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HOWARD J. ROGERS, A.M., LL.D.
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DIVISION E

UTILITARIAN SCIENCES (continued)
DEPARTMENT XIX — ECONOMICS
DEPARTMENT XIX—ECONOMICS

(Hall 1, September 20, 11.15 a. m.)

CHAIRMAN: PROFESSOR EMOY R. JOHNSON, University of Pennsylvania.
SPEAKERS: PROFESSOR FRANK A. FETTER, Cornell University.
          PROFESSOR ADOLPH C. MILLER, University of California.

In opening the proceedings of the Department of Economics, the Chairman, Professor Emory R. Johnson, of the University of Pennsylvania, spoke as follows:

"The purpose of the deliberations of this Department will be to point out the present status of economic thought and to indicate the present trend of economic thinking. There is much evidence that economists are to-day coming to view political economy less as their predecessors of twenty-five and fifty years ago did, and to regard the science as it was conceived by Adam Smith. In Smith's classic work on the Wealth of Nations, the discussion and analysis of production occupies the larger part of the volume. Smith was concerned but little with the distribution of wealth, but endeavored to put in scientific form the principles of the production of wealth.

"Adam Smith and his successors for over a half-century studied production very largely to the exclusion of other phases of economics, because of the universal necessity for a greater amount of wealth. The intellectual and social progress during the latter part of the eighteenth and during the nineteenth century caused men to realize more clearly than ever before the necessity for more efficient production in order to satisfy the expanding wants of various classes of society.

"With the industrial development of the nineteenth century and with the rapid accumulation of wealth, the ethical problems of distribution came to occupy the thought of social philosophers and turned the minds of economists toward ethical problems. The problems of distribution received almost exclusive attention for a score of years following 1880. In dealing with the theory of value and with the principles of the distribution of wealth, the most notable contributions were made by the Austrian and American economists, although Jevons and other English writers contributed in no small measure to the theory of distribution. The American people may well be proud of the achievements of their countrymen in the developing of the theory of the distribution of wealth.

"During the past few years the public has heard but little regarding
the theories of distribution. At the present time the economist as well as the business man is dealing more and more exclusively with the general problem of productive efficiency. The great technical development of the past fifty years and the constant effort of all classes of producers to secure greater economy through a more efficient organization of industry are concrete evidences of the subordination of distribution to production at the present time.

"The same thought may be stated in another way by saying that men are now realizing more and more clearly that the distribution of wealth among producers is determined by and is dependent upon the relative productive efficiency of various producers. Recognizing the fact that distribution depends upon productive efficiency, wage-earners are striving to increase their efficiency by means of their unions; manufacturers and carriers through their consolidations, and capitalists by the formation of syndicates. The labor question and the trust problem are, at bottom, problems of production, and are being so considered both by the practical man and by economic scientists.

"One other interesting evidence of the increasing demand for productive efficiency may be seen in the rapid development of business and commercial education. In Germany and certain other European countries technical education has been provided by public authority with excellent industrial results. In the United States, private funds have thus far contributed most of the money spent in the development of facilities for technical, business, and commercial education; but our public school system has already begun to incorporate business education into its curricula. There are numerous evidences of the tendency to look to educational training for the promotion of economic efficiency. If it be true — and I believe it is true — that the distribution of wealth is determined primarily by relative productive efficiency, and that both industrial education of an elementary grade, and business education of a secondary and university grade can add to the economic efficiency of men and women, we may feel hopeful regarding the future welfare of society. There is no doubt about our being able to increase greatly our productive efficiency, and it seems to be the opinion of economic philosophers to-day that increasing economic efficiency will be accompanied by a progressively better distribution of the results of production."
THE FUNDAMENTAL CONCEPTIONS AND METHODS OF ECONOMICS

BY FRANK ALBERT FETTER

[Frank Albert Fetter, Professor of Political Economy and Finance, Cornell University, since 1901. b. Peru, Indiana, March 8, 1863. Graduated, Indiana University, 1891; Ph.M. Cornell University, 1892; Ph.D. Halle, Wittenberg, 1894; The Sorbonne, and École de Droit, Paris, 1892-93; and Halle, 1893-94. Instructor in Political Economy, Cornell, 1894-95; Professor, Indiana University, 1895-98; Professor, Leland Stanford Jr. University, 1898-1900. Secretary and Treasurer of American Economic Association, 1901-05. Author of Versuch einer Bevolkerungslehre, Jena, 1894; The Principles of Economics, N. Y., 1904, Rent and Interest, 1904; also of many articles, monographs, etc., on economic subjects.]

I. Conceptions

Limitations of the subject. — This paper will necessarily be confined to a few of the important aspects presented by this many-sided subject. We proceed from the thought that economics as a science is primarily concerned with the explanation of the process of evaluating objective things, materials and services, that minister to man's welfare. Every such problem of valuation is an economic problem; every fact helping to an understanding of valuation is, in that aspect, an economic fact. The vast and complex world pours ceaseless streams of impressions into men's minds. As men have striven to correlate these impressions according to various principles, they have come to recognize value as one of the recurring and necessary relations, and have come to group things according to the economic principle. Historically viewed, the increasing scope and exactness of men's evaluation of the world about them is seen to be the unfolding process of men's thought. A theory of value logically adequate, therefore, must trace the value conception from its genesis through its successive stages of thought to the highest and most complex value relations.

Good. — The primordial conception at the basis of all choice, economic or other, is that of the good. There can be no conceptions until mind has been evolved; but an embryonic mind was in the first forms of life reacting upon their environment, shrinking from that which harmed and seeking that which helped. Before higher conscious thought-centers existed, nerves in plants and animals reached out toward the favorable and shrank from the unfavorable. Even the protoplasm has its fundamental economic conception. The evolution of higher animal forms is but the development of special organs of selection to choose the good and to flee from the evil. There need be, as to the use of the conception of good, at this
point no subtle controversy over Epicureanism, or of Hedonism, or of Benthamite utilitarianism. "Good" is here any objective condition, thing, or act, which is seen to have a beneficial relation to the man himself, or indirectly to any one, or anything, else to whom he is bound by sympathy. The old discussion of the utilitarian philosophy of morals has almost lost its meaning to modern thought. In the light of the evolutionary theory it may now be said that a conception of good and evil, in a physiological, an economic, a political, a moral, and a religious sense, are rooted alike in this primordial fact of the reaction of animate creatures upon their environment, choosing that which makes for efficiency and life, and avoiding that which destroys the individual and the species. When man at last rises to the stage of conscious and purposeful mastery over the world, when he, at last, in his gropings for a philosophy of things, begins to create also an economic theory, he recognizes in the broad conception of "the good" the principle that has ruled the destiny of evolving life throughout its struggles upward from the ocean slime to the highest human intelligence.

Scarcity. — Next to the conception of the good the most fundamental economic conception is scarcity; indeed it may be said that economy (which is the study of the good in the objective world) does not truly begin until scarcity sets in. Among the many things surrounding the wriggling bit of protoplasm are some comparatively few things better adapted than others to further its life. It is the appropriation of these better things that insures survival, and so nature begins to shape the various species, making them larger, stronger, swifter to get, more able to digest and assimilate. But improvement in one individual and one species is met by improvement in another, and the contest never relaxes. The origin of species, once so mysterious, has, by the revelations of biology, been made a familiar fact. Selection of the fittest is an agency of biologic progress because of the universal prevalence of superfluous life germs, competing for a limited supply of scarce means of life. This profound truth came to Darwin while he was reading Malthus' Principle of Population. Malthus had got a partial and distorted glimpse of a great fact of nature: the scarcity of food and the excess of life germs. It may be questioned whether Darwin and his followers in turn have sufficiently recognized that natural selection is but a fragmentary expression of a greater economic principle,—the scarcity of goods compared with wants. The survival and increase of a species is but the ultimate resultant of a multitude of acts and relations determining which of the individuals shall wax strong and prevail in the struggle for the scarce goods of their environment.

The process of adaptation is twofold,—individual and racial,—a contrast implied in the whole question of natural and acquired
characters. Adaptation is likewise twofold, — subjective and objective, — according as the change influencing fitness for survival takes place in the living creature or in its environment. Both modes of adaptation are related to scarcity, the subjective mode enabling the individual to excel his competitors in securing and utilizing the particular goods available; the objective mode concerning the change in the environment itself, by natural means at first, then later by artificial agencies.

*Economic gratifications.* — Now let us direct our attention to the conscious human stage of developing thought. Among the varying states or processes of mind and feeling, men distinguish some as good, others as indifferent or as evil. The good became linked by experience and training with certain kinds of activity or with certain conditions of the objective world. In the broad sense any good psychic state or process is a gratification, and any objective condition of it is "a good."

The scarce goods evidently are not all the goods necessary to life, and yet from the beginning of evolution the struggles, the appetites, and the interests center about scarce things. The superfluous things are not in dispute; they are taken for granted. Survival is favored by the concentration of all available energies at the strategic points where the real rivalry lies. Attention becomes intense only when focused upon a small area of thought; effort becomes effective only when narrowed in its task. And thus, throughout the world of animate life, the margin of scarcity bounds the field of economic interest and of economic effort. A distinction, therefore, is to be recognized between free goods, which exist in superfluity, and economic goods, which are scarce in relation to wants. Correspondingly there is a distinction between free gratifications and economic gratifications, but the word "gratification" is generally used in the latter and narrower sense. The quality of arousing gratification is not attributed prodigally to all goods; it is not generally thought of as arising merely from the physiological action of free and superfluous goods; it is the psychological effect credited only to the relatively scarce goods.

As gratification is the subjective aspect of the relation of man to goods, so utility is the impersonal aspect, being the beneficial effect of things, whether felt and recognized or not. The relations of utility and value need further study. The paradoxes are forever recurring,—of intense desire, of strongly felt dependence on things far from vital, and of heedless disregard of things whose loss would be fatal. Gratification and gratitude are closely connected in thought and in life. The relations of man with nature are ruled by the principle of centering effort, interest, and appreciation, upon the scarce things. Relations of exchange are ruled by the principle
of giving scarce goods only in return for scarce goods, measuring the
equivalent more or less accurately in accordance with the gratifica-
tion expected; that is, with the felt and recognized dependence of
the want upon a particular supply.

It is to be feared that after all the able recent contributions to the
psychological economics, the terminology still bears the marks of an
origin in a narrower utilitarian psychology, now much disputed.
Fuller studies should clarify this important subject. Economists
meantime, however, may (despite the confusion of terms) recognize
that, as bearing on the analysis of value, the important factor is
gratification expected rather than realized, gratification in acting
quite as much as in being acted upon, gratification in the totality of
sentiments connected with experience rather than in an absolutely
isolated pleasure; that, in short, gratification is an efficient
element in the valuation process only in so far as it is expressed
in volition.

*Psychic income* next must be recognized as a conception. The
various gratifications form a series of psychic conditions which
constitute the motives of economic activity. This subjective form
of income logically precedes all objective forms of income, for the
importance attributed to any objective goods is but the reflection of
the gratification which instinct, memory, and reason tell men those
goods are capable of affording.

*Consumption goods* are the favorable and scarce things about
men just being converted into psychic income. These are the
immediate points of contact of wants with environment. If men
lived their economic life in the immediate present, consumption
goods would be the only objects to which utility would be attributed.
In a philosophy of goods these present the simplest and most under-
standable problem of value. The animal economy, with rare excep-
tions, is concerned only with this phase of value. The child and the
savage recognize little dependence on any goods but these. Despite
the growing complexity of the value problem, this phase of it re-
mains separable in thought from other phases, and both chrono-
logically and logically is the primary objective aspect. The problem
of value in its simplest form is that of the comparison of these
immediate objective conditions to gratification.

*Usufruct.* — It is a slight step to the conception of usufruct. The
material things affording gratification are not all perishable and
destroyed, but are giving off or affording scarce uses, while little, if
any, injured by use. Ever since men began to think of economic
questions, this temporary use, apart from the durable bearer of the
use, has been recognized more or less vaguely as one of the essential
aspects of the value problem. Usufruct always implies a more or
less durable agent which is affording a psychic product. The
abstract ideal of usufruct, therefore, is that of an income yielded by an everlasting agent.

Such a typical example is rarely presented by any concrete good. Though the conception of usufruct is always in some measure an abstraction rather than a fact, yet usufruct is a practical abstraction indispensable to the understanding of value problems. In practice a particular concrete agent may partake in varying degrees of the nature of a consumption good whose utility vanishes in affording gratification, and of the nature of a usufruct bearer, whose power to afford a series of gratifications is unimpaired by the successive uses. So essential is this conception in practical business that various devices are adopted, such as repair- and sinking-funds, to give the similitude of durability to agents which are gradually wearing out. The confusion of the conception of usufruct with other conceptions has been especially unfortunate in the treatment of rent.

**Time-value.** — The conception of the value problem has widened through the centuries. The elemental phase of value, recognized even by animals, is found in a consumption good, of substance and material to afford gratification here and now. Primitive man recognizes in addition to this the factor of form, and sees in a fitting change of shape a rational cause of value. Many thousands of years elapsed before the change of place ceased to be a mysterious factor in value, and still in the late Middle Ages the merchant, the shipper, and other agents of transportation, seemed to the mass of men to be unproductive parasites upon the social organism. Even the overwhelming evidence of the senses and the estimates of all men showing that value was by these agencies imparted to goods did not, until of late, shake the stubbornly materialistic conception that value lay in the form and substance of things rather than in their psychological relations.

The time-relation proved to be still more subtle and difficult for the concrete minds of men to comprehend. The chapter of economic history dealing with the cruder aspect of the time-value problem, the notions of, and opposition to, interest on money loans, is familiar. Let us venture the more novel opinion that even certain subtle current conceptions of the interest problems are mixed with the dross of cruder materialistic thought, in that the theorists persist in finding the essence of the problem of interest in the particular class of concrete agents with which interest is supposed to be connected.

Economic theory is now ripe for the fundamental conception of time-value as the difference in value of goods of any kind in different periods of time. Time-difference is a pervasive factor in the valuation of the simplest goods and the simplest economic societies, but so long as industry is concerned mainly with the present and a
narrow zone of the future, time-value, being exceptional, seems, even more than place-value, to be a trick, a juggle, a thieving fiction of avarice.

Capitalization. — The economic environment has progressively enlarged, and thus has been broadened the zone of time in which a rich and provident society lives its economic life and makes its economic estimates. Time-value is no longer a minute factor; it rises to a prominent place in the thoughts of men. The use of money and the multiplication of exchange makes the value estimates of men more general, conscious, and accurate. The most noteworthy manner in which time-value is recognized is in the capitalization of a series of incomes. When men provide for the future, they desire to get possession of durable agents yielding a series of future uses. Capitalization of a more or less durable agent is thus based upon usufruct. Capital is but the value expression of a sum of incomes reduced to their present worth by reference to a rate of time-discount. Current conceptions may, from this point of view, be seen to halt confused between the subjective conception of capital as the present worth of any durable agent, and the objective conception of it as consisting of certain concrete forms of goods (especially produced goods). The general use of the capital expression of wealth is a novelty, and the prevailing theories are medieval materialism united to modern views, half-man, half-fish, quite untrue to reality.

Utility and Value. — We have made only passing use of the terms utility and value, but these conceptions pervade the whole discussion. Recent psychological economics has not entirely freed the terms from difficulties. The use of "marginal utility" as synonymous with "value" of particular units in specific moments and conditions seems near at times to a merely verbal shift. We may query whether the difference is not deeper, "utility" expressing the real benefits, and "value" those felt.¹ Now, as the relation of goods to gratification is recognized to be more or less direct or indirect, so there are different grades, or phases, of value. The theory of marginal units as applied to the exchanges made by groups of buyers and sellers in a given market is but a portion of the whole theory; or rather, the marginal unit theory as usually developed assumes the most difficult parts of the problem, and leaves them unanalyzed and unexplained. The commodities brought to a market are more or less durable, more or less direct gratifiers, more or less immediate or remote, in time, from gratification. Fish and meat exchanged for horses, weapons, or dress are goods of entirely different orders. Immediately consumable goods whose value is the exact reflection of gratification are balanced against durable agents whose usufructs

¹ The doubts expressed above (p. 10) as to the adequacy and consistency of the terminology, apply to these terms also.
are to be distinguished over a series of years, and whose present exchange value is the capitalized sum of all the uses they contain.

Therefore "marginal utility" is not the theory of value; it is but the alphabet of the theory of value. Building upon the conception of immediate gratifications the conception of usufructs, and upon the conception of usufructs the conception of capitalization and time-value, the framework of a theory of value may be reared, unified, consistent, and complete.

The conception of proportionality is not mentioned, but is implied throughout the foregoing. In the progress of economic theory it was under the aspect of "the law of diminishing returns" that men first grasped a ragged corner of this broad principle. An historical view helps us to understand how it was possible for the keenest minds to believe at first that "diminishing returns" were peculiar to land used in agriculture, and were due to the peculiar chemical qualities of soil used for food production. Such a view mistook a logical economic principle for a physical fact. Then the same "law" was seen to be true of land in other uses; and of late by some able thinkers has been seen to be true of all indirect agents. We have now but to relate the "law of diminishing returns" in the use of durable agents to the principle of marginal utility in the use of immediately consumable goods for gratification, to arrive at a broad conception of "the diminishing utility of goods" in all conceivable applications, immediate or remote. This is the very heart and essence of the economic problem. It is the proportioning of limited means to useful ends; it is the wise choice and union of limited agents; it is the rule of economy. And this is but a special aspect of a law as broad as life—the law of proportionality. In mechanics it is the adjustment giving the maximum of efficiency; in chemistry it is the union of elements in effective proportions; in politics it is the rule of justice and expediency; in ethics it is the Socratic golden mean between the opposing vices; in economics it is the wise adjustment of goods to wants.

II. Methods

Controversy over the deductive and the inductive methods. — In turning to the subject of the methods of economic inquiry I do not purpose reviving and continuing the well-worn controversy over the rival merits of induction and of deduction. That controversy may have had its uses; in any case it seems to have been inevitable; and yet to the eyes of to-day the issue appears to have arisen out of false analogies with other sciences.

Induction and deduction are different modes of thought, or processes of logic, to arrive at truth. The methods of inductive thought and of deductive thought cannot validly be contrasted
as mutually exclusive alternatives in the study of any of the concrete sciences. Mathematics only, of all the sciences, moves in the realm of purely abstract relations, dependent for the truth of its conclusions only on the inner or logical consistency of its deductive conclusions, not on their correspondence to any specific set of concrete facts. The ideal of shaping the social sciences on the model of mathematics misled for a long time the votaries of the science whose data were, to a greater or less degree, made up of the facts of the concrete world. In every branch of inquiry except mathematics, both inductive and deductive mental processes are constantly employed. They are like the chisel and the hammer to the graver, who must now use one, now another, and again both together. Man's power of thought is not so in excess of its task of understanding the economic world that only half of it need be exerted.

The natural sciences, such as physics, chemistry, and, later, biology, suggested an analogy for economic students which was as misleading, perhaps, as was that of mathematics. The rapid advance of the natural sciences, both in the bulk and in the exactness of their conclusions, seemed to challenge economics and to point the way to progress. Their predominant use of the inductive method served to blind to the fact that deductive processes were also frequently employed, and to offer the false hope that social truths were to be found, if sought, in an exclusive study of the facts of the objective world. And thus, in turn, as other sciences, as psychology and biology, have taken the center of the stage and have played the leading rôle in the drama of human progress, economic studies have been more or less influenced by their examples.

The choice of method in any science must be made in the light of reason, not in the deceptive shadows of analogy. The division between the methods of economics and of the natural sciences is to be found in the nature of the materials dealt with and in the point of departure, whether in the thoughts of men or in the world of things,—the subjective and the objective methods. This distinction appears to correspond with that between induction and deduction, but this correspondence is external and fortuitous rather than essential, as will be seen in considering more fully the special character of the social sciences.

*Dual nature of economics.*—The social sciences have a character as distinct from pure mathematics on the one hand as from the physical sciences on the other. Mathematics presents the type of most abstract subjects of scientific thought; physics the type of the most concrete subjects; while social science presents a dual aspect. But although it may seem to share the features of the other two types, it is in no sense a mere compound of them. Mathematics is concerned with the logical relations of numbers; physics with the
observed and tested interrelations of material things; economics with the relations of man's thought with the utilitarian aspects of things. In this view the economist's problem as a whole is more complex, shifting, and elusive than either of the other types of problem. In part the problem can be studied in the realm of man's psychical nature,—his feelings and his judgments; in part in the physical world which appeals to and gratifies his desires; and finally in the relations between his psychical nature and the objective world. The value problem always involves this last relationship.

The nature of the economic problem should determine the methods of economic inquiry. According as the ultimate relation is approached from the side of man's nature or from the side of the material world, either the subjective or the objective method of study is employed. The two are separable in thought and practice, and yet as each is pursued it moves toward the other, and the labors and results of all students should combine at last into one harmonious body of knowledge.

**Subjective economics.** — The problem of subjective economic analysis is that of interpreting man's psychical nature, his impulses, his wants, his modes of thought, so far as they are concerned with the utilization of the outer world. The subjective analysis should discover and express clearly the economic conceptions which men have regarding things, and it should thus clarify and harmonize the economic categories. In other words it should provide, in place of shifting and individual points of view, certain generally recognized outlooks, from which the whole economic globe can be scientifically charted and surveyed. The subjective study is to discover which among the many shifting points of view are most frequently taken, most essential, most grounded in the logical nature of the case.

The need in clear thinking of keeping the subjective and the objective conceptions distinct may be seen in the confusion that long has continued in the theory of land and rent. It could not escape the earliest economic inquirers that some things appeal to men as durable yielders of usufructs. What is paid for the use of agents considered as indestructible was the "return" or rent for them. In the eighteenth century, when the effort was made to formulate a system of economic thought, it chanced that the only large class of wealth dealt with in the market under the usufruct-contract was land. Not apprehending the distinction between the subjective and the objective basis of economic conception, the early economists linked the idea of usufruct with that of natural resources in a hybrid, illogical conception of rent, which has continued for a century to puzzle and defeat much economic inquiry.

The first form in which the time-aspect of value challenged a theoretical explanation was that of interest on money loans.
Eighteenth century students saw that the same value problem was involved in the case of many agents generally exchanged for money, which chanced to be the products of manufacture in cities; and the term "interest" was thus extended. The concept of interest became thus an illogical cross between a value aspect common to all goods, and the income yielded by a certain objective class of goods. This confusion has been but dimly perceived because of the failure to distinguish consciously the subjective and the objective elements in the so-called "interest problem."

The methods of subjective study. — The specific methods of studying economics subjectively can be hardly more than mentioned. It begins with introspection, and pursues the analysis of man's nature and wants by observing and comparing the impressions, the hopes, and the motives that determine acts in relation to gratifications. The method of psychological analysis requires here no defense, and the service of the marginal utility theory, as developed by various writers, will hardly be denied. That service has, perhaps, been exaggerated, for in the enthusiasm over the discovery of a new and exacter mode of economic inquiry it was believed by some that this was the substance and scope of the economic problem. This study must be extended from the individual consciousness to social sentiments and social institutions, to class feelings, to the psychology of the masses, and to the evolving standards of living. Every degree of relationship of motives to gratification must be followed out, and the whole field of human action must be studied from this subjective standpoint.

Study of the growth of economic theory. — A much neglected but fruitful field of subjective economics is the critical study of the evolution of economic thought; not that students have ignored the writings of their predecessors, but they have approached those writings either in the spirit of implicit faith or of partisan opposition to certain social institutions or plans. The scientific, critical spirit has in both cases been lacking. Almost every chapter of the representative economic works is bristling with logical difficulties and is a challenge to the best critical faculties. As economic thought has unfolded in the past two centuries it has presented errors and mingling of errors in kaleidoscopic variety. Progress of the abstract theory toward truth has been in an empirical manner. The whole problem has not at any one time been investigated fundamentally; rather, each new advance of thought has been inspired by a contemporary need, and has shown, therefore, a temporary character. The analysis of the conceptions employed and close textual criticism give a rare exercise in logical thinking, a conscious mastery of the essential conceptions, and an historical perspective of the highest value to the economic theorist.
Subjective analysis applied to practical problems. — Of what use can the subjective analysis be in the practical aspects of industry represented in this department? In seeking a science of the various arts that make for the fuller life of man, we have to inquire what are the wants that manufactures, transportation, commerce, monetary agencies, public finance, and insurance seek to gratify? How, when called forth by human desires, do these great institutions react upon the estimates and even upon the nature of men? What aspects of value are presented by each of these industrial agents? What abstract conceptions are needed to make possible a logical classification of the phenomena in each of these lines of action? The subjective analysis is indispensable to the task of bringing order out of the chaos of facts. It gives the selective principles around which a scientific treatment of these subjects can be made. The logical starting-point of all economic inquiry is human nature and human wants, as it is also the completion of the circle of economic action and of economic science.

The objective method of study. — In the subjective analysis a recognition of objective conditions is already implied. Owing to the dual nature of economics, the study of the conceptions held by men regarding goods can proceed but a few steps without turning the eyes now and again at the kinds and qualities of goods. Even the study of the economic categories cannot be carried on by the closet philosopher. A knowledge of the ways in which men contemplate goods can be gained only by a study of men under manifold conditions and in manifold relations with goods.

But there are many objective starting-points for economic study. The animal has in its instincts and memory a store of conscious and unconscious associations of goods with gratifications. The savage from necessity roughly classifies the birds, beasts, soils, and materials of his little world. Individual experience has grown at an ever-increasing rate into a social store of accumulated wisdom. Maxims, precepts, oral traditions, religious scruples, injunctions, faiths, and moral codes embody the economic experience of generations. Fragmentary writings grow into systematic chronicles, and these into the history of deeds and into the recorded observations and conclusions of many minds. The growing delicacy of social organization is making possible, and the scientific spirit is demanding, an exacter study of contemporary occurrences. Larger resources are given to the gathering and printing of statistics and to the establishment of commissions of inquiry. Popular interest is encouraging the monographic study of the minutest details of industry, and the publication of these studies in many magazines. The spirit of economic inquiry among industrial leaders is unlocking to the world untouched treasures of practical experience and of wisdom in industrial affairs.
All this knowledge of the objects of economic endeavor not only may be, but must be, made use of by the student who would attain to the fullest understanding of the economic process. Paraphrasing the words of the poet, the economist may well exclaim: I am a man, and nothing that concerns the welfare of mankind is foreign to me.

At this point of view we may wonder whether any one ever could have sincerely doubted the worth of history as an agent of economic inquiry. Are not the fruits of a single generation of studies in economic history sufficiently visible in the broadening perspective of all contemporary inquiry? We wonder, again, whether any one ever could have seriously doubted the scientific worth of the psychological economics. Is it not amply vindicated by the increasing keenness of the critical faculties now attacking every moot point in theory? The subjective and the objective methods are not rivals, but allies; not mutually exclusive, but mutually indispensable. Indeed, they are not so much different methods as different hemispheres of the complete globe of economic knowledge.

The Economic Process. — The ideal has found repeated expression among students that economics should, much more truly and fully than now, formulate the laws of industrial development of the economic process. A number of progressive steps have been made toward this end, which yet, however, appears a long way off. Indeed, as yet no thinker has been able to tell us more than vaguely, in terms of analogy with the biologic sciences, what such an economic process is. The suggestion ventured before (p. 15) may be repeated, that it may possibly be developed along the subjective and objective lines of inquiry. We may study historically the conception of value relations as it has unfolded in the minds of men. Parallel with this is the development of the material environment of wealth which reflects and embodies the value concept. The process of valuation is carried to a certain stage in each generation, corresponding to the process of industrial activity pursued by each epoch.

In each individual as he develops from childhood to maturity are retraced the steps of the valuation process, and side by side at a given moment are found within a single country the various family and neighborhood economics at various stages of growth and complexity, analogous to the different forms of plant and animal life. Some such a conception is needed to make possible some unity in the chaotic mass of historical and statistical material already available to the student. The central thoughts may be economic desire and will expressing themselves in acts and institutions, and in the economic agents with which men have surrounded themselves.

Economics as a science. — As here discussed, economics is seen to
be in no peculiar sense utilitarian, not more so than are the sciences of minerals, of animals, or of plants. It is the philosophy of the useful, but it is not necessarily, as a body of knowledge, more useful than any other philosophy. Its highest aim is truth rather than dollars, and theory rather than practice. But this does not imply the popular and misleading contrast of theory as something certain to fail, with practice as something sure to succeed; of theory as the fantastic and impossible, with practice as the sane and useful. Theory is truth-seeking, it is explanation, it is philosophy, and true theory is the highest and best expression of the practical.

Neither is economics as a science to be thought of as useless knowledge, in contrast with art as its useful application. Science is truth, not wealth; it is knowing, not doing. It has been said that the beautiful is as useful as the useful, and it may likewise be said that nothing has higher utility than truth. In economics more perhaps than in any other branch of human knowledge, the desire for results that can be immediately expressed in dollars tempts from the path of truth, and thus here is the greatest need to hold up the ideal of open-minded, disinterested research.

_The social conception of economics._ — With broad strokes have been sketched the limits of our subject. Throughout the conceptions and methods of economics is the pervading thought that economics is a social science. The complex evaluation process can be carried on only under social conditions. The judgments, feelings, and sentiments of men living in social relations must be studied to get an understanding of the resulting valuation of goods.

As a “social” science, economics must be contrasted with the natural and technical sciences, not so much in the subjects studied, as in the point of view that is taken. When any man, or any group or class of men collate facts for their own benefit, the knowledge gained falls short of science, though it may provide material for the scientist. Each of the subjects in this department must be studied from the nearer standpoint of the technical manager; the economist must view each in turn from the social point of view; he must seek to understand the social functions of the railroad; the motives and the social results of commerce; the origin and social nature of money; the basis and the social effects of public financial measures; the social conditions which have the magic power of transposing a gambling debt into the social boon and blessing of insurance. Economic study is bounded only by the public welfare. The economist must be a devoted servant of the social truth, freeing himself as far as may be from the prejudices of class, and the interests and the passions of the day.

The social conception of economics is growing. The national studies of Ricardo, of List, and of Carey appear now to have been
narrow and temporizing. This international gathering of scholars and of scholarly men of affairs calls to mind the growing international exchange of ideas. We meet as co-workers in the fraternal task of knowing the truth; we shall part with a broader social conception of economic science, and of its pacific part in the progress of the nations.
ECONOMIC SCIENCE IN THE NINETEENTH CENTURY

BY ADOLPH CASPAR MILLER


The part assigned to me in the programme of this Congress is an historical review of the science of economics in the nineteenth century; more particularly, as I conceive it, such a review as may serve to set forth the progress that has been made by the science in that time. To compress a century's history of any active science into a fifty-minute discourse is no easy task. But the task of the historian of economics is especially great, for economics has had its troubles in the nineteenth century. It has come by no short and easy path to its present position, whatever this position may be defined to be. And it has left the record of its troubles and wanderings in a literature of unusual extent and vast variety. Of activity at least there has been no end. Economics has made a history for itself if it has not made progress. So much, at least, is certain. But the history of a science must not be confused with its progress. Much that has a place in the history has little relation to progress. Since our interest lies with the progress of economics, it is my purpose to review the history only so far as it seems necessary for an appreciation of its progress. And all that is requisite for this purpose is to take a straight cut through the history, following the line that seems most competent to exhibit those features of the past development that are significant for the understanding of the successive phases that make up the life-history of the science. But what shall be the line of view?

This question is the more difficult to answer because of the absence of a tolerable consensus of opinion among economists as to the proper character and constitution of the science. The Methodenstreit has not issued in a common understanding. I cannot agree with Professor Marshall that we have "worked our way through controversy to the extinction of controversy," if that is to be taken to mean a rapprochement on the fundamental question of the constitution of the science. If less is said about this question than formerly, it is rather because controversy has taught the futility of controversy and that economists have taken to doing things instead of talking about them. For one has only to compare the procedure of two
such master-works as Marshall's *Principles* and Schmoller's *Grundriss*, to appreciate how considerable the divergence of aims and methods still is. Economic science is still a thing of schools, each contemplating the results of its own work with much understanding and satisfaction, but taking little regard of the others. It was only the other day that a brilliant and dispassionate critic of the present position of economics lamented the persistence of what he called an "archaic habit of thought"¹ in the methods of the economists working under the guidance of the classical tradition. And but a short time before this, Professor Nicholson² had characterized the work of the historical school as "impressionism." This evidence and much more of similar effect might be quoted to show that economists are still far from being of one mind, and the reviewer who looks to find in the present state of economics a definite objective standard by which to estimate the work of the past, will find little guidance. We must, therefore, look elsewhere.

The place assigned to economics in the programme of the Congress might seem to suggest a way of handling the matter. Economics is grouped here with the "utilitarian sciences,"—with engineering, medicine, and agriculture. Though it is true that economics, like most of the sciences, began as a utilitarian science, its theoretical formulations being directed by a keen practical interest, and though it is true that the science derives its chief interest from the light it may throw upon the great questions of economic organization and control, and though it is also true that men of high repute claim that the science "is wholly practical" and "has no raison d'être except as directing conduct towards a given end,"³ and though others, less frank in their avowal have yet cultivated the science with homiletical intent, yet I believe at this present day it would be a gratuitous innovation to undertake to estimate the progress of economics as a utilitarian science. The trend towards a scientific treatment of its subject-matter as distinct from its application has been one of the most marked symptoms of its growth. This is, in a sense, the progress of the science. Few economists would go the length that Cairnes did, a generation ago, but an increasing number would insist upon the observance of a sharp distinction between economics as science and political economy as art. Indeed, the vogue the term economics is coming to enjoy, as against the older term political

¹ Dr. Thorstein Veblen, in an article entitled *Why is Economics not an Evolutionary Science*, in the Quarterly Journal of Economics, vol. xii, p. 379. See also the remarkable series of articles on *The Preconceptions of Economic Science* by the same writer in the same journal, vols. xiii and xiv. Much help has been derived from these articles in the preparation of this address.

² In his presidential address on *The Reaction in Favor of Classical Political Economy*, given before the economic section of the British Association for the Advancement of Science, 1893.

³ Dr. William Cunningham in his *Politics and Economics*, 1885, p. 12.
ECONOMIC SCIENCE IN THE NINETEENTH CENTURY

*Economy*, is due, in considerable measure, to the widespread desire in the science to have a name for the subject that shall be free from the misleading associations of the old name,—one that will more completely identify its character as a science after the usual meaning of the term. And, therefore, though the shadow of its early days still hangs over the science, it has happily moved too far away from that position to make an estimation of it as a utilitarian science advisable. Some other course must be chosen.

The course that I propose to take is to offer an outside view, to see how economics looks when viewed from the general standpoint of nineteenth century science. It ought not to be overlooked that a leading purpose of this Congress is to bring out the fundamental unity of all sciences,—their mutual relations and advance. The advance of knowledge in the nineteenth century has done much to dispel the notion that the several sciences are independent of one another. Those sciences that have lived unto themselves have lagged. The mutual advance of the progressive sciences has stimulated a belief that, in the midst of seeming diversity of character and interests, there is a fundamental unity of knowledge. Whether this belief will ultimately establish itself as a tested conclusion of experience, it needs no great insight to perceive that economics has a close relationship with other sciences. It must go outside its own boundary for much of its material, and it uses it with poor effect when not habituated to the methods and standpoints of those sciences from which it borrows. It is true that economics has not always acknowledged its dependent character and, in its desire to avoid entangling alliances, has sometimes incontinently isolated itself and led a barren life. Something of this sort is doubtless in the minds of those workers in other fields who tell us that economics is discredited by its old-fashioned habits of thought. Economists cannot afford to be indifferent to criticisms of such import, especially when spoken with the sanction of authority. And this accounts for much of the perplexity in which economists find themselves when viewing the results of the work in their science in comparison with those of the material sciences.

Few things stand out more prominently in the history of nineteenth century thought than the change of attitude that the material sciences have experienced. It is sometimes said that modern science is realistic and sets a greater importance on facts as facts. But the older sciences were surely not indifferent to facts; for all science deals with facts. What distinguishes the later-day sciences is not the insistence on facts, but the dispassionate habit of presenting and construing them. For modern science, the matter-of-fact habit of mind is everywhere decisive. Instead of seeking to find the spiritual meaning which underlies appearances, modern science is
content to present things as causally related in a material sequence. Helped on by the evolutionary concept of process and the notion of cumulative causation, a large part of the discipline of the material sciences has been devoted to purifying the scientific mind of the metaphysical animus. Genetic coherence is sought where formerly a spiritual tie was wanted.

How far our science has adopted the new conceptions is a matter of such vital interest as properly to suggest the course of the review to be undertaken. It must be admitted, at the outset, that it can give no more than a partial view. An alternative course has much in its favor. But with the echoes of controversy still sounding around us, touching the character, province, and method of economic science, it seems best to ask how the science has proceeded, rather than what, in point of doctrine, it has taught. Until a science attains a relatively high degree of maturity, a subordinate interest attaches to the development of its particular theories, for development of this sort may take place within, while the progress of the science as a whole is arrested. It is only those developments of theory that correspond to a change of front of the science that can be of consequence when we are trying to measure its advance. It seems best, therefore, in reviewing the science with this purpose, where brevity is necessary, to treat the viewpoint as the paramount concern, and to reach it by the shortest route. Progress in science means more than one thing, but it means no one thing more than the successive conquest of viewpoints that afford a fuller and finer knowledge of the conditions or processes with which the given science is occupied. Just as the history of a country may be read in its highways, and the progress of a people is written in their tools, so the history of a science is most clearly revealed in the paths it has followed and the methods it has used. In such a view of the matter, it is the lower levels rather than the upper levels of the structure of the science that are to be brought under notice. Economics has changed its theoretic constitution from time to time in the course of its modern history, and it will not be a misappropriation of time to inquire under the pressure of what exigencies or the stimulus of what impulses the modifications have taken place, and whether they have been in the direction of progress. It is the foundation, framework, and outfit of the science rather than its specific output that will need to be noticed, the bases of its theoretical formulations rather than the formulations themselves, — what is sometimes called the external history of a science in distinction from its internal history.

For the purpose of understanding the theoretical constitution that economics has had during the greater part of the nineteenth century, it is necessary to go back to some of its eighteenth century antecedents. To the Physiocrats belongs the credit of having attempted
the first great comprehensive synthesis in economics, and though the structure they erected was airy and fantastic, it served as a model for later generations beyond what has ordinarily been admitted. Many a later thinker is of closer kin to them than he would be willing to acknowledge.

Until the Physiocrats entered the field, economics was habitually treated as an art, the chief concern of which was to formulate maxims of public policy. With the Physiocrats the study takes a new direction, or what to all appearances is to be rated as a new direction. They set out to discover the natural laws of wealth, though to the Physiocrats natural law means something different from the empirical generalizations of later science. Theirs is a metaphysical conception of natural law and theirs is the metaphysics of the order-of-nature. Starting from this as their central position, they work outwards to the laws of society. The natural order of society is to them a simple deduction from the physical order of the universe, and the natural laws of society are simply the laws of the physical order applied to social relations. Therefore, the Physiocrats address themselves to a careful scrutiny of nature's processes and purposes. As they conceive the matter, it is the ceaseless exchange of matter and force between nature and man that makes up the natural life of society. That exchange is the phenomenon to be explained, and the order-of-nature explains it. The ultimate term of the Physiocratic formulation of economic truth is, therefore, the order of nature. The habitual effort to reduce all things to terms of nature is the characteristic and dominant feature of their thinking.

To the Physiocrat, the course of human events is under the guidance of nature. Nature is invested with a teleological propensity, working always for the physical welfare of man. She can, however, be hindered or even thwarted,—not only can be, but has been. But as soon as men cease the infractions of her discipline, the natural course is resumed. In the end, nature always has her way, and her way is the best possible way, for she is the interpreter of the Supreme Legislator whose laws are intended to secure the welfare of man.

Such is the Physiocratic view of the order of nature. Starting with this conception, they set about to formulate the laws of wealth, the aim being to construe the economic process in terms of the natural order. And since the great enterprise in which nature is engaged is the support and perpetuation of human life, it follows that the supreme test of economic reality is the relation of any industrial function to this nutritive function of nature. Man's work is to be rated as efficient or otherwise according as it helps or hinders the consummations of nature's substantial end. Thus in the Physiocratic analysis the interest centers chiefly in production, and their economy is, therefore, mainly a theory of production. Specifically the test of
productivity of any activity is its bearing upon the fund of human sustenance — food. Only such activities as enlarged the supply of the material basis of life are accounted productive — all else is beside the mark. Nature is not solicitous for the spiritual welfare of man; hence no alleged spiritual gains coming from diversion of industry from its true channel can compensate for the losses of nutritive material. From this principle follow by logical necessity the Physiocratic theory of the "produit net," the "impôt unique," their classification of industries and their predilection for agriculture. The system is one of singular symmetry and nice adjustment of parts.

Their theory of value presents itself as an integral part of this closely compacted system. If value be generically conceived to mean that which avails towards some admittedly adequate end, then, for the Physiocrats, value must mean that which avails towards nature's work. Exchange values, those which result from the conventional rating of things in the market, manifestly could not satisfy the physiocrat's sense of reality. Natural values are the only real values, to be arrived at through an appraisement of things from the point of view of nature's purposes. Only that is accounted of value which contributes to the increase of nutritive material. Nothing could be farther from the Physiocrat's notion of wealth or economy than to make vendibility the attribute of wealth. That would have been a degradation of the science to the position of a mere "market philosophy."

Other features and details of the physiocratic theory lend themselves readily to a similar construction, but enough has been said to indicate how the metaphysics of natural propensity shaped the theory and to justify the view that economics made its débuit as a systematic science under the patronage of the eighteenth century metaphysics of nature. And it is a mistake to represent this expedient of thought as an invention of the Physiocrats. Their methods and procedure were such as commended themselves to the scientific judgment of the eighteenth century, for the order-of-nature conception played an important part in the philosophical speculations of its moralists and political writers. What was original and striking was the use the Physiocrats made of this conception in constructing a philosophy of wealth, and the new method by which they arrived at it, and the new authority with which they invested it. The postulates of their system were a curious blending of physics and metaphysics, but it is the metaphysics that is of chief significance for the subsequent history of the science.

It gives, however, a very faulty idea of the significance of the physiocrats to represent them as mere system-builders. For them the distinction of a later day between art and science has no existence. Theirs is in truth a utilitarian science, — a sort of economic
sociology in which of necessity the is and the ought-to-be are merged in one. They have no need of going outside the system to point applications of its principle. Under the ordre naturel whatever is of right ought also to be. The laws of the physiocratic economy are not statements of mere historical uniformities or sequences. The sequences are regarded of necessity as describing consummations to be desired, for they are, in a discreet sense, natural sequences. So, while thinking in the spirit of a utilitarian science, the Physiocrat is able to speak in the language of positive science. But, for all that, a positive science of economics, as concerned merely with the explanation of things, had not yet emerged. And what is true of the Physiocrats in this regard is true of much of the later science so far as it worked under the guidance of the-metaphysics of natural propensity or any of its derivatives.

The next important advance in economics is connected with the activity of Adam Smith; and it is to be rated the most considerable advance ever accomplished for the science by any single individual. And his work is to be rated as a great achievement whether we regard the body of its specific teachings or whether we regard only its larger features as set forth in the general attitude of the author. The pains-taking scholarship that has been brought to bear in recent years on the history of economic science has shown Adam Smith’s indebtedness to his contemporaries to be greater than was once supposed. Very real affinities of thought and attitude are now traced where formerly the differences seemed prominent.

Particularly close is Smith’s kinship with the Physiocrats; so close that with the lapse of time there seems to be increasing disposition to group him with them, rather than to set either them or him apart from the direct line in tracing the pedigree of the science. Adam Smith stands on much the same plane of culture as the Physiocrats. With both, the fundamental constitution of the science is metaphysical, and with him, as with them, the metaphysics is the metaphysics of natural propensity; with this difference, that in Adam Smith the metaphysics is toned down somewhat and is made to play a less overt part in shaping the formulations of theory, which is, perhaps, only another way of saying, with just about the difference that we would expect between a representative French thinker of the eighteenth century and a representative Scotchman. Indeed, in this respect, Adam Smith may be said to occupy a transitional position in the history of economic thought, if the greater prevalence of the matter-of-fact habit of mind may be taken legitimately, as broadly describing the cultural advance of the nineteenth century. The sources that fed this advance in Adam Smith need not detain us. It is probably to be set down to the credit of no single influence or indi-
vidual. He simply shared in the change of mind that was being operated for British eighteenth century thinking by the slow-working influences of the time, and that found their most definite philosophical expression in the skepticism of David Hume. So that an admirer of Hume might be pardoned for thinking that Hume did for political economy a service somewhat analogous to what he did for philosophy. However that may be, an appreciable change was coming over British thinking, characteristic out-croppings of which meet us on every page of Adam Smith. So far as he was hard-headed and factual he was a child of his time; but so far, again, was he also child of his time as he preserved, along with the new habit, the metaphysical bias from which it was not given his century to shake itself free.

The feature of Adam Smith's thinking that is here under notice as marking an advance in the progress of the science may be viewed in another aspect. There has been not a little discussion as to the method of investigation followed by Adam Smith. Spokesmen for each of the rival methods — "induction" and "deduction" — have claimed Adam Smith on their side. But all that this means is that Adam Smith is in his ways of thinking at a transition. So far as the deductive method goes with the metaphysical way of handling things, the abundant use of it by Adam Smith shows the vitality of the metaphysical animus; and so far as the inductive method is a suitable companion of the more matter-of-fact habit, Adam Smith's frequent resort to it points to the presence of a new item in the conceptual equipment of the science. For this reason it is a matter of some difficulty to define Adam Smith's true attitude in a summary statement.

Adam Smith, like the Physiocrats, is concerned to find the natural laws of wealth, and his discussion runs almost habitually on the causal sequences of things; and, so far, justifies the title of his book, *An Inquiry into the Nature and Causes of the Wealth of Nations*. But a closer examination shows that, in his handling of the phenomena of wealth, he is not content to let the inquiry stop with the description of proximate causes. His feeling for reality is not appeased until the causal material situation is resolved or, at any rate, is resolvable, into its ultimate spiritual causes; in other words, for him things must have a meaning beyond what the naked situation yields. For him the causal sequence regularly implies a spiritual sequence, and sometimes a spiritual sequence is discernible where the causal sequence is broken. His plan, therefore, like the Physiocrats', demands a scheme that shall be competent to exhibit the significance of the economic processes. But, while this much may be said with confidence, it is not so easy to say what that scheme is. It is not put forth with the Physiocrats' naive frankness. Adam Smith is a
Scotchman. Suffice it to say that to the older notion of a teleological trend in the course of events, Adam Smith adds the notion of a normal human nature. The human propensity to "truck, barter, and exchange" becomes the mechanism through which the "invisible hand" of nature accomplishes its purposes, and since men are pretty much alike, the mechanism is well-nigh faultless. It is, therefore, the workings of human nature as thus conceived rather than the operations of physical nature that form the object of Adam Smith's analysis. His system, like the Physiocrats', is mainly a theory of production, but man, not nature, is conceived to be the central agent in the process. His system has, therefore, been properly called the industrial system, for human industry, labor, is its efficient principle, the term in which economic knowledge is formulated. Though he looks in much the same direction, his outlook is broader than the Physiocrats'. Everything is viewed from the standpoint of production; all the economic processes are construed as aspects of the productive process, but the notion of production is widened so as to include every variety of industry, not alone that which helps the nutritive work of nature. So "natural" value belongs to whatever embodies labor; labor is the cause of value, — the "real price" of things.

But while Adam Smith's notion of the natural course is appreciably nearer the truth as the ordinary layman sees it than was the Physiocrats', it is very far from professing to be identical with the actual course. Thus natural values are not the values causally determined by the "haggling of the market." But, for all that, they are the "real," the "necessary" values, and the market values are the "nominal" values, the "accidents," though a cynic might be pardoned for refusing to see wherein they were "necessary" except to establish the logical congruence of economic theory with its postulate. Of course, the gap between nature and the market is bridged, in thought at least, by the workings of self-interest. Where competition is the regulator of values a reasonable correspondence is held to ensue between the "real" and the "nominal" prices of things, and thus is vindicated the economist's claim that nature does all things well, and that, as she does them well, the logical is the "natural."

Quite as characteristic of Adam Smith's attitude is his treatment of distribution, and it is almost equally characteristic, it may be added, of the attitude of many later economists toward the same problem. The shares in distribution are to be accounted for. How is it done? Briefly stated, by construing them in terms of the "necessary" equivalence of effort and effect in production. Nature does not waste. Therefore, when the natural course of things runs off smoothly, that is to say, when competition does its part, effect
must be proportioned to effort, and *vice versa*; and thus the quantita-
tive equivalence between work and pay is neatly established. Man
bestirs himself to secure a gain with no intention of assisting the
productive processes of nature. But, for all that, the bargains that
he drives betray him into an alliance with nature, and therewith is he
led by the "invisible hand" to do his part in production and the
service of society. The resulting shares in distribution are "natural."
But, here again, it must not be supposed that the natural and the
actual correspond in Adam Smith, least of all in that state of
actual society which follows "the appropriation of land and the
accumulation of stock." Nevertheless, the distribution in question
is "natural," because it falls in with the author's preconception of the
orderly course of industry.

If it be asked whether the term "natural," as employed by Adam
Smith, implies the same unmitigated approval as with the Physio-
crats, the answer must be "No." In general, the "natural" means "what ought to be," or "what is intended by a benevolent
Providence." But some telling passages might be quoted to show
that Adam Smith's enthusiasm for the "natural" is considerably
tempered by his noting the action of other plain, homely, matter-
of-fact causes, even under the "system of natural liberty." The
case of the landlord is one. His "rent costs him neither labor
nor care." So, again, "the interest of the dealers in a particular
branch of trade or manufactures is always in some respect different
from and even opposite to that of the public." The persistence of
these and similar cases were troublesome items in Adam Smith's
system. They must have offended his nice metaphysical sense of
fitness. But it is greatly to his credit that he did not attempt to
ignore them, and was willing to sacrifice symmetry to truth. That
would have offended his dispassionate practical judgment still more.
He is willing to let these blemishes stand as exceptions to the bene-
ficent trend of things. And in this respect he is better than some
of his followers.

But yet, looking backwards, the metaphysical animus in Smith
is strong. The notion of a natural economic order guided his think-
ing as it had done the Physiocrats'. But his natural order was the
result of the free and spontaneous action of individual interest,
acting, of course, under the constraint of Providence. This idea
of efficient self-interest was his specific innovation, and his legacy
to his followers. They seized upon it, and, informing and strengthen-
ing it with a new philosophy of the human mind, made it the basis
of the classical system.

With the turning of the century, the constitution of economics
experiences a substantial change, adding to its premises and shifting
its attitude, but not in any such thoroughgoing way as to divest it of its metaphysical character. It is still a science dependent on the apparatus of preconceptions and postulates.

The leading figures in economics at the beginning of the century are Malthus and Ricardo, and they, with Adam Smith, are usually represented as the great triumvirate that gave to English political economy the character that it has held ever since. But it seems doubtful if either Malthus or Ricardo has exerted a greater influence than the great Utilitarian who was the tone-giving influence in nearly every department of English thought for at least one half of the century. To the influence of Bentham's teaching the science owes that peculiar constitution which has given rise to its characterization as "the mechanics of natural liberty." To that same influence seems due the shifting of the center of interest from the analysis of production to the theory of value. To him, also, is due the rapid rise to ascendancy of the abstract deductive method. And to his teaching in particular we owe the creation of that bondman of the science, the economic man. No doubt, other influences also contributed to these changes. The incorporation of the law of diminishing returns and the principle of population into the premises of the science are to be especially noted. As limiting conditions of the environment within which the economic action of man was noted they also served to add emphasis to questions of value and distribution, and, besides, imported a strain of pessimism into economic thinking. But no other influence was paramount to the influence of the new habits of thought, the foundations of which were so convincingly set forth in Bentham's Principles. That influence was deep and pervasive.\(^1\) It was during the reign of Benthamite utilitarianism that English political economy achieved its greatest triumphs and worked its way to an authoritative position in Great Britain as a foundation for public policy.

The specific innovation that utilitarianism accomplished for political economy was the substitution of utility for providential design as the basis of theoretical formulations. Bentham gave to that metaphysics of human nature which had already emerged in Adam Smith a matchless statement, an impregnable setting. It became for political economy a first principle. Adam Smith had shown how the actions of individual men, each seeking his own gain, inevitably promoted the public interest. But Adam Smith was no utilitarian. It was to only one class of actions that he assigned

\(^1\)It need scarcely be added that the influence upon the constitution of the science here attributed to Bentham's teaching was not exercised by his own economic writings, important though they were, but sprung from his general philosophic standpoint, which found such ready assimilation and bore such characteristic fruitage in the institutes of economics as developed by Ricardo, Senior, and McCulloch.
self-interest, and even there self-interest was but a wheel in the mechanism through which nature sought her ends. With the school of Bentham, however, "there is no true interest but individual interest," not only in the region of business, but throughout the whole of life. Self-interest is, therefore, not a method of nature; it is nature.

To Adam Smith's followers, the Wealth of Nations was a sacred text. But like other sacred books, it was not above interpretation. At the opening of the century the succession to Smith was in question. Malthus and Ricardo were aspirants for the leadership. Of the two, Malthus stands much nearer Smith in his philosophical preconceptions. Like Smith, he imputes a purpose and constraining guidance to nature. But the victory went to Ricardo. He is a layman in philosophy, coming by his preconceptions tacitly, like many a later economist, through a simple process of absorption. That is, perhaps, what makes him so significant an exponent of the change in the point of approach that was taking place in the science. Ricardianism is Benthamite utilitarianism turned economic. It was given to Bentham to formulate the new articles of faith; to Ricardo to use them.

In the hands of Ricardo and the disciples of Bentham, economics ceases to be a theory of the natural order and becomes, what was already foreshadowed in Adam Smith, a theory of the workings of human nature, but of human nature construed in hedonistic terms. Human nature is regarded as a competent mechanism for transforming the effects wrought upon it by the forces of the environment into an equivalent amount of conduct. Human action is viewed as inert, mechanical reaction, the effect in conduct being always quantitatively proportionate to the cause. This being the general position of Hedonism, the particular office of each of the sciences living under its dispensation was to show in detail, in its appropriate department of activity, how this reaction takes place. And since the process through which the human agent translates the adequate cause into its appropriate effects is obviously a valuation process, economics ceases to be primarily a theory of production and becomes a theory of valuation. Its principal problem is not to discover the causes of the productiveness of industry, but, as Ricardo puts it, to "determine the laws which regulate distribution." Value ceases to be regarded from the side of production and production becomes a category of value, and political economy takes a long step towards attaining, in appearance at least, what Professor Marshall three quarters of a century later describes as its proper goal, — a theory of the equilibration of economic forces. In keeping with this change of base, value is no longer conceived as that which avails towards production, but as that which avails towards exchange.
Labor falls from being the cause of value to being merely its measure. Value being taken as the earmark of wealth, the Ricardian economics becomes a theory of acquisition, attention being given to the money-making propensities rather than to productive activity. The distinction between industry and business, between making things and "making money," is obscured and neglected. Archbishop Whately designated the essential interest of the utilitarian economics when he proposed the name "Catallactics" — the science of exchanges.

But however considerable the changes thus wrought in the theoretical structure of the science, the adoption of the utilitarian conception did not destroy or seriously damage the belief in a meliorative trend in events. The fact of diminishing productiveness and the law of population made it far from easy for the Ricardians to contemplate the "natural advance of society" with the unmixed satisfaction of the Physiocrats and Adam Smith. But utilitarianism, with its "greatest good of the greatest number" and "every one to count as one," saved the day for the system of natural liberty. Since society is the sum of its individual men, and the collective interest is the sum total of individual interests, it follows for utilitarian economics that each individual, in pursuing his own private interest, is also furthering the social good in the most effective fashion. And consequently the natural laws of the science under its utilitarian organization, though they have lost something of their former coloring and unimpeachable authority, are still uttered in a sense that usually implies approval, even though in a greater degree than before they are expressed in the dry and conventional language of science. Competition makes for the happiness of the greatest number. Therefore, the natural laws of political economy, which are the laws of competition, carry with them the suggestions of precepts.

So long as utilitarianism maintained its position unimpaired, economic science had a clear and easy course to follow,—that is, until about the middle of the nineteenth century. During that time it advanced to a commanding position among the social sciences, because it was, of all of them, the most competent to turn the utilitarian expedient of thought to effective account in explaining the motions of men and society. Its deliverances, frequently uttered in a spirit of dogmatism, were accepted almost unquestioned. Its standing with the public has never been better. There were differences among the Ricardians on questions of theoretical detail, but nothing touching the spiritual stability of the system they had devised. New departures in economics were taken or proposed by Sismondi in France, List in Germany, and Richard Jones in England. But highly valued as the work of these innovators has been by later economists, it made little impression upon the development of the science at the time. The authority of the classical political economy
was not impeached and could not be impeached by any such attacks. The time had not yet come. So long as utilitarianism was in the ascendent, the public credentials of political economy must needs be the best. But let the supremacy of utilitarianism once be threatened, and troubles must begin for economics. The old constitution would no longer avail; a change must follow.

That change began about the middle of the century and, strangely enough, was associated with the intellectual enterprise of the man who frequently has been represented as having given to political economy its most telling exposition from a clarified Ricardian standpoint, — so much so, that the English economics of this middle period has sometimes been called the Ricardo-Mill political economy. But seen in the fuller and truer perspective of time, Mill’s Political Economy is read to little advantage and his position is badly understood, when he is represented as merely the “Secrétaire de la Rédaction,” keeping to his task with the “piety of a disciple.” The truth of the matter is that Mill was at a transition in British thinking in a sense which neither he nor his following appreciated. In his hands political economy was shifting its ground, insensibly perhaps, but nevertheless unmistakably. Mill may have echoed the laws and phrases of the earlier generation of thinkers, but he was informing them with a new spirit which reflects the presence of the new influences that were affecting the thinking of his day. This is not the place to attempt an enumeration of these influences. They were several and diverse. It will answer the purpose to mention a single one connected with the decline of utilitarianism and its psychological counterpart. For this decline imported a considerable change in the outlook and status of economic science. The change in question is already foreshadowed in Mill’s Logic (1843), where the older view that individual conduct and character are but the mechanical product of the molding circumstances of the environment is qualified so far as to allow to the individual himself an influence and responsibility in shaping those circumstances. That is to say, a teleological trend is coming to be claimed for individual conduct where formerly such a trend was looked for and found only in the sequence of events in nature. In other words, the human nature, into the workings of which the economist inquired, is being differently construed under the guidance of a changed psychology. The psychology that was making its way in Mill’s time was moving away from the older associationist standpoint and approaching the position of modern functional psychology. Centering its interest in the process of attention, it teaches that cognition or perception as the attentive process always implies the presence of a purpose or interest that elicits and guides the attention; that attention is essentially the process of examining a situation with the view to discovering
what objects and conditions it contains that may be made use of for a given intended purpose. Human conduct, as viewed from this standpoint, ceases to be merely uniform, quantitative, inert reaction to adequate forces, and comes to be regarded as qualitative, purposive response to stimuli. The ethical counterpart of this revamped Hedonism, the utilitarianism of Mill, correspondingly recognizes in the motivation of human conduct differences in kind of pleasures as well as in amount, and imputes to the selective agent in conduct a continuity of purpose that gives a spiritual stability to the life process. And herewith there begins to fall away from political economy that ancient article of faith which had seen in nature, and nature alone, the consummate, beneficent trend which enabled the economist to go to his work with conviction in his heart and confidence on his lips.

It is out of the question to pursue here the modifications wrought by Mill and his following in the received version of economic doctrines as a result of the change in their mental attitude. To one of these, though it is far from being the most significant, Mill himself calls special attention. It is the distinction he draws between the laws of the production of wealth and the laws of its distribution. The first are "real laws of nature dependent upon the properties of objects" and cannot be modified; but the second are only the "necessary consequences of particular social arrangements" and are "liable to be much altered by the progress of social improvement." Any attentive reader of Mill will recall many instances in which the outcome in the economic situation is represented as controlled or modified by other forces than mere pecuniary interest. The economic situation is far from frictionless. The many circumstances that Mill finds impeding the indiscriminate play of human competition as, for example, in his discussion of the causes of differences of value or differences of wages, are cases in point. The "counteracting forces" as well as the "controlling principles" are noticed. It is the "negligible factors" that mar the symmetry and flow of his exposition. For similar reasons the unmitigated results of gain-seeking traffic are not necessarily to be construed as good, and competition loses something of its former virtue as the natural scheme of social salvation. There is a visible shrinkage of the teleological content of the laws of political economy. They imply less of approval than formerly of the competitive process of which they are presumed to offer the explanation. They are still natural laws but with more of the limitations of later-day science,—empirical generalizations, statements of impersonal uniformities, of coexistence, and of sequence. Moreover, they are abstract laws built on assumptions and of hypothetical validity only. They are not entitled to exercise, therefore, a narrowly constraining influence on the economist who undertakes
to apply them. Hence, Mill does not hesitate, in applying the principles of political economy to social philosophy, to propose some very substantial departures from what so many of his predecessors had been disposed to regard as a sovereign, natural principle of the science, — the rule of laissez-faire. For Mill the "admitted functions of government embrace a much wider field than can easily be included within the ring-fence of any restrictive definition; and it is hardly possible to find any ground of justification common to them all, except the comprehensive one of general expediency." Liberty and property cease to be "natural rights" and are treated as human contrivances to be tried on their merits. To the emancipated mind of Mill's day, Bastiat's Harmonies was an anachronism, a voice from the past. Cairnes's impatient declaration that "political economy has nothing to do with laissez-faire," shows how changed was the animus of the science.

Clearly, then, the forces of disintegration were at work in political economy, and the constitution of the science, as it left Mill's hands, was a different affair from what it had been in the confident days of his father. When Cairnes some years later undertook to restore the prestige of political economy by a guarded restatement of its leading principles and an explanation of its character and methods, he believed himself, no doubt, to be walking in the footsteps of the masters. But the net result of his effort was to show how far political economy had drifted from its traditional position. The unpretentious character that Cairnes assigns to economic laws was far from expressing the ambition of the masters. The fact is that Cairnes, in attempting to give to political economy an irreproachable character, was simply sterilizing it. He set out to do for political economy what was being done in the natural sciences. In the overhauling the physical sciences were experiencing in Cairnes's day, an attempt was being made to read metaphysics out of them; and the physical sciences were in this respect serving as an example to the social sciences. Whatever success the effort to relieve science of the metaphysical taint may have had in the field of the former, the results of the innovation in political economy are not to be accounted as highly effective. Under Cairnes's dispensation political economy became not so much less metaphysical as less vitally metaphysical. The virile and imposing metaphysics of natural liberty simply gave way to an impersonal and spiritless conception of normality, and political economy becomes what it has remained for many of Cairnes's followers, — a perfect, hypothetical science, formulations of theory in terms of tendencies, a body of so-called ultimate principles. For the average reader, Cairnes took the discussion of economics out of the older region of reality into an atmosphere so tenuous that it could not preserve the aspect of vital interest. It was a meta-
physical science without a message. Political economy was losing caste among the metaphysical sciences without acquiring the sought-for status among the empirical sciences. It was neither stimulating philosophy nor good observation. Is it then surprising that Cairnes should have complained that political economy had "ceased to be a subject of fruitful speculation" with the educated public, or that Bagehot should have found that "it lies rather dead in the public mind" and "no longer matches with the most living ideas of people"?

It is hardly necessary to add that all this is said with no thought of disparaging the services of Cairnes's school to economic science. His is deservedly an honored position in the history of the science and it may well be that the phase which it has seemed fit to connect with his name was an unavoidable phase in the development of the science. Indeed, there is good reason for thinking that it was. But, at best the constitution that Cairnes proposed to give to economics could in no sense become definitive, if the experience of other sciences that had passed through a somewhat similar phase could be taken as suggestive of what might be expected to occur in economics. Economics, after the middle of the century, was threatening to become a closed circle, and to come to a full stop. Such a condition could not, however, long endure in a subject of such vital concern. A reaction in some form was inevitable. What is matter for surprise in reviewing the history of the past fifty years is that the reaction, in a form competent to deliver the science and give it a modern constitution, should have been so long in coming, and that so many of the economists of the generation that followed Mill and Cairnes should have found themselves able and content to pursue their work in the spirit of the old ideals or of other ideals which, though new, were not much more to the purpose when seen in the light of those requirements which the admittedly progressive sciences of this period had, in a sense, made authoritative. Earnest efforts to regenerate economics and to recover for it something of its lost prestige have surely not been wanting. But the record, if the truth is told, is not one of big achievement or even of measurable progress when we consider the startling advances that have been taking place in other fields.

Looking first at the work of the economists of the last generation, mainly English and American, who have set themselves the special task of formulating economic theory, it will hold true, with some exceptions, that their work has been mainly work of repair and extension, rather than of fresh construction. They are the legitimate heirs of the classical tradition,—the classical school of to-day. Magnify as we will the differences that separate these later theorists from their classical predecessors, the differences are differences of
theoretic detail and emphasis rather than differences in point of approach or method of attack. For them, it would appear, the science has no new mission. The problems they handle are the old ones and they handle them after much the old fashion, though, be it said, with some change in the phrasing of their conclusions. Utility may take the place of cost, and productivity that of sacrifice; a single law of distribution may do the work that once required three; but we still have the problems of the Ricardian economics, and the apparatus for handling them shows little change. It is still deductive economics of the old type, seeking by a skillful manipulation of definitions to explain the normal case. A perfectly balanced system in which everything is reduced to order and symmetry and congruence with itself,—that is the accepted test of truth. Such, for example, is Professor Clark's Distribution, a consummate achievement in the art of system-making. And though the phrase "system-making" cannot be applied to Marshall's Principles without much qualification, it is largely because the amplitude of accessories with which he invests his treatment divides our interest with the system. Every competent reader of this monumental work knows how much more it contains than a system. But though Professor Marshall's practice is more liberal than his precept, he has made it clear on more than one occasion that the ideal he cherishes for economics is to place it on a firm foundation as a systematic science, seeking to establish a body of general principles,— an organon, as he has called it,—by those methods which the natural sciences of an earlier generation have made familiar. He aspires to make economics a perfect, quantitative science and would, therefore, keep value in its traditional position as the central problem of the science, to which and from which all else leads. The play of human motives working their way to a position of equilibrium,—that is the thing to be explained. Recourse is therefore taken to the analogies of physics rather than of biology, and so the science remains a mechanics of human action,—a study of balance rather than of growth,—a theory of action, no doubt, but one in which the interest centers in the conditions that limit the play rather than in the factors that vary it. No doubt, neither Professor Marshall nor his colleagues are indifferent to those considerations which the biological and anthropological sciences of our day are pressing upon the attention of the learned world. There are too many evidences in the writings of Professor Marshall, at least, of a sincere and solicitous regard for the viewpoints of these sciences, to charge such neglect. He is read to poor purpose if it is not discovered how the notions of "continuity" and "development" in the movement of things has tempered and broadened his attitude. They are the watchwords of his preface. But for all that, when the analysis is once under way, it is not
the notion of development, but rather that of stability that shapes
the discussion.

The legitimacy of systematic science is clearly not to be impugned.
Science it certainly is. The history of scientific endeavors in other
fields shows that such work has, at one time or another, engrossed
a considerable share of the attention of leading minds; but the later
history of many of these same sciences shows a diminishing con-
viction of its present usefulness. And those that have been most
successful in detaching themselves from the discipline of philosophy
have given it up as an unprofitable enterprise and have taken to
other and less pretentious methods. Systematic science must lose
standing, because its tentative conclusions fail to satisfy that desire
for concrete knowledge of things as they are which it seems to be the
appointed mission of science in our day to provide. It has yet to
prove its competency, in the field of social phenomena as mostly
elsewhere, to present things in those aspects which modern science
has taught us to regard as indispensable for their appreciation. It
cuts out of the field of vision, under the name of "disturbing causes"
or what not, precisely those things which interest the man on the
street.

If this version of the matter be sound, it cannot but be cause for
serious misgiving that so much of the intellectual energy of the
economists of the present day that is being devoted to theory should
have taken such a lead. It lends substance to the criticism some-
times leveled against economics by the adepts of other sciences that
it is behind the times in its adherence to outworn methods of hand-
ling its subject-matter. There seems to be room, if indeed there is
not much need, for work of a different type from that which has
been engaging the attention of the Neo-Classical School. Progress
demands it.

And much the same may be said of the interesting diversion
created by the Austrians. However much they may have done to
advance the discussion of a particular detail of economic theory,
albeit an important one, their achievement is not to be rated as a
serious innovation for the science as a whole. Indeed, the ready
assimilation of the doctrines of the Austrians into the body of the
classical economics shows how near they were in temperament and
standpoint to the school they set out to supplant. The movement
has apparently spent its force and the science goes its accustomed
way.

What shall be said of the historical movement? To it is usually
accorded the place of chief importance in the history of the reaction.
It made its appearance about the middle of the century with the
intention of saving political economy from its unprofitable career.
The movement has been variously known as the inductive, historical, or German school. It was in fact all three: historical and inductive in its professed method, but German in its essential spirit. The rise of this school is not a self-explanatory phenomenon, but it is not enveloped in much mystery. Just as the classical political economy was shaped by English utilitarianism, so the German historical economics was an outgrowth of German philosophy. In each case economics was building on the current metaphysics of the home country. Each was a distinctive national product, and the historical movement, though it has won adherents in other countries, has preserved till this day a peculiarly German character. Roscher started the movement. Reacting from the excessive a priorism of English political economy, stimulated by the example of the new historical jurisprudence, and inspired by the Hegelian notion of development, he set out to reorganize economics on a broader basis. The movement that he inaugurated soon found adherents. Bruno Hildebrand followed in 1848 with his *National Oekonomie der Gegenwart und Zukunft*, and Karl Knies in 1853 with his epoch-making *Die Politische Oekonomie vom Standpunkte der geschichtlichen Methode*. Taken together, these works define the fundamental articles of the constitution of the new historical economics. They were its confession of faith. Knies emphasized the idea of the parallel development of economic ideas and economic institutions,—the idea of historical relativity. But Roscher was more ambitious; he aspired to make of economics a "philosophy of economic history" whose special function should be to discover the laws of cultural development in their economic aspects. Hegel had given to German thought the conception of organic society. According to this, society has a life-history of like kind with organic nature; therefore, the process of organic life supplies the proper analogy for studying the cultural sequence. It was a part of this conception which Roscher seized on,—that the cultural sequence repeats itself in cycles of "youth," "maturity," and "old age," each nation going through much the same course. The history of the past, therefore, is prophetic of the movement of the future; history repeats itself. The laws of historical development are the only "natural laws" of society. It is thus that history became the method of the new departure,—history, that is to say, as officially interpreted by Hegel's formula. Seen in the light of its derivation, therefore, the historical school was as much metaphysical as historical. History was to be read with a purpose. "He," says Hildebrand, "can have no right understanding of history to whom the conditions and needs of his own time are unknown." It is the business of the economist "to discover the link which the present generation is to add to the chain of social development." The movement, therefore, from the beginning
had an ethical as well as an historical import. Its self-appointed mission was to control, as well as to explain, development. It was an *historisch-ethische Richtung*. As Held stated it, the new school "demands a conception of the science, which includes social policy;" and since, according to the German view, the state is the appropriate organ of social control, the new economics was a theory of the state and its functions quite as much as it was a theory of economy and its changes.

Whether the reaction thus described is to be regarded as a far-reaching and salutary reaction in the field of economic study is not here in question except so far as it has a bearing upon the transformation of the theoretic constitution of the science. Every economist, no matter of what school, knows how much his attitude has been modified and tempered by the criticisms of the "Historiker." The "abstracter economics" has been shown its proper place, its spiritual pride has been reduced, and it has been put, as it were, on its good behavior. Every historian as well as economist knows, too, how much history owes to the activity of the new school. If it has turned out much lumber, of which nothing better can be said than that it is scholarship, it has also given some noteworthy and vital researches of the highest value. But all this and more that might be said to the same effect is beside the mark of our present interest. What has this school done, in a positive way, to give a new formulation of theory? Its earlier champions promised a rapid and radical transformation of economic science. Has that promise been fulfilled?

It may be said at once that so far as the activities of the historical school have moved in the orbit described for it by its founders, it has failed to make good. Economic theory has not experienced at the hands of the exponents of the new method the reorganization of which it stood in need. Institutional history is not economic science. A narrative and descriptive account of things is not a scientific relation. The theory of institutions requires that these should be accounted for in terms of determinable cause and effect. A causal sequence implies very much more than historical succession. So far as the work of the historical school has been a search after the laws of social development, it has seldom eventuated in any more definite articles of theory than such loose and sweeping historical generalizations, as, for example, Wagner's law of the increasing extension of state activity, or Held's law of the evolution of industry through the successive stages of family system, guild system, domestic system, and factory system. Such and similar guesses at "the curve of economic evolution" may be useful for the purposes of the economists who use them, but they do not make good the claim of their inventors that they "see things as they
actually are," "free . . . of all a priori theories."¹ The frankly
avowed preoccupation of many members of the school with learn-
ing the "significance and appropriateness" of things discredits
their theoretical work no less decisively than it does that of the
Manchester school which they set out to supplant. The doctrines of
the one are as unmistakably of metaphysical derivation as those
of the other. But since historical induction seems a less competent
contrivance than abstract deduction for turning a metaphysical
postulate to rapid account in the formulation of theory, the theore-
tical output of the historical school has been notably small. Indeed,
many of the school appear to have given up the profession of theory,
being content to use as their working principles, when the occasion
arises, the body of doctrines worked out by the later economists of
the classical trend. It was such a change of heart, no doubt, that
made it possible for Professor Wagner,² some years ago, to express
such ready acquiescence in the work of Professor Marshall. It
would appear, from this and many other symptoms, that the large
group of historical economists for whom Wagner speaks has aban-
doned the field of theory and taken to other work.

When, however, we turn to the branch of the historical school of
which Professor Schmoller may be taken as the representative, we
meet a different situation. There is much in the later activity of this
branch that is of promise for the future of economic theory, and
much that sets it apart from its own past as well as from the con-
ventional line of the historical trend. Taking, at the outset, a posi-
tion so radical that it drew from his colleagues the characterization
of "extreme Historismus," Professor Schmoller yet stands to-day
as one of the foremost workers in the field of theoretical con-
struction. Whether or not such an outcome was to have been ex-
pected as a result of the interest that has hitherto engaged the activ-
ity of Professor Schmoller and his school may be doubted. It is
well known that Professor Schmoller began his career by discour-
aging all attempts at theory as premature and ill-advised until an
extensive equipment of historical, statistical, and other material
should have been provided; and his utterances on different occasions
left no doubt that this preliminary work would need to be done with
such exhaustiveness as to absorb the energy of at least one genera-
tion. An eventual formulation of results was avowed to be the end
in view; but the long-continued and painstaking devotion to history,
and the easy avoidance of theory, gave much ground for the belief
that history rather than theory would always be their characteristic

¹So Professor Ashley in the preface to his English Economic History. Cf.
also the same author's inaugural lecture on the Study of Economic History
²In a review of Marshall's Principles of Economics published in the Quarterly
product. Indications, however, have not been wanting in the writings of Bücher, Knapp, Sombart, and others, that history was not to be the last word of the school, but the pathway to construc-
tion. Above all, the work of these gave substantial promise that
the theory at which they aimed would not rest with empirical, his-
torical generalizations, but would lead to laws of causal sequence.
It is this latter aspect that makes German economics, as seen through
Schmoller's Grundriss or Sombart's Moderne Capitalismus, of such
significance for economic theory. The function of economic theory,
as these men appear to understand it, is very different from the con-
tventional view. Professor Schmoller made it clear some years ago,
in a review of the Austrian doctrines, that he could not regard the
problem of value as the main preoccupation of economic theory.
For him, the economic process includes much more, and much of
more significance than the process of valuation. What he aspires
to offer is a theory of institutions, more specifically a theory of the
factors that have shaped the successive phases that make up the
life-history of these institutions, and the outcome, as we have it,
in the existing situation. The economic situation, as Professor
Schmoller views it, has nothing definitive about it. Institutions
are regarded as a part of the conventional apparatus of life. They
are still in the making, therefore, and always will be; and they are
not accounted for by representing them as functions in an orderly
and rationalized eternal scheme of things. They represent the
accumulated influence of a complex of forces whose shifting play is
to be ascertained by a careful scrutiny of the exigencies under the
stress of which the process of institutional adaptation has taken
place. The interest centers, therefore, much more in the origin,
variation, and survival of institutions and habits, so far as these
determine or are the economic situation than in their present working
or efficiency as rated by some conventional standard. The result
is, therefore, to be described as a genetic rather than an historical
account of institutions, — a natural history of institutions in their
economic aspects, the chronological sequence always giving way to
the causal sequence. The point of view is that of evolution rather
than of "historical development," the discussion habitually follow-
ing the lines that evolutionary science has made familiar. Elaborate
notice is taken of such features and circumstances of environment
as have an appreciable bearing upon the economic life-process,
and a no less careful regard is paid to the changing makeup of human
nature, for it is the complex interaction of man and his environment
that issues in institutions. Neither environment nor human nature
is treated as a given fact invested with stability. They each change,
both as cause and effect, and their interplay is therefore to be con-
ceived and described in terms of process and not of fixed condition.
For such a survey of the natural growth of institutions, history is of obvious importance. It describes the field of investigation; but more than history is needed. One has only to turn the pages of Professor Schmoller's Grundriss to see how widely he has ranged in fields of knowledge that lie beyond the conventional frontier of economic science, as it has usually been cultivated by economists of either the historical or the classical trend. Geography and geology are pressed into service to explain environment, as ethnology and psychology are to explain the human factors. It is the habitual resort to knowledge of this kind, to explain the economic situation, that gives to this latest enterprise of the leader of the historical school its peculiar and striking character. Indeed, this most recent example of Professor Schmoller's method marks so much of an innovation upon the historical method, as it hitherto has been conceived, that it is questionable whether it should be called historical economics. What it is called is, however, of secondary interest. The fact that is of moment, and that is to be signalized in following the progress of our science, is that we have here a new type of economics, a type that attempts, and with appreciable success, to carry into the study of economic institutions something of the spirit and method of the later-day sciences.
SECTION A—ECONOMIC THEORY
SECTION A — ECONOMIC THEORY

(Hall 15, September 22, 10 a.m.)

 SPEAKERS: Professor John B. Clark, Columbia University.
 Professor Jacob H. Hollander, Johns Hopkins University.
 Secretary: Professor Jesse E. Pope, University of Missouri.

ECONOMIC THEORY IN A NEW CHARACTER AND RELATION

BY JOHN BATES CLARK

[John Bates Clark, Ph.D., LL.D., Professor of Political Economy, Columbia University; New York. b. January 26, 1847, Providence, Rhode Island. A.B. Amherst College, 1872; A.M. ibid. 1875; Ph.D. ibid. 1890; LL.D. Princeton University, 1896; ibid. Amherst, 1897; Post-graduate of Universities, Zurich and Heidelberg, 1873–75. Professor of Political Economy and History, Carleton College, Minnesota, 1877–81; Professor of History and Political Science, Smith College, 1882–92; Professor of Political Economy, Amherst College, 1892–95. President of American Economic Association, 1893–95. Author of The Philosophy of Wealth; The Distribution of Wealth; The Control of Trusts; The Problem of Monopoly.]

It is the purpose of this paper briefly to indicate a certain enlargement which economic theory is undergoing and a certain new and intimate relation to statistical knowledge which, in the newer portion, it is assuming. It is obvious that general political economy is becoming practical. It is emphasizing statistics and industrial history, gathering from the field of business data which, in themselves, command a measure of respect on the part of employers of labor, influential working-men, and even politicians. The conclusions which may be based on such data constitute a new mass of theoretical knowledge; and concerning this there is doubt as to whether it is winning its full share of the respect which is felt for tabulated statements of bald fact. While the work of the theoretical economist has, at certain epochs, kept pace in recognition and influence with that of the statistician and the historian, there has arisen a suspicion that the recent gains in applied economics are made at the cost of pure theory as such. They are supposed to represent a reaction against its former spirit and method and in favor of a type of research which calls men out of the study into the arena of active business.

It will hardly be admitted by those who rejoice in an intelligent way over the reaction which has taken place that it implies such an exaltation of bald facts as to carry with it a contempt for principles
or a definite abandonment of the search for them. What is claimed in this paper is that the new facts which are appearing will inevitably prompt, not only scientists but practical men who think at all, to try to discover the principles underlying them. The facts will not go without interpretation. What Aristotle said of the general phenomena of the universe applies in a concrete way to industrial developments: "We must philosophize." It is not in the nature of the mind to see what is occurring without trying to discover the forces that cause it and the laws which govern their action. The search for such laws holds the investigator in the world of realities, and the modern extension of theory will meet the demand for knowledge which is, before all else, practical.

While much of the investigation of early economists could be carried on without elaborate historical data and even without very elaborate statistics, the special character of the new theoretical problems requires us to go below the recent and startling movements in business life and see, if we can, what forces control them; and of course we cannot do this successfully if we get at all out of touch with the facts themselves. Ultra theoretical indeed will be the pure economic science which is thus to be attained and formulated. It will be as far as possible from catering to a really philistine demand for bare facts and figures and from showing any timidity as to the use of the reasoning powers. It will not fear to analyze and generalize. It will do so boldly and confidently, but not without an intimate acquaintance with markets, the organization of labor, and the consolidation of capital, and not without a study of the new economic influence of the law-making power and of party machinery. Philosophical thought and practical life will thus come into the closest connection, and the man of affairs will be worth most when he has in mind correct theoretical principles, while the theorist, on his part, will get most from the world and give most to it when he pursues more rigorously than he ever pursued before, his analytical and deductive work.

Intricate and difficult are the specific problems that now have to be solved. Changes are in progress, the effects of which go through the very structure of society itself. Population is increasing, capital is accumulating, migrations are going on, revolutionary inventions are in progress, the languid Orient is suffering invasions by the irrepressible Occident and is itself about to undergo a radical transformation and also to act in a powerful way on the destinies of the West. These movements do not go on so completely of themselves as to permit no promoting or interfering by the state. Nations seek to control and guide them in a conscious and purposeful way. Diplomacy, war, and experimental law-making, not to mention more experimental platform-making, range themselves among the
forces with which the economist has to reckon; and if in the midst of
the overturnings which result there can be detected the orderly work-
ing of economic law, nothing can be more important or practical
than discovering it.

The larger part of the work heretofore done in the realm of eco-

nomic theory has consisted in a search for standards of value, wages,
interest, rent, and in attaining truths so general that it is not depend-
ent on the amount of progress which a society has made. There is,
for example, the natural price for an article of commerce based on the
cost of making it, and towards this standard the actual price of an
article, at any stage in the development of a civilized society, is
always tending. There is a natural rate of pay for labor of a given
quality, to which the wages of actual workmen of this grade steadily
tend to conform; and there is a normal standard of rent for each
piece of land which the amount that the owner actually gets closely
or remotely approximates.

The establishing of scientific standards such as these does not
necessarily call one far into the field of history, though statistical
tables are eminently useful in assisting in the process and in verifying
its results. The theoretical work is chiefly static and it is in the
realm of dynamics that the historical data become most essential.

The economists have been quick to admit that this tendency
of values, etc., to conform to their theoretical standards is obstructed
by adverse influences and that the price of a commodity, the pay of
a workman or the rent of a piece of land is seldom, as they would have
said, exactly natural or, as we might say, static. They have admitted
the inexactness of the working of economic law, but have ascribed it
to friction and obstruction rather than to anything more general and
legitimate. It has not been clearly perceived that it is organic
change in society itself which causes the abiding differences between
the traditional standards of value, wages, and rent, and the actual
rates. The newer theory will give itself to the study of such organic
change and this will tie it closely to practical life and make theory on
the one side and statistics and history on the other mutually indis-

pensable. It will not confound theory with fact, but will make
theory dependent on fact, and vice versa. The assumptions with
which it starts will be supposed realities which it is in order to test
by practical inquiry, and the conclusions will be subjected to the
same testing process. On the other hand, the principles tentatively
attained by the use of the assumed premises will become an indis-

pensable guide in the search for facts. They will lead to the dis-
covery of facts which mean something and are capable of orderly
arrangement and interpretation. Otherwise there is danger of col-
lecting a mass of information so vast and chaotic that it will be useful
chiefly as a means of moral discipline for the baffled student.
Without fully realizing it the economists of an early day were, as has been indicated, trying to establish static standards. Their "natural" price of a commodity, for example, was one that might be realized in practice if society were in a certain changeless state. Stop the disturbance and movement which progress causes and wait long enough to let friction be overcome, and the cost of an article, as scientifically defined, will be the real price for which it will sell. If the outlay involved in making a yard of cotton cloth of a certain weight and fineness were forever fixed, it might be that the price it would sell for would come to vary from the cost very little; but it is quite otherwise when the cost itself is perpetually varying. When such goods were made entirely by hand their makers' outlay afforded for some time a more or less stable basis of price, but with the invention of the spinning-jenny the cost fell. The actual price began to tend toward the reduced level, but before it could reach its new plane further inventions were made and the standard of price again fell. So long as such things occur the price of an article can never stand at the cost-rate, but must forever pursue that rate, as the industrial changes carry it lower and lower.

This is merely one illustration of what is occurring at innumerable points and affecting many economic standards. There are natural rates not only of prices for all articles, but for wages of labor and of interest on capital. There is even a standard form of industrial society itself, and this is continually changing. For the present the standards of value, wages, and interest will serve as adequate illustrations of a general principle, for all these are undergoing perpetual change and drawing actual prices, wages, and rates of interest after them in their movement, though friction keeps the attracting standards and the pursuing practical rates by a certain distance apart.

The economic science of the future will have to deal comprehensively with industrial changes, their causes and their results, and among the results will be alterations of the economic standards as we have spoken of and of very many others. The productive power of labor which constitutes the basis of its pay should, for the good of humanity, grow larger from decade to decade, and the pay should rise, following, at a certain distance, the rising standard. On the other hand, if the gross amount of the social fund of capital increases as much as the welfare of all classes requires that it should do, it may be expected that the productive power of a unit of it will grow smaller and actual interest will fall with this falling standard. The theory of economic dynamics will endeavor to refer these and many other changes to their causes and trace them to their effects and so afford a comprehensive knowledge of the laws of economic movement.

At three of the general changes which are in progress we may briefly glance in order to see how the phenomena of change, as actually
recorded in statistical tables, need to be appealed to. Population is increasing, capital is accumulating, and new methods of production are coming into use. The most important single result of any one of these is a change in the productive power of labor, which sets the standard of its pay. By way of illustration we may notice each of these changes with reference to this single effect.

On the basis afforded by common observation the effect of each of these changes on the rate of pay for labor is now known. An increase of population in itself and apart from any accompanying change tends to reduce the productive power of a unit of labor and thus to lower the standard of its pay. The more men there are working in a field of a given extent and richness, the less each one of them can create, and the less he can expect to get.

On the other hand, an increase in the amount of capital tends to raise the standard of wages. If we enrich the field in which a force of men is at work, leaving the size of the force unchanged, the more each one of the men will create, and the more, in the absence of excessive friction, he will actually get.

An improvement in the methods used in producing commodities works, as far as wages go, in the same direction as an increase of capital, in that it enlarges the amount which a single worker can create and secure. If population grows moderately while capital accumulates and methods improve rapidly, the standard of wages moves upward at an encouraging rate, and the actual pay of working men pursues this rising standard, though lagging somewhat behind it. A check on the growth of population and a stimulus for the accumulation of capital and for industrial discovery and invention would together produce a result that is ideally desirable. By reason of the enlarged total amount of his fund the capitalist would get an enlarged total income, though the rate of interest would have somewhat fallen. The entrepreneur, by means of the improved methods of production put at his disposal, would have increased profits, and the laborer, by a compounding of the various influences at work, would get a large increase of pay.

Will these gains be neutralized, as an old view of the law of population would have led us to suppose, or will they be permanent? Will the worker who has gained something be in a position to gain more?

It is already beginning to be evident that the latter effect is a probable one, and there is pressing need of statistics that will fully test this probability. An increase of general prosperity means the promotion of men from an ill-paid class to a better paid one and a numerical shrinking of the worst-paid class. This reduces the proportion of population belonging to the class which shows a high birth-rate and increases the proportion belonging to those which
have a low one. The accumulation of property by workmen is an influence that retards the growth of numbers, and it is, of course, the higher classes of laborers that are the best able to make such accumulations. Education reduces the rate and the higher classes have the more education. Finally, any prosperity which is long-continued has a tendency to establish a progressive standard of living. Men may even become habituated not merely to living on a certain absolute level, but to living, as the years advance, on a higher and higher level. This is the supreme possible result of an era of prosperity, and if it ever becomes an assured and general result,—if men come to require for their personal satisfaction that they shall live in each decade better than they did in the preceding one and shall act accordingly,—all danger that they will sacrifice their gains, and, in so far as laboring-men are concerned, turn the course of progress backward, will be forever removed. Gains for labor will be precursors of no offsetting losses, but rather of further gains, and men will hold their improved stations with an ever-increasing firmness of tenure. The culminating result of progress will be its self-perpetuating tendency,—the law that insures that "to him that hath shall be given." It is the function of the statistician to measure quantitatively the influences which make for this ideal consummation and to measure the grand resultant effect of them all.

Only a study which is profound on the theoretical side and elaborate on the statistical side can settle the issue as to whether the favorable conditions are real and how powerfully they act.¹

¹ What Malthus proved is that when a standard of living is fixed, a quick rise of wages above the amount necessary to sustain this standard causes an increase of the birth-rate and a fall reduces it. If the height of the line AB above a base represents the standard of living, and the length of it represents a century of time, it may be taken as representing a basis of wages which remains fixed for a hundred years. The dotted line A'B' represents the actual pay of workmen, now rising above the standard and now falling below it. Each time that the pay exceeds its standard the birth-rate is quickened, and each time that it falls below it, the rate is retarded. Now it may be that the permanent average birth-rate is so slow as to permit a steady rise of the standard. There would, in such a case, be the same fluctuations of the rate of wages above its standard and the same alternate quickening and retarding of the birth-rate as in the former case; but the steady rise of the standard itself would tend to retard the birth-rate and so to perpetuate its own upward movement.
Analogous to the issue as to the law of growth of population is that which concerns the law of accumulation of capital, and in this connection less scientific work has been done than has been done in the former field, and a highly questionable conclusion has been lightly accepted. An increase in the amount of productive wealth raises wages as a decrease in the number of workers would do. It is the second of two coordinate causes of an enlarged return for the laboring class, and it has been too readily assumed that an increase in the productive fund of society tends to retard a further increase.

The conclusion is thus easily reached that any gain which labor may make through an enlargement of the social capital will grow smaller, because this enlargement itself will go on more and more slowly. An influx of capital tends to retard rather than to stimulate a further influx. As capital becomes greater, the rate of interest falls; and it has been assumed that this fall reduces the total incentive to accumulation. Abstinence is foregoing something in the present for the sake of something in the future, and if this prospective reward grows smaller, it is taken as a matter of course that the motive for securing further capital will also be smaller.

Now there is a theoretical condition in which the effect of an increase of capital will be the opposite of this. It will stimulate a further increase. It has been conceded that a desire to endow a family with an income of a certain fixed amount may have such an influence. If, in order to maintain an accustomed standard of living, it is necessary that one's children should inherit an annual income of four thousand dollars a year, a hundred thousand dollars will be needed when the rate of interest stands at four per cent; whereas, under a rate of five per cent, eighty thousand would have sufficed. This qualification may have far more importance than has been attached to it, for the reason, first, that a desire to place descendants on a certain plane of life may become a dominant motive of the capitalist class; and secondly, because this class may come to include a larger and larger proportion of the men who labor. Let it once be that workmen become habituated to a rising standard of living, that they wish to see their children live better than they do themselves, and that they rely on costly training and on transmitted capital to enable them to do so, and we have a motive for saving a greater amount of capital, the smaller the percentage of its annual earnings. If, further, the men who reap the net rewards of business — the entrepreneurs' profits — look on such returns more and more as a means of endowing descendants, you have in their cases also a greater motive for saving as the income from a given amount becomes smaller. The two chief sources of increase of capital, namely, wages of labor and the net profits of business, may, as interest falls, enlarge the grand total of wealth more rapidly rather than less so.
Here, again, is an issue of fact which can be decided only by a broad generalization following a difficult study of statistics. The generalization that can so be made will furnish a law of accumulation, — an important part of the theory of economic dynamics.

It is a question whether the march of invention will be accelerated or retarded by the growth of wealth which results from it, and whether this third basis of prosperity is self-accelerating or self-retarding. This problem is even more complex than the former one. The influences that will decide the issue are many and varied and have been little studied. If a great accumulation of wealth involves a growth of monopolies and a gradual extinction of competition, it will work unfavorably on the improvement of economic methods. In the hands of secure monopolies industry would probably stagnate. Does the mechanical progress of the present day in itself tend in this direction? It is an important question, but is only one part of the larger question, Whether the principle of monopoly is becoming supreme, and whether competition is on the road to extinction. The answering of these questions will require that we attain a law of progress in both the technique of industry and in the forms of its organization. Theoretical and practical alike must the study be which will yield it. A tentative conclusion must be verified by an elaborate study in the domain of fact.

We have cited only three of the problems which progress presents and have, therefore, only skirted the edge of the field of economic dynamics within which, I believe, the chief work of the future will lie. The problems which we have cited afford illustrations of the general truth that economic study will, in its new domain, afford no ground for the charge that it breaks away from the domain of fact. Far, indeed, will it be from being a transcendental philosophy, a product of mere ratiocination, or a system evolved from the inner consciousness of a recluse. Facts will lie at the bottom of it, and much needed guidance in dealing with modern problems will be the immediate fruit of it. The new economic science, as statesmen apprehend it, will have some effect on law-making, and as the people will ultimately apprehend it, will have more. Some conception of the laws of progress will, of necessity, take form in the popular mind. Inevitably will each thinking man try to perceive what forces are impelling us, whither we are moving, and whether we can control the movement. The invitation which the age extends to its economic students is to help men of the time to exercise such control and show in what direction the movement should be turned. The age needs charts for its practical guidance. To fail to furnish them would bring economists into merited discredit, and to succeed in doing it will require a great extension of economic theory. Both the value of the science and the recognition it will receive will be in proportion
to this theoretical growth, and its fruit the chart-making. It will be found, as this study of modern changes goes on, that men have their fate more in their own hands than has been supposed. A government can create conditions in which technical advances will be made, new capital accumulated, and rising wages insured. It can do much to save from suppression the vital force of competition, and in this and in other ways it can avert disaster and insure a normal development. It can do this by respecting the principles of economic dynamics as they shall come to be known through the work of many theoretical students, whose conclusions shall be tested by the work of many more statisticians. The economists of the future have their work cut out for them and the plan of it determined. The results will be as valuable as the work is extensive and difficult.

Squarely in the way of the realization of this effect appears to stand the Malthusian law as originally understood; for it appeared to show that whenever wages rise, a quick increase of population takes place and brings down the pay of labor to its former level. Rising wages would thus start an influence that would shortly induce falling wages, and any gain which labor might make would be transient. This is the essence of that dismalness which has been attributed to economic theory.

On the other hand, it is possible to state theoretical conditions in which the gains of laborers tend to perpetuate themselves. In these assumed circumstances the enlarged income of the laborers would not stimulate, but would retard, the growth of population. Instead of causing something to ensue which soon neutralizes transient improvement in the workers' condition, a rise in the earnings of labor may thus have an effect which induces a further rise. The workers' gains would be self-perpetuating.

The studies of Malthus constitute the most valuable work in economic dynamics that was done by the early economists. Though they were prosecuted with no reference to incorporating their results into a systematic science of economic change, they furnished an important fragment of such a science, and illustrate both its value and its practical character. In their developed form Malthusian doctrines do not afford for the laboring class an outlook that is quite hopeless, for they do not lead one to predict a necessarily disastrous world-crowding. They open a possibility of checks on the growth of population which may operate more vigorously as laborers attain a higher mental and moral level. Yet they leave small reason for concluding that, in a merely economic way, a check on the growth of population can give a permanent benefit to workers, since they do not afford any ground for believing that such a check on the growth of numbers tends itself to cause a further check. With no allowance for psychic gains it may be expected that workers, by
a quick increase of numbers, will lose the increments of wages which any cause may bring to them. Whether they will do this or not is a question of fact, and the decision will involve a further and profound study of population.

What we need to know is whether the assumed theoretical case, in which a rise in wages induces a further rise by means of the check which it imposes on the growth of population, is or is not an actual case. This will tell us whether any real increase in workmen's pay tends to induce a condition in which a further rise may be counted on. On this point we may confidently appeal to statistics, past and future. It will be found that laboring humanity holds firmly such gains as it makes and is in a position, by reason of these enlargements of pay, to make further and greater ones. Civilization does not debar labor from the benefits it confers.
THE SCOPE AND METHOD OF POLITICAL ECONOMY

BY JACOB H. HOLLANDER

[Jacob H. Hollander, Ph.D., Professor of Political Economy, Johns Hopkins University, b. Baltimore, Maryland, 1871. A.B. 1891, and Ph.D. 1894, Johns Hopkins University. Assistant, 1894–95; Instructor, 1895–96; Associate, 1896–99; Associate Professor of Finance, 1899–1900; Associate Professor of Political Economy, 1901–04, Johns Hopkins University; Secretary of United States Bimetallic Commission, 1897; Chairman of Municipal Lighting Commission, Baltimore, 1900; Special Commissioner to revise the laws relating to taxation in Porto Rico, 1900; Treasurer of Porto Rico, 1900-01; Special Agent on Taxation in the Indian Territory, 1904. Member of American Economic Association; American Statistical Association; British Economic Association; American Academy of Political and Social Science; Maryland Historical Society; American Jewish Historical Society. Author of The Cincinnati Southern Railway, A Study in Municipal Activity; The Financial History of Baltimore. Edited Letters of David Ricardo to J. R. McCulloch; Letters of David Ricardo to Hutches Trower (with James Bonar, Ph.D.); Studies in State Taxation; reprint of economic tracts; and has made numerous contributions to economic journals and other serial publications.]

The development of economic thought has been affected at intervals by more or less formal consideration of the relative extent of its subject-matter and the proper scope of its inquiry. Originally conceived as the art of domestic government, political economy became at the hands of the Physiocrats and their immediate precursors a systematic study of the phenomena of wealth. Two influences, emanating from the philosopher-scientists of the early eighteenth century and together summed up in the historic ambiguity of the term "natural," contributed to this end. First, the existence of economic uniformities was asserted; and second, the possibility of basic rules of social conduct was assumed. Similarly, Adam Smith, starting from an academic discussion of "Police," in logical development of the teachings of Pufendorf and Hutcheson, passed, with growing sense of the importance of the subject and under the personal stimulus of the Economistes, to a full consideration of national well-being. Professor Sidgwick has pointed out how this transition from political economy as an analysis of wealth phenomena is actually crystallized in the Wealth of Nations. Explicitly defining the purpose of economic study as the first, Adam Smith in fact devoted the bulk of his treatise to an analysis of public well-being.

This drift of political economy away from rules of economic administration to an analysis of wealth phenomena was aided by the intellectual reaction that followed the excesses of the French Revolution. Economic doctrines and, preeminently, the doctrines of the new economic liberalism, were identified throughout Europe with French principles and the revolutionary spirit. In 1793—three years after Adam Smith's death—Dugald Stewart still hesitated to
give, even before a select audience, any detailed account of the Wealth of Nations. And Mr. John Rae cites Lord Cockburn’s testimony to the fact that, when Stewart first began to give a course of lectures in the University of Edinburgh on “political economy” in the winter of 1801–02, the mere term “political economy” made people start. “They thought,” he says, “it included questions touching the constitution of governments, and not a few hoped to catch Stewart in dangerous propositions.”

But the determining force in the transition of political economy from a body of precepts to a body of principles was the circumstance that, with the dawn of the nineteenth century, the analysis of wealth phenomena ceased to be exclusively the concern of pamphleteers and special pleaders, and became the subject of deliberate and systematic study by a widening circle of keen and influential minds. The Wealth of Nations required too much thought and reflection to be popular, lamented David Hume within a month after its appearance, and the readers of the day, fresh from the pages of the Decline and Fall, might well have found the Scotch philosopher turgid and prolix. But by 1800 the work had reached a tenth edition; its influence upon political thought was evident; its impress upon political action was in part realized, in part foreshadowed; Dugald Stewart’s lectures at Edinburgh were crowded, and young men like Francis Horner, Samuel Romilly, Sydney Smith, George Grote, James Mill, David Ricardo, and Thomas Robert Malthus were turning from natural science, from legal studies, and from literary activity to earnest pursuit of the subject whose prosecution not only involved keen intellectual pleasure, but whose results stood in intimate relation with urgent practical affairs.

It is doubtful whether economic study has ever been pursued with the same intentness and enthusiasm as in England during the period, roughly speaking, of the Continental War. The reflection is seen in Mrs. Marcet, in Maria Edgeworth, and in Harriet Martineau. “It has now become high fashion with blue ladies to talk of political economy, and make a great jabbering on the subject,” wrote Maria Edgeworth in 1822. And again: “Fine ladies require that their daughters’ governesses should teach political economy.” “Do you teach political economy?” “No, but I can learn it.” “Oh dear, no; if you don’t teach it, you won’t do for me.”

Indeed, contemporary evidence abounds. For example, Francis Horner—that brilliant young scholar-publicist whose too early death surely meant grave loss to the progress of economic truth—had read the Wealth of Nations before he was seventeen, had followed Dugald Stewart’s lectures in Edinburgh thereafter, and was devotedly engaged in economic study while practicing at the bar in the Scotch capital.
He describes in his journal under date of April 30, 1801, his systematic manner of approach: "In the afternoon Lord Webb and I made our second attack upon Smith's Wealth of Nations, and finished, for the present, the subject of the division of labor. Our mode of reading is, first to go through each chapter with a minute attention to the accuracy of the argument, endeavoring at the same time to recollect all the illustrations by which we can either confirm, contradict, or modify his general principles; when we have read as many chapters as make a complete subject of itself, we review the whole in a more general manner, and take a note of such subjects of future investigation as seem necessary to complete the theory." From the detailed study of Adam Smith, young Horner passed to the writings of the Economistes, finding comfort in Lauderdale's remark that he (Lauderdale) "had repeatedly left the study of the Tableau Economique, cursing himself for a block-head." When Adam Smith's perplexing fifth chapter on value and price proved a maze, he sought the clue in the currency tracts of Rice Vaughan, Harris, Bodin, Lowndes, and Locke.

It is to this fact of earnest and enthusiastic study, rather than to any formal principle of schematization or methodology that we must ascribe the Ricardians' easy use of the term "the science of political economy." When Ricardo writes to Hutches Trower: "I am very sorry to be obliged to agree with you that there are a very few who are perfect masters of the science of political economy," or when he states that it is in the domain of taxation that "the most perfect knowledge of the science is required" — the concept of science which he has in mind is a body of principles relating to the production and distribution of wealth, obtained by systematic observation of actual phenomena on the part of a group of capable minds and made useful by affording governments the possibility of wise economic policies.

Sixty years after the Wealth of Nations was published, at the very close of the first half of the century and a quarter that go to make up the modern history of economic study, virtual unanimity had been reached as to the changed purpose of economic inquiry. Rules of governmental conduct had passed from primary to secondary endeavor, and conceived as a science, political economy has become the study of the phenomena of wealth, having for its object the formulation of a body of abstract principles which should be capable in their application of shaping public policy in economic affairs.

In 1837, Senior formulated the distinction by differentiating theoretical political economy, which "explains the nature, production, and distribution of wealth" from practical political economy, which "ascertains what institutions are most favorable to wealth." John Stuart Mill and Cairnes took practically the same view, and with
they, and after them, the majority of English writers of the earlier school.

The tranquil acquiescence into which economic thought had thus fallen in the late thirties with respect to accepted dicta of the province and subject-matter of the science, was rudely shaken in the course of the next generation by three distinct influences, about which center the sustained and often acrimonious discussions of the proper scope and method of economic science that constitute a distinguishing feature of the second half of the modern history of economic thought.

From France came the message of the unity of social phenomena and the concept of a master science of sociology. From Germany came protest against the doctrines of economic universalism and perpetualism, and insistence upon the principle of historical relativity. From England came the gospel of economic development and the evolution of industrial organization. Comte, Roscher, and Spencer, with their prototypes Hegel, Savigny, and Darwin, represent the great forces that, in succession, first shook the structure of economic science to its very base, and then inspired its extension and fortification.

We are still too near the scene of conflict to require any review of its events. As so often in the history of science and, preeminently, in the history of economic science, that which had come to overthrow, remained to influence and to be influenced. The principles of industrial evolution, of economic relativity, and of social interdependence entered into the very heart and essence of economic study and left their mark in a changed and bettered condition. If the din of doctrinal battle no longer resounds, it is not because of abandonment or surrender, but because a sane and honorable modus has been arranged.

In but one corner of the field does the struggle yet continue. A handful of doughty spirits are still bravely hammering one another in theoretical determination of the precise bounds of economic science. Yesterday it was as to the interrelation of economics and ethics; the day before of economics and mathematics or statistics; to-day it is the respective provinces of economics and sociology on the one hand, and of economics and history on the other.

To this sustained dialectic I shall venture no further contribution. Whatever advantages, in the nature of precision of thought and economy of effort, attend the solemn partition of an undiscovered country must long since have been attained. Further debate suggests the waste of scholastic controversy, barren in result and mischievous in the suspension of positive investigation, in the blunting of mental acumen and in the diminution of public respect.

A far more promising service than the text-book demarkation of the kingdom of knowledge seems to lie in a comparative survey of what,
in default of a more exact phrase, might be termed the "pace" of economic science. Political economy has for a hundred years or more been "a going concern" the subject of sustained and deliberate study. It seems high time to pause and inquire as to the relative efficiency of its devotees. In what relation does the achievement of the economist stand to that of his fellow scientists? According as he has forged ahead or fallen behind, the economist must teach to or he must learn from those who are speeding to the same goal, although by other courses.

If recourse be had to the readiest empirical measure—public estimate—we are left in no manner of doubt that the progress of political economy, as tested by the practicability of its application, has been incomparably slower in degree and less in result than that of coordinate sciences. For example, at the present moment there are three great economic problems disturbing the consciousness of the American people: Trusts, Tariffs, and Trade-unions. It should be as natural and proper for the public mind to turn to the scientific economist for specific and definite guidance with regard thereto as for the farmers of the arid regions to harken to the physicist as to the efficacy of concussion as a means of rain-making, or for a municipal administration to turn to a pathologist for counsel as to the best method of dealing with epidemic smallpox. Each of the three economic problems can be simplified, if not solved, by the determination of an underlying principle. The public will know how to deal with industrial combinations when an answer has been given to the query: "Is there an assignable limit to the size of the modern industrial unit, and if so, what determines it?" The tariff question will speedily enter upon a new era if clear light be thrown upon the precise relation of labor-cost and industrial efficiency. The crux of trade-unionism is the determination of a natural law of wages and, no less important, a practicable method of ascertaining it. In each of these directions the economist might properly be expected to meet, indeed to anticipate, the public appeal for counsel; and in each of these directions the economist, within the ken of the ordinary man of affairs, has been mute.

Unless, therefore, the economist is to acquiesce with a resigned fatalism in a condition of affairs, of which my illustrations are, I believe, fairly typical, it is imperative that there be profounder searching of heart and more accurate scrutiny of fact for explanation of the loss of popular respect for economic study, and for the decline, at best partially arrested in our own day, of the economist's influence in public affairs.

A generation ago, Arnold Toynbee asserted that "the wage-fund theory was the great cause of the unpopularity of political economy among working-men." More recently, President Hadley,
after deliberate inquiry, explained the smaller practical influence of the economist in government and administration as due, first, to the transition of political economy from an art to a science with a corresponding loss of clearness and precision in its propositions; second, to the use of precedent rather than scientific analysis by the courts as the basis of the adjudication of modern economic problems; third, to the neglect of collective interests and to the cheeks upon administrative power in the organization of modern representative government.

But whatever truth resides in these analyses—and there is much—fundamentally and in the last instance, the distinctly, nay, the distinctively unfavorable attitude of the public mind towards economic theory can only be due to one or more of four causes:

First, the public mind may be inherently opposed to accept scientific leadership in the formation of its economic opinions in something of the same sense that the late Mr. Spencer noted that men who would instantly disclaim judgment in problems of the natural sciences, would, without correspondingly greater equipment, give out-of-hand verdict upon complex questions of social policy. Or, second, it may be that economic phenomena in their complexity, variety, and inaccessibility defy, beyond a certain point, that productive systematic inquiry which we term successful scientific study. Or, third, the tribe of economists may be intellectually inferior to their fellow scientists, or at least less well equipped in those particular mental requisites which go to make up the successful scientist. Or, finally, the methods and the apparatus employed by the political economist may be relatively inefficient.

If political economy as a subject of scientific study has any right to be, we must of necessity reject the first three of these hypotheses and concentrate our attention upon the fourth. Such a procedure is, moreover, encouraged by the complexion of existing facts. It requires the barest observation to realize a startling contrast in method between political economy and any of the actively pursued natural sciences. Let us turn for a moment to chemistry, where within recent years the bounds of organized knowledge have been extended with the most brilliant results. In so far as the layman may speak, it appears that modern chemical—or for that matter, physical or biological—study involves three consecutive stages: (1) Inquiry and research; (2) experiment; (3) theorization. Associated with these essential activities are the complementary processes of initial conjecture affording a tentative working-plan; formation of trial hypotheses in result of investigation and for submission to experiment; and conversion, by demonstration, of theory into law. But, in the main, chemical science advances from truth to truth, from probability to certainty, because a body of mature workers,
equipped with intimate knowledge of the achieved, are busy mar-shaling and classifying facts, searching for and formulating uni-formities, testing hypotheses, and demonstrating laws.

If we return now to the domain of economic science and to the scene of economic study, the contrast is fairly startling. We find a body of capable and devoted workers, and a definite and inviting subject-matter. But here, to any appreciable degree, the parallel-ism stops. There is in collecting and classifying related data, no tentative selection of economic uniformities, no verification of hypotheses by reference and experiment. As against the chemical investigator in his laboratory, deliberately and systematically gathering a particular group of facts, and formally submitting the sequences which they suggest to comparison and test, with a reasonably well-established hypothesis as the ultimate endeavor, we have a corps of student apprentices busy upon historical and institutional mono-graphs, a group of younger scientists absorbed in academic duties, and a body of sages engrossed in doctrinal discussion. A single category has rarely been used to include two things less identical than the term "scientific" in reference to chemical and economic study, respectively. If the one be, the other is not. It is a differ-ence in kind, not in degree of which the contrasted terms "deduc-tive" and "inductive," "experimental" and "a priori" suggest the consequence, not the cause. Some further interpretation of this remarkable distinction is demanded.

A score of years have elapsed since the coincidence, roughly speaking, of economic investigators and economic issues effected a renaissance of economic study in the United States, synchronized, let us say, by the organization of the American Economic Association in 1885. Within that period every important university of the country has found it necessary to provide more or less abundant opportunities for economic instruction, increasing numbers of capable students have gathered for training in economic investi-gation, and economic science in the United States has come to be studied with a vigor and an activity unequaled in any European country and unsurpassed in the case of any of the natural sciences in this. But the method of investigation has been narrow. On the one hand we have permitted the Comtian influence and the "ex-treme Historismus" of the German school to justify economic microscopics; and on the other hand, dismayed by the vast area, the extensive activities, and the scattered data subject to economic inquiry, and poorly equipped both on the score of requisite resources and opportunities, we have deliberately refrained from attempting comprehensive induction.

In consequence, economic investigation in the United States, although pursued with unexampled activity, has been in the last
twenty years almost exclusively historical or institutional on the one hand, and local or intensive on the other. Of extensive economic investigation, economic description in the proper sense of the term, little has been attempted and less achieved. The historical evolution of economic institutions as revealed in more or less accessible records, the functional activity of economic organizations as displayed in limited areas — these have defined the scientific activity of the ordinary economist. Of the comprehensive study of the history, structure, and functions of any actual part of the economic organism, we have had infrequent examples.

In the field of local finance, for example, we have had, on the one hand, faithful historical studies of the finances of particular states and cities and of particular fiscal institutions, and, on the other hand, we have been given intelligent analyses of the present financial status of specific localities. But the investigator has probably not yet attempted — understand, I do not say completed — an exhaustive study of local finance in the United States, in the spirit in which we may conceive the chemist or the physicist approaching a kindred problem. Similarly, the institutional history of the Negro in certain states has been traced and his present status in certain limited localities has been described. But the larger subject, the Negro in the United States, taken in its scientific entirety, is still untouched.

Turn where we will, a similar condition prevails. Railroad transportation, trade-unionism, taxation, industrial combinations, tariffs, as fields of investigation, have been approached only fragmentarily, historically, or locally. Brought face to face with extensive subject-matter, economists have shown the white feather and solaced their souls in the thought that comprehensive study of any important economic institution might properly be postponed until such number of detailed monographs, dealing with specific aspects of the subject, have been completed as will permit full exposition and safe generalization.

Monographs have multiplied; doctoral dissertations have accumulated, and the progress of economic science, as judged by results, has been inadequate. The experience of twenty years seems to suggest that the prime usefulness of intensive economic studies is educational and local, and that variety of approach, distinctness of treatment, and change of environment are grave qualifications, under existing conditions, of the value, and certainly of the economy, of large reliance upon this monographic method of economic investigation.

The proposition which I venture to submit is that the time has now arrived when, without any necessary cessation of historical and local studies, the economic investigator, — and in particular the economic investigator in the United States, — if he is to attain his
highest scientific possibility, must adopt a larger mode of inquiry, a mode analogous to that employed by the natural sciences, and described as extensive or experimental rather than intensive or historical. He must derive his subject-matter not from past history alone, nor from the present experience of restricted localities; but he must observe and collate the phenomena under consideration from an area practically coextensive with their manifestation; he must interpret each group of facts in the light of the conditions prevailing in that particular place, and he must test the uniformities revealed by reference, as tentative hypotheses, to conditions in still other localities.

If he is attempting safe and useful generalizations, he must consider, for example, the taxation of corporations not by one state but by every state. He must study the structure and functions of trade-unions, not with respect to a handful of labor organizations and a few convenient cities, but in the light of the policy and practice, declared and actual, of every important national labor-union as displayed in many representative localities. In a word, the basis of economic induction must henceforth be, to a much greater degree than heretofore, qualitative data, amassed as deliberately and laboriously as chemical or physical data are collected by the natural scientist in his laboratory, and at least approximating in comprehensiveness the quantitative material which the public statistician makes available with increasing efficiency.

The successful conduct of economic investigation along the extensive or experimental course thus outlined involves the use of a group of workers, instead of the individual student, as the unit of research. Until such time as the number of independent investigators shall have greatly multiplied, the well-equipped department of political economy in the university will, naturally, be the prime agent of scientific activity. Such an economic laboratory or seminary will include not only a directing and teaching staff and a body of students actually in residence, but affiliated workers in the field and associated beneficiaries of subventions, desirous of operating from an academic base. A particular body of contemporary economic phenomena will be selected for collective rather than cooperative investigation; and specific aspects thereof will be assigned to individual workers for research in accordance with an organic plan. A student showing special interest in or capacity for investigation along lines other than that selected for collective effort will be encouraged to follow his particular bent; otherwise his energies will be directed, by deliberate assignment, to the seminary topic. Class instruction and the use of bibliographical and documentary materials will serve as the preparation for systematic laboratory and field work.

In regard to books and documents, the investigator must be able
to command, in addition to ordinary library apparatus, all primary documentary material relevant to his inquiry, whether it be as ephemeral as municipal reports and trade-union journals, or as unobtainable by formal request as trade agreements and corporation record. Similarly, he must be able to publish the results of his investigations in the precise form which scientific fidelity or practical usefulness demands, without regard to their commercial attractiveness or to the limited resources of existing scientific agencies. A more liberal policy of library administration and a more intelligent appreciation of the proper relation of publication to investigation in the social sciences, have notably improved conditions in the past few years with respect to these two requisites.

It is with respect to field and experimental work that the occasion for largest change exists. Descriptive investigation, as distinct from historical study and local inquiry, must bear the same relation to political economy that field work does to geology and the clinic does to medicine. The immediate environment should first be utilized as an economic laboratory for the development of scientific spirit in economic study and sound method in economic research, and as the field from which bases of working hypotheses may be derived. Thereafter the investigator must extend the range of his inquiry by visits to and even residence in representative localities, with a view to collecting wider and more varied data and to testing tentative conclusions.

Such a procedure involves two essentials,—leisure and resources. The investigator's time and energy, if not entirely available for scientific inquiry, must certainly not be unduly absorbed by the routine engagements of the student or the teacher. To the extent that he is still a student or instructor in academic attendance, opportunity for extensive inquiry must come with greater prominence of field-work and laboratory exercise in economic instruction. Economic teaching can properly harken to the message of the physical sciences, that the ideal of student training is less the accumulation of detail than the development of a mode of thought. An association of courses, a reduction of lecture attendance, a unification of seminaries, and, most important of all, the utilization of the long summer recess for field-work, will ordinarily effect an economy of time, making possible that amount of experimental inquiry demanded both by student development and scientific progress.

With respect to resources, the investigator must be in command of funds sufficient to enable him to visit, and upon certain occasions temporarily to reside in representative localities, for the purpose of gathering additional evidence and of testing and verifying tentative conclusions. To some extent, such funds can be made available by a modification of the fellowship system, the original purpose of
which, the attraction of students to post-graduate study, has ceased to be necessary, and the further extension of which along existing lines threatens serious evils. Beyond this, aid may be anticipated from cooperation with governmental agencies and with endowed institutions of research. But most of all, university authorities must recognize that "investigation funds" are as essential to scientific activity in political economy as laboratory apparatus is to chemistry and clinical provision to medicine. I have elsewhere ventured the opinion that "less and less will lack of material resources operate as a handicap," and that "as long as the method be sound and truth light the way, economic investigation will probably receive as generous an equipment as the economic investigator deserves."

In short, I urge a complete parallelism in method of investigation between political economy and natural science. Comparative study can fairly well replace deliberate experiment — certainly in a country as varied in resources and institutions as the United States. Beyond this, we need but a larger equipment and a common spirit. Here-tofore the economist has adapted his method to his resources. Let him now demand resources, made necessary by his method.

The significance of this great Congress is that every branch of science is but a facet of truth, and that every aspirant is in motive and endeavor as his fellow. No wise man will say, "I have the true path and every other is false." But just as surely is he a blind and foolish traveler who trudges along with eyes intent upon the worn stone, neglectful of the shorter course and the smoother way of him whose starting-point and whose goal are as his own.
SECTION B — TRANSPORTATION
TRANSPORTATION

BY EUGEN VON PHILIPPOVICH

about one hundred thousand kilometers; its highways have never been equaled up to to-day.

The development of transportation has been limited to improvements of the construction of vehicles up to the nineteenth century; in the eighteenth century even the most highly cultivated countries did not possess any regular system of roads. Until 1750 the large highways leading from London to the north were constructed solidly only at the first one hundred miles; further north they were changed to a narrow road which was admissible for but a few horses. At the same time most of the roads in the central and northern parts of England were still unbounded.\(^1\) What enormous progress have the European nations made in the period of economic liberalism! In as many decades as the Romans used centuries to construct their much admired roads, the European nations have spread a net of railroads over the countries which possess the threefold extent of the Roman system of roads. Travelers upon Roman roads usually made forty to fifty kilometers in one day; only at the beginning of the nineteenth century this rate was changed and the fast mail reached finally a rate of two hundred and fifty kilometers. To-day the trains run with an average velocity of fifty to sixty kilometers in one hour; hence, one thousand two hundred to one thousand four hundred kilometers in one day. Thus men have been moved nearer to each other, and the earth has, so to say, been diminished in the same proportion as the velocity of transportation has increased. However, not only on land, but also at sea we have surpassed all former centuries.

The greatest progress in navigation since the invention of the compass is marked by the application of steam, not only on account of the greater velocity of transportation, but especially because thus the construction of larger vessels was made possible and the ships became less dependent upon wind and weather; thus gradually a regular communication on sea was instituted over the whole globe.

In 1813 the first regular transatlantic line between Europe (England) and America was opened, and now five hundred and seventeen seaports are reached from Europe by regular voyages. How great the importance of this fact is may be shown by the fact that the sea covers five sevenths of the surface of the earth, so that all world's commerce and all world's transportation is done by sea. Seventy to eighty per cent of the world's commerce is effected on sea. At the beginning of the forties it took English troops who sailed to India around the Cape of Good Hope seven months (with bad weather) from Falmouth to Bombay; emigrants who at this time sailed to North American ports traveled (against the wind) four weeks. But when, in 1881, Francis Galton published the first

\(^{1}\)\text{Spencer, Principles of Sociology, vol. iii, p. 73.}
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isochronic passage charts (on which the average time is indicated to navigate from a given point to certain other points in the shortest way and with the fastest means of transportation), it was shown that one could reach from the English Channel all ports of the earth in less than forty-five days. The normal ship of the thirties had a tonnage of 200, rarely 300; to-day 6000 to 7000 tons are considered the average.

A steamer like Kaiser Wilhelm II of the North German Lloyd, with a register tonnage of 19,500, is as large as the entire commercial fleet of Bremen or Hamburg at certain times in the beginning of the nineteenth century. At present the oceans of the earth are carrying about 30,000 vessels, with an aggregate tonnage of 30,000,000 tons. The combined railroad lines are nearly one million kilometers long; the telegraph cables, one third of which are submarine lines, have a length of 2,000,000 kilometers.

History of mankind has no example for any such achievement in former times, not even in the smallest measure. Only in the nineteenth century man has subdued space, diminished the globe, and moved nearer to each other the nations with their mutual, hostile, or brotherly relations, so that nowadays our mind must obliterate the national boundaries and must comprehend continents, if it will judge the forces innate to peoples and measure their effects. The consequences of these changes in transportation are, to-day, still rather felt than clearly recognized. We know that these changes influence all conditions of social life, economics, politics, the production of manufactures as well as of agriculture, of commerce, science and art and military organization, national feeling and individual life; but, as Gustav Cohn remarks correctly, even if the theme is limited to the economic effects, most work of its investigation is yet to be done. This must not be wondered at; the most decisive progress has been made only in the last twenty-five to thirty years, so that we find ourselves still in midst of a process of transformation whose limits cannot be drawn. The more interesting is the question which I am asked to answer, in which wise science in its different branches has treated this powerfully great subject.

Scientific treatment of transportation has been very insignificant till late in the nineteenth century. Only the first greater organization of transportation, the mail, invited historical reflections and juristic investigations, while the social importance was not regarded. The development of the construction of streets and the improvements of the waterways have been treated, in the eighteenth century, in technical writings; later the new means of transportation, the rail-

1 Nationalökonomie des Handels und des Verkehrswesens, 1898, S. 976.
roads, gave rise to a special technical literature. The authors foresee the importance of the means of transportation and communication for the economic, intellectual, political, and strategical life of the nations, but they do not comprehend it to its full extent. Only political economy has a presentiment of the effect of the improvements of transportation in behalf of human society. But also political economy shows a narrow conception and does not go beyond general considerations of the economical effects and of the consequences of the organization of post-roads and railroads. James Stewart mentions, in his *Inquiry into the Principles of Political Economy*, 1767, only the influence which the improvement of the country roads exerts upon agriculture on account of the facilitated sale of its products.

Adam Smith, in his *Wealth of Nations* (b. 1, chap. 3), has a deeper insight into the relations between space and national economy. He recognizes the dependency of all economics upon the extent of markets; this is augmented by good roads, channels, navigable rivers. These means of transportation open the distant sections of the country, which always are the most extended, and bring them into connection with the consuming cities. Therefore, they are the greatest progress of all; where they are missing, all production is limited to the market which the surrounding country offers. For this reason the entire interior of Africa and the whole northern part of Asia is still in the same condition of barbarism as since the beginning of the world. Smith was unable to foresee the possibility of a great development of the ways and means of transportation. His recognition of the ways of communication is therefore limited to emphasizing the greater advantages which the waterways possess in comparison with the highways.

International transportation over extended spaces appears to him as something impossible; what wares could, by their value, compensate the expenses of the transportation overland between London and Calcutta; or, if some were so precious that they could counter-balance the costs of transportation, with what security could they be carried through the territories of so many barbarous tribes?

The English followers of Smith, Ricardo and Malthus, do not consider transportation at all; his French followers, Jean Baptiste Say and Storch, have again taken up his idea, but have not developed it further. Also these authors limit themselves to mention the greater advantages of the waterways and to point to the importance of the diminution of the freight expenses for production.¹

Among the German economists Lotz and especially Karl Heinrich Rau have paid special attention to transportation. Lotz ² does not

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¹ Say, *Traité d'économie politique*, 1803, vol. 1; appendix, chap. 16; and Storch, *Cours d'économie politique*, 1818, part 1, liv. 1, chap. 9.
go any farther than Smith, Say, and Storch, although he was able to observe the railroads. But he mentions them in an annotation, as standing between highways and waterways; the latter he considers still the most important and the best. Raß has accomplished, for Germany, the separation of the theoretical Volkswirtschaftslehre from the Volkswirtschaftspolitik, i.e., the separation of the knowledge of the laws of economic life from the knowledge of the duties of the state with regard to economics; he treats transportation in the Volkswirtschaftspolitik \textsuperscript{4} originally as an aid to certain kinds of commercial affairs. Thus still in 1844; later among the measures by which the state furthers commercial intercourse. In accordance with this systematic position he does not deal with a theoretical conception or with considerations of transportation which would go beyond the economic deliberations. He describes the existing means of transportation (highways, waterways, post-roads, railroads) rather as organizations of public administration than as members of the social organism. Thus he is led to a penetrating investigation of the state's relation to these institutions, but for this reason his treatises lose the universal character. Adolf Wagner, who has revised the books of Raß, has still further considered this administrative, political, economic side of treating transportation,\textsuperscript{2} while Gustav Cohn opened, with great success, the series of the historical and economic monographs with his English railroad studies.\textsuperscript{3}

Friedrich List and Knies have demonstrated, in monographs, the importance of transportation. List has, above all, recognized the great influence of the railroads upon the expansion of agricultural and industrial production, but also far beyond this he saw the importance for the national life of the nations.\textsuperscript{4} In his monograph \textsuperscript{5} Knies has investigated the railroads and their influences in different directions; he has correctly recognized, not only their economic, but also cultural, political, and strategical significance, and pointed, in a later treatise \textsuperscript{6} especially, to the increased international communication and to the transportation of raw products \textit{en masse} as decisive results of the improved means of transportation. Taken all in all, even up to 1875, the investigation of transportation has advanced but little. Schaeffle and Sax have given utterance to this. Schaeffle pointed to the far-reaching relations connected with transportation, to which the former connection of the ways, institutions of transportation, and means of communication with the economic

\textsuperscript{1} \textit{Lehrbuch der politischen Oekonomie}, 2. Band; \textit{Grundsätze der Volkswirtschafts-politik}, 1. Aufl. 1828, 5. Aufl. 1863.


\textsuperscript{3} \textit{Untersuchungen über die englische Eisenbahnpolitik}, 1874, 1875.

\textsuperscript{4} \textit{Über ein sächsisches Eisenbahnssystem als Grundlage des allgemeinen deutschen Eisenbahnsystems}, 1833; \textit{das deutsche Eisenbahnssystem}, 1841.

\textsuperscript{5} \textit{Die Eisenbahnen und ihre Wirkungen}, 1853.

\textsuperscript{6} \textit{Die politische Oekonomie von geschichtlichen Standpunkt}, 1883, S. 444.
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institutions cannot do justice. "For the ways of transportation and communication are not only the base of the material and ideal communication, but they serve also the transportation of persons, of material, and ideal articles for all other purposes; they are a constant fundamental element for the social, scientific, juristic, esthetic, pedagogic, and political-strategic conditions of life."¹ After having placed, in his social system of "human economies,"² the economic systems of transportation in opposition to those of original production, of the trade and commerce, as equivalent, he was the first to investigate, in his great work, these further effects of transportation from the point of view of their importance for society as unity. Sax has devoted to transportation the first comprehensive monograph. In his introduction he declares that national economy neglects this point. While the qualities of other means of transportation and their influence upon the formation of economics are discussed in each systematic representation of the economic fundamental doctrines, and have even found, so to say, their distinct place in these doctrines, the same is not the case with regard to the means of communication. One is satisfied usually with a few rather superficial remarks which, besides, are inserted occasionally and dispersely, instead of being discussed "ex professo," connectedly.

The work of Sax is a very complete analysis of the institutions of transportation from the point of view of technical organization and of economy. He has not answered the question which place shall be assigned to transportation in the system of national economy, how it is to be used for the theory of national economy. Thus it has remained to this very day. Only Thuenen makes an exception; in his "isolated state" (1826), he discussed the importance of the distances and of transportation for the selection of the places of agricultural productions. Thus he has furnished the first contribution to a theoretical valuation of space. Besides him we must name Dühring. He is the only one who places transportation in the system of national economy in a position determining the whole economy. He considers the importance of transportation equivalent to that of the organization of human forces, to the size of population, and to the endowment of a country with natural resources; all these are general conditions of increased productivity. Dühring stands under the influence of the American Carey who, without treating transportation itself, sees the determining principle for the progress or regress of the national organization of production in the dependency of the production upon the distance from the market and who strives

² Gesellschaft System der menschlichen Wirtschaft; namentlich in der 3. Aufl. 1873.
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to restrain the changes of place of the material to the possibly least measure.¹

In all other treatises of transportation by economists especially the relation of the state to transportation stands in the foreground. Only lately Schmoller, in his Grundriss der allgemeinen Volkswirtschaftslehre, recognized the real significance of transportation as the base of the social process of productivity and distribution of income.

It cannot be said that the position of transportation in the political economic science is generally recognized and assured. It is certain that transportation is treated exhaustively in treatises in which the relations of the state to economy are the object of scientific research, as in the separate treatment of political economy customary in Germany. Here the organization and the juridic conditions of the institutions of transportation are examined. The theory of national economy has, however, not yet obtained any sure gain from these studies, though relations to it are not lacking. But an independent science of transportation had not yet been founded till now. The last decades have, indeed, called forth an extraordinarily copious and comprehensive literature of the railroad, and special railroad-schools were established in Austria, Germany, Switzerland, and England; during the last few years also the scientific treatment of navigation has been advanced remarkably, yet no attempt has been made to investigate the inner connection of the decisive facts and to found them upon a general theoretical base. But transportation is so closely connected with the entire life that its modern development in a number of sciences has produced strong suggestions which, in different cases, offer a clear image of the mutual relations of the sciences. Above all, the close connection of transportation with the physical features of the surface of the earth, with the courses of rivers, and the extent of seas has effected that geography occupies itself with these objects in a penetrating manner.

When, in the epoch of commercialism, about the middle of the eighteenth century, the interest in the investigation of the economic conditions of the state and of the rival countries awoke, as a part of the great systematic science of commerce, the representation of the expansion of commercial politics, of the articles of traffic, and of the commercial roads arose, which became then an integral part of political geography, and, finally, also, of the kindred statistics and political science, systematized by Achenwall. In modern times it has been integrated, and besides, the conception of economical geography has been formed, which would have to show the influence of "the physis of space upon the transportation and production of

¹ Principles of Political Economy, 1837–40; Principles of Social Science, 1858–59.
Distinguished from this economic geography is the "geography of communication," about whose extent, limits, and methods the opinions still differ at present. There are two tendencies, opposed to each other. First, the applied or practical geography of communication which starts from the given facts in order to investigate their influences upon the economic, intellectual, or political life, and in order to deduce therefrom the transformation and improvement of the conditions of communication. It is evident how closely this way of treating transportation must touch to the political economic treatment.

The second tendency aims at the theoretical investigation of the causes of the conditions of communication; here, again, a twofold conception of its tasks can be formed: The investigation of the influence of nature upon the actual communication and the explanation of its natural causes; and an historical consideration which pursues the diminution of distances of time and space in the historical development. According to Hettner's conception, it has to show how in each space on earth and upon the surface of the earth the system of communication taken as a whole is connected with human settlements and places of production, and how it is dependent upon the distribution of land and sea, the courses of rivers, the direction of mountains. On the other hand, there must be represented how within each space or most spaces of the earth the communication is effected on the main and side lines in quite a different manner, and how the spaces are distinguished from each other through the different kinds of communication.

The first who investigated the natural dependency of communication was Kohl. But he tried to make the communication of men too much mechanically dependent upon natural conditions; in this he has found many followers. Contrary to this view Hettner emphasizes that the opening of each way originates from acts of human will, which are influenced by distinct motives and must be subjected to psychological analysis. Thus the way is shown on which the connection between geographical and social research can be traced. At which extent of reflection one can thus arrive,
Ratzel shows in his _Political Geography_. He is able to pursue the natural dependency of communication as regards its influence upon the political organization of men in the formation of states and upon their position in the world. The kernel of his discussion is that the main features of the surface of the earth direct the chief currents of communication. The communication by sea is determined by the distribution of land and water, climate, and physical condition of the sea-water; the communication by land depends upon climate, quality of the soil formation of the surface, irrigation, and the vegetative properties of the soil. Therefore, there is no random distribution of the communication on the globe, but a normal, geographical division into main and subordinate lines determined by the character of the surface of the earth. They bestow upon each part of the earth an individual character which is determined by the tendency of each communication to grow, to get around obstacles, to cross from one border to the other, from the habitable to the inhospitable regions, and from those more favored by nature to the less favored.

No science is so closely connected with transportation as the technical science. It sprang up, together with the development of transportation, in the course of the nineteenth century, and grew directly with its progress. A prominent German technologist sees four stages in the development of transportation. It begins with finding the best way, the natural tracing formed by valleys, fords of rivers, mountain passes, etc. The second stage is the development of vehicles. Another progress is made by the improvement of the road. The perfection attained by the Romans had been lost and was reached again only in the nineteenth century. But the system of roads had been little extended when a new stage of development began with the application of steam power. Only in this latter period the empirically founded activity yields to the scientifically established. The scientific treatment of constructing roads can be traced back to the technical construction of roads, which was introduced since Macadam (1820), but the science of engineering took its rise only with the invention of railroads. The railroad engineers found themselves in a difficult position in the first half of the nineteenth century. Without personal experience and scientific foundation of their task, they had to rely mostly upon their technical instinct, by which they were not rarely led astray. Only the variety of experiences and the new tasks of construction have become the cause that the different technical theories, as those of the earth-work, the vaults, the properties of material, of the wooden and iron

3 Birk und Krauter, _Der Eisenbahnbau, Einleitung und Allgemeines_, 1897, S. 27.
bridges, were furthered considerably, and that quite new theoretical considerations arose\(^1\) as concerning the superstructure.

Freiherr von Weber, one of the most brilliant technologists, believes that all branches of the science of engineering arrived thus at an extraordinary height, while with the ordinary course of events only centuries could have accomplished the same.\(^2\) Even the earthwork is performed not any more in an empirical way, but based upon scientific principles. The solidity, possibility of slides, the rate and costs of the work, the method of excavating and building embankments are nowadays founded upon science.\(^3\) The building of tunnels, which formerly were driven only through firm, steadfast rock, has become possible also in heavily pressed ground only through the scientific development of tunneling; thus at the present time extraordinary success has been reached.\(^4\) Dredging machines, drills, the foundation of shafts by means of compressed air, the iron bridges, have become complete parts of modern technical building only in connection with railroad construction. The finer geodetic instruments have been invented with the problem of tracing which the railroad construction required. Metallurgy has entered into a wholly new stage; iron, so important for the construction of buildings, bridges, machines, vehicles, has been introduced into life. If the railroad engineers have made copious use of the results of geological research in judging the formation of the soil or the construction of tunnels, they surely have, on the other hand, also assisted this science to an inspection into the structure of the surface of the earth, which under other circumstances could not have been attained without great difficulties. Also the electrotechnic is a child of the railroad period. Without it the magnificent development of the railroads would not have become possible; but, without the continuous demands by the railroads, the electrotechnic would not have reached its present high degree. Enormous progress has been made within the few decades from the first application of electricity to giving signals (1840, Great Western in England, and 1847, Buckau-Magdeburg) to the first vessel driven by electricity (Werner Siemens, 1879), and the first electric railroad (1887, in America). To appreciate the powerful incentives which the railroads proved to be to the construction of machines, it suffices to compare the renowned locomotive *Rocket*, with which Stephenson gained the first prize, in 1829, a vehicle of 4.5 tons, with the locomotive of our days, whose colossal weight amounts to 240 tons. The construction of the means of transportation has been raised for some decades from

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\(^3\) Rziha, S. 91.
the craft bequeathed by an empiric master to his apprentice into the province of scientific research and application of technology. Sombart has correctly pointed to this feature as decisive and characteristic for the machinal equipment of the presence. The admirable development of the technical sciences in their application to transportation owes very much to natural philosophy, but very little to the social sciences, whose object is given by the regulated association of men. Also here it is evident that the connection of the sciences which occupy themselves with transportation is formed not by a mutual dependency in the manner of investigation and method, but by the homogeneity of the object. But, on the other hand, all changes which one science causes in the object produce an effect in all other sciences. The attainments of scientific technology create new forms of communication and new relations in the exchange of wares as well as in the intellectual connection of mankind, which must be taken into consideration by the social sciences. And these show to technology the direction in which it must master the natural forces in order to respond to the demands of society. Therefore, the technical sciences are always related to the social conditions. Freiherr von Weber has ingeniously shown the national character of the railroad systems in different states and explained it from their dependency upon the natural, economic, political conditions of the life of the different nations. This dependency is also felt by every technologist at the execution of his tasks; it is the reason for which also the technical sciences make their problems depend upon the economic conditions and the juristic conditions of the state. As to the economic consideration of the technical problems, we owe to the technologists very valuable incentives to transportation, of which political economy makes use.

So the question of the feasibility of constructing a railroad has been treated until now in a scientific way only by the technologists. They have developed a theory of "commercial tracing" besides the theory of technical tracing, and searched after formulae which shall enable political economy to decide the arrangement of street systems and of railroads, and the kind of their construction. The commercial tracing must establish the capacity of the different technically possible lines of a system of railroads or of streets, and must select the most favorable line. Instead of the old method followed at the construction of railroads and based upon the estimation of the traffic on the highways, the French engineer Michel was the first to employ a more perfect and, at the same time, more simple method. In his investigations, which he extended to a large part of the French railroads, he started from the assumption that the transportation must be closely connected with the number of inhabitants of a certain region, and he found that the transportation
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was proportional to the number of inhabitants of the railroad station, to which the inhabitants of the surrounding country must be added; but also the different grades of economic importance of the region must be distinguished, and very large as well as very small places be omitted. According to the statistics of 1866, he found that each day 6.5 passengers and 2.1 tons of freight correspond to each head of the population concerned with transportation. These numbers were changed in agricultural districts to 4 passengers and 1.5 tons of freight, and in the more densely populated industrial districts to 9 passengers and 3 tons.¹ This method has been perfected by Launhardt, who added to it a general theory of tracing. In Launhardt's view, the characteristic of the universal development of transportation consists in the fact that the work of preparing for the single case of transportation constantly increases in order to diminish thereby the executing work necessary for utilization. Evidently the technologist has thus discovered independently for transportation the law observed in production by the economists of increasing substitution of circulating by standing capital.

The diminution of the executing is equivalent to the lowering of the expenses. In order to proceed economically, one must endeavor, when determining the direction and construction of a road for transportation, to make the expenses for the unit ("ton-kilometer" or Parson-kilometer) as small as possible, these expenses being a function of the yearly interest of the capital stock, the yearly number of transported objects, and the expenses for operating the transportation; at the same time the consumers' advantages must be considered, which are due to velocity, security, regularity, frequency, and efficiency of the transportation. On this general basis Launhardt has construed different theories about tracing of streets and railroads with regard to the markets, accessibility, connection with other ways, and construction of centers of intersection; these theories strongly support the economic conception of technical problems, and have been extended to all branches of engineering. An important consequence was the individualization of the railroads by the engineers, their division into main lines, branches, local lines, secondary lines, etc.

In many regards transportation has touched upon jurisprudence. Each developed community must create regulations for the right of ways. Although real estate is private property, yet the want of communication presupposes the usage of at least certain roads by all. Through this, numerous legal questions, often very complicated ones, arise. Moreover, transportation involves many dangers for the security of persons and of property and of the maintenance

¹Annales de ponts, chaussées, 1866, p. 145.
of public order; to avert and suppress these dangers becomes a public duty. Finally, any transportation passes beyond the boundaries of the single states and causes international relations which must be treated in legal form. Thus the public right, the right of transportation, and the international right of institutions of transportation, has grown in the same measure as the increased communication.

Scientific treatment of the public right of transportation began in Germany by the Cameralists of the eighteenth century, placing besides, many older technical treatises on ways and communication, new discussions in which this topic is considered from the point of view of the administration of the state.

So did Justi in 1760 and Sonnenfels in 1798. In the first half of the nineteenth century transportation is treated as subject of public administration, partly in the works on public administration, partly in those on state's right, partly in those on political economy. Only since 1850 the right of administration has become an independent science under the influence of the great German authors, Mohl, Gneist, and Stein. This science has to establish the laws on whose observation the solution of the problems of the state are based. One of these problems is the care of the necessary ways and institutions of transportation, as far as these cannot be cared for by private economic activity without detriment to the whole.

But also where this is the case, it agrees with our modern conception of the duties of the state, that it controls and supervises transportation. The maintenance of roads was forever the duty of the public corporations. Already the Franconian kings, especially the Carolingians, displayed an energetic activity in building highways, and the law-books of the Middle Ages contain regulations concerning their width and the conduct of travelers on the highways. The communities and markgenossenschaften provided the roads for immediate neighborly intercourse. The large roads, the king's highways, passed over to the ruler of the country, who used them in fiscal interests and acquired in them a "regal," the privilege to employ them for fiscal purposes. It was a great progress in the development of right that the idea of the supremacy of the state took the place of the "regal," and thus the administration of the roads was performed in the interest of the community. The great juristic ideas on which this administration is based are: (1) That the complete transportation satisfies the claims of a many-sided and free cultural

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1 Aussichtliche Vorstellung der gesamten Polizeiwissenschaft, S. 427-435.
2 Handbuch der inneren Staatsverwaltung, S. 229-241.
3 A systematic treatise of German right of administration appears not earlier than 1883: G. Meyer, Lehrbuch des deutschen Verwaltungsrechts, followed, 1884, by Loening's Lehrbuch.
life and the needs of intercourse of all classes of society; (2) that its usage is conceded to all with equal rights; (3) that it must be administered and developed as an integral system.

In regard to the means of communication, first, the mail service was influential upon the development of public rights. From the institutions of messengers, which were, in the Middle Ages, established by cities, universities, trade-unions, a regular mail service by mounted messengers was developed in France and in Germany during the second half of the fifteenth century. It was organized by the rulers of these countries, serving at first only the official communication, but soon after private persons were permitted to make use thereof. A formal concession of the privilege to establish mail service in the Empire, as an imperial right, was made in 1570 in Germany, and in 1615 the office of general postmaster in the Empire was bestowed, as Reichsregal und Leben, upon the family of Taxis. They had, from then on, to maintain the mail service by their own means, but were entitled, in return for it, to keep the intakes. This Reichsregal was infringed upon by the rulers in favor of establishing government’s mail service, and since the seventeenth century it is generally acknowledged that the right of establishing and conducting mail service is a privilege of the Empire or the ruler. In the second half of the seventeenth century the edict was made forbidding the dispatching of letters or persons in any other wise than through the postal service.

A new epoch in the development of the rights of transportation begins with the railroads. While Knies, fifty years ago, expressed his astonishment that the influence of the railroads upon jurisprudence had scarcely been observed, we possess nowadays an extended science of railroad rights. It comprehends the relation of the railroads to the state and to the provinces or communities, the concession and organization of the railroads, the acquisition of railroad estate, railroad service, and transportation, and the change of railroads. Both the private and the public rights are equally influenced by it. Generally the railroad supremacy of the state is recognized as an extension of its supremacy of roads. The railroads are considered as public ways and public institutions. The state has (1) the right of concession; the state decides if the construction of a railroad can be permitted, in case of a certain enterprise. The state cares for the proper construction of the railroad. (2) The right of supervision of the construction, operation, and administration of the railroads. The state grants to the undertaker the right of expropriation to acquire the necessary estate, but the state is also concerned in a just indemnification.

The safety of the buildings and means of operation of a railroad are matters of public interest; construction and operation are subject
to control. The railroads are conceded the right of transportation; thus they gain a certain monopoly, which is counterbalanced by a number of obligations: The obligation of transportation to everybody; the recognition of the state’s right to exert its influence upon the rates of transportation; the duty to establish uniform conditions of transportation, hence prohibition of arbitrary preference of certain shippers; the duty to introduce uniform institutions of transportation; the duty to permit other lines to be connected, etc. Not all, but most states of Europe, have regulated upon this basis their relations to the railroads; also those which have not deducted consequences from the right of railroad supremacy of the state in all points mentioned, have done so at least in several points. Considering this far-going regulation of the private operation of railroads, the acquisition of the railroads by the state seems to be the next step; by far the majority of all states have already adopted the idea of a railroad system of the state.¹

The public right of the railway cannot be treated without referring to its economic and generally cultural importance. The measure of economic liberty which the state leaves to the enterprises, the limit which it puts to its influence, will always be defined the conception of free competition, private monopolies, the principles of the formation of price in free and in regulated transportation of the economic and social function of the state.

It lies in the nature of institutions of transportation that they obliterate the boundaries of historical and national peculiarities, as they connect the nations in spite of all differences of nature and of their striving for power; thus they “create a universal image of the world which could not be possible without them, for which his-

¹Cf. Keller, Der Staatsbahnbedenken bei den verschiedenen Völkern, Aarau, 1897. That the principle of the supremacy of the state is generally recognized is expressly pronounced by Emery R. Johnson, American Railway Transportation, New York, 1903, p. 322. He declares that transportation is a public duty and it is the duty of the government to regulate it. He quotes several very interesting decisions of the United States Supreme Court in which also this principle is recognized: “Whether the use of a railroad is a private one depends in no measure upon the question who constructed it or who owns it. It has never been considered a matter of any importance that the road was built by the agency of a private corporation. No matter who is the agent, the function performed is that of the state. Though the ownership is private, the use is public.” Also by other authors the general political importance of the railroads in America is fully recognized. K. H. White, History of the Pacific Railway, Chicago, 1895, p. 7, mentions the approval of the first sketch of an Atlantic-Pacific railway by the Street and Canal Commission of the Congress of the United States in 1850. “Such a railway will connect more closely the eastern and western states in economic, social, and political regard. It will become a road of commerce from Europe to Asia. It will further universal peace and transfer a part of England’s commercial importance to the United States.” In 1870 Charles F. Adams writes in the North American Review (1870, i, p. 125): “Our railway system, connected through the sentiment of equal interests and equal dangers, will once exert the same great influence as the Roman Catholic Church, although it will possess, instead of the religious and moral dominion only, the mighty influence which the desire for material development bestows upon it, which it serves so effectively.”
tory possesses no example, and which is to be considered as the living base of all progress.\textsuperscript{1} Even the independence of the states has submitted to them, and for the first time in the province of transportation those unions of administration\textsuperscript{2} of the states have originated which establish international regulations for communication; the legislation of the different states will be compelled to recognize these, because universal intercourse demands so. "The state builds ways and bridges for itself and regulates and administrates them after its own will; but the mail-wagon, the locomotive, the electric spark which goes beyond both, does not any more belong to the state alone."

Probably the first similar international treaties have been made with regard to navigation on rivers. The Vienna Congress Acts of 1814 established first general principles for all rivers common to several states. On these rivers navigation should be permitted to all vessels. The police of the river and taxes should be regulated uniformly. Later treaties have been made concerning the large German rivers: the Rhine, 1831; Elbe, 1821; Weser, 1823; Danube, 1856 and 1857; Po, 1850; Pruth, 1866. Commissions and inspections were established to make and enact regulations for navigation, to determine the punishment for transgressing their norms, so that they exercise acts of an international legislation. By the treaty of Paris of May 17, 1865, the European telegraph union, and by the treaty of Bern of October 9, 1874, the Universal Postal Convention was formed, without board with executive right, as is the case with the above-mentioned river commissions, but with an infinitely farther-reaching effect of international uniformity upon the order of transportation. Never has the international communication been acknowledged more distinctly and precisely than in Article I of this latter convention, which reads: \textit{Les pays entre lesquels est conclu le présent traité formeront sous la désignation de "Union générale des postes" un seul territoire postal pour l'échange réciproque des correspondances entre leurs bureaux de poste.}

This force of communication striving after unity has attained still greater success as to the right of railway freight. As early as 1846 a union of German railway administrations had been formed, which comprised not only the railways of the numerous German states, but also those of Austria-Hungary and later those of Belgium, Holland, Luxembourg. The purpose of this union was to create common regulations of the operation of railways for all connected lines and to subject thereby the freight transport to independent, and in the several states, equal rights. However great the success

\begin{itemize}
\item Stein, \textit{Verwaltungslehre}, p. 361.
\item Stein, \textit{loc. cit.}
\end{itemize}
of this union was which, in 1879, already comprehended a railroad net of 55,000 kilometers, yet it was by no means complete, insomuch as large regions of Europe were not included (France, Switzerland, Russia, and Italy), and as the contents of the agreed regulations depended upon the conclusions of a majority and did not sufficiently guarantee its consistency. Therefore Switzerland proposed to create an international freight-right through a juristic convention, which should encircle all states of the European continent. The preliminary work was begun in 1876, and after many conferences the convention concerning the freight transportation by rail was adopted definitively by the delegates of the enumerated states, in the conference at Bern on October 14, 1890; it was ratified on September 30, 1892, and the regulations became valid on January 1, 1893.\(^1\) Although this convention did not establish uniform regulations for the whole rights of transportation, as it concerns only the railroad transportation from one state into another, but not the internal transportation, which is governed by the laws of the single states, yet the facilitation of transportation must be considered a great progress in the organization of the European freight transportation; and Meili correctly demands, in view of this beginning created by praxis of juristic science, "to create a universal right for the world institutions of transportation."\(^2\)

In the interior of the states the transportation of freight remains still subject to the private law of the several states which have formed a special source of it in the commercial law. Also for this branch of jurisprudence many new legal questions have arisen through the modern institutions of transportation; the scientific treatment of this subject brought about many investigations into the rights of transportation and especially of transportation of freight by rail.

Also the international treatment of the rights of private persons receives its material, increasing in quantity through the facts of modern transportation, and thus the most important points in which jurisprudence comes in contact with transportation have been demonstrated. There does not yet exist any treatise on this development and transformation of juristic material in connection with transportation. Only Goldschmidt declares in his universal history of commercial law\(^3\) that a considerable part of the institutions in that province of jurisprudence, of antiquity, and of the Middle Ages have arisen from maritime intercourse, because at times of insufficient communication by land, communication was confined to navigation. Through centuries all temporal and local differences in

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\(^1\) Eger, Das internationale Uebereinkommen über den Eisenbahnfrachtverkehr, 2. Aufl, 1903.

\(^2\) Meili, Das Recht der modernen Verkehrs und Transportanstalten, 1888; and Die internationalen nionen Über das Recht der Weltverkehrsanstalten, 1889.

\(^3\) I. Band, 1891, S. 28.
commercial law are closely connected with the transformation of maritime commerce and navigation.\(^1\)

It would be of great interest to pursue the effect of transportation on the forms of political organizations and on the utterances of political life, and to investigate to what extent one has already become conscious of these effects in scientific treatment.

Only the connection of transportation with the physical development of power of nations and its valuation from the point of view of modern military science shall be discussed here.

Modern strategy has to take into consideration three new factors which arose in their beginning in the Franco-Prussian War, but were not considered at all in earlier times. They are: The levy of the whole national force for war, the progress of technical science, and the development of transportation. The concentration of the army formed by the entire armed nation, the sending of auxiliary troops, their gathering at certain points, the care for provisions, are conditioned by the organization of transportation. The mercenary armies of the epoch of Frederick the Great must collect and keep the whole amount of provisions that were needed in a campaign before the war in a place as near as possible to the frontier. This dépôt contained provisions, supplies of arms and ammunition, materials for artillery, engineering, workshops of all kinds, even barracks for recruits, and formed the basis of operation, which was protected by fortresses. When the armies marched on, in most favorable cases after ten days' march, a new basis had to be established; this was the reason of the long duration of former campaigns and of the lack of display of force and energy in comparison to the present. Although Napoleon brought the system of requisition, the sustenance of his army through the means drawn from the enemy's country, to highest perfection, yet he could not entirely act without establishing such "spaces of basis," as especially his preparations for the war against Russia (1812) demonstrate. In present days these conditions are completely altered by the railway transportation. Storing up supply in a prepared basis has become unnecessary, since reserve forces and any kind of provisions and materials can be moved within a few days from the remotest districts as far as the railroad is operated. The administration of the Prussian army ought to have kept, according to old regulations, a supply of provisions amounting, outside of the fortresses, to one or two years' supply of rye and to one half-year's or one year's supply of oats. Instead of observing this regulation, the supplies had been diminished, during the years preceding the declaration of war against France, so that the supply for the need in time of peace would have been sufficient for but few months; at the time of harvest for an even

\(^1\) 1. Band, 1891, S. 336.
still shorter term. And, nevertheless, Prussia could better than only satisfactorily supply its field army in war, inasmuch as not only Germany as a whole, but also foreign countries contributed to the sustenance of the troops; for example, at the beginning of war the Secretary of War had purchased forthwith three million pounds of preserved meat, hard biscuit, oats, and pressed hay in England to be delivered to the Rhine. The centralizing effect of a highly developed system of transportation is shown also there. The entire state, with its industry, production of the soil, with all its auxiliary forces of each kind, had assumed the rôle of the "basis;" the widespread net of railways had become the substitute of that formerly so-called basis. It is evident that this valuation of the railroads in the service of the army was not completely understood at first. The first author who considers the railway seriously, from a military point of view, and has a very clear insight into its importance, Pönitz, still considers the transportation of one hundred thousand men, with all supplies, improbable for great distances.

The first experiences with transportation of troops was gained by Austria. In the war of 1859 against France and Piedmont, its insufficient system of railways proved to be a disadvantage of serious consequence. Only the experiences of the American Civil War, especially on the side of the Northern States, opened a new epoch. There a special corps of troops was formed, equipped with copious material with which railways were built or destroyed. The state alone ruled all railways through a "department of military railroad." General David MacCallum, who was the chief of this department, is the real founder of the military railway system. In the wars of 1866 and 1870-71, the importance of the railroads became strikingly evident in Germany. Prussia had five railroad lines at its disposal in 1866 for its invasion of Bohemia, while Austria possessed there but one line; in 1870 Germany could send its armies against France by means of nine lines, while France had only three at its disposal. Only thus was it possible that within the short space between July 24 and August 3, in two weeks, 350,000 men, 87,000 horses, 8400 cannon and vehicles were sent to the frontier. Therefore the numerical preponderance upon the battlefield was secured for the German army from the very beginning; this is the factor to which, according to the experiences of the history of war, the most celebrated generals of all times owe their victories.

1 Engelhardt, Rückschri auf die Verpflegungsverhältnisse im Kriege, 1870-71, Beilage zum Militärischen Wochenblatt, 1901.
2 Pönitz, Die Eisenbahnen als Militärische Operationlinien, 1842.
5 Obauer und Guttenberg, Das Train-Kommunikations- und Verpflegwesen vom operativen Standpunkt, 1871, S. 50.
science has based its demands concerning the organizations of railways. The development of the railway system shows in the military states of Europe, especially in France, Germany, Austria, in large measure the characteristic type of military railroads which is constructed, not with regard to local transportation of freight, but, in the first line, with regard to transportation of military forces, certain cases of war being presupposed. At the concession of each new railroad to be built, officers of the Ministry of War participate in the council; they decide about the minimum demands, as to ability of transporting, construction of stations, water-supply, etc., which the line has to fulfill before the concession to build and operate the railroad is granted. The average daily supply of provisions for an army of 1,000,000 soldiers and of 250,000 horses is estimated to amount to 4000 tons; the transportation of this mass requires 14 trains with 5000 tons brutto-weight each day, a wagon carrying 8 tons. But as reserve forces, ammunition, material of each kind must be transported besides, the number of trains must be increased. This transportation can, of course, not be effected by any vehicles, and a very well-organized system of railways is necessary to satisfy these claims. Such extended use of railways requires also strong defense and protection of the army's connections with the rear; a new problem has thus arisen for the science of war.1 As the history of war shows, the chief operations of the army depend greatly upon good natural communications (brooks, rivers, the seacoast).2 In the future the railways seem to be destined to a still more important rôle. The war of the future will become rather a war in the province of technic science; who possesses the most complete equipment and institutions will finally be victorious. The armies of to-day are no longer chained to one line as formerly, nor dependent upon the possession or loss of a source of their force. They depend upon the entire railroad region in the rear and are thereby closely connected with their entire country. The railroads will bring about quick and powerful decisions in future wars.3

In this essay on the relations of transportation to the sciences, I have already spoken of political economy, but only in so far as I tried to show at which place and in what way the science of economics has taken up this subject as a whole and how it has embodied it in its system. I shall now return to the relations between transportation and political economy in order to show that the efforts to conquer space have also influenced other realms of political economy and have furnished new problems. I shall not direct the

2 Obauer und Guttenberg, loc. cit. S. 292.
3 Joosten, loc. cit. S. 83.
reader's attention to the great transformations of social life, to sub-
jection of the local markets under the influence of great central
markets, to the invasion of European agriculture by transatlantic
production, to the extension of capitalistic organization of produc-
tion under the dominion of European and North American capital,
but only to certain phases in this great process of development
which have become important for scientific treatment of national
economy. The institutions of transportation have created, in the
province of pure theory, the law of price. It is a fact that increased
communication, within a certain maximum of intensity, does not
increase the expenses, and that the expenses of transportation do
not grow with the distance over which transportation is operated.
Therefore it is to the interest of the undertaker of transportation
to invite, by proper rates, the strongest possible use of the means of
transportation; hence to set the prices low and uniformly. This
principle was followed first with postage (Rowland Hill's penny
postage; uniform world's postage); great consequences resulted
from it, and finally it was recognized as a special case of a general
law of the operation by monopolies.\(^1\) To the theory of formation of
capital another most important contribution was made, especially
by the railroads. It is often asked whence the monstrous capital
has come by means of which in about sixty years the railroads of
the earth were built; the expenses of the railroads in Europe which
were operated at the end of 1901 amounted to 21,262 millions of
dollars; those of all the railroads of the earth, which were certainly
all built with European or North American capital, were 40,574
million dollars. English, French, and German authors have de-
clared that this costly means of transportation has, in a certain sense,
built itself, inasmuch as the savings from expenses for production,
besides the powerful effect upon the increase of production, were
more than enough to make the capital free which was needed for
the construction.\(^2\) There is scarcely any more striking example to
refute the socialistic theory of the amassment of capital from "de-
predation of labor." Our knowledge of the form of organization of
human society has also been enlarged by the railways. The railways
are the first great operations of capitalism. The amount of the
amassed capital, the number of working forces, and, above all, the
undertaker's uniform authority over a far-stretching operation of
railroads with the various branch institutions, are something new
as to their great and careful division and to their inner organization.
The railroads have been first to introduce the modern form of asso-
ciation of capital, that of stock companies, into wider circles of
population, and to create the modern type of operation by large

\(^1\) Huber, Die geschichtliche Entwicklung der modernen Verkehrs, 1893, S. 128.
\(^2\) Emery R. Johnson, American Railway Transportation, 1903, S. 228.
concerns. There, for the first time, one has studied a great financial success reached by well-organized coöperation of employees in whom the interest of the owner which shows itself so distinctly in little enterprises, does not appear individually.

But the means of transportation of the present have not only created great organizations; they have also become instrumental to the organization of production in gross. Thus industrial and commercial monopolies were created, and the first example of organized coöperation of independent enterprises without competition was given.

I need only, in first regard, to point to the history of the Standard Oil Trust, which originated by the discrimination granted to Rockefeller by railways; in the latter regard I mention the fusions and combinations of English railways, formed in the forties for the purpose of removing competition, and the great development of the pool system in the United States. The institutions of transportation, which had always a tendency to uniformity, have become the strongest force for centralization of economics, for preponderance of the great industries over the smaller, of the large centers of economic, intellectual, political life over the local districts with individual characteristics of the large cities over the district. The whole modern political economy and the discussion of the socialists about the growing tendency of concentration of capitalistic economics is connected with the institutions of transportation and their effects.

Also the doctrine of free competition has been strongly influenced by the modern formation of transportation, and especially by the railways, not only because the railroads proved by themselves that free competition can lead to monopoly, but especially by the fact that, through their influence, the competition of single private enterprises lost its regulating power. The attraction of low freight rates proves to be stronger than the industry and ability of local producers. Who has the enterprises of transportation on his side needs no longer to be anxious about his victory in competition. But where the influence of such factors which are not within the reach of every single man have turned out to be so determinative, the law of free competition is no longer valid, and science has no longer to examine only the effect of free competition, but, above all, to investigate how the conditions for the competitor can again be equalized. These facts have, in the highest measure, contributed to the fact that the doctrine of free competition is much more complicated nowadays, and that we cling less to the simple formulæ of the past. But from its effects the principle of state intervention has developed.

No technical and economic fact has been more instrumental in representing the state as the living element of each economic organization than the transportation of our days, which could not exist without being supported by the state, and which, on the other hand, would turn out to be, not a creative, but a destructive force in economics without being regulated by the state. The necessity of a principle of common economics as supplemental to one of purely private economics has been illustrated in transportation by the influences of the corporations with common economics, viz., state and community.

Finally, I shall point to the fact that the consideration of commercial organization and commercial politics is no longer possible without simultaneous consideration of transportation. The establishment of roads for universal commerce as the result of the development of transportation, especially the technical and systematical improvements of navigation, the removal of the economic effects of natural obstacles by tariff policies, the separation of the organization of transportation with the organization of commerce, and, in connection with it, the more perfect organization of expedition, have caused most important changes of the world's trade as well as of the interior commercial organization. I mention only the facilitated avoiding of staple places and the increase of direct communication between producers and their customers, which, for instance, brought about the independency of the continental ports from England, the destruction of the basis of existence of the smaller tradesmen in the interior of the countries, the advancement of corporative commercial organization with its own production. An apparent contradiction between the exterior commercial politics and the facts of communication is thus solved. "Railways, and commercial blockade! The outlay of immense capital for the furtherance of trade, and tariff laws for the obstruction of trade!" Thus Prince-Smith has exclaimed, to call attention to the economic politics of the present time. But, in fact, it was the centralizing force of the means of communication which had aroused powerfully the political and economic common spirit; it contributed, as a mighty factor, to the fact that the idea of the national protective tariff rooted deeper in the foreign commercial politics and that it was demanded that the state should similarly influence the international competition, as in the tariff politic in the interior. Presumably the time is not long when uniform tariff politic of transportation for international commerce will be the topic of public discussion, as it indubitably has been used already with success in several cases.\(^1\) The influence of the institutions of transportation upon the cultural life of the nations, independently from their material and political basis,

\(^1\) Cf. Seidler und Freud, Die Eisenbahn tarife. Ihre Beziehungen zur Handels politik, 1904.
reaches beyond their economic effects. This influence is, in the end, the most important; it is, at the same time, least open to the regulating invasions of the states. "There is, in communication, a greater necessity than the political or purely economical, namely, the cultural. Communication survives political changes; not only the states, but also the nations which would separate themselves, are joined against their will, by communication.\(^1\) What will be the last and most powerful effects we cannot yet see to-day; for we do not stand at the end of the development of transportation, but at its beginning. Antiquity and Middle Ages, up to 1500, are considered one epoch from the point of view of transportation. The sea voyages and great discoveries in the space of the globe from 1500 to 1900 fill the second great period, and the third, the period of increased intensity of all means of and relations of transportation begins at the end of the nineteenth century. We are overwhelmed by the progress which the decades have matured; we feel how much they concern not only the life of the nations, but the life of every one of us. And yet we must confess, if we behold the image of the earth and of the lines of communication drawn thereon by man, that the deeds of the future will be infinitely greater than that which we see nowadays and which we may foresee for the next days. For wide regions of the earth still belong, as to their ways and means of transportation and forms of communication, to that period which is for us a matter of the past of five centuries. It is still the smaller part of the earth that has progressed to more intense communication.

The different effects of the attained progress of transportation which we have shown or indicated are only a small part of that which mankind may still expect, when the whole globe will be drawn into the circle of culture of the nations of European origin, in the same way as this is now the case between Europe and North America. Whether then the results will turn out, as heretofore, as a blessing for the peoples of European culture, this cannot be predicted by any science. We must rather confess that science has, till now, pursued facts only hesitatingly and recording what it has experienced; it did not foresee nor determine facts of the future; thus it will probably also be in the future. For a science which would dominate extent of men in space would, in reality, determine the whole life of mankind. So high our fancy and ambition shall not soar! We acquiesce in the hope that our review of the sciences whose object is transportation has at least shown that social science, and especially its most developed branch, political economy, finds important reasons for investigating, with greater attention than before, the influence of space upon the formation and development of the human society.

\(^1\) Ratzel, *Politische Geographie*, S. 529.
PROBLEMS OF TRANSPORTATION

BY WILLIAM ZEBINA RIPLEY

[William Zebina Ripley, Ph.D., Professor of Economics, Harvard University.
  b. Medford, Massachusetts, 1867. S.B. Massachusetts Institute of Techno-
  logy, 1890; Fellow, Columbia University, 1891-93; A.M. 1892; Ph.D.
  1893. Instructor in Economics, Massachusetts Institute of Technology, 1894;
  Assistant Professor, 1896; Professor, 1900; Professor of Economics, Harvard
  University, 1902; Expert, United States Industrial Commission, 1900-01.
  Member of the American Economic Association (vice-president, 1899-1900);
  American Statistical Association; Honorary Corresponding Member, Société
d'Anthropologie, Paris; Società di Antropologia, Rome, etc. Author of
Financial History of Virginia; The Races of Europe; Report on Transportation,
United States Industrial Commission; Trusts, Pools, and Corporations, etc.]

Trade Areas

A GROWING problem in transportation is the determination of trade areas, or spheres of influence, to borrow a phrase of international law. This is another way of stating that the problem turns upon the importance of distance in any scheme of rate-making. Geographical location is a factor in commercial competition. Most of the cases before the Interstate Commerce Commission concerning the Long and Short Haul Clause raise this issue; wherever within, or even outside, a given territory, lie a number of cities competing for business. Take the Southern States for example. What are the conditions at present as determined by the adjustment of freight rates; that is, by an arrangement patched up between competing carriers, each striving for all the traffic it can hold, irrespective of any abstract rights of competitors or of the community at large? Literally speaking, railway competition does not probably exist in the Southern States to-day; so far has consolidation proceeded. But inasmuch as the system of freight rates in force is an unchanged hold-over from a competitive period, our statement holds good. Large distributing-centers in the East are in the field seeking business. Western cities are also actively bidding for trade, while indigenous centers of primary importance like Atlanta, New Orleans, Nashville, and Memphis are actively seeking to wrest the business of distribution from their older rivals.

This contest for trade may even descend into competition between smaller local centers either struggling against one another or against the larger cities. To be concrete, it may be a case of Atlanta against New York and Chicago, respectively; or of Denver as between San Francisco and the Middle West. Or the struggle may turn upon the rights of a secondary center, such as Montgomery, Alabama, lying between Atlanta and New Orleans. Columbus, Ohio, lying between Cleveland and Cincinnati, is similarly situated. What
would be the ideal distributive system supposing the matter were referred for decision to an omniscient governmental commission with power? Precisely such issues are already before the Interstate Commerce Commission. The immediate question may be a technical one, such as relative rates upon car-load or less than car-load lots, or the relation between rates upon raw and finished products. But underlying these technical details the real question pertains to the relative rights of competing centers in certain territory.

Many elements in settling trade rivalry are, of course, entirely independent of transportation cost. Among such are native or imported enterprise, available capital, and the like; but aside from these the most important artificial factor is the adjustment of freight rates.

There is a larger amount of waste due to a neglect of the element of distance in transportation than most people appreciate. It is wonderful how circuitously freight will travel, in order to reach a certain point, when once loaded on the cars or vessel. More than this, districts may even buy their supplies of the very things which they produce, not from themselves, but through a distant distributing-point. Arkansas is a great fruit-growing state, yet wholesale grocers are selling dried fruits from Chicago throughout its own fruit-growing territory. Some years ago one of the most enterprising shoe jobbing-houses in Virginia, doing business throughout the Southern States, was shipping its shoes made in New England to customers, not as the bird flies, but back through New York. It is not very many years since interior points in the South were supplied with Western produce in part by goods which traveled three quarters of a circle, going east over the trunk lines to New York and then down the coast and away west into the interior.

Such facts illustrating the extreme fluidity of freight are familiar to all students of this subject. As a deplorable waste in transportation, they are usually charged up to the carriers. Less attention has been given to corresponding waste in transportation due to unregulated competition, not of carriers, but of buyers and sellers themselves in the ordinary course of business.

We buy hoes, rakes, and shovels in Massachusetts made in Iowa, while the greatest manufacturers of some of these products, selling goods all over the world, are situated within our own state. Nashville, Tennessee, is selling Northern goods not only as far south as its rival, Chattanooga, but beyond and all around it. Chattanooga, in its turn, would like the privilege of similarly cutting into territory which its rivals enjoy. A great struggle in the Western field illustrates the same difficulty. A bitter competition has long been waged for distributive business between the Middle West and Pacific Coast. St. Louis and Chicago are seeking markets out on
the Pacific; San Francisco and the coast cities are striving to sell not only in their own territory, but as far east as possible, and Denver, between the two millstones, is striving to retain a few rights on account of its geographical situation. What interest in the outcome have the carriers? No adjustment on general grounds of equity or economy can be expected to appeal to them. Every economy in transportation means for them, in fact, a loss of revenue. The only satisfactory issue for them is the one that yields the most returns. The result is an appeal to the state to enforce an equitable adjustment of the matter; or, in other words, to sanction a rate adjustment which shall protect each market in the possession of its own rightful geographical advantages.

Definitions of these rights, so-called, to definite territory are well put in a recent case: "Every commercial city owes its existence to its geographical position, giving it natural advantages which make it a distributing-center or gateway for a territory, the periphery of which is established at points better served by other cities possessed of like natural advantages. As the original tributary territory of a city increases in population and advances in development, competing distributing-centers within this territory, having like natural advantages in regard to the same, responsive to a natural demand, spring into being and share in the business, each city practically getting the trade to which its contiguity entitles it. Such is the history of the cities of the Atlantic Seaboard, the Middle West, and the Pacific Coast." By such reasoning as this we find the commercial zone of a city even more exactly defined in a recent case: "Taking into account the claims of those cities (Nashville and Knoxville), the legitimate trade of Chattanooga covers a strip of territory extending northeast and southwest a distance of about two hundred miles in length by about one hundred and twenty-five miles in width. And a demand results for a rate adjustment which shall 'protect this city in her natural trade rights.'"

At this point arises a difficulty, What are natural rights of location? We may easily recognize these in the case of places like New York, New Orleans, San Francisco, St. Louis, Chicago, or Minneapolis and St. Paul. A whole chain of cities from Richmond skirting the Allegheny chain around to Montgomery, Alabama, determined by the headwaters of navigation on the coastal rivers, are likewise located where they are by act of God, but shall we say the same of places like Indianapolis, Omaha, Denver, and Atlanta? Neither one of them has any rights of natural origin. They are all railroad towns, determined in location by the intersection of carriers. They might have arisen anywhere within fifty or one hundred miles from their present situs and have fulfilled their mission equally well. Here, then, are two distinct classes of rights of location. The Inter-
state Commerce Commission, since its earliest Louisville and Nash-
ville interpretation of the Long and Short Haul Clause, doubtless
had in view real geographical rights when it consistently refused
to recognize the competition of carriers among themselves as justi-
fying a neglect of the element of distance in transportation. On the
other hand, the Supreme Court has, perhaps, been predominately
influenced by facts bearing upon the condition of our second class of
cities, which owe their prosperity not to natural, but to purely arti-
ficial causes, along which commercial competition is preëminent.
Atlanta, Georgia, is purely a railroad town, without historical ante-
cedents, without a water course or power, without fertile surround-
ings, remote from the sea, and with no natural charms save climate.
The location and prosperity of this most important city in the
South was undoubtedly due to the preferential treatment of the
many carriers who happened to meet or cross at that point. What
"rights" has such a place, — a creature of the railroads, — which
railroads are bound to acknowledge; or what rights worthy of
respect have any other competing centers which carriers will recog-
nize as equal to the railway rights which they themselves confer?
The waste in cross-freights, competing centers invading each
other's territory without regard to distance, is accentuated by the
operation of an economic law. Surplus production at low cost is
familiar to us in the case of international trade. The United States
Steel Corporation or the German Sugar Kartel can profitably sell
their surplus product abroad cheaper than at home. Within limits
this foreign sale may not injure the domestic consumer, but may
help to lower the price of his goods. Precisely the same principle
underlies all long and short haul adjustment. It is exemplified in
the case of low export and import rates. Given a volume of exist-
ing business at remunerative rates, which cover fixed charges, any
surplus business which repays direct outlay is worth while. Apply-
ing this principle to our case in hand, the farther each center extends
its market, the more ruinous becomes its price for the competing
city which looks to that trade, not for its infinitesimal surplus profit,
but for its staple and basic one. This principle not only influences
the merchant in fixing his price, but it also, of course, appeals to
the carrier to give lower and lower proportional rates as the distance
increases.
Various industrial influences seem to be at work to prevent a part
at least of this fruitless waste in transportation. Certain indus-
trial combinations have contributed appreciably by locating their
plants with reference to a division of the market and economy
of freights. Others attained this end by enforcing scales of prices
based on certain distributing-centers. Pittsburg, for example, is
made a base for the price of pipe, plates, and other steel products.
Prices for these goods are fixed all over the country at this figure plus the arbitrary approximate cost of transportation. One object is that all traffic may be kept moving outward from the producing-center. For obviously any shipment inward from any other distributing-center is penalized not only by lower and lower prices as Pittsburg is approached, but also by the increasing freight rates in proportion to the distance shipped backward. Still another device for correcting undue competition at ruinous distances is the adoption of a scale of crossed freights between several distributing-points. Thus Cleveland and Cincinnati, competing for business throughout Ohio, may agree, through a Wholesale Grocers and Hardware Association, to quote prices in the intermediate territory at a fixed price, freight paid; or they might agree each to figure freights as based upon a third point equally distant.

In any case the result is to give contiguity its due weight in fixing the outline of trade areas tributary to each.

Agreements between carriers often seek to obviate unnecessary waste in transportation. The division of territory between the eastern and western lines in Southern States is a case in point. Thirty years ago competition for trade throughout the South was very keen between great cities in the East and in the Middle West. Direct lines to the Northwest from Atlanta and Nashville opened up a new avenue of communication with ambitious cities like Chicago, St. Louis, and Cincinnati. The state of Georgia completed the Western and Atlantic Railroad in 1851 for the express purpose of developing this trade as Western manufactures developed. A keen rivalry between routes respectively east and west of the Allegheny Mountains into the South developed. A profitable trade on food-products by a natural direct route from the Ohio west of the mountains was, however, jeopardized by ruinous rates made by warring trunk lines to the Northern seaboard. Corn, oats, wheat, and pork came down the coast and into the South through the back door, so to speak, by way of Savannah and the seaports. On the other hand, the Eastern lines into the South could not earn dividends because of the retaliatory rates on manufactures made by the Western lines on goods from New York and New England. Finally, in 1878, a reasonable remedy was found in a division of the field and an agreement to stop all absurdly circuitous long hauls in each other's natural territory. A line was drawn through the Northern States from Buffalo to Pittsburg and Wheeling; through the South from Chattanooga by Montgomery, Alabama, to Pensacola. Eastern lines were to accept goods only from their side of this line to points in the South also on the same side of the boundary. Western competitors were to do the same. The result was the recognition of the rights of each to its territory on the ground of contiguity.
Such action for the reasonable definition of trade areas and routes as has been outlined is feasible enough for industrial monopolies and for those carriers who by agreement or by consolidation make themselves monopolies, but the remedy is not open to the general competitive or consuming public. Merchants of Denver, Colorado, cannot conclude a treaty with competing cities for the mutual determination of one another's territory. Nor would it be desirable to have it so. Competition is the life of trade and the salvation of the public, so long as it is reasonable. The only possible geographical delimitation of each other's activities is, and must always be, through the adjustment of freight rates. This function has heretofore been performed by more or less beneficent autocracies—the carriers themselves. That so important a public function, however, affecting the origin, development, and continued prosperity of great commercial and industrial centers should remain in purely private hands without power of revision by representatives of the public, is contrary to the tendency of the time, and cannot long persist. This does not mean that the task to be assumed by the state is an easy one, nor, perhaps, that it would be more satisfactorily performed in its larger aspects by the government than by private persons. What the situation demands, however, is not so much an immediately equitable adjustment of rights as a guarantee that the problem shall be worked out at least free from the bias of private interest. Whether more or less satisfactorily performed than at present, satisfaction must be afforded to the public that the decision is free from the bias of private interest.

**Territorial Division**

All of these influences which we have adduced as making for a wider and more general dispersion of manufactures will, of course, never affect the great and unchanging influences which have placed many of our staple industries where we now see them. The several states of the Union will never probably roll their own steel rails or make their own cotton cloth. Early fruit will still grow in California and Florida better than anywhere else. Spruce trees for paper, and grain for the distillation of liquor will still grow where Nature bids. But, on the other hand, in the vast complex of manufactures, it can scarcely be doubted that a great many industries having no special *situs* foreordained will follow the population which they serve. And neglecting export to foreign countries, the business of transportation will in just that proportion be changed from long carriage for both raw and finished products to and from a specialized center, to a long or perhaps even a short haul for the raw material, and a distinctly short haul for the finished commodity. The only
long haul definitely assured may be the staple food-supply, which to-day, in the form of grain, or its derivative, beef, forms perhaps one third of the traffic of our carriers.

Are any influences yet discernible of the progress of industrial specialization upon the character of transportation in older European countries? It would be of great interest to hear from our foreign delegates.

One of the most interesting general problems for the student of transportation concerns the effect of development of facilities for the carriage of goods upon territorial division of labor, and the relative interdependence of regions or populations upon one another for products. Marshall, the great English economist, thus puts it: "Speaking generally . . . a lowering of freights tends to make each locality buy more largely from a distance what it requires, and this tends to concentrate particular industries in special localities." There should be comfort in this principle for the practical railroad man. It means several things for him. It means with the growth of a country, let us say the United States, not only an increase in the volume of traffic far more rapid than the increase of population, but also at the same time it implies an ever-augmenting proportion, not only of long-distance traffic, but also of high-grade freight. The first of these probabilities seems to be justified by the results of the decade of 1902. The average ton-mileage of the railways of the United States for the three years up to and including 1892 was 82,000,000,000. Ten years later the corresponding figure was 148,600,000,000 tons of freight hauled one mile. The increase in freight traffic was upwards of 80 per cent. During the same time the population increased about 20 per cent. Thus the volume of traffic during a decade increased about four times as fast as the population. That something like this proportionate rate of growth will continue can scarcely be doubted. Let us assume it as assured. The problem for discussion is not as to its volume, but as to the precise character which this increase in traffic will assume. If Marshall, expressing the orthodox view, be right, this increment will progressively rise both in the length of haul and in character, as specialization in agriculture, mining, and manufactures develops.

Two economic forces are in continual opposition in any country. Territorial division of labor, the specialization and localizing of industry, mean an increasing dependence of men and communities upon their neighbors, close at hand, or perhaps on the other side of the globe. The trend in this direction entails an exchange, not only of raw materials, but of a larger and larger proportion of finished products. Even food staples, grain and cattle, are not carried long distances in the raw, as formerly, but largely in the manu-
factured state, as flour and beef products. On the other hand, with the maturer development of every community, comes an increasing desire to be economically independent and to develop resources in a well-rounded way. The Pacific Coast wants to make its own ships; the Middle West to make its own shoes; the South to grind its own flour and spin its own cotton. Every force which operates in this direction toward the decentralization of industry means a reversal of the previous effects of industrial growth in the line of regional division of labor. Every utilization of local raw materials for local manufacture to be consumed at home means a change in the character of freight offered for transport. The problem comes home every day to the traffic manager of a great system. If St. Louis shoes the great Southwest with hides of local Western origin, what becomes of the long-haul business from New England? If Richmond and Atlanta become the seats of thriving local manufactures of furniture, crockery, wagons, and soap, what becomes of the traffic displaced? The answer is, of course, that every such industry has to be fed, clothed, and supplied in a hundred ways which more than compensate the carrier for the direct loss of traffic. This is, of course, true. But the change exemplifies exactly what we have in mind, namely, that the maturer development of a country will profoundly influence not only the amount, but the character of the transportation service demanded as well.

Many forces tending to specialize industry and locate it predominantly in peculiarly favored places are familiar to us all. The oldest, and for our country the most important, historically, is nearness to the market. Nearly one half (48 per cent) of the manufactures of the United States, according to the latest data, are located in the six states of Massachusetts, Connecticut, Pennsylvania, New York, New Jersey, and Rhode Island. But this concentration is rapidly yielding before the spread of population, with increased consumption power, through the South and West. Who can say that within a hundred years the center of manufactures will not pass beyond the Alleghenies? It has already almost done so in the case of several industries. A second concentrating influence is, of course, the location of raw materials in the ground and of climatic advantages in the air. There are no signs of weakening in the supremacy of Pittsburg or Birmingham as centers of the iron and steel industry.

Yet many of the more highly elaborated products of these staple raw materials, from ships to hardware, will be more and more made near where they are to be consumed. Other factors to be noted presently may readily prove it to be more economical to carry the raw material, pig-iron or steel billets, rather than the finished products over the long haul. Consider the cotton industry. We hear a great
deal in New England about the advantage of having cotton grown at the mill door. Yet those conversant with the subject assure us that freight rates play no part in the differential advantage which the Southern mills enjoy over New England. In fact for many of these mills, until very recently, it cost more to bring their raw material two hundred miles than to carry it fifteen hundred to Boston. The only real advantage for the South lies in its abundance of cheap white labor and its freedom from legislative interference in the interests of decency and humanity. Water-power and supply is a powerful factor making for localization in manufactures. It still determines the situation of certain industries, paper-mills for example. But our cotton-mills are more and more relegating water-power to the background in favor of coal. And, moreover, New York and New England possess no monopoly of this gift of nature. Parts of the South and West are overrun with it. Natural gas holds the glass industry within its belt; but the life of this fuel supply is highly uncertain. And, moreover, who can say what possibilities lie before us in the line of electrical transmission of heat and power. The twentieth century is not yet four years old. Niagara and many of our interior rivers may offer great alternatives in the future location of industry. Nor is our list of localizing influences yet exhausted. A local supply of capital has been a powerful factor historically in the geographical development of industry. But the South and West have not only demonstrated their rehabilitation as fields for Eastern investment. They have also developed indigenous supplies of capital, big with possibilities for the future. The supply of available labor again has often determined territorial division of labor. To be sure, the English cotton industry settled in Lancashire because of its climate and in spite of its sparsity of population; yet it is labor supply, and that alone, which to-day gives our own South its hold on the world. Many highly specialized centers of industry, Gloversville, New York, for hardware; Brockton, Lynn, and Haverhill, Massachusetts, for foot-wear; Attleboro, Massachusetts, with its gilded reputation for jewelry; Troy, New York, for its linen and laundry work; these and a score of other places owe much of their supremacy to their local supply of skilled labor. Yet the migratory habits of our American population show no signs of decline; and, moreover, the dangers of overcentralization in labor-unionism are inducing many manufacturers to long for a little more industrial seclusion. A noticeable decentralization of industry from the latter cause may be detected. And finally every improvement in the technique of transportation, making it almost as profitable to carry raw materials in bulk a thousand miles on a commodity rate as to transport the finished product even in car-loads at high-class rates, helps along the same process.
TRANSPORTATION

Prices

Another important problem at this present time is involved in the relation of freight rates to general prices, as revealed by developments of the last four years in the United States. An almost continuous decline of freight charges characterizes the years since the close of the Civil War down to 1900. The extent of this decline is indicated very roughly by a fall in the average ton-mile revenue of the United States from 1.92 cents in 1867 to less than three quarters of a cent (.729) in 1900; or to take Massachusetts by itself, from 3.11 cents in 1871 to 1.22 cents in 1902. So long and unvarying did this phenomenon appear that even traffic experts seem to have become convinced that the downward impulse was irresistible, only to be compensated for by increased efficiency in operation. Progress during these years certainly seemed to inure to the benefit of the public.

The prosperous years since 1900 have brought a sudden and remarkable change. Carriers combined, tonnage was large, and commercial sentiment against departure from published rates was made enforceable by amendments of the Act to Regulate Commerce. The consequence has been a reversal of the downward tendency in freight charges. Rates have bounded upward, in fact, if not always on paper, to a degree more than commensurate with the general rise of prices characteristic of the time.

It is often difficult to prove these increases concretely. And it is often easy for astute traffic experts to show averages which minimize the real increases effected. The only way oftentimes to ascertain the amount of increase is by going directly to the individual shippers, asking them in fact what they used to pay and are now charged for identical service. The complexity of traffic methods defies statistical analysis. No general statement suffices; each rate must be worked out in detail. Thus for example in the case of grain rates from Chicago to New York, they were ostensibly raised from 17.5 to 20 cents per hundred pounds, an increase of 12.5 per cent. But only when it is made evident that owing to competition old rates actually paid were always from two to five cents below the quoted tariff of 17.5 cents, whereas now the full 20 cents is exacted from all shippers, does the magnitude of a real advance amounting to 30 or 40 per cent become apparent. The stiffening of rates may be more indirect still. Rules of the Southern Railroad Association used to prescribe that for all cars over 42 feet in length a minimum weight of 28,000 pounds should be charged. In a particular case a shipper of wooden pails states that to load 20,000 pounds of his product, wooden pails, requires a longer car than this. Hence, if he be furnished one of these long cars and desires a car-load rating, he must pay a nominal rate
per hundred pounds for 14 tons for every 10 tons actually shipped. Here is a real rate 40 per cent higher than it appears from the tariff.

Or, again to be specific: raising the minimum car-load weight of caustic soda or lye from 20,000 pounds, where it used to be in Official territory, to 24,000 and 30,000 pounds respectively, regardless of the difficulty of filling so large a car with these products, amounts practically to increasing the rates by 50 per cent without changing a type in the tariff sheets. And so, in a thousand little ways, abolishing privileges in demurrage, in switching charges formerly gratuitous, by stiffness in allowances for insurance, etc., the situation may be changed. This is what has happened a number of times during the last four years since January of 1900. The rates have universally been raised and together with these increases a multitude of other changes of the kind mentioned have all accentuated the same result.

The problem which we would raise is not as to the exact extent of this rise in transportation charges, but rather as to its significance in a well-ordered scheme of things economic. The old evil in this field was inequality between individuals. To combat that injustice was one of the main objects of the Act to Regulate Commerce in 1887. This inequality, particularly with the law as fortified by the Elkins Amendment, has now been more nearly obviated than ever before. The present problem is not of inequality, but of the general level of rates absolutely considered in its relation to prices as a whole. In other words, are carriers justified in expecting a sympathetic rise of rates in accordance with a general advance of commodity prices all along the line? We have for thirty years become used to a movement of railroad rates entirely independent of the course of prices, efficiency in operation being correlated with a reduced cost to the public. Are we to witness henceforth a reversal of this phenomenon, characterized, let us say, by a sliding scale of transportation charges following the upward and downward trend of prices of things in general?

The problem must, however, be simplified somewhat further. All expenses of operation have greatly increased as a direct result of rises in wages and the cost of supplies. To be recouped for this final outlay, owners are of course entitled, although they have never heretofore been able to take advantage of any upward turn in cost of operation of this kind since the Civil War. And in so far as it is necessary to repay this added expense, no one will contest their justification for the raising of prices of their own product,—transportation. But the carriers have not alone been content to stop at this point. They seem to have based their claims for increased returns upon the necessity of continuing a high level of earnings and dividends reached at an early part of the period of prosperity. Many of them have in fact through consolidation capitalized the abnormal
prosperity of two or three years. They established an unprecedented level of gross earnings from operation in 1900, of $1,500,000,000, as compared with an average of less than $1,200,000,000 for the ten years to 1899, an increase of more than 25 per cent.

It was frequently asserted in 1900 that this new high level of investment returns was henceforth to be maintained with net earnings and dividend rates commensurate with the increased gross receipts. Even this might be conceded could such results have followed at existing rates. No one denies their right to share in the general sunshine of good times. But the crux of the question is met when a decline in general business and prosperity gives rise to a claim, not only to all that they have already received, but also to a continuance of these high returns indefinitely. The means to this end lay close at hand. Having demonstrated their power to turn back the long-continued decline of rates upon itself, they now proceeded to hold this high level of net earnings in the face of declining business by again raising the price of their product. That the enactment of the Elkins Amendment helped to make this possible, by prohibiting individual discrimination and departure from established rates, cannot be doubted. To be sure, the great coal-strike, with its largely enhanced cost of operation, followed by demands for high wages on the part of employees, would, without such increases in freight rates, have made a considerable cut in net earnings. This, together with a cessation of the increase, if not a positive decline in gross earnings, would undoubtedly have brought returns down with the general stagnation and fall of profits in other lines of business.

On the other hand, something was surely to be expected from the enormous outlays made during the fat years for permanent improvements. These ought to have helped to maintain net returns, even in time of stress. In this case both public and investors have been somewhat disappointed. Yet the character of many of these improvements, rightly considered, was not aimed primarily at a reduction of operation cost at all. This point seems to have been largely lost sight of. Many of them, improvement of terminals especially, will never have as much effect upon earnings as upon the monopoly control of the field. Every new station, every freight yard in large cities, every grade-crossing abolished, every tunnel completed, makes the possibility of effective competition more remote. The fact that railway returns have not yielded save inconsiderably until January, 1904, means the establishment of a new ratio for the country at large between transportation charges and the price of commodities, or at any rate it denotes an elasticity between the two which inures greatly to the advantage of the carriers at this time.

Who is to determine this question? At this present time more millions of dollars would be involved and more people affected than
in any fifty cases ever argued before the Supreme Court of the United States. That one party to the issue shall at once be defendant, judge, jury, and court of appeal and last resort, is, in my humble judgment, a condition which an enlightened public opinion will not long tolerate.

Consolidation

A third transportation problem still in the making is that of railroad consolidation. A great movement began on the Eastern trunk lines in 1898, which culminated two years later in a wild outbreak of combinations of railways in all parts of the country. It was freely asserted that all of the carriers in the United States would ultimately fall into four or five groups, each holding a monopoly of a definite section of the country. In other words, that a division of the field similar to that which took place in France many years ago was the only logical outcome. These predictions confidently made three years ago are now being subjected to the test of experience, with the result that an ultimate solution along the lines expected seems much more remote than it did then.

The growth of giant consolidations has not ceased since the culminaton of the furor in 1900. The Great Rock Island system, controlling over twelve thousand miles of line, has taken place since 1902. Of the first magnitude, this consolidation extends from Chicago to Denver, to the Mexican line, and into the very heart of the eastern Southern States. The Atlantic Coast Line Company, by purchasing a controlling interest in the Louisville and Nashville Railroad, forms a vast railway loop reaching from Chicago to the Gulf and away up round the Alleghenies on the east to Richmond. The so-called Gould system has reached points on the Atlantic seaboard through control of the Wabash and of the Western Maryland. In fact the coup by which it broke the monopoly of the Pennsylvania, by entrance into Pittsburg, is one of the most interesting episodes in modern railway history. Another Eastern company ceased independent existence early in 1903 by the joint control of the Philadelphia & Reading by the Baltimore & Ohio and the Lake Shore companies. Inasmuch as these latter roads are controlled by the great Pennsylvania and New York Central systems, consolidation in trunk-line territory is appreciably advanced by this operation. More recently still a considerable system is presaged by the appearance of the Père Marquette as an absorbing company. And finally, if rumor be true, the Chicago & Alton Railroad is passing at this present time into the great Union Pacific group.

Progress toward consolidation has not, however, been universal. A number of events are contributing toward an increasing independence of many companies. The adverse decision of the Supreme
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Court in the Northern Securities case in 1902 can scarcely be overestimated in importance as affecting the nature of corporate development in this field. A most salutary check is thereby placed upon a malign tendency in the so-called field of high finance, although in this particular case the evils in sight were probably more than counterbalanced by the advantages to be gained. The dissolution of several voting trusts, notably the Erie and Reading, Ontario and Western, and Père Marquette, have thrown these important companies also more into the control of their owners. The Southern Railway is, in fact, the only important voting trust giving control to wholly banking interests, which remains from the period of reorganization of 1893. The dissolution of these trusts may be, perhaps, taken as symptomatic of a general loosening of the hold of Wall Street upon railroads of the country. A large amount of so-called undigested securities, products of the reorganizations of 1893 and consolidations of 1900, were forced from banking control by the great liquidation of 1903. Huge operations conducted upon borrowed money were brought to an end by that wholesome event, so that it may be presumed that a number of railroads once definitely placed in groups named after prominent financiers are now to a far greater degree in the hands of their owners. Whether this increasing independence will render the properties more likely to be seized upon by growing consolidations remains to be seen.

Viewing the nature of the more recent consolidations and the disintegrating tendencies above mentioned, it appears less likely that a parceling out of our territory into monopolistic groups will be the ultimate outcome. Scarcely any of the great systems in reality can lay claim to an absolute monopoly of any considerable territory with the exception of New England, and if some substitute for the Northern Securities Company be found, the Northern transcontinental lines. Certain evidences appear that the process of merger cannot hope to obtain this result. All that a great system can hope for is that it shall connect the great strategic points of our vast territory. They all seek entrances into Chicago, whether their systems lie west, south, or southwest. Most of them aim at an outlet on the seacoast east or south. With this result they must be content. Moreover, the community-of-interest idea is working less smoothly than at the high tide of our industrial prosperity. Several events, such as the warfare between the Gould and Pennsylvania interests for entrance into Pittsburg, and the still more recent struggle between the Gould and Harriman forces concerning the Colorado iron and steel products, cannot fail to be somewhat disquieting. And the supreme test of all, hard times, has not yet arisen. The old prediction may come true that present consolidations will merely transform railroad competition from a multitude of petty conflicts between small com-
panies to titanic contests between consolidations in case of a sufficiently severe and prolonged period of depression.

But whatever the future of competition may bring forth, one thing seems clear. If the carriers are to get together for the advancement of their interests, it behooves the public to do the same. More and more is it being appreciated that ruinous warfare, be it of railroads or between labor and capital, shall not be permitted to jeopardize the welfare of the country at large. And the phenomenal development of consolidation which makes such warfare possible adds yet another forcible reason for the people to provide adequately for safeguarding the public weal through governmental supervision.

*Governmental Regulation*

It is often urged against a further extension of governmental regulation of transportation that the interests of the carrier and community are identical; in other words, that the interest of the road in charging what the traffic will bear is a safeguard for the public against charging what it will *not* bear. There are three objections to this statement, or, in other words, three reasons why the adjustment of freight rates under the present conditions of legally unrestricted private initiative are unsatisfactory.

These reasons, concisely stated, are: First, that the permanent interest of the carrier is often directly opposed to an adjustment favorable to the commercial or industrial welfare of the community served; second, that even if the permanent interests of the carrier and public are harmonious, yet the *temporary* interest of the carriers may be at variance with a policy favorable to the public; and third, even if, as before, the permanent interests of the carrier and community are one, competitive forces may prevent the management of the railroad from doing what it concedes to be best and what it would do if its hands were free.

Let us illustrate these three possible cases by concrete illustrations:

The clearest instance of a permanent divergence between the interests of the carriers and the public is afforded by the great increase and maintenance of freight rates yielding abnormal returns to the carriers, to which reference has already been made. Let us agree that equality as between competing shippers may obviate any loss of those shippers due to an increase of freight rates; inasmuch as they all being raised at the same time simply shift the burden upon the community by raising the price of their commodity. But this very fact merely changes the contest of rights between the shipper and the road to a divergence of interest between the carrier and the consuming public. The case is so plain that it needs no further elaboration. Another illustration of the same divergence
of interest is also often found in the establishment of a local industry in a new country. Suppose it is a question of establishing a new paper-mill at Denver, Colorado. The carriers serving Denver have enjoyed a remunerative traffic in the carriage of wood-pulp paper over a long haul from Wisconsin or elsewhere. The establishment of this paper-mill will mean the substitution of a short haul to and from Denver of wood pulp from Colorado, and of paper carried to a local market in the same state. Argue as you may that every industry added to Denver inures to the permanent interest of every carrier which serves that city, yet the fact remains that the loss of traffic is direct, while the ultimate gain is indirect and will have to be shared with other roads serving the same territory. That this argument is a cogent one may be illustrated any number of times by the dog-in-the-manger policy which is too often taken by traffic managers.

Our second principle is that, conceding a joint permanent interest of carrier and public in a certain policy, the temporary welfare of the management may often be directly opposed to that of the community.

The best illustrations of this contingency are found in certain phases of speculative finance which, like the poor, are always with us. Of what use is it for the far-sighted traffic manager to seek permanent development of his territory if a gang of speculators are in control of the situation. What care they for the future growth of the territory at large. They may merely hold the control of that road for a few months in order to sell it out at a profit; or, perhaps, to secure profits by speculative manipulation vastly exceeding any legitimate earnings from operation. A huge volume of earnings must be made, let us say, to attain this result. Efficiency or safety does not count. Expenditures for permanent improvements are sidetracked and the country is practically exploited until such time as these speculative interests have accomplished their object by selling out to their rivals, or perhaps, have been forced out of control by bankruptcy.

Results of the experience of the last ten years in the field of high finance emphasize the necessity of some adequate supervision by federal authority, not only of rate-making, but of financeering. This is perfectly evident. Such notorious episodes as the reorganization of the Chicago & Alton in 1899, by which its capital stock was watered four times over; the stock-market raid upon the Louisville & Nashville in 1903, by which its sale to the Atlantic Coast Line was forced; and the entire process of financing of the Great Rock Island system,—all emphasize the need of reasonable control. It is useless to control rate-making so long as juggling with securities in this way is possible. In this respect, both investors and the public
have a joint interest. Consider particularly the last case above mentioned, the financing of the Rock Island system, where less than $55,000,000 gives entire control of a holding company through its preferred stock, and thereby wields the entire destinies of a railroad system capitalized at over $500,000,000 and aggregating more than 15,000 miles of line. The commonwealth of Massachusetts did not hesitate many years ago to undertake the control of operations of this sort. That some way will be found for extension of federal power over this sphere is devoutly to be wished.

The third objection to the fixing of freight rates by purely private initiative lies in the rigidity of freight-rate adjustment as between competing carriers. This often makes it impossible for a road to do what it concedes to be in the public interest and what it would do if its hands were free. This case we may best illustrate by experience in the Southern States. Two systems of transportation compete for the carriage of cotton from the great Mississippi delta to the mills in New England. One of these operates east of the Allegheny mountains and the other west. The lines east of the Alleghenies desired some years ago to lower their rates on cotton from the Mississippi Valley to Carolina mills, inasmuch as the rate to those Carolina mills was in fact four cents a hundred pounds higher than the rate through the same territory away up to New England. Naturally the Southern cotton-mill men objected to this discrimination, yet it took repeated pressure to prevail upon the lines operating west of the Alleghenies to acquiesce in the change. A widespread and rigid adjustment had grown up through years, many of whose arbitrary exactions would be endangered by modification. The Western lines would not permit the Eastern lines to make a change without exacting from these Eastern lines similar concessions for which they had struggled in vain. In other words, each competitor insisted upon jacking-up the other's rates regardless of the welfare of the community. Precisely an analogous case was found in 1880, when a committee of the Southern Railway and Steamship Association proposed to put in force an adjustment of rates throughout the South, having reference in some degree to the factor of distance. This proposed improvement was based, to take the words of the committee of traffic experts themselves, upon "necessity for more intelligent and defensible methods of making comparative freight rates than the following figures descending to us from tariffs named on arbitrary bases of conditions now obsolete." Such instances of opposition to reasonable adjustment, not by carriers serving a definite territory, but by competitors often far distant, might be multiplied indefinitely. They emphasize most certainly the need of a regulative force to be applied, not only in the interests of the public, but in the permanent interest of the carriers themselves.
The argument that the community is naturally protected against arbitrary exactions by the carrier, because any excessive charge will kill the traffic, rests, moreover, upon a false assumption in part. While freight rates may directly affect the volume of traffic, this is not true of most high-grade commodities.

The fourth objection which we have stated to freight rates as made without governmental supervision and control consists in the often infinitesimally small proportion of the total price which transportation forms. The rate on clothing from New York to Chicago by less than car-load lot being, say, 75 cents per hundred pounds, a suit of clothes costs for freight perhaps from 7 to 10 cents. The transportation cost for a silk dress for a similar haul of 1000 miles might be possibly 2 or 3 cents. These charges cannot approximately affect the volume of traffic if increased even by a large percentage. And therefore not affecting the volume of traffic, the development of the territory served will not be affected, while a direct revenue to the carrier will materially result. We have said that the territory served will not be affected; that is not, of course, true, because in all probability the extra cost of carriage will be added to the price of the goods; but supposing the rates are similarly raised over the entire United States, no single community will be affected, but the general cost of living for the whole country will be raised. Practically a tax is laid upon the community by private initiative without any power of supervision or control.

Our final problem, then, involves the extension of governmental supervision at the hands of an administrative board or a properly constituted judicial tribunal. No domestic question before the country is of greater significance, involving as it does the welfare of practically every industrial and commercial establishment in the country as well as every individual consumer of goods. The matter is not settled by the enactment of the Elkins Amendment of 1903. That law was granted because it contained something that the carriers desired. The demand of the public for relief remains practically unanswered. Case after case before the Interstate Commerce Commission remains unsettled either because of the refusal of the carriers to conform to the decisions rendered, or because of prolonged and intolerable delay in the final adjudication by the courts. Other countries have never hesitated to embark upon great socialistic enterprises of popular ownership. In my judgment the only way indefinitely to postpone an outcome of this sort, which is to be deprecated in many respects, is that a compromise in the line of more efficient control should be brought about.
SECTION C — COMMERCE AND EXCHANGE
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(Hall 10, September 24, 10 a. m.)

Speakers: Professor E. D. Jones, University of Michigan.
Professor Carl Plehn, University of California.

THE MANUFACTURER AND THE DOMESTIC MARKET

BY EDWARD D. JONES

[Edward D. Jones, Junior Professor of Commerce and Industry, University of Michigan. b. Janesville, Wisconsin, 1870. M.S. Ohio Wesleyan University; Ph.D. University of Wisconsin; Expert in Social Economy, with Department of Education and Social Economy, United States Commission, Paris Exposition, 1900; Assistant Professor of Economics, University of Wisconsin, 1901. Member of American Economic Association; Michigan Political Science Association; National Geographical Society; Political Economy Club of Chicago. Author of Economic Crises; The People and the Country; Resources and Industries of the United States.]

American Domestic Market

The American domestic market is probably the most complex in the world. It has become so because it occupies the largest economically high-grade area which is under one political control, with a uniform language, system of weights and measures, trade customs, and laws. In America there have been lacking the diversified agriculture, the household industry, the public market-places, and the inertia of custom which, in other countries, have kept the domestic markets simple. Sharp territorial specialization has always characterized our industry. The different forms of agriculture, developed under an essentially manufacturing instinct and compelled to specialization by the distance of the European market, have a clearly differentiated geography. The mining, lumbering, agricultural, and manufacturing regions are singularly distinct. This has compelled an extensive internal exchange, to facilitate which adequate transportation facilities have been forthcoming; and it has necessitated comprehensive methods of performing mercantile functions, which the administrative genius of American industrial leaders has provided. The result of these forces in our national economy, as it finds expression to-day in the organization and processes of the domestic market, is too large a subject for any paper.

I wish, therefore, to choose a theme, and I invite your attention to the wide range of mercantile functions which is being assumed
by American manufacturing concerns and the unusual dominance they are acquiring in the domestic market.

Manufactures Forty Years Ago and To-day

This movement, taken as a whole, is of recent origin. Before the Civil War manufacturers had very restricted control over the movements of internal commerce. There was no need for them to show special enterprise in securing supplies of raw materials, for the seller of the crude bounties of nature pursued the buyer. In the finished products market, articles imported from foreign countries controlled, and the autocrats of commerce, if there were any, were the great importers, the so-called "merchant princes." The home manufacturers started with the humble rôle of supplying the lower grade of products. Prejudice was still strong against home-made style goods and much of the product of American factories went on to the market anonymously or under misleading trade-marks to be sold as imported goods.

The change of forty years has greatly altered the position of the manufacturer in the distribution of mercantile power. In the majority of modern national economies we find the most progressive industrial group to be the manufactures; the least so, the extractive or raw material industries, while the mutually accommodative element is the mercantile. It is not difficult to mention some of the causes of the increased power of manufactures in this country. Manufacture, including railroad transportation, since the internal economy of a railroad resembles a manufacturing rather than a mercantile concern, possesses the advantage of being that form of industry which best utilizes inanimate forces in a country where power is cheap, and best allows an accurate division of labor in a country where labor is expensive. It has enjoyed the special advantage in this country of a high general average of intelligence and an unusual mobility of labor. There has been the negative advantage of entire absence of prejudice against machinery and the positive advantage of the unusual mechanical ability which characterizes Americans. When we couple with this the protective tariff, which has insured a large and profitable market and made all other forms of industry pay tribute to manufacturing, it can be readily understood that our manufactures have resulted in recent years in an enormous production of wealth, a portion of which has sought investment in promising types of industrial enterprise under the direct control of the parent concerns.

Not only wealth, but capable men of constructive genius, have been produced in this branch of industry. In manufacturing, the applications of science are so numerous and convincing as strongly to
develop the scientific frame of mind. The striking combination of factors of production opens the thought to large plans. The changes constantly required in machinery and processes impel the manager to progressive policy, while visions of the economy of production on a large scale attract him. The manager is in a training-school for cultivating quick decision, figuring costs, managing men, freely laying out money where conditions justify, and grouping, combining, and governing the productive factors. The result is that in and through our American manufacturing industries have arisen the "captains of industry," who have laid hands upon the undeveloped or loosely coördinated commercial functions wherever found, and have developed them and assumed the direction of them.

**Struggle for the Control of Raw Materials**

To take up our specific topic and define the controlling position which the manufacturing industries have secured over the domestic market, it will be convenient to divide the subject into three parts, conforming to three classes of markets and the separate causes operating on each.

Let us first consider the struggle for the control of raw materials. For some time an effort has been made by manufacturers to more effectually control the source of supply of their raw materials. For those materials of which the quantity is relatively fixed, this has resulted from the definite development of sources of supply and the increase of manufacturing demand, carried to such a point that the chances of accommodation on the open market are deemed by business managers to be precarious. As a result, manufacturing concerns in many lines are anticipating their needs and are buying or have bought stocks of undeveloped materials, and are erecting exploitive works and establishments for preliminary manufacture. We find makers of soap and lard substitutes building cotton-seed oil-mills in the South. Pulp-mills invest in pulp-wood lands; fertilizer manufacturers open phosphate-rock quarries; oil-refineries lease and purchase oil-lands. The change is already complete for anthracite coal and Northern pine; it is just now being completed for Bessemer ore and Western timber; it is rapidly going on for coking-coal, non-Bessemer ores, and Southern pine. One of the striking signs of the advent of a new economic condition in this country is the rapid rate at which, during the last fifteen or twenty years, raw materials have passed out of the hands of small holders who offered them upon open markets, into the hands of large corporations closely affiliated with manufacturing and transportation interests. To use an expressive phrase, there has been a scramble to prevent being frozen out. This has not been due so much to exhaustion of supplies as to
the fear of their monopoly. It has, therefore, been immensely stimulated by the formation of great consolidated corporations and by the increased use of holding companies, stock syndicates, and harmony-of-interest arrangements.

With respect to raw materials which are readily reproducible, like wheat, cotton, and wool, the policy of our manufacturers is not to own and manage agricultural and other industries. But the tendency is increasingly shown to pass by the great primary or terminal markets and the visible supply points on which raw materials were formerly secured, and purchase upon the remote local markets at which they first appear in commerce. There are several reasons to account for this.

In the first place, the imperfect and unorganized condition of many raw-material markets has forced it. The effort of our manufacturers to produce finer products, coupled with the increased value of materials and the closer specialization of processes, has compelled a sharper scrutiny of the supplies they purchase to secure purity and uniformity. The offering to manufacturers of poorly graded and mixed lots of materials has necessitated the substitution of professional for amateur local buyers, as in the case of wool. A poorly housed and protected product coming onto the market, water-soaked and stained, as often happens with our cotton, has favored direct shipments as opposed to the passage of materials through several markets with their delays. The agriculturalist is with great difficulty able to take initiative for the improvement of these conditions by commercial organization. As Professor L. H. Bailey has said, "The farmer reacts so slowly to changes in his environment that after all other businesses have become adjusted, he is still out of harmony with commercial conditions. Collective or cooperative movement among the agricultural classes is difficult, because of the lack of common interests. Farming is not one occupation, but many occupations." The American farmer has furthermore been engrossed in other things than the adjustment of markets. He has had laid upon his shoulders the great task of finding out the physical capabilities of a new country. Each region, climate, slope, and soil has required countless experiments to explore. A stupendous investment of labor and capital has been and is being made in these experiments, the results of which will be enjoyed to remote generations.

A second force drawing the manufacturer into the raw-material market is connected with the financing of the products of agriculture. The farmer is hampered by lack of ready money. The period of his turn-over is long; the fixed capital is large in proportion to the circulating. A considerable part of the spare money he has had has been attracted to investment in land. The statistics of unim-
proved land included in farms show that land is the chief storehouse of surplus agricultural wealth. Approximately one half of the land included in American farms is unimproved. Under these conditions the farmer has sought money crops, and has been obliged to market as soon after production as possible. To secure adequate supplies of materials, therefore, some lines of manufacturing have been obliged to take direct part in the organization of a spot-cash market on which materials would always be sure of sale at fair prices. Such materials are then rendered good money crops and hence attractive to short-handed farmers. An excellent illustration of the way in which this has been done by manufacturers is afforded by the various union stockyards of this country, in most of which the packing interests are prominent. The financial problem of accommodating the even requirements of a manufacturing plant for materials throughout the year to the necessity which the farmer feels of disposing of his crop at once when it is matured, has been solved through the co-operation of several agencies. The early purchases of manufacturers involve them in speculative risks. The profit or loss showing of a cotton or woolen mill or the milling profit of a flouring-mill often depends principally upon the correctness of the buyers' estimate of speculative conditions. There are also independent institutions illustrated by the grain elevator companies which aid in carrying speculative risks and controlling storage conditions. Furthermore, by the organization of produce exchanges it has been made easy for the general public, through speculative investments, to assume a considerable part of the financial burden of carrying foodstuffs and other materials through the year.

A third force drawing the manufacturer upon raw-material markets is railway competition. The result of intense competition for traffic has sometimes been that, in pursuance of a compact, a road has given substantial advantages to a large consumer when he has acquired the ownership of materials at the market of their origin, and is hence able to prevent their being diverted from the line at any competitive point, and insures their routing as desired. The transportation arrangement may include both the outgoing and incoming traffic of a concern in an agreement permitting manufacture in transit. Between a group of competing roads manufacturing interests have occasionally obtained advantages in return for acting as traffic-distributers. The classic case of this is in the early history of the Standard Oil Company. In these transportation struggles the manufacturer has been unable to keep aloof. The old-time free lance, the commission merchant, has been thrust aside; the raw-material producer has been confined increasingly to his local market; the manufacturer has taken up transportation worries and commercial functions unknown years ago.
Elimination of Intermediate Markets

We now turn to a different type of buying and selling center, namely, that group of intermediate markets lying between different stages of manufacture and on which the finished product of one establishment is transferred to another to be further elaborated.

From the beginning of the factory system in America there have been fewer of these intermediate markets than in Europe. In the older countries the introducers of machinery found already in existence a strong household and shop manufacture, including the preparers of materials, those expert in the various intermediate processes, and the finishers. The factory system took possession of one process at a time, and thus independent concerns grew up, each engaged in but one stage of manufacture, and between these there continued to exist many of the intermediate markets. In America the projectors of the first factories usually found the entire field open and the products imported; consequently they were obliged to provide simultaneously for all stages of production. Hence we find, for example, as a characteristic difference between the American and European textile industry, that here the several processes of scouring and combing, or throwing and spinning, weaving and finishing are more often all controlled by one cotton, worsted, or silk concern than in Europe.

Just as it began to be realized that there were disadvantages in the American system, particularly in the adjustment of production to a rapid succession of styles, the trust movement made itself felt and stimulated the process of combination in all branches of industry. The organization of consolidated corporations has had many effects. It has made profits for the organizers through what Mr. Lawson calls "made dollars." It has given us a highly centralized type of business administration to experiment with. It has substituted a system of delegated authority for individual initiative. It has eliminated some competition, substituting therefor emulation and the comparison of records, and it has changed the form in which competition manifests itself. It has secured certain economies of production on a large scale. But among its various effects there is one which has not been sufficiently noticed, and that is the elimination of intermediate markets. Complex manufacturing corporations have been constructed involving not only former competitors, but businesses bound together in the sequence of production, capable of manipulating materials from their first appearance as economic goods until they are ready for the ultimate consumer, without at any time making them the object of purchase or sale. This linking together of processes in great corporations has coerced the independents to similar consolidation through the fear of the monopoly
of raw materials, to which reference has already been made. The movement has been, in this manner, made general, with the result that many series of consecutive establishments can now be found which are working into one another's hands within non-competitive groups. The blast-furnaces have acquired ore properties, and steel manufacturers have in turn absorbed them and transportation facilities. Furniture factories have built saw-mills upon their own timber-lands. Cooperage-works are owned by flour-mills and whisky-distilleries. Pulp-mills and their spruce-timber are owned by paper-mills. The meat-packers establish canning and car-works; the car-builders operate linen-factories; the reaper-works control the manufacture of binder-twine; the breweries engage in the production of malt. These combinations are made possible by the improvement in systems of cost-accounting and internal administrative methods. They give the supplying-plants certainty as to markets, the receiving-plants certainty as to supplies and absolute control over their quality. Shipments to and from intermediate markets are unnecessary, and the expenses of traveling salesmen, dealers, advertising, and the waiting period of the market are all eliminated. In short, for the uncertainty and expense of competition is substituted the economy and exact calculation of a system of bookkeeping.

Before leaving the subject a word should be said about an entirely different operating cause which is at work to withdraw many businesses from intermediate markets. This is the application of science to the utilization of wastes. The growth of large concerns has often made the quantity of mill-supplies and advertising materials, packages, etc., so great that subsidiary industries can be profitably started in the interest of a single corporation. Repairs also become important enough to warrant the erection of well-equipped shops. In a like manner the accumulation of large quantities of waste products in concerns of efficient management, equipped with scientific laboratories and possessing the capital necessary to put through any logical extension of the business, has given rise to a great variety of by-product manufactures. These allied businesses are owned and managed by the principal concerns and receive their materials without purchase from them. They have been able to offer very effective competition on the finished products market and so to command attention to the commercial principles which they illustrate.

Approach of the Manufacturer to the Consumer

Let us pass to the third main division of the subject and consider the attitude of the manufacturer toward the finished-products market. It may be observed that while there is a great difference in the policy
pursued by large concerns, and we may find plate-glass jobbed, meat sold from subsidized shops, and Standard Oil hawked upon the streets, many of the consolidated corporations which have acquired large control over the market do not attempt to invade it directly or supplant dealers in the performance of mercantile functions. These rather content themselves with exercising power over prices and the terms of sale by curtailment agreements, price pools, joint selling agencies, and other more direct means. The greatest invasion of the mercantile field in the distribution and sale of consumers' goods occurs under the influence of strong competition between manufacturers and especially where this meets a more or less obstructive conservatism, not to say inefficiency, in the regularly constituted agencies of distribution. Of the positive force, the competition between manufacturers, it will not be necessary to say anything; of the negative condition found in the inertia of wholesale and retail trade a few words will be in place.

Confining our attention to the retail trade for the sake of brevity, we must at once make an important admission. In this field there has sprung up the remarkable institution known as the department store. These establishments, dealing directly with manufacturers, willing to engage in want-creation and increase the volume of business by advertising and price reduction, willing to accept new goods of merit because understanding the profit of novelties, and having a clear grasp of the principles of merchandising, have not only been able to serve the consuming public well, but have been satisfactory distributive agents for manufacturers. The rank and file of the million or more proprietors of retail stores have, however, been unsatisfactory to such manufacturers as have been chafing for better outlets under the stress of competition. The average retail store proprietor has too easily accepted as unsurmountable the apparent limitation of his local field, and has often been caught in the infinite detail which characterizes the business and rendered by it incapable of constructive commercial policy. Competition has choked many who are lacking in ingenuity, for retailing is a business easily entered on a small scale, and competition in it, almost more than in any other type of business, takes the form of simple multiplication of concerns and division of trade. More than anything else, however, the business of retailing as a whole has been held back by confusion of mind as to the proper policy — the economic laws so to speak — of the business. This confusion may be partly accounted for by the extreme variety of establishments which fall under the general caption of retail institutions, but the chief explanation lies in the recent history of American trade.

During the period of the Civil War and the immediately subsequent years there was such a scarcity of goods that overbuying was
almost impossible and the check upon buying, always so essential in normal retail trade, did not seem so necessary. For a long period prices rose with such rapidity that the profits of a rapid turn-over of capital paled beside the estimated profit of appreciating stocks lying on the shelves. Under these conditions it was natural that the merchant should treat his customers with indifference. The fluctuation of values made price publicity and a policy of fixed price impossible. Dickering and bargaining became a natural accompaniment of all important sales of goods. In the settlement of accounts long credits were not found to be very dangerous. Recent years have reversed all of these conditions, and hence have demanded an entire reversal of policy. The generation which did business in the previous period has been put at sea, and there has been established a confusion of principles penetrated until the last few years only by a few of the stronger minds. The result has been to cramp the growth of the retail industries as a whole and render them unsatisfactory to the manufacturers as the distributors of their products.

The invasion of the realm of the retailer has been made by the manufacturer in several ways; by establishing a mail-order trade and eliminating dealers entirely; by distributing through the dealer, but absorbing many of his functions and controlling his actions; and finally by the ownership of retail establishments.

Direct Selling

When a manufacturer has been met with unwillingness on the part of the dealer to educate new wants in the public and a refusal to stock and introduce new goods, he sometimes appeals directly to the consuming public. Direct selling has always had a considerable field. Natural monopolies of necessity use it. Producers' goods such as leather, billet-steel, and boilers, are usually sold in this manner. Neighborhood manufactures, such as custom mills, and manufacturing retailers, such as bakers and tailors, use it. The country at large is familiar with the canvasser. As important as some of these lines of distribution are, the great modern development of direct selling has come with the perfecting of its chief instrument, advertising. So great is the progress made in the arts of publicity that the entire complexion of trade has been changed by it. Advertising is often spoken of as a science. It is certainly a complex and powerful engine. The development of the arts associated with it, that is, printing, and especially illustration, has increased its potency. The vehicles which convey it to the public are numerous. The weekly newspaper is largely supported by it. The low-priced magazine of our day exists because of it. Through it house organs are built up scarcely distinguishable from independent scientific and
trade publications. It counts in its service the billboard, the dodger, the sample, the catalogue of encyclopedic proportions, the commercial package, and the follow-up system. Its technique has been carefully considered, and the statistical study of circulations has been made the basis of a profession. Even its psychology is being explored in college laboratories. There is no need to enlarge on the extent to which advertising has been applied by manufacturers to direct selling. The examination of any popular magazine will be convincing. As a method of distribution this affords a manufacturer an outlet independent of the will of any dealer. It serves well to introduce new articles, and trade built up by it can be used as a means to bring pressure to bear upon dealers.

Control of the Dealer

It is not always, however, in attacking the market that a manufacturer is willing to cut loose entirely from the established retail distributive agencies. Many articles cannot be readily sold by mail-order. A way has, therefore, been discovered by which the manufacturer can distribute his goods through the dealers and still so control every important part of the distributive process that the dealer is reduced almost to the condition of an automaton. When he is in complete command of his entire field the retailer is perhaps the most universal servant of industrial society. His functions are both varied and intricate, blending a mechanical element with the art of personal service; controlling a flow of goods involving endless detail by a system the correct formulation of which is a masterpiece of commercial statesmanship. The task of the retailer is to furnish the consumer goods wanted, at the time and in the quantity and place desired. He chooses his stock from the infinite variety of manufactured articles. He educates the customer to new wants, making known to him new goods and showing their use. He advises with him in his purchases, that the adjustment of the want, the goods, and the pocket-book may be as perfect as possible. He makes the buying process easy and agreeable for his customers. He protects his merchandise from deterioration. He guarantees it to be as represented, putting his reputation behind it. He measures it out in quantities convenient for the customer, puts a fair price upon it, and delivers it.

Now consider how many of these services can be rendered by a manufacturer. Take the case of the sale of a spool of photographic films. The manufacturer puts the article in a form ready for immediate use. He furnishes a package which protects the goods and shows the size, quantity, and age, besides carrying a guarantee and serving as a memorandum of exposures and a cover for mailing.
A pamphlet of instructions is given away by the manufacturer, who advertise extensively to attract trade. The price is fixed and is everywhere the same. If you look for the goods in a strange city you will probably be guided by a sign furnished to the dealer by the maker and you will be attracted by large photographs, from the same source, to show the range of work possible. As the films must be developed, the company offers to do this, but it also puts on the market a simple apparatus and all the necessary chemicals. The value of films depends largely upon the possibility of obtaining them in travel; consequently the makers have established agencies in almost every important locality in the world. In the solution of this distributive problem, which was unusually complex and difficult, the manufacturer has originated all the plans, done all the work, and controls all the essential conditions. The most ignorant clerk can quickly learn all that remains to the retailer to be done.

The inventive genius and advertising talent shown by leading American manufacturers in putting their goods upon the market are certainly remarkable. By advertising, with the powerful individualizing agency of the trade-mark, by sample distribution, by demonstrations at the consumer’s house or the merchant’s place of business, by exhibits at universal expositions, such as can be seen in endless numbers and variety upon these grounds, the manufacturer educates new wants in the customer and makes known new goods. By explicit printed directions, in several languages perhaps, and accompanied by ingenious pictures, he so clearly shows the use of the goods that the advice of the dealer is rendered unnecessary to a person of any intelligence. By the use of a package, perhaps airtight or moisture-proof, the dealer loses all credit for keeping goods in presentable condition. As the customer knows, when he opens the package, that it was closed at the factory, he feels that responsibility for its quality is removed from the dealer; and when with the package there is a strong and carefully emphasized guarantee, the dealer sinks into a mere agent for the transfer of any complaints to headquarters. Personal relations of customer with dealer are in this way weakened, and the more so since the customer realizes that in any store where this article with its identifying trade-mark can be had, an absolutely identical ware is found. The package furthermore does away with the necessity of weighing or measuring, and it usually carries prominently marked upon it a price which sets a maximum upon the charges of the dealer.

This incursion of the manufacturer into the province of the dealer has been disadvantageous to the latter in several ways. In the first place it has reduced the portion of the profit which the manufacturer leaves to the dealer, for with every function which the manufacturer takes up he makes a corresponding reduction in the profits allowed
the retailer. Again, it sharpens the competition of dealers in the same line. The use of packages and trade-marks has, in a few years, vastly increased the list of goods which can be recognized by customers as identical in different establishments. The significance of this lies in the use of leaders and other forms of price competition. A leader, in retail trade, is a line of goods put on sale at a very low price to attract the attention of the public and impress upon it the idea that the establishment in question has very low prices in general. There is no direct profit in leaders to the trade, since they must be sold at or near cost. Now those articles serve best as leaders which can be identified by customers as absolutely the same in different establishments, because this identity gives force to the price difference. If there were not identity the customer and the higher-priced dealer could easily claim that the difference in quality accounted for the difference in price. Consequently the widely advertised goods which carry trade-marks everywhere known and which are bought by most dealers, all of them serve more or less as leaders. That is to say many of them do not yield satisfactory profits, unless specially protected, because of the directness of the competition of dealers with respect to them. The manufacturers have also created a new form of competition between dealers in different lines of trade. The majority of retailers have handled a restricted group of merchandise, as drugs, shoes, hardware, or dry goods. There are many articles which cannot well be sold by one not expert in the business. The druggist could probably not explain the operation of certain tools; the dry goods merchant would be dangerous as a compounder of prescriptions. Within certain limits, therefore, stores in different lines have not competed directly. There has always been, however, a class of goods so easy to sell that they have been carried by dealers of all sorts as side lines. The manufacturers have succeeded so well in rendering simple the retailing of many of their wares that they have vastly increased the list of articles which any dealer, regardless of his line, can sell. The consequence is that dealers of all types are introducing side lines taken from each other's field of trade. Reprisals are everywhere made, and so the number of competitors with whom each dealer has to reckon is increased. The manufacturer, by direct selling to large retailers, whether they be department stores or mail-order houses, has put the small dealer, who depends upon the jobber, under a great disadvantage. This compels the jobber and semi-jobber, with the various classes of syndicate buyers, to take part in the confused competitive strife now prevailing in the distributive trades.

In this struggle, for which the manufacturers are largely responsible, it is interesting to see that appeals for help are made to them by the dealers. These appeals, through trade associations and other-
wise, take the form of requests that the manufacturers should control the retail price at which their goods are sold, and in so doing protect and regulate the profit which the dealer is to receive. There has been considerable response to these appeals, since the manufacturer has a direct interest in the soundness and profitableness of the business engaged in distributing his products.

From this has resulted a variety of plans by which the manufacturer can regulate retail prices and profits. One method is through the establishment of Exclusive Agencies. By this I do not mean the practice of giving an extra cash discount to dealers who handle no rival goods, a practice pursued by some concerns which are trying to perfect a monopoly, but I refer to the plan of choosing a dealer as agent in each market and making it impossible for his near-by competitors to secure the goods in question. The retail exclusive agency is the application of an arrangement long common between manufacturers and jobbers. The manufacturer regulates the price at which the goods are sold, and, since the outlets are restricted in number, keeps up an aggressive advertising campaign to drive trade to them. Some articles sold in this way are tools, men's linen, dress-patterns, shoes, and silks. The exclusive agency prevents goods from being made common upon the market as leaders, and this pleases a certain exclusive element of the buying public. Its chief service, however, is to limit competition by providing one dealer only with the goods on each market.

A second way of regulating retail profits is by means of a Price Contract. This involves an agreement regulating the selling prices and signed by manufacturers, jobbers, and retailers. Such agreements have been freely used in the sale of patent medicines under the name of the "N. A. R. D. Plan," named from the National Association of Retail Druggists. When there is printed upon the goods or their labels directions as to retail price and terms of sale, and these are worded to form a contract with any dealer who may purchase the goods, the arrangement is known as the "Worcester Plan." In the attempt to enforce these contracts by law different interpretations have been encountered in various courts. In Massachusetts the Supreme Court has held that the fixing of the price of proprietary medicines is not contrary to public policy and that as between the manufacturer and dealer the acceptance of goods as billed makes the printed contract on their labels regulating distribution binding on the dealer as a part of the contract of purchase. In Rhode Island and Pennsylvania it has been held that the mere purchase or acceptance of goods by a dealer without specific assent to a contract printed on them does not bind him. Price contracts have been used freely in the sale of patent medicines, books, and in the case of at least one celebrated brand of soap.
A third means of regulating prices, known as the Factor or Rebate Plan, is more elastic than the price contract. It has been used chiefly between manufacturers and wholesalers, but is equally applicable to retailers. According to this arrangement, after the proper contracts have been made in writing, a manufacturer sells to a dealer at a certain open price, giving the usual rebates for cash. It is agreed that the dealer shall sell at a given price, and the difference between this and the manufacturer's price involves a small but unsatisfactory profit for the dealer. At the end of a given period, say six months, the dealer makes an affidavit to the manufacturer that he has not sold his goods at less than the mentioned price; thereupon the manufacturer pays to him a per cent of the original purchase price in the form of an extra discount which, added to the direct profits of sale, makes the transaction remunerative to the dealer. The contract establishing these relations is so devised as to take the form of creating the relation of principal and agent between the manufacturer and dealer. The dealer is not bound to sell at a given price, but he is paid a bonus when he does so. The rebate plan has been most prominently applied in the sale of sugar. The so-called Whisky Trust at one time used it. It is now used in a number of the lines handled by grocers, such as soap and baking-powder. The Pittsburg Plate-Glass Company employs it.

Probably the most effective of the means now in use for regulating retail prices is called the Serial Numbering Plan. As used by a prominent manufacturer of medical preparations the plan involves, first, an exclusive system of distribution. Only authorized wholesale houses handle the goods, and they are under contract to sell only to the retail agents of the company. Every retail dealer, before he can purchase the goods, must sign a contract by which he becomes an agent of the manufacturer and agrees not to sell the medicines to any other dealer who is not an agent at any price whatever, and to sell to others only at the authorized retail price. Second, the system provides a means of keeping track of goods. Each dozen of bottles sent to the wholesaler bears a certain consecutive number, and with it is a postal card having stamped upon it the same number. When the goods are sold by the wholesaler he sends the card to the manufacturer with the name and address of the dealer to whom sold and the date. The retailer must not sell or otherwise dispose of a bottle until his firm name has been plainly written or printed across the face of each wrapper. By this means if a bottle of the preparation is anywhere sold at less than regular prices and the manufacturer can ascertain the serial number, he can trace out the responsible agent. The latter, on proof of price-cutting, becomes liable to the company for specified liquidated damages.
Ownership of Retail Establishments

We turn finally to the last of the methods by which the manufacturer is making his power felt upon the finished-products market. This is by the direct ownership and operation of retail establishments. As a method of distribution this innovation is as little subversive of the usual equilibrium of trade as any irregular method. Each establishment takes its place simply as one among other competitors.

Let us consider the actuating motives as they present themselves to various classes of manufacturers. Take, for example, the sewing-machine makers. In the sale of certain kinds of goods a somewhat elaborate demonstration is necessary, and after sale, occasional repairs, both of which require the presence of an expert more skilled than the average storekeeper. Experience shows that the experts are best chosen, trained, and superintended as direct agents of the manufacturer. When sales made in this way are of sufficient density to warrant the permanent location of an agent in a neighborhood, and when the articles are sufficiently attractive to make the opening of a public place of business with a stock-room worth while, the system of traveling agents gives place to permanently located retail agencies. The firm controlling the largest number of retail agencies in this country is probably the Singer Company, which has eight hundred stores in the United States, besides many in other parts of the world. Automobiles, safes, phonographs, and typewriters are sold in part by this system.

The case presented by the sale of carriages, wagons, plows, and agricultural implements generally is very similar to the above. Here an added motive for the direct control of retail agencies lies in the economy of shipment by car-lots. An agency, because it pushes the make for which it was established and carries a full line of the goods, is able to take a larger proportion of its supplies from the factory in car-lots than the average independent dealer. If, therefore, the goods to be distributed are very bulky, so that the question of car-lots is important, the establishment of a few agencies in the chief markets may be profitable because they will be able, through their own sales, to take goods in car-lots, and they will also serve as transfer-houses in distributing supplies to smaller markets. If numerous agencies are desired to penetrate and hold a field, the expense may be lessened by selling the goods of other makers on commission. If the establishing concern makes plows, its agencies can add on and sell goods germane to a plow agency, such as reapers, wagons, and carriages. By selling on commission, car-lots of assorted goods can be frequently sent out, keeping the stock fresh without overloading the agencies.

The direct retailing of shoes presents an entirely different case
from that of agricultural implements. The general buying public has recently become familiar with retail establishments owned by manufacturers and which are stores in the usual meaning of the term. They are not as yet very numerous, and their establishment is not stimulated by any of the advantages which we have just considered. They are not practicable except for goods which can be successfully sold by themselves in specialty stores (that is, they are impossible for articles like sugar or saws), and in this fact of depending upon specialty sale they meet their strongest check, for the prevailing tendency which has originated among retailers is integrating in its nature and is expressed in the department store. Furthermore, a system of retail stores operated by a manufacturer cuts him off from distribution through independent dealers, for the dealer will not buy of his rival in trade. There are arguments, however, which have apparently been deemed convincing to many manufacturers. A chain of stores absorbing the output of a factory affords an independent outlet entirely free from the control of jobber or retail dealer. The maker also, by coming into direct contact with the customer through his agencies, has the benefit of the direct criticism of the user. He can from week to week follow the changes in demand as they affect styles. He can to some degree avoid the intensity of rush seasons and the idleness of dull ones in his factory by supplying his stores evenly throughout the season. The dominant argument in most cases is, however, undoubtedly the fact that it is only through the ownership of retail stores that the full profit of an extensive advertising campaign can be realized by the manufacturer. By means of retail stores he takes all of the highest retail price which the force of his advertising will induce the customers to pay. The stores themselves also are an advertisement. The independent dealer always wants his own name over the door. The manufacturer's store exerts its entire force as an harmonious element in the general scheme of publicity which is being followed. This principle, which makes the store one means of realizing the profit out of the modern gigantic campaigns of advertising, helps to account for the shoe-stores of Douglas and Means, the forty-five of Bliss & Co., and the twelve Crawford Shoe stores. It applies to the Knox Hat stores. Together with the desire to intrench a monopoly, it explains the policy of the American Tobacco Company in effecting distribution through the United Cigar-Stores Company and other firms.

It is worthy of notice that there is a tendency at work which in the near future may lead to an increase in the number of stores owned by manufacturers or combinations of them. This is connected with the growth of advertising. When a few manufacturers only are conducting strong advertising campaigns they are conspicuous be-
because they are the exception. When a large number of competitors besiege the public, the conspicuousness of any one is lessened by the eagerness of all. We have, in this country, in a generation been introduced into an age of advertising. The very great advertisers are yet conspicuous because they are not numerous. But when the time comes, as it appears to be coming rapidly, that the multitude of great advertisers in any single line is so large that the average consumer is bewildered, then the retailer may again perform the service he once performed; he will choose for the customer, and the customer will follow his advice. Under such circumstances, unless monopoly or some other combination of factors intervenes, the manufacturer will feel a strong motive to control directly retail establishments and so get a step closer to the consuming public than advertising will bring him, and, if possible, distance his rivals.

Conclusion

In conclusion, let me recall briefly the chief points in the situation I have tried to picture, which is one phase of our evolution from a raw-material producing to a manufacturing nation. Because of its natural strength as a form of industry, and because of special advantages accorded it in this country, manufacturing has in recent years greatly increased its dominance in domestic commerce. In the raw-material market this is shown first by the increased ownership of materials of fixed quantity, stimulated by the fear of monopoly and the trust movement. Second, for materials easily reproducible, it is shown by the advent of the manufacturer on the market of origin, and the causes which have brought him there are the unsatisfactory condition of materials offered, the necessity of taking part in financing the movement of raw materials, and railway competition. The intermediate markets, we have seen, are being depleted by the withdrawal of manufacturing concerns from them, which either became parts of non-competitive groups during the period of trust formation, or have become attached to other industries as by-product or waste-utilizing manufacturers. On the finished product market the dealer has been eliminated from some lines of distribution by direct selling, which advertising has made possible, or by the ownership of retail stores, the function of which is to secure to the advertiser all of the profit his advertising will create. In other lines of distribution the retail dealer has been deprived of many of his functions by the use of packages, trademarks, guarantees, printed directions, and advertising. This has resulted in a smaller margin of profit for the dealer and sharper competition because of the increase of leader goods and side lines. In his extremity the dealer has besought the protection of the manu-
facturer, and the latter, in many lines of trade, now dictates the retail profit and protects it by exclusive agencies, price contracts, and the factor and serial numbering plans.

I have no wish to over-emphasize the tendencies I have presented. Many of them are not as yet prevailing tendencies, but if all of them taken collectively establish the fact that manufacturing in this country is assuming mercantile functions, it is a subject worthy of serious study. It involves the internal economy of businesses, because up to this time it has been an axiom of trade that it is dangerous for a business man or a corporation to undertake two kinds of business the fundamental principles of which are entirely distinct. It involves also larger considerations of the national economy, because the three great categories of industry, raw material, production or agriculture, manufacture, and trade, have, in the period previous to this, been distinct, and a change in the domestic market more fundamental than the coalescence of two of these or the dominance of one by the other would be hard to imagine.
FOREIGN MARKETS

BY CARL COPPING PLEHN

[Carl Copping Plehn, Associate Professor of Finance and Statistics, and Dean of the College of Commerce, University of California. b. Providence, Rhode Island, June 20, 1867. A.B. Brown University, 1889; A.M. and Ph.D. University of Göttingen, Germany, 1891. Professor of History and Political Economy, Middlebury College, Vermont, 1891-93; Assistant Professor of History and Political Science, University of California, 1893-96; Chief Statistician to United States Philippine Commission, 1900-01. Member of American Economic Association. Author of Introduction to Public Finance; The General Property Tax in California; The Finances of the United States in the Spanish War, etc.]

PART I

A Review of Recent Developments in that Part of Economic Theory which relates to Foreign Markets

That part of the theory of political economy which relates to foreign markets — the theory of international trade and the theory of foreign exchanges — has had, of late years, an appearance of finality which has been conspicuously absent from some other parts of economic science. This stability has endured while the theory of distribution — the rational explanation of rent, interest, and wages — has been a sea of raging storms; it has endured while the theory of value, which Mill regarded as so nearly perfect, even in his day, has been subjected to extensive revisions, in phraseology if not in substance; and while even the theory of prices, so much more nearly related to that of international markets, has been subjected to attack. During all this time, through all this turmoil, the theory of international trade, as set forth by Mill, and that of foreign exchanges, as expounded by Goschen, have remained well-nigh unaltered and little criticised. A review of the latest text-books and treatises shows us the same old theories, unchanged save in some slight details. For the present, therefore, we may assume that the theory of these two subjects is fairly satisfactory to economists as serving their purposes and explaining the more important features of foreign trade.

Although the generally accepted theory of international trade is in the main the same as it was fifty years ago, there is a tendency among recent writers to make a change in emphasis. The theory of comparative cost, or relative advantage, as the element chiefly determining the direction of trade, is so striking that it is apt to receive more emphasis and to be given seemingly a more important place than it really deserves. It is, of course, true that relative advantage, entirely irrespective of absolute advantage, may, and in many cases does, determine what goods a nation will produce for export and
what it will prefer to import. But by far the larger part of foreign trade moves along the lines of absolute advantage, combined as that is, necessarily, with relative advantage. Our largest exports are of those products in which we have an absolute advantage over all but a few sections of the world, and our largest imports of those things we can scarcely produce at all. It is probable that the theory of comparative cost received undue attention mainly because it is not obvious at first reading and requires careful expounding and elaborate illustrations for its demonstration. But that absolute advantage rules wherever it occurs has always been recognized.

The conflict between free trade and protection still continues with unabated vigor, protection seeming to gain ground in practice. But the chief features of this conflict are political, as they ever have been, rather than economic, and the conditions have not been such as to call forth any new arguments. The proposals of Mr. Chamberlain and his party in England, and the possibility of tariff reform in the United States, will be discussed in their practical aspects in the last part of this paper. There are then no real changes to note in the theory of international trade.

The theory of foreign exchanges or international payments has also, as has been said, remained essentially unchanged, but there has been a notable attack made upon that part of the theory which explains the international movement of money or bullion. The older theory was that whenever an excess of bullion accumulates in any country (or locality, for in this respect national boundaries present no barriers) from any cause whatsoever, it tends to raise prices and that country (or locality) becomes a good place to sell in and a poor place to buy in, and thus the excess is drawn off. This involves the acceptance of the quantity theory of money. Those writers who have abandoned the quantity theory of money have found themselves compelled to criticise this theory of the international movement of money. Their criticism has been supported by two lines of argument. The first is that international prices are fixed by telegraph and other means of rapid communication and cannot differ from country to country even for a short time. They further allege that there is no statistical evidence, when money moves from one country to another, of such changes in the price level as are required by the old theory.

In all of this it appears to me these writers overlook the influence of the discount rates in bringing about virtual changes in prices and, above all, the fact that the rates of exchange are fluctuating constantly. A change in the rate at which a man sells his bill is tantamount to a change in the prices he receives for his goods. The machinery by which foreign trade is governed is so delicate that a very slight change will set it in motion. Those who criticise the older
theory make much of the argument that a uniform "general" rise or fall in prices is never observable, as the prices of some commodities fall when others rise. I am inclined to believe that a "general" rise can and does occur. A change in the discount rates and a change in the rate of exchange is tantamount to a general change in the level of prices; as it affects all bills alike, it affects all sales alike. It is the resultant of those forces which affect all prices uniformly, other forces being at work on the different commodities separately, causing the divergences which have obscured the issue. Such a change in the rates of exchange is the very phenomenon demanded by the old theory as the cause of the international movement of money. The old theory does not require that merchants get out new catalogues or change violently from what would otherwise have been the bids they make or accept on the exchanges. A sale of wheat by a Chicago shipper to London on a day when he can sell his bill at $4.89 is worth one per cent more than if the sale took place on a day when exchange is $4.84. Here we have a difference of one per cent which can occur without a single change in quotations. Every such fluctuation is felt at once by the delicate machinery that moves the tides in the ebb and flow of bullion in international payments. As to the argument that we have no evidence in current index numbers, showing clearly that a rise in prices has followed an increase in the stock of bullion, it may be said that we have no statistical device for watching prices which will record such a change with the requisite delicacy, even if we were warranted in looking for the change in the prices current. The change required by the theory is too slight to be detected by any statistical device yet invented. Such a criticism amounts to saying that the governor of a steam engine does not regulate its speed unless the arms and balls are gyrating violently up and down, when, as a matter of fact, the better the governor, the slighter the fluctuations. The weight of the argument in this controversy that has recently grown so hot seems to me to sustain those who have rushed to the defense of the quantity theory, and there seems to be no occasion to qualify the statement made above that the theory of foreign exchanges has undergone no important modification in recent times.

Part II

A Review of Some of the More Important Recent Events in the Economic History of Foreign Markets

Although the economic theories relating to foreign markets have been quiescent enough of late, there has been stir and bustle indeed in the markets themselves, and during the past five years certain great changes affecting them have come to pass which are worthy of
enumeration and which suggest many important problems and considerations. These changes affect primarily the markets for American and also for European goods in the Orient and the routes of travel between the Far East and the markets for Oriental wares. They are: (1) The acquisition of a trading-base in the Orient by the United States; (2) the completion of the Trans-Siberian Railroad; (3) the expansion of steam-carrying trade on the Pacific and the definite determination of the fate of the Panama Canal; (4) the opening of China; (5) certain important changes in the conditions of the production of several of the great commodities of the world’s trade.

Section 1.

The Acquisition of a Trading-Base in the Orient by the United States

Chief, in many respects, among these changes is the advent of the United States in the Orient by the acquisition of the Philippines, of Hawaii, and of other islands in the Pacific. That this is an event of first-rate importance is easily realized when we consider but for a moment the significance of the Philippines in the past history of Oriental trade. Manila has been in the past, and can again become, a great commercial emporium. In 1573, when the Spanish acquired Manila, there was no safe and economical route from Eastern Europe to the Orient. Long and tedious as was the Spanish route by galleons to Acapulco, across Mexico, and then across the Atlantic, it was far less difficult than the older routes via Archangel or Northern Russia and Central Asia. Moreover, Manila was, by virtue of its location and of the local products of its immediate environment, a natural emporium for the collection of some of the most precious wares then or since known to commerce. Conveniently located between China and the Spice Islands, with India also near at hand, Manila had the additional advantage of being a collecting and distributing point for certain local wares which had, long before the advent of the Spaniard, served as a lure to bring the Chinese and other Asiatic traders to her harbor, and which in turn helped to obtain the wares that Europeans sought. With silver from Mexico, and by way of enforced “tribute,” the Spaniard bought or collected from the natives of the Philippines, rice, palm-oil, abaca and other fibers, fine straws and cane, dye-woods and lumber needed in China, and bartered these for the silks of China, the fine woven fabrics of India, and the spices from the islands to the southwest of the Philippines, which the Chinese traders brought.

As a mere dépôt for southern Asiatic wares Manila has since lost her original monopoly, and must now compete with Singapore and Bangkok, and what is more important than either or both of these, with the aggregate storage capacity of the many smaller treaty ports
south of Shanghai and the ports in French China. Her nearest European rival, Hongkong, she need not fear, for Hongkong has no warehouses and no local products, and is commercially but a city of office buildings. Her vast shipping trade is a mere paper record of tonnage passing by but rarely discharged. Hongkong, moreover, is at a point slightly off the direct route of the most important lines of trade; Manila at a point where many lines of sail and steam travel naturally converge or pass, and directly on the main route from northern Asia to Australia. Imports into the Philippines via Hongkong dwindled from $4,600,000 in 1900 to $500,000 in 1903 under the influence of direct steamer connection with northern Asiatic ports. A day for a ship in Hongkong Harbor waiting for orders usually means a day lost in idleness of men and capital, an item of necessary expense, perhaps, but with nothing directly to offset it on the profit side of the account nevertheless; while a day in Manila Bay, by contrast, is one of busy activity and with a distinct profit to offset expense. With rice and cotton goods inbound, copra, and sugar outbound, Manila has business for a steady stream of vessels; and as a collecting-point for spices, for Chinese table delicacies, such as béche de mer and birds' nests, and for shell and similar valuable items all northbound, she has no rival save Singapore, and, although for silk, coffee, and spices westbound she has to compete at some disadvantage with Singapore and Bangkok, she has no rival when the same wares are eastbound. Tea is the only great staple of Oriental export in which Manila cannot deal with advantage.

It is obvious that Manila can again be made a very great emporium, and whatever tendency there may be under the flag to turn these valuable wares which can be assembled there over an eastbound instead of a westbound route tends to increase its importance. In this respect it is a great pity that the exigencies of the revenue system have not allowed the United States Government to make Manila a free port like Singapore. To be sure, the methods of modern trade do not demand, to the same extent as in the past, the gathering of wares by small ships at great ports to be finally transported to their destination in larger vessels. The large steamers of to-day have so many ports of call that the territory contributing to any one dépôt is limited. But Manila is so situated that the territory naturally tributary to her is large. The entrepôt business of Manila at the present time is limited to products of the Philippines, and though large, is but a small fraction of what it should be. The existence of a custom-house, with the necessary inspection, delay, tonnage-duities, port-charges, etc., even though duties are remitted on goods intended for re-exportation, involves such a burden that a port so afflicted cannot become a collecting center, save for goods produced within the tariff wall. To afford Manila a chance to rehabilitate herself
as an emporium for the Orient, a portion of the port and harbor might be set aside as free territory. There are islands in the harbor which would serve this purpose admirably. Within this free territory goods not the products of the Philippines themselves and not destined for importation into the Philippines could be landed, trans-shipped, etc., and vessels come and go free of restraint. As there is no hope that the custom-houses can be abolished in the islands for years to come, because of the need of revenue, some such plan is necessary to restore Manila to her proper place in Oriental trade.

The importance of Manila in Oriental trade may be illustrated in another way than by the mere enumeration of her advantages of location and the importance of the local products of her contiguous territory. The fact that the Mexican dollar is the standard coin, so far as there is any standard, in the greater part of Oriental trade, shows the extent of Manila's former commercial supremacy. For two centuries a steady stream of these coins flowed through Manila at the rate of from 250,000 to 3,000,000 Mexican dollars per annum into her commercial connections. The extent of their dispersion measures very nearly the extent of Manila's commercial influence. That the United States, the only great Occidental nation still using the dollar, should have entered the Orient over the pathway marked out by that coin, is at least auspicious.

Manila's commerce has responded rapidly to the advantages of American rule. During the first three years of our administration it grew to double that of the best year under Spanish rule, and has grown apace ever since in face of war, with its devastation, pestilence, and terrible agricultural reverses, and in spite of a new tariff and a severe customs administrative law.

Section 2

The Trans-Siberian Railway

The completion of the Trans-Siberian Railway took place so shortly before the beginning of Russia's great diplomatic and military struggle for the control of that railroad's best trade termini that no satisfactory data are yet available to show the effects that enormous enterprise will have. Much, too, turns upon the outcome of the present war. It is obvious to the most superficial observer that American and European trade interests in Manchuria and Northern China will be safer under the yellow flag with its blue, green, and red dragon, which, fierce as it looks, stands for the beneficent sway of Sir Robert Hart, than in the claws of the Russian bear, or even under the civilizing empire of the Mikado. But aside from the problematical possible effects of artificial restraints on trade, the Trans-Siberian Railroad will undoubtedly affect the markets and
the trade-routes of several of the great staples of Oriental trade, namely, petroleum, cotton, and cereals for Oriental consumption, and silks and tea for Occidental consumption. For all high-class goods, where the saving in time is essential, the Siberian route will be attractive. Neither the Panama Canal nor the combination of well-equipped steam and rail lines across the Pacific and the United States and Canada, can outrival the Siberian route, save in so far as American Oriental trade is affected. So far as American cotton and cereal interests are concerned, they can be protected, even in Manchuria, barring extreme political interference, by the steamship lines now in operation across the Pacific and so rapidly expanding their capacity. The great disadvantage under which the United States labors in competing for a general trade in the Orient arises from the fact that our manufactures are for the most part located on the Atlantic Coast. This disadvantage will be in some measure overcome by the opening of the Panama Canal. Meanwhile the service of steamships of ever-greater capacity in connection with the transcontinental railways bears witness to the ever-growing importance of that trade.

Section 3

The Expansion of Steam-carrying Trade on the Pacific

The sailing-vessel retained an important place on the Pacific long after it had disappeared from any but secondary trade on the Atlantic. The long distances to be traversed, the scarcity of coaling-ports, together with the steadiness of the demand for and the slow-sale character of the more important goods transported on the Pacific, gave the sailing-ship an advantage. But during the past ten years I have watched from the windows of my study, which overlooks the bay and harbor of San Francisco, the progress of a mighty but peaceful revolution,—a revolution typical of the whole Pacific trade. Ten years ago, for every ton that entered or left the harbor of San Francisco by steam, nearly two came and went under sail. In 1898 the steam tonnage exceeded that of sail for the first time, and now the conditions of ten years ago are exactly reversed, and more than twice as much goes under steam as under sail, while the total is over fifty per cent greater than in 1898. The hull of many a fine ship lies rotting on the mud flats and in out-of-the-way estuaries around the Bay of San Francisco, pointing the fate of others still afloat. The grain, coal, and lumber trade alone now offer a field for sailing-vessels, and this is fast narrowing, and will be greatly curtailed when the Panama Canal is opened. These conditions are a fair sample of those which prevail all over the Pacific, and yet the growth of the steamship traffic is but beginning.
The definite determination of the fate of the interoceanic canal has been so recently the subject of wide discussion that little more need be said about it. To attempt to determine accurately, in advance, the exact effect of the canal assumes powers prophetic. Some few things are, however, clear. The canal will greatly assist trade between the manufacturing centers of the Atlantic and the Orient, and also with the west coast of South America; it will afford a cheaper route to market for grain and lumber from the Pacific Coast of North America, and for sugar from the islands of the Pacific; it will force a reduction in the through rates on the transcontinental railroads and still further emphasize the advantage of coast over interior by forcing still larger differentials than now exist in favor of the former. It will mark the end of long-distance transportation in sailing-ships.

Section 4

The Opening of China

The Japanese war with China, bringing in its train the cession of many pieces of China's territory to foreign countries, created a whirlwind in world politics of a very violent character. In the dust which this whirlwind raised it looked as though China was threatened with disintegration. When, after the Boxer outbreak, with its accompanying international military pageant at Pekin, the storm subsided and it became possible to estimate the results, it was seen that from an economical and commercial point of view China had changed but little. Nine cities had been added to the list of treaty ports as a more or less direct result of the Treaty of Shemonoseki. The inland waters of China had been opened to foreigners, and trading and warehouse privileges extended, on paper at least. But the net result to trade during the following six years was an increase of only ten per cent, a rate of increase — less than two per cent per annum on the average — which might well have come without so much turmoil.

The insistence of Great Britain and of the United States upon the open door in China, while preventing many complications that threatened serious interruptions in trade, had a defensive rather than an aggressive value. It held the doors open, but it stimulated no new trade. In short, the opening of China in any real commercial sense is still a matter of the future. The future, however, is in this respect bright with hope.

The necessity for re-examining the customs duties of China, and of strengthening the hands of its excellent administration, which arose from the arrangements to insure the payment of the indemnity after the Boxer outbreak, afforded an opportunity for lighten-
ing the charges on commerce. The most burdensome of all these charges, not so much on account of the actual taxes imposed as on account of their uncertainty, were the interior or likin duties. By the terms of the new commercial treaty with the United States, ratified last January, China "undertakes that all offices, stations, and barriers of whatsoever kind for collecting likin duties, or such like dues on goods in transit, shall be permanently abolished on all roads, railways, and waterways in the nineteen provinces of China and the three eastern provinces." This does not affect the regular customs duties which were increased by a surtax of about forty per cent, to offset the decrease in revenue due to the abolition of the likin. This consummation of a long struggle for sound trade relations with China promises a real opening of China. The ultimate accomplishment of this undertaking may prove beyond the powers of the Chinese Government, but the endeavor in that direction will be watched with great interest.

The railways of China, except the connection with the Trans-Siberian line and the few roads in the north in operation for some years, are still largely a network of paper concessions and partial surveys. Authoritative announcement has been made of the opening to come this year of about two hundred and seventy miles of new lines.

China is still far from "open" to Occidental trade, rich as are the rewards which come from the interchange of commodities so different in character between peoples so differing in customs.

Section 5

Changes affecting the Great Commodities of Foreign Trade

I have space for a consideration of but three of the most notable commodities:

(a) Sugar. During the past half-decade there have been changes of considerable importance affecting the production of several of the great commodities of the world's trade. Probably the most notable of these are those affecting sugar. The abolition of the beet-sugar bounties recommended by the Brussels Sugar Convention of March 5, 1902, marks the end of a century's struggle in building up an industry by artificial stimulus. Just before that time reciprocity between Hawaii and the United States and the ultimate annexation of Hawaii by the United States brought a rapid development of great cane-sugar plantations and a marked increase in the output. The restoration of peace in Cuba and the promise of permanent peace under the American protectorate presages a steady increase in that direction also; and, although the Philippines can, for some years to come, produce but a comparatively small amount of sugar,
yet owing to their proximity to China they will probably meet any increase in the demand from Asia without drawing upon the European or American supplies. The cane-sugar producing countries, several of which were, but a few years since, the most disorderedly in the world, are now policed in a most satisfactory manner. On every hand there is the promise of a vast increase in the output of sugar. Yet so elastic is the demand that it has responded to the increase in supply thus far without seriously affecting prices. European beet-sugar, after the repeal of the bounties, advanced only about twenty per cent, which was slightly less than the effect expected, while in America, inside the tariff wall, the price of sugar, in spite of the increased supply, has declined only about half a cent a pound. The regularity with which the demand for sugar responds to every decline in price is one of the marvels of modern commerce.

(b) *Hemp.* The United States and the United Kingdom have long been the best customers for Manila hemp. But the United States was formerly content to buy its share from English traders. Owing to the removal of the duty and the payment of what is practically a bounty, namely, the reimbursement of the insular export duties on all hemp imported into the United States, we are now buying our supplies direct. The hemp industry has responded to this stimulus in a very striking manner, the total output in 1903 being nearly threefold that of 1899, and over half of the whole goes to the United States. The only discouraging feature is the fact that the resources of this industry are overtaxed and there is a lamentable lack in the preparation of the fiber, reducing its quality in a very marked degree, the premium on good qualities not being sufficient to induce proper care in its preparation.

c) *Cotton.* The ravages of the boll-weevil in Texas and the consequent unprecedented speculative fever in the cotton market has caused a great deal of attention to be directed to the changes in the cotton production of the world. Though not so spectacular as the soaring and tumbling of prices, the thing of vital importance in the cotton trade has been the rapid growth in the demand rather than any fluctuation in the supply. The decrease of the output of cotton in Texas from the promised yield suggested by the crop of 1900–01 was more than offset by the increase in other states, notably Arkansas, Georgia, and Louisiana; and the commercial crop as a whole was the largest on record. Yet large as it was, the crop did not nearly meet the demands of the spinners who depend upon American cotton. Mills everywhere have been shut down or run on short time. The most marked feature of this growing demand has been the growth of new mills in the United States. It is claimed that the United States now consumes more raw cotton, by nearly a million bales per annum, than any other country, and that it uses forty per
FOREIGN MARKETS

cent of the American crop. The crop conditions this year promise to be about the same as last year.

The situation is, therefore, a bad one on the whole, a rapidly growing demand not being met by an equally growing supply. The Brazilian output has been greatly stimulated in the past few years, and, unless the American conditions improve, will become a very important factor. So far as the demand can be foreseen, it will continue to grow. The opening of China will largely affect the problem in the future.

PART III

The Political Situation as affecting Foreign Markets

We have passed in review the recent changes in the theory of foreign markets and the more important of the concrete changes in the condition of the markets themselves. It remains to review the political situation, always more or less fraught with meaning for the world's trade so long as "national economics" rule. Space will permit of only a brief glance at two of the most important phases of the present situation; first, the agitation for protection in England; and second, the necessity for tariff reform in the United States. In this we shall necessarily take the American point of view.

SECTION 1

Mr. Chamberlain's Fiscal Policy

After half a century of free trade in England, a strong party is now considering the advisability of resorting to protection. Although it certainly cannot be said that the proposals put forward by Mr. Chamberlain are "viewed with dismay" in the United States, yet it is true that they are matters of serious concern. In industrial circles the feeling seems to be that we shall be able, when the time comes, to adjust our trade to the new conditions; but we are much concerned to know the direction in which the adjustment will be necessary and the time when it will come. It is, at present, extremely difficult to anticipate what is likely to be done. Not only is there the problem of anticipating how far the programme is likely to meet with the support of the people, but the leaders themselves present a somewhat shifting programme. With true English conservatism, Mr. Chamberlain has been careful to disclaim any sympathy with protectionists, and the leaders, to quote Mr. Balfour, "approach the issue from a free-trade standpoint;" and yet, starting from that standpoint, they seem to be proceeding with some rapidity in the direction of protection, judging from the more recent of Mr. Cham-
berlain's utterances at Welbeck that "the effect of free trade on the laborers of this country has been disastrous." The programme put forward each time is characterized as provisional and subject to modification. That part of it, however, which seems to be most widely accepted and which develops most directly from the objects which those who have advanced it have in view, is of vital interest to the United States. The main object of Mr. Chamberlain's proposed policy seems to be to cement a closer union of the Empire and to draw the colonies nearer to the mother country, thus strengthening the Empire for national or imperial defense. If this object is to be attained by preferential tariff legislation in favor of the colonies, it cannot but seriously affect a number of important American industries. And if, as seems almost inevitable, the more general scheme be entered upon and compensatory duties should be allowed British manufacturers, it will involve a considerable amount of actual protection. In the programme outlined by Mr. Chamberlain in his speech at Glasgow, on October 7, 1903, he proposed tentatively to lay a tax of two shillings a quarter upon all foreign grain excepting maize. Joined as this proposal is with a distinct purpose to build up wheat-farming in the colonies, and especially in Canada and Australia, by special exemptions and concessions which shall insure them a market in England for all their surplus grain, it constitutes a certain menace to American agricultural interests. For, although the importations of food-products into Great Britain from the United States fluctuate from year to year with the changes in the crops in different parts of the world, yet, roughly speaking, Great Britain still takes about fifty per cent of her necessary food — wheat, flour, and meats — from the United States, and any curtailment of this market, which, even at the present time, takes about one sixth of the American output, cannot but be a matter of serious concern to the United States.

Wheat-growing in the United States is still so important an industry that its prosperity or the reverse may well-nigh be said to mark the prosperity or depression of all industries throughout the United States. The predominance of wheat-growing is not so great as it was a few years ago, but, nevertheless, any disturbance of that industry would be felt the length and breadth of the country. The wheat-growing industry has already suffered a series of setbacks, especially through the competition of the Argentine Republic, and lately through an increased acreage and output from Russia. Any further curtailment of the market for the surplus wheat of the United States will be felt immediately. These considerations are, however, offset by certain others which may have considerable weight. In the first place, there has been a marked increase in the home demand for wheat and flour products, an increase in the Asiatic demand, and
a promise of a still further increase in the consumption of wheat and flour in China since the removal of likin, the duties already referred to. More than that, the area of new wheat land available is somewhat limited, and the possibility of increasing the output upon the acreage now under cultivation is not very large. With the growth of population, land once used for wheat is found to be better adapted to other uses and is removed from the wheat acreage. There is, therefore, to be anticipated an increase in the demand in other places which would partly offset any loss in the English markets, and a tendency in the acreage under cultivation toward stability or possible diminution.

In the earlier speech above referred to, Mr. Chamberlain suggests a duty of five per cent on flour, meats, and dairy products, but he was inclined to exempt bacon on the ground that it was a "popular food for some of the poorest of the population." This proposal is not likely to work serious interference with the market for American meats. Five per cent is scarcely a protective duty, especially with the exemption of so important an item as bacon. The strictly protective features of Mr. Chamberlain's programme, such as the desire to give a "substantial preference" to British flour-mills, to prevent the "dumping" of surplus iron and steel manufactures from America on the English market, are also so moderate as not to be considered dangerous. The unavoidable restraint upon trade which the re-establishment of any system of customs duties in England will impose is more serious, perhaps, than the protectionists' proposals themselves. Rapid as seems to be the growth of favor toward Mr. Chamberlain's financial policy, no one can foresee the result at the present time.

Section 2

Tariff Reform in the United States

The preliminary skirmishes for the present presidential campaign in the United States gave rise to the expectation that, whichever party might come into power in the next administration, an attempt would be made at a revision of the tariff in the United States. The temper of both conventions, however, excluded from the platforms any expression upon this important subject which made any definite promises; the Republicans contenting themselves with the general statement that if any tariff reform is to be undertaken, it would be safer to intrust it to the hands of the friends of protection than to its enemies; and the Democrats outlining a no more definite scheme for revision than might develop from their free-trade traditions. As the complexion of the Senate makes Republican control for some time to come a certainty, any revision of the tariff must necessarily be
made along Republican lines. With the apparent willingness of some of the more influential leaders to entertain some plan for a gradual revision, so moderate as not to affect existing industries, there is still a possibility that something may be done in this direction.

As the extent and direction of this revision, should it ever be undertaken, will necessarily be determined by purely political forces, economists are interested mainly in the method by which it may be undertaken. Economic writers have frequently pointed out that the methods pursued in the past for revising the tariff were unsatisfactory because of the failure to collect, in a thorough and systematic manner, the data necessary for a revision. Few, if any, of the leaders now in Congress have even a modicum of the knowledge necessary for a revision of the tariff. This may be said without any disparagement, for, in fact, there are few men in the whole country who have that knowledge. The precise effect of each of the duties on some four thousand different articles covered in the fourteen great schedules of the tariff cannot be ascertained by a hearing conducted by a congressional committee in the hurry of preparing proposed legislation, and at which only interested parties are examined. Only by an extended and painstaking investigation along strictly scientific lines can the effect of the present tariff or of proposed changes be ascertained. The complex interrelations which arise from the changes in the relative importance of different exports and imports as affected by different duties offer problems which are among the most difficult in the whole field of economic science. Temporary commissions appointed to gather data desired for the information of Congress when a tariff revision was under way have failed, not merely because political considerations have forced Congress to disregard their recommendations, but because their recommendations based on a brief study under pressure of temporary demands could not be altogether sound and well matured. The following principles may be laid down as generally admitted by impartial authorities: (1) On account of the vast size of the interests involved, sudden changes in the tariff are dangerous to the welfare of the country; (2) for the same reason violent changes are equally dangerous; (3) changes should, therefore, be gradual and announced long in advance; (4) to ascertain the exact effect of present duties or to estimate the probable effect of proposed changes requires a careful study of each of the industries or branches of trade affected, not only in this country, but in other countries whose goods are affected. If these four points be granted, then no exigencies can arise which should be allowed to prevent what the nature of the work to be done looking to a revision requires, namely, a long and careful investigation of every possible effect of the tariff.
This all points to the conclusion that there should be a permanent bureau connected with the administrative department of the government, whose function it should be constantly to gather and compile, according to the most approved scientific methods, all the data necessary for an intelligent appreciation of the exact working of the tariff. Such a bureau could, when required, extend its investigation so as to cover the probable effect of the proposed changes. Modern economic science is equipped with the methods of research, of analyzing and interpreting statistics, of delving into the forces which control prices, and of ascertaining the cause and meaning of changes in the direction and extent of trade,—in short, it has the methods necessary for dealing safely with the multitudinous and bewildering facts which enter into the problem of the effect of a tariff on the world's markets. There is no reason for groping in the dark, when by a little provision in advance we might walk in the light.
SECTION D—MONEY AND CREDIT
OUR MONETARY EQUILIBRIUM

BY HORACE WHITE

Two months ago a political convention met in this city to nominate candidates for President and Vice-President, and after struggling a day and a night over the monetary plank of its platform, it decided to say nothing whatever on the subject. This action was equivalent to saying that the standard of value is no longer a matter of dispute. Monetary equilibrium has returned to us after a disturbance of more than forty years. This is merely saying that mental equilibrium has been restored on the subject of money, for the disturbance has been psychological and sociological rather than economical. Every person in his individual capacity in his own oikovμία, has always preferred gold to irredeemable paper; but multitudes in their collective capacity have preferred the latter to the former, and by carrying this preference into their political action caused the disturbance. The dispute has been a difference of opinion as to the meaning of the word "dollar," some holding that it signified a fixed quantity by weight of the metal gold, while others contended that it meant also the government's stamp impressed upon various things.

In this prolonged contest the borrowing and lending sections of the Union were arrayed on opposite sides, as was shown by the votes which they cast. The states having a relatively dense population and concentration of capital adhered to the gold standard. They accepted irredeemable paper as a temporary necessity, but were inflexibly opposed to any lasting change in the definition of the dollar. Those states in which contrary conditions prevailed were in favor of cheaper materials for the making of money, because
they thought that money would thus be more easily obtainable. A relatively small number of instructed persons, not belonging to any particular section or party, but distributed among all, held a balance of power and a preponderating influence. In all the vicissitudes of the contest they were able to count upon the executive branch of the government, which held the legislative branch in check on some critical occasions.

The Legal Tender Act of 1862, an incident of the Civil War, first unsettled people's minds on the question: What is a dollar? There was no such question under debate previously. We had had controversies in plenty about bank-notes, but nobody had imagined that a piece of paper was real money, or could ever be made such. The distinction between paper promises and real money was sharply defined and was kept alive by frequent bank failures and by the numerous "bank-note reporters," which were used in business circles to distinguish between notes that were at par and those that were at a greater or less discount.

In 1862 there came into the hands of the people a new kind of paper currency called greenbacks, which seemed to be at par, although they were actually at a discount. The average citizen, unless he was a dealer in money or was engaged in foreign trade, did not observe the discount. He perceived that the greenbacks would pay his debts and buy the things he wanted. If the prices of commodities were somewhat higher than before, they affected both his sales and his purchases. If he had a fixed income or was a wage-earner, and if his receipts did not keep pace with his expenses, he thought that the difference was caused by the war. So the definition of the dollar underwent a gradual change in the common mind. Instead of being a fixed quantity of metal, it might be the government's promise to pay the same at an indefinite future time. Five years after the end of the war this new definition received the sanction of the Supreme Court both as a legal and as an economical proposition. When the court declared that 25.8 grains of coined gold was in no sense a standard of a dollar, it gave a footing and a license in Congress and on the hustings to every possible vagary in finance. Congress, in 1874, availed itself of the court's permission to pass a bill increasing the amount of greenbacks then existing. But fortunately it was stopped by a presidential veto, which caused the party in power to turn suddenly about and pass a specie resumption act. This veto was the pivot upon which our financial policy turned; for, although without it we should have found our true path eventually, it would have been after a longer period and a more painful experience.

The Resumption Act was passed to meet a political rather than a financial exigency. The party in power was rent in twain by the
veto of the Inflation Bill, and the only way for the fragments to come together again was for Congress to accept the President's platform. It was a case of Mahomet and the mountain. If the President would not agree to inflation, then Congress must agree to resumption. That it did so with reluctance was proved by subsequent events. General Bristow, then Secretary of the Treasury, informed me that it was with much difficulty that Senator Sherman was brought to the support of a resumption policy. Mr. Sherman was a man of clear and sane ideas on finance, but of extreme timidity in facing hostile votes in his own state. His hesitation in adopting a policy of resumption in 1875 was indicative, not of any misconception in his own mind, but of much misconception in the public mind, which manifested itself in the House two years later by the passage of a bill to repeal the Resumption Act altogether. This bill failed in the Senate by only one vote. Failing to repeal the Resumption Act outright, Congress passed by large majorities a bill to forbid the retirement of the greenbacks, whose redemption the Resumption Act had provided for. It was commonly believed that the retirement of the redeemed greenbacks would cause contraction of the currency. The fact was overlooked that the gold with which the greenbacks were redeemed would take their place in the circulation, in the form of coin or certificates, so that there would be no contraction.

Doubts existed as to the ability of the Treasury to resume on the appointed day, notwithstanding a slow but persistent decline of the gold premium. These doubts were felt even by men in the higher ranks of finance, and some Wall Street capitalists lost large sums of money by speculating on a speedy exhaustion of the government's redemption fund. The saying of an influential banker, who was not a speculator, that he would give a large sum to have the foremost place in the procession at the door of the sub-treasury on resumption day, was widely repeated and generally approved. These doubters had failed to give due weight to events which were lowering the gold premium independently of the action of the Treasury, and which would soon have extinguished it altogether, even if no Resumption Act had been passed. Given a fixed sum of depreciated currency in a growing country, the demand for the circulating medium increases pari passu with population and wealth, and augments the value of the currency by the law of supply and demand. Secretary Boutwell was right when he said, in 1871, that the country would grow up to the volume of greenbacks and that the gold premium would disappear in obedience to natural causes. Although he was right, neither he nor anybody else imagined that the growth of business would overtake the volume of the greenbacks within eight years. That it did so may be reasonably inferred from the fact that the gold premium disappeared before the date fixed for resumption and that
when the redemption bureau was actually opened, scarcely any gold was called for. But the danger which menaced the cause of sound money during the interval (1871-1879) was not economical. The real danger was that public opinion would demand, and Congress would vote, an addition to the volume of greenbacks. And if Congress should vote for one such increment, there would be no assignable limit to future additions.

Specie resumption was followed by a period of great prosperity, which would soon have extinguished all differences of opinion touching the definition of the dollar and would have brought about the desired equilibrium in 1879, but for an unexpected circumstance. Between the passage of the Resumption Act and its execution, the gold price of silver fell ten per cent in the market.

This was an unheard-of phenomenon in the modern world. Various causes were assigned for it by experts and ignoramuses, by economists and politicians. Some said that it was due to the great output of silver from the Comstock mines; others, that it was a consequence of the lessened demand for silver in India. Still others thought that it was caused by the demonetization of silver by Germany. Some even contended that our Demonetization Act of 1873 was at the bottom of the trouble. Official investigations were made in various countries, including our own, which yielded scanty results.

We can see now that all of the foregoing reasons were either half-truths or wholly erroneous. Forty per cent of the product of the Comstock mines was gold. The surplus of silver was, therefore, only twenty per cent of the total output. The difference was too small to account for the disturbance.

The demonetization of silver by Germany was not a vera causa. It was itself the result of something else. A nation does not take the trouble to change its standard of value without good reason. It does not incur the expense of re-coinage and suffer heavy loss by the sale of the discarded metal from mere caprice. The lessened demand for silver in India was likewise an inadequate explanation. If it were due to a gradual substitution of gold for silver, both for money and for ornaments, it was akin to what was going on in Germany, i.e., it signified a change in the public demand and the public taste. If due to a bad harvest and consequent poverty, these were events of frequent occurrence in India. Why had they not affected the relative values of the two metals before? As to our own Demonetization Act, we had no silver at that time to demonetize and throw on the market. Moreover, the passage of the Act was not generally known until after the great decline of silver had taken place. It was the latter event that first drew attention to the former.

Looking at the phenomenon from the superior standpoint of the present day, we can see that the great decline of silver that began
about the year 1871 was due to uncontrollable commercial causes, which the governments of Europe and America could not have resisted even if they had tried. Gold had been the real standard of value in the civilized world long before. As the metal most acceptable and most convenient for the settlement of international balances, it had become the cynosure of the trading community. Every drawer and receiver of a bill of exchange had his mind fixed upon gold when drawing or receiving it, even though the bill itself were payable in silver. Hamilton observed this fact as existing in our own country in the latter part of the eighteenth century. England had been under the single gold standard twenty-four years before she became conscious of the fact and gave legal sanction to it. Germany was in the same situation long before 1871, although legally under the single silver standard. Under such conditions it was inevitable that whenever circumstances should impel the nations to overhaul their monetary systems they should adopt the single gold standard, thus making the law conform to the fact. Circumstances impelled Germany to reform hers in 1871, and she took the inevitable step. Her act was not the cause of the decline of silver in the early seventies, but was rather the sign and symptom of a commercial movement which was working with irresistible force in Germany and everywhere, and had been signalized some years earlier by the Paris Monetary Conference of 1867.

But whatever may have been the causes of the phenomenon, it took place in our own country at a most unfortunate time, in the midst of a monetary and political crisis, when it could produce the greatest confusion by freshly unsettling the public mind and breaking the peace that had been nearly won by the passage of the Specie Resumption Act.

Europe did not wholly escape this disturbance; but in Europe the task of dealing with it was assigned to a small group of experts in each country, the mass of the population taking no interest in it even if they were aware that anything unusual had happened. The same course of proceeding would have been followed here if circumstances had been the same. All of our previous coinage legislation, from that of 1792 establishing the Mint to that of 1873 demonetizing silver, had been the work in each instance of a few experts, the mass of the people giving no thought to the matter. The same popular apathy would have existed in 1876–1878 regarding the decline of silver had not public feeling been already inflamed over the greenback question. But for this special and temporary excitement we should have contemplated the decline of silver in the same way that other civilized countries did. We should have congratulated ourselves that we had no stock of that metal on hand upon which a loss must be incurred. We should have been thankful that the Demonetizing
Act of 1873 had been passed in time to prevent us from sharing the embarrassments of France, Germany, and India. Our monetary equilibrium would have been reached when specie payments were resumed in 1879, and we should now have four or five hundred millions more gold and less silver in circulation than we actually possess, since all of our silver certificates might have been gold certificates if Congress had so willed.

Two matters of importance, both incidental to the Civil War and contributing to our monetary equilibrium, remain to be mentioned. First, the national banking system. The public records show that Secretary Chase adopted this plan as a means of selling bonds and procuring money for the war, but that it had no perceptible effect in that way. To recast the banking system of a nation requires time, even when one knows how to go about it and has all power in his hands. Mr. Chase's *modus operandi* was defective, and he did not have unlimited power. The plan contemplated that all banks should secure their circulating notes by government bonds deposited in the Treasury, but the federal tax which eventually compelled them to do so was not enacted until the beginning of 1865, and was not put in force until after the war was ended. Consequently no bonds were bought for this purpose during the progress of the war, except a mere bagatelle taken by the voluntary action of a few banks. Nevertheless the new banking system was and remains a gigantic success for banking purposes and a great bulwark of our monetary stability. So far as it supplies us a currency, it supplies one that is at par everywhere. It organizes credit and vitalizes the productive capital of the country admirably. It does not, however, supply a circulating medium to the extent that its resources and reputation would justify. Of $2,500,000,000 now circulating, national bank notes are only $432,000,000,—about one sixth of the whole, and little more than one half of what the law authorizes the banks to issue. The bank-note circulation does not keep pace with the country's growth in population and trade, and since all other fiduciary circulation is limited by law and has reached its limit, further expansion will be mainly by means of gold certificates.

This brings us to another incident of the war period, which has proved to be a great convenience and an aid to monetary equilibrium. The law authorizing the Treasury to receive deposits of gold and to issue certificates therefor of $20 and upward was passed in 1863. In the panic of 1893 the greenback redemption fund was reduced below $100,000,000. The law required that the issuing of gold certificates should be suspended whenever that condition existed. For some unexplained reason the Treasury officials thereupon treated the law as though it were repealed, and refused to resume operations
under it when the gold reserve was replenished. Congress accordingly reënacted it in the year 1900, at which time the amount of old certificates outstanding (held mostly by banks for clearing-house purposes) was $228,000,000. The volume of certificates has since increased by leaps and bounds. It is now above $500,000,000 and is still growing, and most of the increment has gone into general circulation, in obedience to a demand for a paper medium of exchange that could not otherwise be satisfied.

While nothing of this kind was contemplated by Congress in the original enactment of the law, it must be regarded as most fortunate in two particulars. It has contributed to cure the prime defect in the national banking system — the rigidity of its note issue — and has saturated the currency with gold. Each new certificate is a prop to our monetary equilibrium, since it increases the proportion of gold to the credit circulation. That proportion at the present time, counting only the gold in sight, is as 66 to 100, being about the same as that of the Bank of England. Our proportion would be even greater than it is if gold certificates could be issued of lower denominations than twenty dollars. There is no valid reason why ten-dollar certificates should not be issued. They are greatly needed now, the Treasury being unable under present laws to meet the public demand for the smaller denominations in any kind of paper circulation. Of course, gold eagles, halves, and quarters can be had without limit as to quantity, but our people do not like to carry metal in their pockets, except for small change; moreover, the frequent handling of gold involves waste and loss by abrasion. The very next reform in our money system should be the lowering of the denominations of gold certificates to ten dollars, both as a public convenience and as a further support to our monetary equilibrium.

What we mean by monetary equilibrium is a state of absolute confidence that every dollar in circulation, whether of paper or of metal, is the equivalent in the hands of the holder of 25.8 grains of standard gold. Have we reached that state of confidence? If not, how far do we still come short of it?

Probably ninety-five per cent of our people are perfectly satisfied on that point now. Yet the remaining five per cent think that there is still some room for doubt. They know that the continued redemption of the greenbacks depends upon the will of Congress, and they remember that only ten years ago Congress refused to do anything whatever to replenish the redemption fund when the Treasury was only two days removed from bankruptcy. What protects us against a similar crisis hereafter?

I have already alluded to the action or non-action of the St. Louis Convention, which assures us that no political party now calls in
question the standard of value. This is perhaps the strongest guarantee we could have against a recurrence of the crisis of 1893, but our position has been improved in other ways. The Act of March 14, 1900, increased the gold reserve for the redemption of legal-tender notes by fifty per cent, and provided for its replenishment in case of need, and it made the notes expressly redeemable in gold, whereas they had previously been redeemable in "coin." It separated the fiscal from the currency transactions of the government and prohibited the use of the gold reserve for any other purpose than the redemption of notes. But it authorised the Secretary of the Treasury to pay the notes out again "to purchase or redeem any bonds of the United States, or for any other lawful purpose the public interests may require, except that they shall not be used to meet deficiencies of the public revenues."

Now a deficiency of the public revenues cannot be judicially ascertained without a standard of a full or non-deficient revenue. The law does not supply such a standard. Apparently a deficiency means a shortage of ordinary income as compared with ordinary expenses during one fiscal year, regardless of any pre-existing surplus or deficit in the Treasury. But there are extraordinary expenses and extraordinary receipts in time of peace and still more in time of war. Where is the line to be drawn which shall separate the ordinary from the extraordinary? A little reflection will show that this saving clause in the Act of 1900 is meaningless, or, at most, only advisory. The Secretary of the Treasury must determine for himself whether a deficiency of the public revenues does or does not exist at any time. In other words, the paying out of redeemed greenbacks is optional with him, as it was before. This is a defect in the law which ought to be cured by an explicit proviso that legal-tender notes presented for redemption shall not again be put in circulation except in exchange for gold deposited in the Treasury by private persons. Thus the reissued greenbacks would be gold certificates in fact, although not in form; and in time public opinion would require that the form be changed so as to correspond with the fact.

Are our silver dollars to be considered a source of anxiety? Theoretically they are. They are a part of the fiat money of the country. They are like the greenbacks in all essentials. They circulate by virtue of the government's stamp, and the government accepts them in all payments to itself. There are $576,000,000 of them, $70,000,000 being in circulation as coin and the remainder as certificates. The field of retail trade has been practically reserved for them by law, and the growth of the country has been so rapid that the redundancy of 1894 has become a deficiency in 1904. There is not enough currency of denominations under ten dollars now to meet the legitimate demands of trade, and while this condition lasts
silver dollars must be at par, just as the subsidiary coins are. True, the latter are redeemed at the front door of the Treasury, but the dollars are redeemed at the back door, in the custom-house, and in the tax-office. That a real danger once existed from silver coinage was proved by experience, but it seems to have passed away. It should not be forgotten, however, that the government paid $464,000,000 gold for the bullion from which these needless dollars were manufactured. This was an unnecessary expense. It is possible eventually to recover this $464,000,000 without throwing any silver on the market. A bill is now pending in Congress, with the approval of the Secretary of the Treasury, to convert silver dollars into subsidiary coins as fast as the latter are needed. The annual increment of subsidiary silver required by the growth of population and of retail trade is about $5,000,000. If the policy is adopted of re-coin- ing the dollars into smaller pieces instead of buying new bullion therefor, the government will finally get back the money that was expended under the Bland and Sherman Acts. Gold will flow in to fill the vacuum, and Congress can regulate the denominations of gold certificates to meet the public convenience.

May we not have too much gold in our circulation for the economical working of trade and industry? Of course our solvency can never be impaired by having an excess of it, but gold is capital. It is the product of labor, and the country may be compelled to use more of it than is really needed for effecting its exchanges and guaranteeing the soundness of its credit instruments. Credit dispenses with the use of capital to an incalculable extent. It is a labor-saving machine of immense value, and it is not to be supposed that we have yet seen the last of its devices or that we have exhausted its utility. It does not fall within the scope of my theme to consider plans for bettering our bank-note system so that it shall keep pace with the growing demands of trade, but such plans cannot be postponed forever in the face of a decreasing public debt and an increasing price of government bonds. If in the mean time we take more gold than is really needful into our circulation, that certainly involves some waste of energy, but of all financial evils it is the one most easily cured.

Although the greenback and the silver dollar are not a present cause for anxiety, all fiat money is objectionable, because it is a noxious microbe capable of multiplication. It would be best to remove it, so that its evil example may not be before the public eye to lure us astray in some future emergency. It is needless to say anything to this assemblage about the advantages of monetary peace as contrasted with the turmoil through which the nation has struggled during the past forty years. All the reasons which exist for having any kind of money are reasons
for having a good kind. It is the agreement of mankind which makes it good, and when we disagree about the definition of the dollar, we are plunged in doubts and fears, confidence and credit are impaired, enterprise is chilled, business partakes of the nature of gambling, widows and orphans are defrauded, labor is deprived of its just reward, and civilization sinks to a lower stage. All these conditions have been within the nation’s recent experience.

To sum up: We may say that once upon a time the nation lost its financial pathway by accident and after wandering forty years in the wilderness regained it by a process of self-education. During all its wanderings, however, it never repudiated nor failed to keep any contract that it had made. It has met both principal and interest of its bonded debt in the times and manner agreed upon, and has never imposed any tax thereon or allowed any inferior authority to do so. For all this it reaps its reward in the highest credit that any country ever enjoyed. There are some minor problems of finance yet to be solved, but since they may now be approached without passion, we may fairly expect that they will be solved rightly and in good time. Let us hope that we have learned the cardinal principle of finance, viz., that the monetary standard is established in the first instance by the tacit agreement of mankind, which it is the duty of the statute law to recognize, ratify, and enforce, not to resist, counteract, or annul.

May we confidently predict that the lessons of the past will not be forgotten and that the monetary equilibrium will never again be disturbed? Alas, history teaches that such lessons gradually fade from the public mind. Our colonial experience with bills of credit did not prevent the revolutionary fathers from following the same disastrous policy, nor did their example prevent us from repeating the experiment. Moreover, President Grant’s veto of the Inflation Bill did not prevent Congress from passing another one sixteen years later, which was not vetoed and which was attended by disastrous consequences. But history teaches also that such disturbances of the monetary equilibrium usually have their beginning in a state of war. The colonies issued bills of credit in the first instance for war purposes and afterwards for other purposes. The revolutionary fathers did the same, and we also did the same. The teaching of history, therefore, is that if we would avoid the grossest financial errors of the past we should avoid as much as possible the direful curse of war. Perhaps no teaching could be more salutary to mankind.
PRESENT MONETARY PROBLEMS

BY JAMES LAWRENCE LAUGHLIN

[James Lawrence Laughlin, Professor of Political Economy, Chicago University. B. Deerfield, Portage County, Ohio, April 2, 1850. A.B., A.M., and Ph.D. Harvard University. Assistant Professor in Political Economy, Harvard University; Professor of Political Economy and Finance, Cornell University. Member of International Institute of Statistics. Author of Facts about Money; The Principle of Money; numerous articles for the Atlantic Monthly, Forum, North American Review; and several books on political economy.]

I

Present Monetary Problems

The development of thinking about money is the most interesting portion of the history of political economy. The first dawn of economic principles came with the discussion of monetary phenomena, and monetary science has not only always had a peculiar practical interest of its own, leading to its constant appearance in political campaigns in all countries, but it has also had an organic life persisting in its full vigor to the present day. In the United States the monetary question is not at this very moment, as it has been, the football of the political parties; but there has been very recently an active upheaval in scientific discussion which is healthy and worthy of attention. In Europe, while the active discussions of bimetallism have simmered down to relative quiet, yet the interest in the fundamental monetary questions among scholars is burning with a clear flame. The present monetary problems are not only enlisting the interest of economic scholars and reach the very center of systematic exposition, but they also happen to be those which have to do with the truth or error of convictions which are widespread among great masses of our countrymen.

It is passing strange that the vast literature of money has not been marked by a passionate zeal for the statement of an organic body of principles. Past discussions of money have been usually started in some local, or practical, problem; and interest has centered largely in the acquisition of historical data, without any considerable success in the formulation of the principles explaining such data. Once that the problem of special interest to the public had been settled for good or for ill, the real scientific interest seemed to wane. To-day, in my judgment, the case is entirely different. The attention now being given by scholars in both Europe and America to the vital questions of monetary doctrine is nearly as intense as that given to questions of wages and interest.
Since the time of Ricardo there has been a magnificent confidence that the theory of money has been so well settled that there was little more to be said on the subject. The economic dogma of money, at least, was supposed to be fairly complete. And yet, in my judgment, the systematic treatment of the principles of money has remained undeveloped almost to the present day. There is scarcely any part of the field which can be regarded as thoroughly disposed of. Indeed, the very definition of money itself is to-day under the most critical examination; and with the definition goes the question as to the functions performed by money. On these points, like investigators in other sciences, we must frankly admit our lack of agreement.

First of all it should be emphasized that the dispute about the definition and functions of money is not merely a question of words; it relates, in truth, to fundamental problems of great practical import. Every day the statesman and man of affairs are confronted by difficulties connected with the primary effect of "money" on prices in general; but it is at once patent that the relation of the value, or quantity, of "money" to prices cannot be disposed of until we have determined what we mean by "money." As at present used, "money" has no scientific precision; it is often carelessly employed in many different senses by one and the same author.

Evidently before a rational definition of money can be found, some agreement based upon an analysis and description of the functions actually performed by money must be reached. If several dissimilar services are rendered by monetary instruments; if each of these services is associated by usage with "money," and if it happens that different things are employed in these different services, then, while authors may agree as to many of the functions of money, it may easily happen that they may still disagree as to which shall be regarded as essential to the definition of money. Money may have different meanings according as it is made to include, or exclude, some or any unquestioned services associated by usage with money. In such ways, an important difference might arise between that which is money in an economic, or true sense, and that which is money in a legal sense. In fact, the economic relations of money ought to be scientifically ascertained before legal functions should be assigned to it. If, for instance, the state should apply the quality of legal tender loosely to some instrument which does not completely fulfill all the functions of money, then that money is not, in the economic sense, true money. It thus often happens that incomplete forms of money exist, which give the public
much difficulty to classify and define. The expressions "substitutes for money," or "surrogates," or "representative money" have arisen which depend for exactness upon the primary meaning assigned to the money on which they depend. The very functions of money need careful limitation.

Among writers as late as John Stuart Mill there is practically no separation of these functions. The term "money" was applied indifferently to an instrument which served only as a medium of exchange, or only as a standard, as the case might be. Obviously, it would not be possible here to summarize all the different ways in which the functions of money have been viewed; they vary with each writer. In the main, there is a discussion upon the merits of the following separate functions:

1. A medium of exchange.
2. A standard, or measure of value.
3. A standard of deferred payments.
5. A store of value.
6. A means of transferring value, or capital.

The most recent German writer, the distinguished scholar Helfferich, in an epoch-making treatise, holds that there are only two primary functions of money, neither being secondary to the other: (1) Medium of exchange; (2) means of payment. He does not regard the standard function as essential to the conception of money, believing that any such service as may be included under a measure of value has been derived from the two primary functions given above. With several other writers, he finds that the medium of exchange was the thing which first developed, and then came into general use as a standard or measure of value. He practically defines money as everything serving to facilitate exchange between economic factors. Thus Helfferich would hold that the state, by giving legal-tender power to things worthless in themselves, such as irredeemable paper, has created a means of payment for debts, and therefore he would include even such instruments as these under money, because they fall under one of his primary divisions.

Whatever conclusions may be reached in regard to the functions of money, the application to the system of any one country would raise difficult questions as to the classification of money. If one of the necessary functions is lacking to any one form of money, it is not true money; for instance, in the United States no one would hesitate to say that gold coin is true money, and yet it is very little used as an actual medium of exchange. Therefore, we may easily call that true money which does not serve principally as a medium

1 Das Geld, von Karl Helfferich, Leipzig, 1903, 8°, pp. x + 590.
of exchange. Also, silver dollars, and French five-franc pieces, in the so-called "limping gold standard," could not be called true money in all senses, because their value is dependent on a primary form of money. Like national bank notes and greenbacks, they are only "surrogates;" they are, perhaps, legal, but not economic, money.

One may well doubt if the function of a means of payment can be distinguished from that of a medium of exchange. At least, most writers seem to agree that the medium-of-exchange function is essential to money; but if the standard function be neglected, could we possibly define that which acts only as a medium of exchange as true money? Of course not. Deposit-currency (i. e., bank-cheques) certainly act as a medium of exchange, and as a means of payment; but we should, in all common sense, be obliged to place such currency in a very different class from gold coin.

Therefore every one must agree that the critical discussion of the meaning and functions of money is fundamental to scientific progress and to all serious treatment of the main problems of money, such as the theory of prices.

III

Credit

In regard to another unsettled problem of money, credit, it is to be said not only that it has been very much misunderstood, but that it has been given very little real study. There is to-day no commonly accepted definition of credit; the element of futurity in a credit transaction is generally admitted, but "confidence" is by some regarded as the essential element; and yet "confidence" can play its rôle only because futurity exists in the credit operation.

Nor is there any received opinion as to the real nature and functions of credit. We seem, in the whole field of credit, to be on the frontier of knowledge. In any true sense, the economic end of society is the possession and use of goods which satisfy wants. Credit has been devised as one of many means to aid in accomplishing this end. In its fundamental relations it has to do with goods and their increase. To some, however, it is related only to money. The truth of this concept, to my mind, depends upon the nature of money. If it be only a means to an end, and if it does not alter the elemental principles of value, but aids and cheapens the exchange of goods, then it is easy to understand that a borrower in reality obtains the use of goods, as the purpose of a loan, and that money and credit are but the instruments devised by society for effectually carrying out that purpose. Hence the credit operation, as regards extension
or contraction, is primarily based on transactions in goods; its relation to money is a secondary, and incidental, connection. Credit being a transfer of goods involving the return of an equivalent in the future, forms of credit appear only as a consequence of transactions in goods. More transactions, not more money, cause an increase of forms of credit; and, by an interesting process of evolution, forms of credit, especially the deposit-currency of banks, act as a medium of exchange, obviating recourse to money. The belief, however, that credit depends on money, and not on goods, is widespread, and much discussion is probably before us on this point.

The relation of credit to the theory of prices is evident; some think that all the money plus all the credit (whatever that may be) act primarily to fix the level of prices; but any sane person will see at a glance that the forms of credit, such as bills, drafts, etc., arising from the movement of the wheat crop, have no effect on the price of that crop, the price having been made antecedent to the creation of the forms of credit which came into existence only because of the actual sales of wheat. Does a farmer wait until he sees how many wheat bills are drawn before fixing the price of his wheat? Evidently not; and the popular conception needs thorough criticism.¹

When men speak of "our expansion of credit," they have a very vague and general idea in their minds. The definite and distinct forces at work are covered with darkness; and when a revulsion of trade comes the results are accepted as coming from some undefined and mysterious force which can only be felt, but not explained. It remains the duty of the economic thinker to outline with scientific exactness the forces uniting in the upward wave of overtrading, and to state with equal definiteness the causes of the receding movement. Principles must be sought for which will explain the differing actualities of each special crisis.

IV

Theory of Prices

Only after the honest student has come to a satisfactory conclusion in regard to the nature of money and credit is he in a position to discuss with profit the pivotal problem of this field — the theory of prices. Perhaps I may be criticised for treating here the present monetary problems from too theoretical a point of view; and it may be urged that I should have presented the practical problems confronting each leading nation, and discussed their relations to the several monetary systems actually in use. But I must respect-

¹ For a full discussion of "Credit," see my Principles of Money, chap. 4 (1903).
fully insist that the moment any practical problem in any existing monetary system is taken up, one is instantly faced by the difficulty of agreement upon the terms in use, and in fact upon the simplest monetary principles involved in the examination of each case. Every practical reformer in the field of money is in fact using some theory of prices, true or false, in all the premises laid down in his propositions. One might as well go into practical engineering without a knowledge of thermodynamics as to discuss practical monetary schemes without first settling basic monetary principles. But, unfortunately, the thinking, even among so-called economists, is to-day unsettled on so pivotal a question as the theory of prices. Practical monetary legislation, in more than one country, would be radically modified, accordingly as the so-called "quantity theory" of money is accepted or not. In my humble opinion that theory is indefensible and erroneous; and yet our great politicians in the United States, in their fencing on the monetary problem, have decided that the question of the gold standard has been definitively settled because of the large recent production of gold. The partisans of gold have thus accepted the principle on which the demands for an extension of the circulation of silver and greenbacks have been based, and the position is absolutely untenable.

The issues in this crucial problem are unmistakable, and they must be threshed out to a conclusion before any practical applications can be attempted. These issues may be briefly stated in the following heads:

(1) Is the price of goods the quantity of some standard commodity for which they will exchange, or is it the relation between goods and a variety of several media of exchange?

(2) If true money is a commodity, like gold, then what determines the exchange value between goods and that commodity? Is the problem in any way different from that of obtaining the exchange value of any two commodities?

(3) What is the actual process of evaluation between goods and gold?

(4) If demand and supply regulate the value of money (cost of production apart), what is the exact meaning of demand for money, and of supply of money?

(5) Is the demand for a money-metal only the monetary demand? Is the demand for a commodity as money something sui generis?

(6) In the theory of prices, what is meant by "money"? Is it only gold, or gold together with everything, such as deposit-currency, which acts as a medium of exchange? In short, what constitutes the supply of money?

(7) If prices are influenced by "purchasing power," is that synonymous with the sum of the existing media of exchange, multi-
plied by its rapidity of circulation? Or, is purchasing power in its ultimate analysis synonymous with the offer of salable goods?

(8) Have the expenses of production, or progress in the arts, no influence on the general level of prices?

(9) What is the effect of credit on general prices?

(10) How do fluctuations in bank reserves actually affect general prices? Does the rate of interest, being paid for capital and not for money, have an effect on prices through its effect on loans?

(11) By what economic process would a great new supply of gold influence general prices? Only by being directly offered for goods as a medium of exchange?

(12) Does the Ricardian reasoning in favor of the quantity theory of prices hold in monetary systems where free coinage of the standard money exists and where other devices are used as media of exchange? If mints are open, how can the coin differ in value from the bullion of which it is made?

It is safe to say that the thorough discussion of these points, and a satisfactory disposal of them, will aid in the solution of the central monetary problem, not only of the past but of the present time. It is one which cannot be blinked. It arises at every step in popular monetary discussions, and the economists have not given it necessary attention. On the settlement of the theory of prices, of the value of money, a host of minor questions which have caused endless and fruitless differences of opinion will disappear. The solution of this matter of theory is of the greatest practical import; it is as important to practical monetary action as a theory of heat is to mechanics. Therefore, let us not be deterred from a struggle with a fundamental matter of theory by any slighting and cheap sarcasm about the futility of theoretical and abstract discussions. As well scoff at the mathematics which lies behind physics and astronomy as theoretical.

Nor will it be wise to minimize the differences between the old and new points of view in the theory of prices. It may be said that the quantity of money would have an influence on general prices in any theory. True; but that does not touch the crucial point at issue. The quantity theorists make the process of evaluation between goods and money dependent on the actual offer of the money and goods for each other; an increase of transactions in goods is an increased demand for money, resulting, unless the quantity of money is increased, in falling prices. It is needless to say that the facts do not agree with these statements. An inductive economist who would be unwilling to state any principle which had not been the outcome of a study of concrete data could never, under any possible circumstances, have arrived at the quantity theory of money. In no case coming under my observation has there ever been any corre-
spondence between the movement of general prices and the known facts as to the quantity of circulation, or the money-work to be done. If I am wrong, it lies in the power of induction to disprove my statement by the facts. In truth, the quantity theory was the product of the metaphysicians, and not of the men of affairs, and it never has been in accord with the data of inductive study so far as I know.

It is true that a great increase in the supply of gold would lower its value, other things remaining the same; but the effect on general prices would be a simple one, such as would be produced by any cheapening of the standard, like a change to a depreciated paper standard. But this change in the value of the standard is a radically different economic process from that by which prices are said to be influenced only by changes in the quantity of the media of exchange actually offered for goods. One or the other must be wrong.

V

Prices and the International Movement of Metallic Money

The settlement of the theory of prices, or the principles determining the value of money (suitably defined), has an importance reaching out into the field of the international movements of specie. We cannot properly formulate the methods by which the shifting of specie and goods act upon each other in international trade without having previously reached a definite conclusion upon the theory of prices. Thus the examination of and agreement upon the theory of prices will largely determine the statements made concerning the relation between the shipments of specie and the level of prices within a country.

With the Ricardian formula, derived from the experience of England in the early part of the last century, writers have attempted to solve this problem by using the quantity of money in a country as the force regulating the general level of prices; if gold is exported, prices must fall; if gold is imported, prices must rise. In brief, the originating cause of a change in the general level of prices, so far as international trade is concerned, is the shipment of specie. The movement of goods is a consequence of the change of prices brought about by the addition or subtraction of specie. That is, the quantity theory has been relied upon to solve this highly important and practical problem of money.

The original statement of Ricardo has, of course, been added to and amended; but, in the main, it is intended to show that any one country obtains a part of the world’s circulation of specie in the proportion that its trade bears to that of other countries. This quota of gold, for instance, is retained in a country by influences
working automatically on the price level through changes in the quantity of gold within that nation. If gold is withdrawn, prices fall, exports of goods are increased, and in due time the gold begins to return until the country’s quota of gold reaches an equilibrium adjusted to the relative demands of other countries. The movement of goods forms the variable in the process which aims at a correction of the quota of gold, whenever the equilibrium has been disturbed. The shipment of gold is the initial cause; the movement of goods is a consequence.

In support of this view, the orthodox view, it is held that gold will flow wherever its exchange value is highest. The flow of gold will make it abundant in the receiving nation, and thus raise general gold prices there, or, *vice versa*, will lower prices in the countries from which gold is taken. The possession of the proper amount of gold seems to be the main consequence, while commerce is regarded as the means to the end.

This manner of treating the problem, however, reverses the true order of events. Commerce is the real objective which lies behind all other phenomena, such as the methods of payment; the movement of money is a secondary operation, dependent on the direction and extent of the shipment of goods. Moreover, to say that gold, like other goods, flows where its exchange value is highest, is a truism; the real question to be settled is, How does the flow of gold take its effect on prices? To say that because it is abundant, it raises prices, is to assume the whole problem at issue. How does a cheapened mass of gold adjust itself to other goods? What is the price-making process? Are goods priced only by an actual exchange of those goods against the increasing flow of gold? On this point the adherents of the orthodox teaching of Ricardo have offered no light.

The trouble with many symmetrical monetary theories is that they do not agree with the facts. For instance, it has been pointed out that the gold stock of the United States has increased three and one half times from $326,000,000 in 1880 to $1,174,000,000 in 1902; and yet that gold prices in the United States in that period have fallen. This discrepancy between fact and theory is dogmatically disposed of by assuming that the growth of our trade has outstripped the supply of gold. This position is far from tenable; there are no statistical data in existence worth a fig which could give us the truth as to the money-work, or demand, for gold. To say that our gold has increased only because of our phenomenal increase in trade relatively to other countries, is to make a statement without proof. Possibly our deplorable silver legislation of the past has forced us to carry more gold than we ought to have held, just as men on the frontier must invest considerable means in firearms for protection.
from purely local dangers. Other countries than ours have enormously increased their trade, but they have not added in the same proportion to their gold circulation. In truth, the old-fashioned theory of international price-changes needs restatement in vital parts. It will be found that forces affecting the prices of goods, such as demand and supply of those goods, are of primary influence in affecting prices, quite independent of the action of a medium of exchange, which often comes into existence, in fact, as a consequence of the exchange of goods. The movement of specie is not the end of commerce, but specie moves as an instant consequence of commerce. The monetary changes follow, and do not precede the operations in merchandise.

VI

Bimetallism

Bimetallism was eagerly taken up by writers as a means of increasing what was once regarded as a deficient supply of the world’s metallic circulation. The decline of prices, which in this country began in 1866 and not in 1873, was attributed to a scarcity of “money” throughout the world. Therefore, if silver could be added to or retained with the circulation of gold, the larger quantity of metallic money would, it was believed, support or even raise the general level of prices. The theory of prices, assumed as a matter of course in this exposition of bimetallism, was the quantity theory.

Throughout the recent writing and speaking on monetary topics, both in Europe and America, if not also in Asia, there has been a very general subsidence of interest in bimetallism. The demand for silver has been believed to be unnecessary because of the enormous production of gold in recent years. That is, by the old quantity theory on which bimetallism was based, some authorities — and more politicians — have saved their consistency by accepting the gold standard.

The logic and character of bimetallism cannot escape so easily. If the quantity theory falls, the whole artificial structure of bimetallic argument falls; and the gold standard cannot possibly be supported by intelligent minds on any such basis of theory. The facts are too ugly. In the diagram which I have constructed here, it must appear to the most casual student that if the fall of prices on or about 1873 was due to a scarcity of gold, then since the supply of silver has been greatly increased, and especially since the supply of gold has been about quadrupled since 1850, we ought to have witnessed a phenomenal rise of prices in the last decade or two. The movement of prices on the diagram has been generally downward, or at least not
seriously rising, during all the years when the production of gold has been so astonishingly large. The facts oblige us to question a theory which presents such evident disparities as this; and one is obliged, in all fair-mindedness, to accept the truth that many other and potent influences, besides the quantity of the media of exchange, have a powerful effect upon the price level. When this admission is made, then the investigator is in a position to understand the remarkable influences of the great industrial revolution of the last thirty years upon the expenses of production of all articles, and hence upon their market prices. Thus, the sweep of economic forces, in the natural tide of events, is bringing us to a saner and very different point of view from that of the scientific bimetallist of past years.

VII

Stability of Exchange

Consistency is a jewel; but it may be questioned whether it is always worth the price. The escape from the pitfalls of bimetallism and the quantity theory has led to some new and surprising formulations. It had been the hope of the bimetallists to secure a parity of exchange between countries now using gold and silver standards. If gold could be maintained permanently at a given ratio with silver, this happy result might have been brought about. It is needless to say that bimetallism proved to be a political impossibility, even in the countries of the Latin Union. By force of business requirements, such silver as has remained in general circulation was effectively kept at a value in gold equal to its face value by varying devices in different countries, all of which had a common principle, practically equivalent in a more or less evident form to redemption in gold. In the case of India, it is frankly accepted that the value of the rupee has been maintained at a fixed price in gold by a machinery which amounts to the establishment of the gold standard, involving a quasi-redemption of silver rupees in gold at 16d.

If, however, there are some silver-loving sensibilities to placate, such a process is not spoken of as the establishment of the gold standard through the indirect redemption of inferior silver by gold, but it has been discovered that a uniform ratio of exchange between gold and silver-using countries can be established, not by the gold standard, but by a "gold-exchange standard." In the recent proposals laid before Mexico and China this new form of statement has been employed. It is difficult to know what the new term means. A bill of exchange in a silver country drawn on a gold country is nothing but the amount of silver coins of the one nation which must be given to buy a stated sum of gold coins of the other nation. The
silver bill varies relatively to gold coins in proportion to the changes in the value of silver bullion relatively to gold, unless the silver coins, under the laws of token-money, are kept at an artificial value, above the market value of the silver bullion in them, by some method, more or less direct, of redemption in gold. When silver bills are offered in the exchange market, they are simply offers for the sale of so much silver to be paid for in gold. If then the treasury of the silver-using country buys the bills in certain emergencies of the exchange market, it is paying gold for silver; or, in other words, it is to that extent redeeming amounts of silver in gold.

Stripped of its enveloping mystery, the only way in which the new proposals for Mexico and China can establish stability of exchange is to establish the gold standard. For that purpose, if the silver coins in common use are to be rated in gold above the market value of the silver content of the coins, the only way in which parity in daily business or in the exchanges can be maintained is by creating a gold reserve large enough to redeem coins at par, or buy exchange at par, if no direct redemption is allowed. The whole operation, therefore, harks back to the principles regulating the value of such money as token-coins, bearing a seigniorage, or paper money which has no value in itself. The worship of quantity as a regulator of value of money may do for those who are unwilling to test their theories by the facts; but inevitably one is obliged to admit that other forces are far more potent than quantity.

VIII

The Value of Paper Money

I have said that the pivotal problem in the whole field of money is the theory of prices or the value of money. How true this is may be seen by the recurrence of this issue in each of the problems noted in this paper; and in the last one which I shall take up it again reappears. What regulates the value of those forms of money which circulate at a rate above their content is a question which forces itself to the front whenever we study a case of paper money. In times past it has been sufficient to explain the value of paper money by referring its rise or fall to an increase or diminution of its quantity. This blind reliance on quantity as the main force controlling the value of money cannot now, with our knowledge of the facts, be consistently held.

The amount of notes which a merchant can put out, provided he redeems them promptly, is limited only by the extent of his transactions. So it is with a nation. Given a certain set of business operations, as many notes can be kept in circulation as are needed by the
community, and no more; and these notes will remain at par only if there is a recognized system, not of ultimate, but of immediate redemption. No matter what quantity of notes may be put out, if there is no system of immediate redemption, the notes will depreciate. But if there is an effective system of immediate redemption in operation, then no matter what the amount issued, none of it can depreciate, and only that quantity which is needed by the convenience of the business public will remain outstanding. In this way it may be realized that the element of quantity is incidental to the more dominant factor of redemption.

The connection of the value of the standard money with the paper promises to pay in that standard coin is the one important consideration in determining the value of paper money. Redemption is the only sure means of ascertaining automatically what quantity of paper is needed by the public. Redemption determines both the quantity and the value of the paper.

In the case of irredeemable paper, however, it is often assumed that, in the absence of redemption, the value of the paper is determined directly by the amount outstanding as compared with the uses to which such money can be put. There is believed to be an imperative demand for money, as a medium of exchange, which must be satisfied in some way; and in default of anything better, irredeemable paper will be required, and a value will be given to it by this imperative demand. Then, only if issued in excess of this demand, will even irredeemable paper depreciate. This is the usual explanation of the fact that irredeemable paper, worthless in itself, bears any value at all.

But men of affairs are the last persons to exchange valuable goods for valueless paper. They will use any medium only from a business point of view. This paper is a promise to pay; the whole question centers in the probability of keeping that promise sooner or later.

A guess is made on that point, and it is recorded in the value given to the paper, just as in the case of quotations of stocks, not now paying dividends, but believed to have some chance of paying in the future. If the chances of redemption, consciously or unconsciously, become brighter, the value of the yet irredeemable paper rises, without any change whatever in the amount outstanding; or an event which postpones redemption will correspondingly depreciate its value. The history of our United States notes (greenbacks) from 1862 to 1879 furnishes abundant evidence on this point.

There certainly is an imperative demand for a medium of exchange where goods are bought and sold; but there is no monopoly of any one medium by which a monopoly value can be secured for it. As regards metallic money this could appear only in the absence of free coinage; and even with token-coinage it is a question if a value
can be given it by monopoly conditions. But as regards the usual media of exchange, there are so many kinds — government notes, bank-notes, bills of exchange, checks, and deposits — that a demand for a medium of exchange can be satisfied by many alternatives. A scarcity of one could not produce such a want that an unlimited monopoly value could be given to it. Especially is this true when we remember that deposit-currency is perfectly elastic, providing a medium of exchange as a consequence of legitimate transactions in goods whenever desired. Such a machinery, expanding according to the work to be done, makes it impossible that the so-called imperative demand for a medium of exchange should ever give to any one medium an exceptional, or monopoly value, due wholly to a limitation of its quantity.

With coins having a seigniorage, such as the American silver dollar or the French five-franc piece, their value is kept at par with gold only by some method of redemption, more or less direct; and the same general principle applies to the value of paper money, in which the seigniorage may be one hundred per cent.

In this necessarily brief review of the present monetary problems, as known to students of this branch of economics, I have attempted to present the issues in a form which could be understood by the layman as well as by the professional economist. In the nature of things, it has been impossible not to give a setting to these problems colored by my individual judgment. For that I have no apology to make; I assume that it was intended to allow the author to give such an exposition as, by his best lights, would present most clearly the leading points at issue among scholars of money at the present day.
SECTION E—PUBLIC FINANCE
RELATION OF THE SCIENCE OF FINANCE TO ALLIED SCIENCES

BY HENRY CARTER ADAMS

[Henry Carter Adams, Professor of Political Economy and Finance, University of Michigan, since 1887. b. Davenport, Iowa, 1851. Graduate of Iowa College, 1874; Ph.D. Johns Hopkins University, 1878; LL.D. Iowa College, 1898. Lecturer in Johns Hopkins University, 1880-82; in Cornell University and University of Michigan, 1880-87; Director of the Division of Transportation, Eleventh United States Census, 1887; Statistician, Interstate Commerce Commission, 1887. Member (President) of American Economic Society. Author of Outlines of Lectures on Political Economy; Public Debts; State in Relation to Industrial Action; The Science of Finance; and other works and memoirs on political economy and finance.]

The science of finance finds its place in the group of sciences to which it pertains through the relation it bears to political organization. This is true because of the nature of the task imposed upon the public financier. He it is who provides for the support of the state. Both public income and public expenditure are intrusted to him. He is the business representative of the body politic regarded as an active corporation. The particular form assumed at any time by the political organization is of slight importance so far as fundamental principles are concerned, but it is of great importance when one undertakes to give formal expression to those principles in a scientific treatise. The science of finance is before all else an analysis and classification of those principles of conduct that the financier finds it expedient to put in practice, from which it follows that as a science not only does it borrow character from the nature of political organization, but the scope of its investigation is limited by the practical necessity of making pecuniary provision for the support of that organization, and the relation which it bears to other social sciences is determined by the manner in which these other sciences affect the amount of money to be raised and the method by which it is raised and expended. I am aware that this is not the philosophical attitude in which the definition of the science of finance and its rela-
tion to allied sciences is usually approached, but it is certainly more concrete and has the merit of being easily understood. I shall at least ask your indulgence while developing along this line the subject assigned by the committee. And first let us consider the relation of the science of finance to political economy.

Relation to Political Economy

The most important fact of political organization for one who seeks to define and limit the science of finance is found in its essentially benevolent character. The state as an organization has no personality of interest. A consideration that centers in itself, or a policy that holds in view the power or prosperity of the state apart from the well-being of the individuals who compose it, is bereft of any sound basis of judgment or safe test of propriety; without such judgment and test it is, of course, impossible for a science to exist. The state feels no pleasure in riches nor ambition for wealth except so far as an ample income ministers to the well-being of the people. It is this fact, namely, the benevolent character of the political organization, that gives to the science of finance its peculiar point of view, and what is of more importance for the purpose of this analysis, it is this fact that draws a clear and enduring line between the science of finance and the science of political economy.

It may be well to dwell for a moment upon this distinction, for it carries with it many formal and theoretical conclusions as well as practical results.

The essential weakness of what is known as English political economy consisted in the assumption that material well-being can be attained only through the agency of a single form of association, that is to say, through voluntary association resting on contract. This assumption is nowhere formally expressed by the writers of the classical school for the reason that its expression would have been superfluous. The establishment of this thesis, and the enactment of laws to secure for the individual the exclusive right of operating within the industrial domain, was the sole purpose of all their analysis and argument. This is not the time to pass in review the line of reasoning which identifies private gain and public welfare, and which seeks to clothe with an ethical philosophy an industrial organization directed by the hope of personal gain. It is sufficient to note that while such a philosophy of industrial relations held sway there was no place for the science of finance as a distinct and independent branch of human knowledge. The course of events has proven the limitations of this philosophy. Its modification covers most of what is important in the development of economics since 1850, and perhaps the most significant of the formal results of
this development is found in the universal recognition by modern economists of a science that has to do with the material well-being of the state as well as a science that has to do with the material well-being of the individual, both of which adopt the same ultimate test of a well-organized society.

The relation which the science of finance bears to political economy, the two sciences that together fill the field of economics, may be more clearly suggested by passing in review the formal changes that have taken place in economics since the time of John Stuart Mill, the greatest as well as the latest expositor of the classical school of economy. Mill was too acute a thinker to ignore the existence of the state in a study of industrial organization, but the philosophy in which he was educated did not permit him to acknowledge the state as a positive factor in industrial organization. It is true that in his *Principles of Political Economy* he considers some of the problems that are now included in the science of finance, but this consideration is introduced in that part of the work which treats of justifiable interference with the normal workings of economic laws.

Manifestly no science of taxation was possible, to say nothing of the science of finance which embraces much beside taxation, as long as the influence of government in industry is regarded as a disturbance of the normal working of natural law; for it is essential to any science that it gives expression to laws that inhere in natural conditions and to principles that are enduring because they are vital to the existence of the subject investigated.

For the correction of this error of the older English economists we are indebted to the economists of Germany, and in Germany the change came rather as a result of the study of jurisprudence and of the application of the historic method of investigation to all kinds of social institutions, than as a formal criticism of individualism in industry. The German economist was educated to the conception of the state as an institution which existed by virtue of the forces that gave it a history. One result of this study of Roman institutions was the idea that the authority of the state rests upon necessity. The material with which he dealt when investigating the industrial life of his own people also obliged him to distinguish between the political and the industrial organization, each with its own principles and its own natural order. It may be true, as some have claimed, that German economists, when treating of the industrial and fiscal character of the state, fall into an error the same in kind as the error of the English classical economists, in that they subordinate the industrial to the political organization. With that, however, we are not concerned. We are endeavoring to thread our way between public finance and political economy as formal expressions of scientific conclusions, and certainly some help is obtained for this task
when we come to understand why German students were able to accomplish what English writers thought it not worth their while to undertake, namely, the development of an independent and self-consistent science of finance and its presentation as one of the many branches of knowledge that have to do with social institutions. The German writer started with a scientific conception of the state; the English writer, on the other hand, notwithstanding the marked success of his people with practical problems of government, had no such conception, nor, indeed, was it possible for him to gain such a conception without confessing the inadequacy of his philosophy of social relations. This he has not yet done in any formal and comprehensive manner, and this is doubtless the explanation of the fact that the English language yet waits for a satisfactory treatise upon the science of finance.

One generalization from the above may not be out of place. Society exists by virtue of two principles of organization which between them divide the field of social relations. These are the principles of voluntary and of coercive association. The former is motivated by the proximate interest of the individual and finds expression in contract and agreement; the latter is motivated by the welfare of the state and finds expression in fundamental law and legislative enactment. The science of political economy and the science of finance are dealing with the same material, but the former confines itself to the domain of voluntary association and the latter to the domain of coercive organization. It is doubtless this distinction that led Dr. Adolph Wagner of the University of Berlin—he to whom this paper was first assigned by your committee, and whose absence no one regrets more than myself—to begin his encyclopedic work upon finance with the observation that "the state is the sole depository of coercive power." This fact is the cornerstone of his work, and properly so, for upon it are based the rules by which we are to determine whether a proposition, an argument, or a problem belongs to public finance or to private economies.

Other marks there are that differentiate the field of public finance from the field occupied by political economy, but their mention at the present time is precluded by the necessity of considering the relation of the science of finance to other fields of investigation that touch the interests of society. The responsibility of condensing into a single paper so broad a topic, I am glad to say, rests with the committee in charge of this programme and not with myself. Among the sciences that demand consideration are political science, the science of jurisprudence, and the science of sociology. Each will receive brief consideration.
Relation to Political Science

It is sufficient for our present purpose to know that political science deals with the formal and administrative activities of political organization. It not unfrequently assumes the form of history, but its history is limited by the purpose of understanding administrative forms and of criticising administrative methods. The proximate motive to which judgment is submitted is the same for political science as for the science of finance. Both acknowledge public welfare rather than personal advantage as the appropriate test of all conclusions. It cannot, however, be claimed on this account that political science includes a consideration of financial problems or the search for financial principles. The distinction between the two fields of investigation is more than a matter of convenience; it touches the fundamental character of the two sciences.

There was a time when the science of finance might properly have been regarded as a branch of, or chapter in, political science, but this is no longer the case. With the recognition of voluntary association as a means of correlating social activities, the financier has been obliged to pay closer attention to the business conditions of private agencies than to the business management of public properties. This is true because he is now obliged to rely rather upon taxation as a source of revenue than upon the possession of public property productively employed. Nor can it be said that the modern tendency of giving to the state the exclusive proprietorship over certain profit-bearing securities tends to relieve the financier from the necessity of administering such industries with a view to the enduring prosperity of private industrial enterprise. Voluntary industrial association is an established institution and the administration of coercive association within the domain of industry, that is to say, the nationalization of public-service industries, must be guided, if not absolutely controlled, by what is required for the perpetuation and success of private enterprises. This means that Kameralwissenschaft, by some regarded as the forerunner of the science of finance, and which might, perhaps, have been properly claimed as a branch of the political science of its day, has passed, never to return. It disappeared with the rise of the institution of private property, and in its place there has appeared the independent and self-consistent science of finance.

At what point, then, do these two fields of investigation touch, and what is the nature of the influence that passes from the one to the other? I shall answer this question from the point of view of finance only.

There are two important lines of influence that political science exercises upon the science of finance, the one formal, the other funda-
mental in character; the one having to do with procedure, so far as financial legislation and administration are concerned, the other relating to the source from which the financier may hope successfully to obtain revenue.

The question is sometimes asked why the science of finance should include a consideration of budgetary legislation and a chapter upon financial administration, and it is indeed a difficult question to answer. A casual survey of the literature, however, makes it evident that these topics are included along with the topics of taxation, public industries, and public credit, by the financial writers of all nations. The explanation of this is, perhaps, found in the fact that the science of finance is primarily a practical science. It has assumed its modern form very largely as the result of the actual problems presented to the practical financier. The financier is the only public official who, by virtue of his office, is interested in holding legislative appropriations within reasonable bounds. The painful experience of Albert Gallatin, the greatest of American financiers, is ample proof of this assertion. It is natural, therefore, that the financier should emphasize, with all the power at his command, those rules and maxims of legislative procedure which tend to the control of expenditures and which demand from the legislative body due consideration of all appropriations. Whoever feels responsible for public expenditure must, from the very nature of the case, assume a responsibility for the form in which those expenditures are determined and for the manner in which grants of money are expended. Now the science of finance, as already stated, consists in an analysis and classification of those principles of conduct that the financier finds it expedient to put into practice. It is, therefore, inevitable that the publicist who undertakes to write a comprehensive treatise upon financial problems should devote considerable space to budgetary legislation and financial administration.

This brings us to the question with which we started, namely: What is the formal relation that exists between political science and the science of finance? So far as budgets are concerned, this relation is found in the fact that there is no legislative machinery of which the financier can avail himself to check excessive expenditures except such as is provided by political science. The form of government, the relative power of the legislative and executive branches of government, the nature and extent of public responsibility, and all other similar facts relative to political organization, are given factors for the science of finance; but for political science they are the material of investigation and the objects of explanation. Such, as it appears to me, is the formal relation between these two fields of investigation.

The vital relation to which reference has been made is much the
same in kind as the formal relation just explained. The financier is not at liberty to choose the sources from which public income is drawn in an arbitrary manner. He is obliged, as he hopes for success, to adjust fiscal machinery to existing industrial, social, and political conditions. The amount of income required by the government raises a question which pertains primarily, if not exclusively, to political science. It is true that many writers within the field of financial investigation enter upon the discussion of the legitimate sphere of government as bearing upon the question of reasonable expenditure, but in so doing they encroach upon the domain of political science. It is for political economy to discuss the problem of governmental function from the point of view of industry and for political science to consider it from the point of view of the state; the science of finance should content itself with a consideration of the proper adjustment of fiscal machinery, in view of established industrial and political conditions. It is thus evident that, from the point of view of public expenditures, political science has a very direct bearing upon the science of finance.

Relation to the Science of Jurisprudence

Closely allied to the science of finance is the science which deals with the fundamental rights and duties of persons and of property in organized society. The relation between these two branches of classified knowledge is clear because it is a relation that exists in the nature of the case. As political science outlines the financial programme, so far as the source of public revenue and the organization of public industry are concerned, so juridical science places a limit to the extent to which that programme may be carried when the question of the amount of income to be drawn from one source as compared with other sources is being discussed, and when the principles that control the administration of public industries are under consideration. There is not a state in the American Union that does not in its constitution give expression to the principle that taxes must be equal and universal. Such exemptions from the duty of paying taxes as exist are clearly expressed and rest upon considerations of general policy. Such specific taxes as are allowed also are explicitly named and find their justification in the quasi-public character of the property affected. In other countries than the United States, also, where written constitutions exist, the same legal conditions relative to the exercise of the taxing power may be observed, nor is the situation different in countries where fundamental law consists in established custom. The foundation of the science of finance is jurisprudence, a statement that is equally true of all the practical sciences that analyze human society in order to learn how it should
be administered, and the success of whose administration depends upon the accuracy of their analysis.

So important is this relation in the characterization of the science of finance that an illustration may not be out of place. The illustration I have chosen is pertinent to a current problem, for it shows how hesitation on the part of jurisprudence to recognize a manifest tendency of the time acts as a hindrance to the further development of the science of finance.

The philosophy of human relations may be expressed in the form of rights to which responsibilities are attached, or in the form of duties that carry with them certain privileges, and society at any time takes its color, if not its character, from the degree of emphasis which jurisprudence in practice places upon the one or the other of these two ways of expressing fundamental law. At present we find ourselves at a point in the world's history when the theory of personal rights is paramount, but when, also, the results that are observed to follow from the extreme application of this theory are forcing men to consider whether or not property and privilege should not be a little more heavily weighted with responsibility and duty. This observation is not submitted with a view to its discussion, but as preparatory to an illustration of the curb that is put upon the development of finance by the disinclination of jurisprudence to consider the consequent as well as the precedent.

The theory of property in harmony with the philosophy of personal rights and restricted governmental functions is well expressed by Thiers when he says [in effect] that a man owns what he makes, and that being its owner he can dispose of it as he sees fit. Upon this assumption respecting the nature of property which may, perhaps, be conceded when confined to primitive industry, the financier has built the general property tax, as it is known to the nineteenth century. This tax may be defined as a tax that accepts value as a homogeneous element in property and which imposes a uniform rate on property irrespective of the amount of property held. No matter what injustice may result from the general property tax, it is unfair to hold the financier responsible. The truth is that no other form of taxation is possible as long as the science of jurisprudence asserts the homogeneity of property and distinguishes public property from private property according as its formal title rests in the state or in the private person. The political economist, the financier, and the sociologist have long passed that point in the theoretical development of their respective sciences. Thus the economist acknowledges frankly that quantity, whether it be of goods to consume or of power in production, is measured by curves of intensity; the financier admits that value varies in its personal as well as its social significance according to the purpose and method of its
use; while the sociologist has finally succeeded in giving vitality to the conception of organic unity in social relations, from which he concludes that any line of conduct that rests solely upon personal or individual considerations will result disastrously for the individual as well as for the state. But jurisprudence, the oldest as well as the most dignified of all the sciences that deal with human relations, is still confined within the narrow limits of the purely personal conception of private property. Such at least is the impression one receives when he considers the present condition of the science of finance, for he observes many suggestions for the readjustment of fiscal conditions, and for the development of financial institutions, that must remain unrealized, if not, indeed, unexpressed, until jurisprudence again becomes a living humanistic science. The writings of financiers are replete with condemnations of the general property tax, but that scheme of imposts will continue to exert its baneful influence as long as jurisprudence maintains that equity between individuals demands equal and universal taxation, and this claim will be maintained as long as the institution of private property continues to be defined in the language now common in our courts of law.

This illustration pertains primarily and perhaps exclusively to conditions as they exist in the United States. We need not consider European conditions. What has been said is ample to make clear the relation that exists between the science of finance and the science of jurisprudence. It is a vital relation, not only as limiting and directing the development of fiscal institutions, but in theory also the relation is vital. Even the nomenclature of finance is largely supplied by jurisprudence.

*Relation to Sociology*

It is not, perhaps, necessary to make a formal statement of the relation of the science of finance to sociology, partly because this latter science is too new and as yet too indefinite to be in possession of a well-defined field of investigation and a compact body of classified information, and partly because the chief service of sociology to the enlargement of human knowledge has been already referred to, namely, the vitalization of the conception of social unity. In a sense the science of finance has always made use of this conception. Considered philosophically, such a conception is inseparable from financial analysis, while on its administrative side, the science of finance is obliged to assume the fundamental unity of human interests. When, however, the financier came to deal with individuals, partnerships, and corporations under the industrial and juridical conditions of the last half of the nineteenth century, he seems
to have lost this sense of social unity, and, as a consequence, much that he said was confused, and much that he did failed to prosper. There was need of a new statement of these fundamental, ethical relations, and it was reserved to that branch of investigation known as sociology to render this service. Without undertaking to trace the rise of the science of sociology we must, I think, admit that the science exists, and that the organic nature of society is its cornerstone. So far as fundamental ideas are concerned, the science of finance is in perfect sympathy with the aim, purpose, and the methods of the science of sociology. It will prove to be of great advantage to students of finance, as well as to practical financiers, that their point of view is thus emphasized by students and workers in yet another field. No difficulty arises with sociology, but when one comes to consider the point of view of many who assume the name of sociologists and who concern themselves with all kinds and sorts of social reforms rather than with the investigation of the social structure and the discovery of social principles, the attitude of the science of finance is decidedly hostile. This is true because the social reformer is determined to make use of fiscal machinery for all kinds and sorts of social ends. It is superfluous to say that such an attitude of mind fails to appreciate the relative values of social interests. It seems scarcely pertinent, however, to follow this suggestion further. The determination of the extent to which fiscal machinery should be directed for secondary ends rests on considerations that lie outside the scope of this paper. It is likely that the practical result of the relation which at present exists between sociology and the science of finance is that writers of finance will be forced to a clearer and more definite expression of those rules and principles according to which public expenditures are determined and by which the use of the financial organization of the state is limited.

The relation of the science of finance to history and to statistics might perhaps be considered under the title given to this paper, but an analysis of this relation would introduce a point of view quite foreign to that by which it has thus far been characterized. History and statistics are methods of investigation rather than domains of investigation. As methods they are common to all sciences, and for that reason do not call for special treatment.

Conclusion

The impression left by the foregoing analysis must be that the organization of our knowledge relative to human relations is neither arbitrary nor directed by the convenience of the investigator. Each of the sciences passed in review claims for itself a definite field of investigation and rests upon a definite and clearly defined purpose
which no writer is at liberty to disregard. It would be as great a mistake in the domain of research to lay undue stress upon any one class of considerations, or upon an analysis of society from any one point of view, as it would be in the domain of administration, to endeavor to solve all public questions and meet all public demands by a single agency. There are two thoughts to which this analysis seems to me to lead. The first is that social sciences cannot with safety be severed from their practical application; and the second is that, as liberty of action is found in the balance of power, so liberty of thought (I mean liberty, not license) is attained when each investigator in any of the sciences of pertain to human relations recognizes that what he says is true only as it bears harmonious relations to that which other investigators may say.
PENDING PROBLEMS IN PUBLIC FINANCE

BY EDWIN ROBERT ANDERSON SELIGMAN

[Edwin Robert Anderson Seligman, McVickar Professor of Political Economy, Columbia University, b. New York City, April 25, 1861. B.A. Columbia, 1879; Ph.D. ibid. 1884; LL.B. ibid. 1884; LL.D. ibid. 1904; Post-Graduate, Universities of Berlin, Heidelberg, Geneva, Paris, 1879-82. Lecturer in Political Economy, Columbia University, 1885-88; Professor of Political Economy and Finance, ibid. 1891-1904. Former President of the American Economic Association; American correspondent of British Royal Economic Society; corresponding member of the Paris Société d'Economie Politique, and of the Russian Imperial Academy of Science; President of Society for Ethical Culture. Author of many books and articles on railway, tariff, taxation, economies, and public law.]

In addressing myself to the task of presenting a survey of the practical problems of public finance I am naturally confronted by the difficulty that the actual problems assume a different aspect in various countries, an aspect largely colored by fluctuating political, economic, and social conditions. Notwithstanding this diversity, however, there can be discerned an underlying uniformity in the modern fiscal development of civilized nations, and it will be my endeavor to point out some of the different phases of this development.

To discuss all the modern problems of finance would be impossible within the limits of a single paper. Whole groups of subjects manifestly must be omitted. The topic of expenditure, for instance, may be passed over entirely, for the reason that expenditure is chiefly statesmanship; the fiscal principles here are principles of interpretation rather than of construction. Again, the subject of public credit has been so thoroughly elaborated that the scientific problems which await elucidation are comparatively few and unimportant. The budget, also, while susceptible of undoubted improvement, especially in the theory of municipal accounting, is so closely intertwined with administration that it would be hopeless to attempt in this place to disentangle it. Finally, in the great domain of public revenue, the subject of income from government industry is of predominant economic, rather than fiscal, importance, and may thus fitly be excluded from our short survey. There thus remains only the field of taxation, a field broad enough and sufficiently hedged about by difficulties to warrant a closer examination.

There are three considerations which distinguish the modern science of finance in the study of tax problems. These are, in order, the pursuit of justice, the emphasis put upon the modern economic phenomena, and the insistence upon the conformity with economic principle. Let us consider each of these in turn.
The first point is well summed up in the alleged conflict between
the fiscal and the social principles of finance. I say alleged conflict,
because in reality there is, from a deeper point of view, no such conflict
at all. It is sometimes asserted that the fiscal object of taxation is
simply to secure revenue, while the social object is to effect some
desirable change in social relations. This antithesis rests upon a
failure to observe that finance, like economics, is a social science,
and that even from the narrow political point of view of the relation
between the government and the citizen, the government cannot
derive any revenue—that is, cannot take any part of the social
income—without inevitably affecting social relations. The fact
that the government has in mind solely the fiscal aim of securing
revenue does not alter the social consequences of the particular
revenue system. In modern times social conditions are influenced
to a large extent by changes in wealth. Every tax necessarily
affects the wealth of individuals, and if we could in all cases trace
the final consequences of even a "purely fiscal" tax, all kinds of
unforeseen results, social as well as fiscal, or perhaps better, social
because fiscal, would disclose themselves. Economics and finance
deal not with intentions, but with results. The function of fiscal
science is to point out to the legislator the necessary results of his
actions.

The distinguishing mark of modern social science is that it en-
deavors to explain not only what is, but also what should be. All
practical action is thus brought to the crucible of justice, and all sys-
tems of taxation are put to the test of conformity with this principle,
irrespective of the intentions of the legislator. The great problem
which still remains, however, is to elucidate the exact nature of this
economic justice. Every one agrees that the essential ingredients of
this scheme are equality, or uniformity, and universality of taxation.
When, however, an attempt is made to interpret them and to outline
the practical form which these principles should take, there is con-
siderable disagreement, because the actual nature of the principles
has not been thoroughly analyzed. It betokens, however, a step
forward in all practical finance that a more or less conscious effort
is everywhere being made to bring the tax system into some manner
of conformity with the principle, however dim its outlines may be.

The second point, which differentiates modern taxation from that
of the past, is the emergence of the new economic substratum of
society. These new facts of fiscal importance may be summed up
under the following heads:
First, the increasing economic significance of the laboring class, with the corresponding growth in the importance of popular consumption. It is not meant by this to imply any depreciation of the role played by capital. On the contrary, it is a platitude to say that this is preeminently the capitalistic age. What it is intended to emphasize is that precisely because of the growth of modern economic well-being, the great mass of the community, represented by the laborers, are acquiring an increased consuming capacity and that their demand is the very tap-root of modern progress. The recognition of this fact has brought about vast changes in modern tax systems.

In the second place we have to note the coming to the fore of the corporation as the typical form of modern business enterprise. The evolution from the individual to the early partnership, from the partnership to the joint-stock company, from the joint-stock company to the corporation, and from the corporation to the trust is one of the most instructive lessons in institutional development. Finance has not to study it, but to accept it. Tax systems framed upon the assumptions of the older conditions, where corporate activity was the exception rather than the rule, are manifestly inadequate and belated.

The third change consists in the growing importance of the problem of franchises. This is not the same as the corporate problem, although often confused with it. A franchise may assume many forms. It may be a patent or copyright in the hands of an individual; it may be the privilege of inheriting property, whether that privilege be granted to a single person or a group; it may be a right accorded to corporations to utilize opportunities which originally belonged to the community, and which are for sufficient reasons given away. Such privileges and franchises have indeed existed from of old, but the complexity of modern society and the immense increase of public wealth have vastly enhanced both their extent and their significance. How to analyze them, how to measure them, and how to fit the result into the system of public revenue is becoming one of the most subtle and difficult problems, which will, no doubt, long perplex the trained student as well as the legislator.

The fourth change is the economic revolution affecting the distribution of governmental authority as between the general and the local government. The cause of this change, as is well known, is not only the forging to the front of the interests of peace rather than of war, but above all, the agglomeration of modern population into urban centers. With the segregation of wealth and property into great local masses, there is coming the need of administering to the wants of such complex aggregates. Accordingly, while the last century has shown a great increase of national expenditure and
income, there has been a far larger growth in local expenditures and incomes. And whereas formerly local taxation could be treated as a relatively unimportant appendage to national taxation, it now claims a distinct and separate place of its own.

Side by side, however, with this localization of wealth there has been a counter-movement in the direction of the nationalization of wealth, in the sense of nationalization in the opportunities of securing wealth. The economic activities of to-day have far outgrown the swaddling-clothes of former times. Business enterprise not only covers the whole country, but encircles the globe. Citizenship in the various commonwealths of a federal state, like Germany, Australia, Switzerland, or America, has become in great measure meaningless because its economic basis has been so effectively weakened. In all federal states, therefore, the problem of taxation is complicated by the difficulty of correctly apportioning the burdens among the constituent commonwealths. In every country, federal or not, a similar difficulty exists as between the local government and the state government. Problems of double taxation resting upon inter-state and interlocal complications arise to confront us at every turn.

The fifth and final point is that of modern social solidarity. In former times the close relation subsisting between the various branches of productive enterprise in the community was beclouded by the predominant social and political influence secured by some one factor. In an economy based upon slavery the only importance of a slave is that of a working-tool; in an economy based upon the predominance of the large landowner, the function of the moneyed and commercial interests is apt to be overlooked. In the early stages of the factory system, where the mass of the laborers are regarded from the point of view of production rather than from that of consumption, it is natural that the socialistic conception of class conflict should emerge. A more careful study, however, of modern industrial society has shown that while indeed there is no such thing as a natural harmony of interest, there is a distinct and inevitable influence, sometimes for good, sometimes for evil, exerted by each factor of production upon the other, and by each social class upon its neighbor. Laborers and capitalists, landowners and traders, factory owners and financiers, are pursuing their own interests, and in so doing they necessarily react upon the interests of the others.

The distinguishing mark of modern economic life in this respect is the realization of these close economic interrelations. The machinery of production has become so subtle and so complex that the disarrangement of any one part throws the whole out of gear: The overburdening of any one class may have the most unlooked-for consequences upon another. Taxation, as a weapon of retaliation, often proves to be a boomerang. An undue pressure on a
railroad may decrease facilities rather than increase revenue. The assessment of mortgages may hit the farmer rather than the money-lender. The taxation of the laborer may limit the market rather than increase the profits of the capitalist. Whether we desire it or not, modern economic conditions are engendering a situation where every one is in a larger sense his brother's keeper and where at all events it is unsafe to disregard the often hidden and recondite, but none the less active, influence exerted by each economic class upon the others.

All these changes in economic life have affected the practical system of taxation throughout the world. They have created new problems for the scientific student. The justification of finance, however, as a science, rests upon the correlation of fiscal problems with economic principle. We thus come to the third part of the discussion, the influence of economic analysis on fiscal facts.

III

The first result of economic analysis was to show the errors of a tax system resting exclusively or in great part upon consumption. The theory of consumption as the test of faculty or ability to pay was promulgated in the later middle ages by reformers who despaired of reaching the privileged class in any other way. Every man, it was said, must consume, and the more idle a man is, the more luxuries will he consume. A consumption tax thus seemed to be the sole method of securing universality of taxation. To these considerations there was added the thought on the part of some that so far as the working-classes were concerned, taxes on the necessities of life would be admirable, in that they would compel the laborers to work harder.

In opposition to this view, a more careful economic analysis disclosed the fact that a tax on consumption, regarded as a universal system, was unwise and unjust—unwise because a tax on mere luxuries would be most disappointing in the yield; unjust because a tax on necessities would fall with crushing severity on those classes which could least afford to bear the burden. Above all, it was recognized that by checking consumption we were thereby checking production, and that a general tax on consumption would possess most of the disadvantages of a tax on production and few of its advantages. Consumption taxes, therefore, as a sole or chief reliance of the government, have been fast disappearing. One of the first acts of the American Government in Cuba and the Philippines was to abolish the consumo tax; and it is well recognized that the continuance of the municipal octroi in France and Italy is deplored by all serious students.
The next triumph of economic theory was to disclose the dangers of a system of taxation resting on production and exchange. In one sense indeed every tax that is not a tax on consumption may be regarded as a tax on production, for all wealth consists either of producers' goods or of consumers' goods. It would, therefore, seem to be impossible to avoid the imposition of taxes on production. In the sense in which the term has usually been employed, however, a tax on production has denoted a tax imposed directly, and at a late stage, on the process of completing the finished article. Regarded in this light, such taxes manifestly impede the process of production and are to be deprecated because they affect the able and the shiftless producer alike. Taxes on production often put a premium on inefficiency and are apt to clog the wheel of industrial progress. The tendency of modern statesmanship has accordingly been away from reliance on such methods.

Perhaps the greatest change in fiscal theory during the nineteenth century has been, thirdly, to analyze and to explain the need of taxing shares in distribution rather than consumption or production. A vast amount of ingenuity has been expended upon the attempt to disclose the real meaning of faculty or ability to pay as measured by the property or the income of the individual. When we come to consider the facts, however, there are two striking considerations that confront us. The first is the pitifully small proportion that the income tax bears to the total revenue. In France, for instance, there is no income tax at all, and even in England and Germany the proceeds of the income tax are utterly insignificant when compared to the total revenue, state or local. The scientists may discuss and do discuss the problems of progression and differentiation of taxation, and all of the discussions rest on the assumption that the burdens upon the individual must be in a certain proportion to this income; yet we find as an actual fact that only a most beggarly proportion of the taxes in the civilized countries of to-day stand in any direct relation to the income of the taxpayer.

Not alone do the income taxes form so small a part of the whole, but furthermore, in most countries the so-called income taxes are really not income taxes at all in the sense of taxes on the personal income of the individual. In England, for example, it is well known that the so-called income tax is merely a collection of taxes on the thing which yields the income rather than on the person who receives it. That is, it is a collection of taxes on produce and not on income. The only exception is the famous schedule "D," which is notoriously the least successful of all. It may be claimed indeed that in Prussia the income tax is really what it purports to be, but all who have made a study of the system know that when similar methods were employed in England at the beginning of the nineteenth century,
they proved to be a dismal failure. The English administrators consider the principle of their tax far superior to that of the Prussian; and to the extent that this contention is justified, the superiority rests upon the fact that the tax is not one on personal income. Even in Prussia itself, the home of efficient bureaucracy, the tax is sometimes called the _Lug und Trug System_. The same repugnance to the personal element in the income tax which is found in England explains why it has been impossible to introduce the system into France, with its still lively recollection of the abuses of personal taxation under the _ancien régime_, and explains also why the income tax is beyond the range of practical politics in the United States.

We thus find the remarkable fact that while the science of finance has been elaborating its fundamental principles, it has succeeded in some respects, but has failed in others in imprinting its conclusions upon legislation. It has brought the actual taxes on consumption and production, to a great extent, into line with its conclusions, but it has spent most of its time during the nineteenth century in working out the principles of an income taxation, which is either not accepted in legislation, or which, if accepted, is realized to so small an extent and in such a half-hearted way as to be on the whole of little consequence.

The conclusion is hence forced upon us that the fiscal analysis has not proceeded sufficiently far. We are indeed grateful for what has been accomplished, but we have evidently not yet reached the goal. We need, therefore, a fourth and final economic principle to help us thread our way through the maze of actual fiscal facts.

This fourth principle is that of the social versus the individual basis of taxation. The conception which has dominated fiscal science until lately is the individual conception. Direct taxes have in theory been preferred to indirect taxes, because they were supposed to rest where they were imposed, and thus to help in securing justice as between individuals. The goal of all taxation was the attainment of a method in harmony with individual faculty. The first serious breach in this doctrine was made by the diffusion theory of taxation. The diffusion theory erred, indeed, in that it went too far, attempting to show that every tax is always and inevitably shifted off from the shoulders of the original payer. The value of the diffusion theory, however, consists in the fact that it put the problem in the right way, by presenting the societary aspects of taxation.

Nevertheless, the diffusion theory made the situation too simple. It has quite correctly been termed superficial and one-sided. To make it at all serviceable, it needs to be supplemented by another theory, which I have taken the liberty of calling the absorption theory of taxation. The absorption theory rests upon the doctrine of capitalization. That is to say, where the tax is not shifted from
the seller to the buyer and where the economic good has a rental value as well as a capital value, the tax which remains on the commodity and which, therefore, to that extent diminishes the income to be derived from it, i.e., its rental value, must also proportionally diminish its capital value. The selling or capital value of anything is always the capitalization of the actual and prospective rental or income value. As a consequence, through this familiar principle of capitalization the new purchaser of the commodity will buy it at the reduced price, and will thus virtually buy himself free from taxation. The tax is discounted, or absorbed, in the new and lower price.

A new tax on city real estate, for instance, will either be diffused by increasing the rents of the tenants, or it will be absorbed in the sense that when the property changes hands the new purchaser will pay a price reduced by the capitalization of the tax.

The combination of the diffusion and the absorption theories of taxation explains several things. It explains why the theoretic distinction between direct and indirect taxes based upon the alleged facts of incidence is erroneous. It explains why in spite of this theory the great mass of revenue to-day continues to be raised in the shape of indirect taxes. It explains why in countries like the United States the state and local taxes, although still in principle levied on persons, are slowly coming to be imposed on things rather than on persons; it explains why in France personal taxes have been impossible since the Revolution; it explains why in England, with the exception of a single schedule of a single tax, the whole system of taxation is based on things and not on persons; it explains why, even in Germany, where the personal and individual elements of the problem have been emphasized in theory, the personal share in actual taxation is so very insignificant; it explains, finally, why the legal decisions on taxation in the United States are coming to be in harmony with the truer economic doctrine of universality and equality of taxation. For this does not mean that everybody must be taxed alike, but only that all the members of a given class must be taxed alike, while there may be the greatest diversity between classes. An equal tax on all corporations does not imply that each individual stock- or bond-holder who may have bought after the tax was imposed pays equally, just as little as an equal tax upon real estate implies that each individual land- or house-owner everywhere and necessarily bears the burden of the tax.

In short, the individual point of view in taxation, which assumes that justice can be done by assessing each individual directly and in first instance, rests upon an analysis suited only to primitive economic conditions. The social point of view is that of modern economies, which seeks to trace the workings of general economic law and to
study the forces which affect the distribution of the social income. The individual point of view is not only inadequate in itself, but fails to explain the development of modern taxation. The social point of view, resting upon a combination of the absorption and diffusion theories, is alone in harmony with the facts of fiscal life. It is safe to predict that when once this is accepted, the most fruitful work of the future in the science of finance will consist in the elaboration in detail of the conditions and the limits of the absorption and diffusion theories.

IV

Regarded from this point of view, a new light is thrown on the practical problems throughout the world. The most important of these pressing problems are as follows: First, the reform of so-called indirect taxation. The social consequences of indirect taxation are now recognized to an ever-increasing extent. So far as taxes on consumption are concerned, it is fairly well appreciated that the commodity taxed must possess the mingled qualities of a necessity and a luxury; if it possess only the characteristics of a luxury the revenue will be insignificant; if it possess only the qualities of a necessity, it will fall with undue severity on the modest consumer; if, however, it combines both characteristics, namely, that of wide use and at the same time that of a certain degree of dispensability, the revenue is apt to be large and elastic and the burden not too severe. The number of consumable commodities that unite both these characteristics is small, and hence we find everywhere throughout the civilized world the tendency to restrict taxes on consumption to very few but very lucrative articles.

In the second place we find well-nigh everywhere the abandonment of the old general property tax regarded as a personal impost. In England and Germany it disappeared during the eighteenth century; in France it was abolished by the Revolution; in America, where the economic conditions brought it into life during the eighteenth century and the early part of the nineteenth, it is beginning to break up in those sections where the agricultural economy is giving way to a commercial and industrial economy.

Thirdly, we notice everywhere the replacing of the general property tax by taxes on the thing rather than on the person. In the local tax on real estate this process has been carried almost to completion. In Europe, for instance, the taxes levied on the land and on the house are assessed irrespective of the owner or of the relations that may be entered into between owner and tenant. Everywhere in Europe the tax is a tax on the produce of the land or house — that is, upon what it yields in the shape of rent or of profits equivalent to rent. In some countries, as in England, the tax is not paid by the owner at
all, but by the occupier. Even in the United States the tax is assessed on the parcel of real estate and not on the individual who owns it. Whether the owner or some one else pays the tax is immaterial, and if the tax is not paid, no regard is paid to the owner and the land itself is sold. We could get scarcely further away from the old idea of individual taxation. The tax is a tax on the thing and not on the person.

In the other so-called direct taxes, a similar development is to be observed. The business taxes in Europe are levied upon the business as such and not upon the owner of the business. The inheritance tax is levied upon the inheritance and not upon the individual who receives the inheritance. The general land tax in England—the last vestige of the medieval general property tax upon individuals—has actually become a redeemable rent charge. Even the income tax, which in theory is assuredly personal, has, as we have already stated, almost completely lost its individual character and has become in great measure, a tax upon the thing affording the income rather than upon the person receiving the income. In the United States the so-called personal tax, that is, the tax on individuals according to their personal property, is fast becoming a farce in all the older centers. It is especially noteworthy that in the one place where a recent intelligent effort has been made to reform the personal property tax—the city of Chicago—it is becoming in effect a tax upon the thing rather than upon the person, and is being limited to the business capital, assessed upon groups or classes of business men rather than upon the individuals composing the classes. The problem is really a deeper one than the German scientists have usually recognized. It is not so much a conflict between a tax upon produce and a tax upon income as it is a conflict between the social and the individual bases of taxation.

In the fourth place, we find everywhere an increasing importance attached to corporations as the source of revenue. In Europe this process is somewhat concealed because of the inclusion of the revenue from corporations in the income tax, just as in many of the younger American commonwealths the revenues figure in the general property tax. In the older states corporation taxes are put into a separate category, and in some states, as in New York, they are even called indirect taxes in contradistinction to the direct or property taxes. Everywhere, however, they form a problem of increasing importance and present an admirable example of what is meant by taxation from a social rather than from an individual point of view. Taxation of the corporation does not mean taxation of the security holder who has purchased the stock or bond from the original holder.

The main outlines of the development of the immediate future, throughout the world, are thus fairly clear. Each country will con-
tinue to have its particular problems based upon its special economic
and political needs. Everywhere there will continue to be an attempt
to realize the principle of fiscal justice, interpreting it, however, more
and more from the point of view of social interrelations rather than
from that of individual conditions. The statesmen and scientists
alike will find the great difficulty of the future to consist in attaining
this due proportion between the undoubted needs of the individual
and the consequences of his participation in the social group. For
we must not forget that while it is necessary to regard the ultimate
results of all fiscal policies, the immediate results are often of primary
practical importance. The conflict between immediate and ultimate
results is another way of putting the contrast between the individual
and social aspects of finance. To realize the truth contained in the
latter, without disregarding the legitimate importance of the former,
is the problem reserved for the coming decades.
SECTION F—INSURANCE
SECTION F—INSURANCE

(Hall 10, September 21, 3 p. m.)

CHAIRMAN: Dr. Emory McClintock, Actuary, Mutual Life Insurance Company, New York.

SPEAKERS: Mr. Frederick L. Hoffman, Statistician, Prudential Insurance Company, Newark, N. J.
Professor Balthasar H. Meyer, University of Wisconsin.

In opening the Section of Insurance the Chairman, Dr. Emory McClintock, of New York City, spoke as follows:

"Our old proverbs embody and represent the experience and wisdom of many generations. One of them warns us not to put all our eggs in one basket. When this idea is carried out logically, it really means that we should not put more eggs in one basket than we can afford to lose in case of a smash. Insurance is a development of civilization which was not known to those wise forefathers who invented these proverbs of ours, and insurance has made this particular proverb, excellent as it is, practically obsolete. The object and effect of insurance is to enable us to put as many eggs as we please in one basket. This is accomplished by an agreement or arrangement, by means of which, whenever one lot of eggs gets broken, the loss is distributed among many owners of other lots. By means of insurance you can safely invest your whole fortune in one ship, or in one building, or in one mortgage; you can devote all your land to a single crop which may be destroyed by hail in half an hour; you can send all your gold across the country in one conveyance; you can leave your whole property in a house unguarded, or in the charge of an employee unwatched; and you can, if need be, live upon and enjoy the use of the bulk of your earnings without anxiety, provided you apply the remainder in such a way as to protect your dependents in case of your death and to secure an income for your own old age.

"There are few corporations, and still fewer individuals, who have absolutely no occasion for insurance. Indeed, insurance is sometimes expedient even in cases where there is little or no logical reason for it. I confess I should be puzzled if Mr. Carnegie were to ask me why he should insure his life; but there are few business men who, like him, have wound up their affairs while living, and whose executors would, therefore, have no use for life insurance money instantly available upon their death. There are corporations which have their eggs in so many baskets as to enable them mathematically to carry their own risk partly or wholly, yet which carry insurance rather than incur reproach by going without it. There are great
states which insure their public buildings against fire, and of course they do it without real necessity; yet public opinion customarily upholds them in this course, the habit of insurance being so universal, and when the practice is questioned, the answer is ready that the annual payment of regular premiums works more smoothly than the making up of large fire losses at irregular intervals. Take, for instance, the recent burning of the state capitol of Wisconsin. The capitol building had been insured according to custom, but the legislature thought it best to save for the state the profits which the insurance stockholders were making, and ordered the discontinuance of the fire policies. Soon afterwards the capitol burned down, no doubt to the chagrin of the legislators and the wicked joy of the insurance men. Yet the legislature had mathematics on its side when it stopped the insurance, for the fire losses of a great state like Wisconsin, in case they are large enough to increase any one year's taxes unpleasantly, can be defrayed in annual installments by means of temporary loans, and still cost less in the long run than the payment of regular premiums. However logical its course was, public opinion condemned it. If, indeed, it is true that the legislature arranged for the accumulation of an unnecessary insurance fund by appropriating annual premiums to be invested at interest in the name of the state, its course in that respect was deficient in common sense.

"It is unnecessary, before those who are here present, to dwell on the economic benefits of insurance. As a mere matter of dollars and cents insurance is worth all that it costs to those who need it. Those who preside at the various congresses this week are expected to make very brief addresses in opening the proceedings, and I shall confine what I have to say to a single point. The dollar and cent value of insurance is by no means its whole value. Insurance relieves anxiety. It does away with many fears.

"That insurance relieves men of anxiety is well known; so well known, indeed, that we seldom think of it. It would be hardly correct to put it the other way, and to say that anxiety is in these days relieved by insurance, for there is in fact no such anxiety to relieve, since the universal habit of insurance acts beforehand by preventing the possibility of the fears and anxieties which would be severely felt if there were no insurance, fears and anxieties of which we can scarcely realize the magnitude.

"Marine insurance was known in early times, but was not always to be had, and even when available was not always taken, for the system was crude and expensive. In those days the owner of a number of vessels was much better off than the owner of one vessel, because his eggs were not all in one basket. The merchant adventurers who fitted out ships and supplied them with cargo were, of
course, prudent in their day, but the circumstances were such that they could not help making frequent and large losses, with correspondingly large gains when successful. They were enterprising speculators, and were never free from the anxiety which besets speculation. The gambler in stocks lives in an exciting and unnatural atmosphere of hopes and fears, but he can escape from it by closing his accounts. The merchant adventurer of old times lived constantly in such an atmosphere.

"Again, we may remind ourselves of the fear of fire which for many centuries oppressed the minds of all whose savings or inheritances consisted in houses or merchandise. In those old days cities like London were built of wood, small fires happened frequently, and conflagrations occurred at irregular intervals which were never many years apart. Householders covered their fires at night with the greatest care, and sprang from their beds whenever the cry of fire arose. The fire danger was always imminent, and always a matter of anxious fear.

"Those of us who are old enough can remember the days when the greatest necessity for saving oppressed the young man with a growing family during those very years when he needed most to live almost up to his small but increasing annual earnings. The more prudent such a young man was, and the more he cared for his wife and children, the more he felt the burdensome necessity of saving, and saving heavily, so as to leave at least a little for their support in case of his early death. Notwithstanding everything that he could do in the way of frugality, with his wife doing the housework and his children going barefoot, his savings before middle life were indeed small as compared with the needs which he was struggling to provide for in case of his death. Insurance has rid the world of the worst of those fears. Frugality is still necessary, but the burden of it no longer comes heaviest in a man's younger days, when his earnings are usually least and his necessary expenses usually greatest.

"By substantially banishing a whole class of fears insurance has prolonged men's lives and made men happier and more useful. It is one of those agencies of civilization which have in various respects tended to reduce the element of fear in human affairs. Just as we have almost ceased to think of the various kinds of fear from which insurance has relieved mankind, we find it hard to realize all those other fears which have dwindled as a result of civilization. Every kind of danger which has been reduced by modern progress was formerly a source of acute fear. Our early ancestors were in constant fear of wild beasts, of bad neighbors, and of open enemies, passing their days with arms in their hands and their nights with some one on the watch. They feared uprisings of their inferiors, and they feared the tyranny of their superiors. They feared pain,
which as a persistent thing has been almost banished by science. They feared the terrors of the law, human and divine, to an extent not customary with the present generation.

"This element of fear, affecting human society in old days as we can now hardly realize, has been of enormous value to the race, to look for a moment at the other side of the question. Without fear, there would have been no caution, no prudence, no leadership, no discipline, no laws, no social order, no patriotism; in short, no organization of mankind, if indeed mankind could exist at all without it. It would seem impossible to look back without recognizing fear as one of the most powerful forces which have affected the minds of men and the progress of the race. Punishment of unwise acts by natural law, punishment of criminal acts by the law of society, both have assisted progress to an extent which we can hardly exaggerate. Yet we sometimes hear the theory advanced that the fear of punishment cannot deter any one from crime, and that society has, therefore, no right to punish criminals.

"In speaking thus of the useful fears which have benefited mankind, I may have seemed to be getting away from the subject of insurance. It cannot, however, have been useless for us, during a few minutes, to recall the enormous effects which fears of all kinds have produced in the past upon the human mind, whether these fears have been useful or injurious. It is a happy thought for us that those fears which have been dissipated by insurance have all belonged to that noxious class which paralyze human energies and shorten human life."
LIFE INSURANCE AS A SCIENCE

BY FREDERICK L. HOFFMAN

[Frederick L. Hoffman, Statistician, Prudential Insurance Company of America. B. Varel, Grand Duchy of Oldenburg, Germany, May 2, 1863; Lecturer on Insurance, University of Wisconsin and Wharton School of Finance, University of Pennsylvania. Member of American Statistical Association; American Academy of Political and Social Science; National Geographic Association; International Congress of Tuberculosis, London, 1901; International Congress of Actuaries, New York, 1903, etc. Author of Race Traits and Tendencies of the American Negro, New York, 1896; History of the Prudential Insurance Company of America, Newark, New Jersey, 1900; Tornadoes and Windstorm Insurance, 3d Edition, Spectator Company, New York, 1901; also of a large number of papers and public addresses on insurance, statistics, mortality, social problems, etc. Contributor to the Encyclopaedia Americana, article, "Insurance Science and Economics."
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For the first time insurance is included in an authoritative classification of the sciences and properly so as a branch of the department of economics, which, broadly defined, is "the science of the relation between private property and public wealth." The honor of having been the first to assign a definite place to insurance in the science of economics appears to belong to Mr. Henry Dunning Macleod, whose conception of economics comprehends first, material things; second, personal qualities, both in the form of labor and credit; and third, annuities. Most of the works on political economy and social science are barren of references to the third department which, for want of a better term, Macleod defines as annuities, or "the right to receive a series of future payments." Such rights he terms "negative economic quantities," comprehending all mercantile and banking credits, checks, bills of exchange, terminable annuities, leaseholds, policies of insurance of different kinds, and many other valuable rights, amounting in value to thousands of millions of dollars, of which there is scarcely any notice in the text-books on economics." He very properly remarks that by introducing this class of incorporeal property, he has doubled the field of economics.

To establish the relation of the science of insurance to the other great divisions of accurate and systematized human knowledge is the purpose of this address, and the more definitely this relation is established, the more clearly we shall comprehend the true nature, possibilities, and results of insurance as a vast and indispensable social institution of to-day.

Insurance, reduced to its simplest term, means the application of the principle of association to the equalization of losses resulting from the inherent uncertainty in human affairs. This is the risk of
untimely death, of fire, shipwreck, burglary, windstorms, floods, and many other contingencies outside of the control of man. The uncertainty of human life is modified by social progress, in particular by the advances in medicine and related sciences, but there must always remain the risk of premature death, which insurance alone can equalize through the principle of association. In the classic language of the first Select Committee on Friendly Societies, in 1825, this means that "wherever there is a contingency, the cheapest way of providing against it is by uniting with others; so that each man may subject himself to a small deprivation in order that no man may be subjected to a great loss. He upon whom the contingency falls does not get his money back again, nor does he get for it any visible or tangible benefit, but he obtains security against ruin, and consequent peace of mind."

The theory of risk and insurance has been elaborated and set forth by Mr. Allan H. Willett in a most instructive dissertation published by Columbia University in 1901. He holds, and very properly so, that as a general rule uncertainty exercises a repellant influence in human life and that the existence of risk in an approximate static state causes an economic loss, while, on the other hand, the assumption of risk is a source of gain to society. From this point of view the business of insurance does not differ essentially from general commercial enterprises. Risk is assumed in mining and agriculture in much the same manner as risk is assumed in the business of insurance, but in life insurance, for illustration, the assumption of a risk and the equivalent premium payments required are determined by the theory of probability and the established laws of human mortality and observed experience. In general commercial enterprise the risk assumed is, as a rule, created, while in insurance the risk assumed is preexisting. This marks the broad division between gambling and insurance. Insurance is not "in the nature of a bet," for in insurance an effort is made to eliminate an existing risk by its assumption on the part of the many, while in gambling a non-existing risk is created with resulting uncertainty and needless loss to society.

The gain resulting to society is the reduction of the uncertainty for the group as a whole, or the substitution of certain loss for uncertain loss. By this process of diminishing the degree of uncertainty, the cost of the risk to society is very largely and considerably reduced, if not entirely eliminated, and thus it follows in the words of Willett that "the risk an insurance company carries is far less than the sum of the risks of the insured, and that as the size of the company increases, the disproportion becomes greater;" or, to use a definition of Roscher: "The aggregate danger is less than the sum of the individual dangers, for the risk of it is more certain, and uncer-
tainty itself is an element of danger." It is of the utmost importance that this point should be thoroughly realized by the statesman and the general public, so that from individual appreciation of insurance as a beneficent social institution may evolve the national appreciation of insurance as an institution making for the security of society and the well-being and effective protection of its members against the uncertainties of human life.

At the outset we must consider the relation of insurance to ethics, for unless the business of insurance has the sanction of private and public morality it would be to no purpose to discuss its social and economic importance. One of the earliest objections to life insurance was the view of its being a form of gambling and that to insure one's life was not quite in harmony with religious duty. Even to-day a religious sect called the Dunkards object to life insurance on the ground that it has not biblical sanction, or at least, is not specifically enjoined as a duty by biblical authority. Few things, however, it would seem, are more readily susceptible of proof than that insurance must of necessity be included in the moral forces which make for the betterment of mankind, and especially for the gradual amelioration of the condition of the poor. Life insurance in particular appeals to man's moral sentiments, making for the protection and support of others at the cost of self-sacrifice and self-denial. So well has this been realized that almost from its earliest history we hear of the duty of insurance, until to-day this sentiment has become subconscious and a part of the conscience of civilized man, practically the same under conditions of poverty as under conditions of material well-being.

Much injury has been done to the cause of insurance by the unfortunate and unwarranted assumption that there is a fundamental identity between insurance and gambling. There is this much truth in the assumption, that the fundamental laws of chance and probability have at times and with great skill been applied to efforts at systematic gambling, but speaking generally, without much success. Gambling, lotteries, and kindred attempts to gain by the losses of others are intrinsically immoral in their results, while life insurance is intrinsically moral as a method and means for the advancement of mankind. Insurance advances progress, while gambling retards it. This fact is well brought out by Dymond in his Essays on Morality, and is indorsed by Wayland in his Elements of Moral Science. Dymond remarks, with particular reference to the duty of insurance against fire, that "the merchant who conducts his business partly or wholly with borrowed capital is not honest if he endangers the loss of an amount of property which, if lost, would disable him from paying his debts." To guard against this possible loss he holds that it would be unjust under such circumstances not to insure, for the majority of
uninsured traders, if their houses and goods were burned, would be unable to pay their creditors. The injustice, in his opinion, consists in the taking of needless or unnecessary risk. Had life insurance in 1836, when this was written, been developed to the present extent of a universal provident institution, the Quaker moralist would, without question, have enjoined with even greater emphasis the duty of insurance protection for widows and orphans and self-protection against want in old age.

The second great division of science in the classification adopted by this Congress is mathematics, itself the foundation stone of insurance theory and development. Without mathematics life insurance could not be thought of as a science, nor could its progress long continue without the application of mathematical checks to intricate processes, the real nature of which can only be explained by mathematical researches. It has, in fact, been common usage for many years to speak of the work of the actuary as actuarial science, and the training of the actuary and the required quality of his judgment is very largely mathematical. It is a primary necessity if he is to possess the ability to master the more subtle problems of insurance theory. It is, however, with much justice that Young and other writers hold that “every problem in life insurance administration—the scope of investments, the ratio of expenditure, and the amount of new business which will probably produce a favorable or disadvantageous effect upon profits—possesses an actuarial aspect of definite significance, and demands the application of professional knowledge and experience.” But primarily the work of the actuary is concerned with the mathematical and fundamental nature of life insurance as determined by the laws of human mortality and expectancy, upon which the vast business rests with absolute certainty for the ultimate fulfillment of contract obligations. Some of the greatest names in mathematical science and astronomy are those of men who have rendered signal service to the cause of insurance. From Fermat and Pascal, Newton and Leibnitz, Bernoulli and De Moivre, Laplace and Quetelet, we have a long list of mathematical philosophers extending to the present time, whose work has made possible the development of the science of life contingencies. It is upon the science of mathematics that the science of insurance rests, and it is the actuary who applies abstract mathematical principles to the solution of practical problems of business administration. Hence the actuary must be more than a mathematician, and the tendency of the age is constantly to enlarge the function of this office by delegating the purely mathematical side of the work to qualified mathematicians. Much remains to be done in the field of insurance mathematics to develop the science and art of life contingencies to its highest possible degree of perfection. Great indeed as is the work
of Woolhouse, Goimpertz, and Makeham, each period presents problems of its own which demand the specialization of expert talent, never needed to such an increasing extent as in the administration of a great and successful life insurance company of to-day.

Biological science, or the science of living things, rests in a larger measure than is commonly assumed upon a statistical foundation. Much, if not most, of what life insurance companies require to know of biology for the medical selection of risks relates to normal and abnormal man from the viewpoint of anatomy and physiology. American anthropometry, while well advanced since the army statistics by Gould were published in 1869, as a memoir of the Sanitary Commission, leaves much to be attained before we shall be in a position to deal in a strictly scientific manner with the problems of normal stature, weight, chest-expansion, pulse-rate, and other elements too numerous to be here referred to. The tables published by the Association of Medical Directors and rearranged by Dr. O. H. Rogers, are an admirable indication of the treasures which the archives of life insurance companies yield when subjected to expert tabulation and critical analysis. For the needs of accurate chest diagnosis we require more determining data than are at present available, while the field of human thermometry as applied to life insurance selection has remained almost neglected since Seguin published his work in 1876.

The larger and more involved problems of human multiplication and normal increase, the marriage-rate, fecundity and sterility, consanguinity, race-mixture and intermarriage are all pending questions, toward the solution of which insurance contributes much information and expert talent. All that is summed up in the problems of heredity, both direct from parent to offspring and through collateral branches of the family, is of the utmost importance to life insurance companies, and in time the vast number of accurate family records in the possession of these companies as a part of the application for insurance, supplemented by the known results of subsequent mortality, with certified causes of death, must needs add much of value and interest to the future development and practical value of biological science. Toward the problem of reproductive selection, so admirably set forth by Karl Pearson, life insurance can contribute much valuable information, particularly on the point of the effect of the age of the parents at the time of the applicant's birth on the subsequent chances of death.

If the mathematical basis of life insurance is derived from the doctrine of probabilities, the medical basis is derived from pathology, or the doctrine of diseases, their causes, mode of occurrence, etc. The position of the medical director is of equal fundamental importance in the administration of a life insurance company to the position of the actuary, in that upon the medical selection of risks proposed for
insurance depends the subsequent mortality experience. With the immense development of life insurance in all countries has gone the advancement of insurance medicine, from the crude methods of the London Equitable Society in 1762, when a health certificate was required bearing the signatures of two witnesses, one of whom had to be a physician, to the uniform blank for medical examiners proposed a few years ago at the International Congress of Medical Directors at Brussels. To-day there are few general practitioners who have not, at one time or another, rendered services to life insurance companies in the examination of proposed risks, and the number of physicians regularly employed by these companies is constantly increasing.

Insurance medicine has a large and valuable literature of its own, to which constant additions are being made as the result of special researches and increasing experience in a vast field with rare opportunities for the development of expert skill. The highly scientific character of this work is due, in a large measure, to the close relation of cause and effect. Errors of judgment in physical diagnosis, or the omission to note symptoms of incipient diseases, are certain to be followed by an unfavorable mortality experience. While errors of judgment on the part of the general practitioner outside of hospitals, as a rule remain unknown, such errors on the part of the medical examiner are a matter of permanent record and comparatively easy discovery.

The neurology of the future will render even greater service to insurance science than has been possible in the past. Brain diseases, as a class, are unquestionably on the increase in this and other countries, and there is some trustworthy evidence to support the view that insanity is increasing at a perceptible rate from year to year. No extensive statistical investigation has been made into the alleged increase in insanity, which may be attributed to the complex nature of the problem, the difficulty of exact definition, the undefined borderland of sanity and insanity, and many other causes; most of all, however, to the confusing effect of the improvement in the recovery-rate and the decreasing death-rate in state and private institutions. Actuarial skill can be of great service to the medical profession in determining this question in much the same manner as in the investigation of the alleged increase in cancer by the eminent actuary, Mr. George King, and Dr. Arthur Newsholme.

Suicide may also properly be referred to here as one of the problems of neurology and one of great importance to life insurance companies. Suicide is on the increase in this and other countries. For illustration, in American cities the rate per 100,000 of population has changed from 12.0 during 1890 to 18.4 during 1903. Qualified investigations into the probable causes responsible for this much-to-be-
deplored increase in self-murder would be of considerable financial value to insurance companies. Of the total mortality of insured males, aged forty-five and over, 4.3 per cent are deaths from self-destruction, and the financial loss to insurance companies is of much larger proportions than is generally assumed to be the case.

The achievements of surgery are one of the glories of modern civilization and of both direct and indirect value to life insurance science in making for an improved longevity and a resulting increase in the chances of a healthy life following a successful surgical operation. Beginning with the two principal factors — the introduction of anesthetics and the introduction of antiseptics — we have a long list of important modern discoveries in surgical methods which have done much to reduce human mortality and do away with needless suffering.

Gynecology has an important relation to insurance science. Woman as an insurance risk is one of the perplexing problems in life insurance practice. In most of the mortality tables for the general population women at nearly all ages experience a lower death-rate than men, and the tendency would seem to be toward a still greater difference in the future and in favor of women under modern conditions of life. In contrast, insured women have often proved a loss to the companies on account of certain subtle elements of adverse selection not readily comprehended or allowed for in the medical examination of women as insurance risks. As a rule, the physical examination of women, for reasons of modesty and general custom, is made with less care than in the case of men; obscure pelvic diseases and diseases of the ovaries and uterus often exist, but they are quite concealed. Many other facts, brought out by extensive experience, tend to complicate the matter, and all companies exercise great caution in the acceptance of women as insurance risks.

During the past thirty years the chances of death have undergone a material modification, and in most civilized countries the general death-rate is much lower to-day than it was during the early seventies. This improvement in human longevity, however, affects almost entirely the younger ages of life and in particular children under ten years of age.

The modern treatment of the diseases of children, or the science of pediatrics, combined with improved measures of public hygiene, has resulted in a great saving of infant life, which goes far to balance the general decline in the birth-rate. Industrial insurance companies in particular are affected by this improvement, and the amounts now paid for a weekly premium of ten cents are twenty per cent greater than they were some twenty-eight years ago, when this method of family insurance was first introduced into the United States by Mr. John F. Dryden. There are, however, general benefits resulting to life
insurance practice as a whole from the gradual diminution of a needless waste of infant life. A healthier type of manhood and womanhood must develop from children free from the after-effects of acute infectious diseases so extremely prevalent in the past.

The improvement in the chances of death is primarily the result of our increasing knowledge of the causes and true nature of diseases, the conditions favoring a high or low death-rate, and the resulting means and methods for their effective control. For want of a better term we use the one of "sanitary science," which includes both preventive medicine and public health administration. As a first requirement it was necessary to perfect the official registration of deaths and the medical or legal certification of their causes. Vital statistics form the groundwork of sanitary science as it has been developed during the past fifty years in all civilized countries. Time is not available for more than a cursory glance at the history of disease prevalence, or in particular of epidemic diseases. The great work of Creighton on Epidemics in Great Britain is an illustration of what is required for other important countries before medical topography and geographical pathology will have reached the high position to which they are destined in due course of time.

The American life insurance companies of the first forty years of the nineteenth century are of little more than historic interest to us of the present time. The Pennsylvania Company for Insurances on Lives and Granting Annuities, the Massachusetts Hospital, the New York Life Insurance and Trust Company, the Baltimore Life Insurance Company, the Girard Life Insurance and Trust Company, the Ohio Life and Trust Company, and others, transacted but comparatively little business, so that by 1850 it is estimated only about thirty thousand life insurance policies were in force in the United States. In 1843, however, the organization of the Mutual Life marks the beginning of a distinct period of life insurance history which extends to 1875, when industrial insurance was introduced by the Prudential. A number of valuable contributions to the literature of public medicine and medical topography had been made, and it gradually became possible to obtain a more correct view of the value of human life in the different sections of the country. Bills of mortality were available for a number of important cities, and Seibert, in his Statistical Annals of the United States, published in 1808, could supplement his observations by two life-tables calculated for the use of the Pennsylvania Company for Insurances on Lives and Granting Annuities. One of these tables was derived from the records of the Episcopal Church, the other from the records of the Philadelphia Board of Health. The gradual development of public medicine is exhibited in the volumes of the Journal of Health, the first of which was issued in 1830. Ten years later a valuable report on the
Sickness and Mortality of the Army of the United States, embracing a period of twenty years, was published by governmental authority, and contains much interesting and suggestive information relative to the health of different sections. This valuable document was followed by the classical report of Shattuck on the Vital Statistics of Boston for the period 1810–1841. In 1842 Forry brought out his treatise on the Climate of the United States and its Endemic Influences, which still retains its position as a work of great value. In 1845 Shattuck supplemented his earlier work by a Census of the City of Boston, which forms the first comprehensive statistical account of the population of an American city. Dawson and De Saussure, in 1849, published their Census of Charleston, S. C., which includes observations on health and mortality. In the same year the first report of the Committee on Public Hygiene of the American Medical Association was published, which contains much valuable information on the medical topography of the most important sections of the North and South. The American edition of Tilt's Elements of Health was published in 1853 in Philadelphia, a book admirably arranged for the use of the period, with special reference to the requirements of life insurance companies. In 1854 Drake issued his medical topography on the Diseases of North America, with special reference to the diseases of the Interior Valley, unquestionably the greatest contribution to the medical topography of our country made up to that time. Following Drake, Blodgett, in 1857, issued his well-known treatise on the climate of the United States, which includes a valuable chapter on medical topography. The scientific interest of American life insurance companies in the subject of human mortality is made evident by the publication, in 1857, of a Report on Vital Statistics, by James Wynn, M.D., to the Mutual Life Insurance Company, but the expenses for which were shared by seventeen other companies, including all of the more important and representative institutions of the period.

The office practice of the early American life insurance companies during the fifties was, however, in a large measure determined by very fragmentary data. Most of the observations and conclusions of writers of the period on medical topography were derived from extensive travels, carried on under great difficulties and at considerable personal exposure to the ill-health-producing conditions described. The general apprehension was not so much as to the probable unfavorable experience in the country at large as in the Southern and Far Western sections. The general apprehension as to the high death-rate in the South was amply supported by the published mortality statistics of New Orleans, Mobile, and Savannah, and many able articles in the Southern medical publications. Dunglison, in his treatise on Human Health, one of the first works on hygiene pub-
lished in this country, connects the science of public medicine with the science of insurance by a chapter on "Atmosphere and Locality." An Englishman by birth, he states that when he was about to leave Great Britain to occupy a situation for which he had been selected in the University of Virginia, a life insurance company of which he was a member declined to continue the insurance unless the premium was doubled. Dunglison states that this requirement compelled him to sacrifice or lapse his policy. Many of the assumptions with regard to health in Southern latitudes were, however, largely exaggerated. Dunglison's treatise did much to correct erroneous views, though on the whole a regard for truth compelled the author to admit the extensive prevalence of health-destructive conditions which it required time and an infinite amount of human labor to change for the better. Even at this early period, however, it could be said with much truth that within the last century the value of life had increased progressively and was rapidly improving, but as long as the primitive conditions of pioneer life obtained it was out of the question for life insurance companies to develop their business on a large scale, especially in the Southern and Western States. Speaking generally, the slow growth of American life insurance during the first half-century was, in a large measure, due to the high mortality, the frequency of epidemic diseases, and the fragmentary nature of the vital statistics of the period.

The selection of risks for insurance, while primarily medical, takes also into careful consideration certain facts, most of which may be included under the general term "environment." These are, locality of residence, housing, occupation, habits, and war, all of which are more or less comprehended in the department of preventive medicine and public and personal hygiene.

The immense development of modern life insurance, approaching that of a universal provident institution, is primarily the result of the insurance education of the public through the solicitor or life insurance agent. Psychology alone explains the mental processes by which so abstract an idea as the theory of risk and insurance is reduced to "insurance consciousness" and made operative on conduct. It is not necessary, in fact not desirable, because tending to confusion of thought, that the abstract idea or even the business methods of insurance should be comprehended by the applicant for insurance protection, any more than we require to know the chemical analysis of food-stuffs and the processes of their manufacture to enjoy and digest our daily meal. What is required is education in the simple elements of insurance protection, emphasized by intelligent suggestion and an effective appeal to the emotions. What the prospective policy-holder requires to know is the annual expense of risk transference, the amount of insurance provided in the event
of certain contingencies, and the special contract provisions of the policy which form the legal basis of the relation of the insured to the company.

The principles of risk and insurance are of too abstract a nature to be comprehended by the average mind, even after a considerable amount of intelligent explanation. The elements of insurance practice and results, however, are readily within the mental grasp of all but a small proportion of the public, and while in consequence of the enormous development of the business there exists a vague general consciousness of the insurance idea, it is but imperfectly understood and not operative on conduct. We are taught by psychology that "an object must be seen many times before it is rightly seen," and the abstract idea of insurance does not become concrete and operative on conduct until it has been emphasized and reëmphasized by the insurance instructor, who is called the agent or solicitor. The immense success of industrial insurance, with now more than forty million policy-holders in the world, is due largely to the simplicity of the idea itself — so much to be paid each week — so much receivable in the event of death — which is readily within the mental grasp of all the people. In the more complex form of ordinary life insurance, especially when combined with investment, as in the case of endowments, the process of insurance education is much more difficult and results are secured more slowly. What is true of the progress of life at large is equally true of the progress of insurance, that "the adjustment of inner tendencies to outer persistencies must begin with the simple and advance to the complex, seeing that both within and without complex relations, being made up of simple ones, cannot be established before simple ones have been established."

Abnormal psychology has already been briefly referred to under neurology. The psychology of suggestion in its special relation to the occurrence of mental epidemics is of considerable interest to life insurance companies. The present-day frequency of self-destruction and the unquestionable effect of suggestion in causing small epidemics of suicide of a local character is a source of considerable anxiety to the management of conservative insurance companies. What is summed up in a dissertation on The Wonders of Human Folly explains the need from time to time to recur to the experience of the past for an explanation of the experiences and occurrences of the present. Mackay's Memoirs of Popular Delusions, for illustration, throw much light upon recent experiences, and it has been said with much truth that while "time and progress have changed the manifestation, the spirit of ancient folly lingers still. . . . From time to time the infatuation to acquire wealth speedily by an illegitimate shifting of the cards rather than by safe and equitable methods in the employment of capital and labor, seizes the
people; and thus probably it will ever be until those who possess property shall be acquainted with the principles and laws of trade and shall at the same time be desirous to restore to the commercial character generally an inviolate and inflexible spirit of single-minded honesty."

In the selection of risks for insurance it is necessary to take into consideration certain broad principles of anthropology, in particular the primary distinction of race, or the varieties of mankind. Even the most cursory inquiry reveals important differences between the longevity of different races and peoples which no conservative insurance company can prudently ignore. "The physical peculiarities and geographical distribution of the human family," wrote Pickering, "form one of the most interesting problems in history;" and in the words of Darwin, "There is no doubt that the various races, when carefully compared and measured, differ much from each other." Unfortunately, most of the earlier anthropologists took more interest in speculations as to the unity or plurality of the human species than in determining types of mankind by careful and extensive measurements and observations of physical, psychological, and pathological characteristics. Quetelet, to whom insurance owes much light on the theory of probability, was also the author of valuable works on normal man and anthropometry, which have done much to suggest the more recent investigations. The methods of Quetelet, as to both measurement and description, were followed to advantage in the more elaborate works of Beddoe, Roberts, Gould, Baxter, and many others. We are nearer to the truth to-day than we have been, but yet far from having the required data for a practical anthropology or science of man applicable to the solution of pending problems of insurance.

Every advance in geography and the more accurate mapping of the surface of the earth contributes to the science of insurance. Medical topography and geographical pathology depend primarily upon accurate topographic surveys, and the immense advances which have been made in this direction during the past twenty years have been of great value to insurance science. The geographical distribution of disease is receiving more and more the intelligent consideration of the geographers of to-day. As an admirable illustration of what in time may develop into a distinct science, I may mention Haviland's work on the Geographical Distribution of Disease in Great Britain. Even the very early American geographers recognized the relation of physiographic and climatic conditions to health and mortality, and Guthrie, for example, in his geography published in 1795, refers to the subject at some length. Darby, following Guthrie, contributed valuable observations in his various writings, in particular his View of the United States, published in 1828, and his Geo-
graphical Description of Louisiana, published in 1816. The ultimate tendencies of geographical science in this particular direction are best illustrated in the Appendix of Maps to the Report by Sir H. H. Johnston, as Special Commissioner on the Protectorate of Uganda. These maps illustrate with exceptional clearness the average altitude and the salubrity of each district, and it is not going too far to say that we have really more accurate information regarding this distant section of the globe than we have for many sections of our own country. The importance to insurance companies of similar investigations into our own Southern States, and in particular into our new possessions in tropical countries, cannot be overestimated. The works of Sir Henry Johnston illustrate the methods to be followed and the practical results to be attained.

It is hardly practicable to separate a discussion of geology from the preceding discussion of geography in its relation to insurance science, since every geographical survey contributes to the development of the science of physiography by the mapping of surface geology and general topography. Areal geology often discloses important factors of soil composition, etc., which have a distinct and well-understood relation to health and mortality; as, for illustration, in the clay formations which underlie the Gulf coast of southeastern Texas, and which, in a large measure, are responsible for some perplexing sanitary problems at Houston and Beaumont. The comparatively recent development of scientific soil surveys may here be referred to, for many of the reports which have been published emphasize important points in medical topography. Of special interest, for illustration, are the reports for portions of the Yazoo Delta and the Gulf parishes of Louisiana. In addition, these reports often contain a careful analysis of the elements of climate and other matters of interest and value to life insurance companies.

It is, however, in the field of economic geology and the mineral industries and mining that life insurance companies have, perhaps, the most important interest. The immense development of the mineral resources of the earth give employment to a vast army of men whose occupations are almost without exception of a dangerous or unhealthful nature. Mining accidents are still of great frequency, and the present-day tendency does not appear to be toward a substantial reduction in the rate. The problem of miners' phthisis is attracting much attention, especially in Utah and South Africa, where exceptional conditions present unusual difficulties. The geological formation of coal areas determines in part the accident frequency from falls of roofs and gas explosions. The mineral composition of rocks has a direct relation to the frequency of industrial poisoning in the milling and reduction of copper and other metaliferous ores, while the accident liability of quarrymen depends primarily upon the geologic formation of the strata to be removed.
Meteorology I assume to include both climate and weather service. The field is immense, for, as has been observed by Montesquieu, "The empire of climate is the most powerful of all empires," and the progress made by meteorology has been a material gain to life insurance science. The normal climate of any given locality is a factor of great importance in determining health and longevity. The elements of temperature, barometric pressures, humidity, rainfall, prevailing winds, etc., are of considerable determining value, but as yet we have not the required standards by which accurately to measure the effects of these elements on human health under the varying conditions met with in different portions of the globe. We still speak of the "deadly climate" of the west coast of Africa or of French Guiana, with not much better knowledge of the facts than when these expressions came into use, under entirely different conditions of attempted settlement or colonization. While the climate and weather of India are the same to-day as at the time of the great East India Company, the mortality of European troops has been reduced from seventy-six to sixteen per thousand. While it may be true, as Ripley holds, that "the English of to-day are no nearer to true acclimatization in India than they were in 1840," there can be no doubt but that a more perfect knowledge of the elements of tropical climates and the resulting tropical hygiene have done much toward the ultimate solution of the white man's conquest of the tropics.

The applied sciences I can only discuss in the most general way. All improvements in processes and methods of manufacture, as a rule, benefit the workmen by incidental improvements in the sanitary condition of factories and workshops. The increasing proportion of risks written by life insurance companies on the lives of persons employed in manufacturing industries points to the importance of all improvements in industrial hygiene and their resulting relation to the diseases of occupations. The improvements in the processes of manufacture imply, as a general rule, a decreasing amount of waste in the form of dust, vapor, or gases, many of which are of a health-injurious character. The utilization of waste products, on the other hand, has led to new industries, many of which are injurious to health and life. The consolidation of industries in the form of industrial combinations or trusts, primarily for the purpose of effecting economies, has done much to improve sanitary conditions by providing larger factories with more light and better ventilation, so that it is safe to say that since the introduction of the factory system the average workman has never been employed under healthier conditions than at the present time. To insurance companies the problems involved in industrial technology are, however, extremely complex and a never-ending source of anxiety. For illustration,
the relatively new process of pulp manufacture is carried on by three distinct methods, the mechanical, the soda, and the sulphide, each of which represents different conditions affecting health and longevity, which require to be taken into account in the acceptance of this class of risks. In electrical engineering the truly astonishing progress which has been made during the past few years has resulted in entirely new conditions, which no prudent company can safely ignore. As an illustration I may mention the introduction of electricity into mines which has recently been made the subject of a special official inquiry in England and by state mine inspectors in this country. The enormous development of electrical industries in general has resulted in entirely new conditions, which cannot be considered in the light of past experience. Mining engineering, perhaps most of all, requires serious consideration, and among other new factors affecting health and longevity I may mention the extensive introduction of coal-cutting machinery into the bituminous coal-mines of our Western States. In ore-milling and smelting new processes are constantly supplanting old methods, and here again present-day practices cannot be determined by past experience. As an illustration of the benefits to health arising from the utilization of waste products I may mention the modern appliances in smelters by which many of the health-injurious vapors and gases are converted into profitable by-products.

The general conception of insurance law limits this term to the settlement of legal difficulties arising from the contractual relations of the company and the policy-holder. Most of the works which essay upon the subject, from Park and Marshall to the latest digest and dissertation, treat of insurance law in this narrow and restricted sense. We have not as yet a comprehensive work which includes the relation of the companies to the state and public policy in addition to the relations at law of the company to its policy-holders and agents. The brief consideration which I am allowed to give to this subject precludes proper treatment of so complex a relation as that of insurance to legal science, and at best I can only indicate the more important results of law, jurisprudence, and social regulation affecting insurance interests.

Under modern conditions the conduct of a life insurance business is beyond the reach of individual or private enterprise. It is to-day an accepted principle of government that "life insurance is a business of so sacred a character, and involving issues so important to the national welfare of each country, that it must be the subject of special legislation in order to safeguard the interests of the insured. . . . It is their savings in the shape of premiums and their accumulations which constitute almost the entire resources of every life insurance company, and it cannot be a subject of unconcern to any
government that its citizens should have made provision for the future to so large an extent, and that the security for the eventual payment of the sums assured, as they mature, should be guaranteed by the solvency and sound investments of the companies that underwrite the contracts.” Insurance companies derive their existence from charters specially granted, but in conformity to the general corporation laws of the different states. Corporations are by law endowed with perpetual succession, or, in other words, artificial persons having no necessary or natural term of life, and they may be regarded as an extension of individual capacity. The earlier charters of American insurance companies illustrate the crude ideas regarding the business of life insurance prevailing at a time when the term “insurance,” in the words of Park, was practically equivalent to “marine insurance.” Almost from the beginning of the business of insurance the importance and necessity of some form of state supervision was recognized, and we meet with the inception of the present form of state supervision in a Massachusetts statute of 1827, which required the companies to report annually as to the condition of their business. The growth of the business and the extension of operations to other states developed the present system of state supervision, which had its origin in a law passed by the legislature of Massachusetts, establishing a separate department for the supervision of insurance interests, in 1855. To-day such departments exist in every state and territory, with more or less comprehensive powers for supervision and control. The resulting problems are of most serious concern to the companies.

The insurance laws of the different states are often widely at variance with one another. The remark of Mr. Griggs, ex-Attorney General of the United States, that while “the interpretation of law is a science, law-making is not,” applies with special force to the insurance legislation of the last thirty years. When, in 1876, Mr. C. C. Hine issued his volume on Insurance Statutes, within six years of the issue of a similar work by Wolford, he could truthfully say that “the insurance laws of five years ago are almost obsolete, and in their stead new statutes have come upon the books of almost every state and territory.” The process of grinding out laws has gone on with undiminished energy, and the opinion of a learned judge that “no attorney is bound to know all the laws” may give some comfort to the law officers of insurance companies confronted by the problem of digesting the large number of special statutes passed annually or biennially by forty-nine different states and territories for the ostensible purpose of regulating the insurance business. In marked contrast, we may reflect upon the English legislation affecting insurance interests, which since 1870 has practically remained the same. Mr. Griggs, in his address on “Law-Making,” properly
Remarks that "this history of the English law reveals change and growth, but growth by slow and deliberate processes." It would be an immense step in advance towards the perfection of American insurance law if a similar habit of mind prevailed in this country.

The taxation of life insurance companies may be referred to here as an important problem of insurance company administration. If it is the duty of the state to encourage thrift or efforts on the part of the people toward economic independence and a secure position above the need of state aid, it is certainly a paradox to meet with an increasing tendency to tax life insurance policy-holders out of a relatively large share of their annual savings.

In many other countries than the United States insurance is supervised and regulated by some central authority; — in England by the Board of Trade, in France by the Minister of Commerce, etc. There must come a time when the burden, expense, and annoyances incident to supervision by some forty-nine different insurance commissioners of states and territories will become intolerable and some form of federal supervision must be the result.

An increasing number of life and fire insurance companies are extending their fields of business operations to foreign countries, and in a few cases companies transact business in most of the civilized countries of the earth. Without wishing to underrate the ratio of progress made by life insurance companies of other countries, it is generally conceded that the American life insurance companies abroad are more aggressive, and as a rule attain more rapidly to a commanding position than the home companies. As a result, there is, at first, much local antagonism to foreign insurance companies, to which, partly, at least, a large share of the burdensome regulations which have been imposed in certain countries upon American insurance companies must be attributed. On the other hand, there can be no doubt but that during the past quarter of a century the tendency has been politically and socially to draw states together by the strong attraction of "common political sentiments, common aspirations, and common interests of a permanent kind." Insurance may rightfully claim to be one of the forces making for international harmony and good will.

All insurance is in the nature of a contract between the company and the insured, who is usually referred to as a policy-holder. The policy is the instrument which defines the respective rights and duties of the contracting parties, who are assumed to be aware of the fact at law that "a contract is a deliberate engagement between competent parties, upon a legal consideration, to do, or to abstain from doing, some act." Out of the contractual relations and its unavoidable disputes, misunderstandings, etc., has resulted a mass
of litigation and court decisions usually comprehended under the term "insurance law." A retrospect over the years since the "Court of Insurance" was established by Queen Elizabeth, and the sixty-odd cases tried during its entire history, to the present time would carry us far beyond our present purpose. Suffice it to say that the development of insurance law has gone forward with the growth of the business until this term now comprehends a variety of subjects unknown and unthought of at the time when Park and Marshall first published their works, about a century ago. Considering the enormous extent and highly complex character of the insurance business, it is a matter of surprise to find that, after all, the amount of litigation should have been so small.

The tendency has been constantly towards a contract free from restrictions likely to lead to litigation, until the insurance policy of to-day is practically a promise to pay a certain sum on the occurrence of a given event, except in the case of fraud. There has always been an unfortunate disposition on the part of the courts to construe a policy of insurance more upon the grounds of sentiment than upon the common law of contract and fraud. Mr. Davies, the eminent solicitor of the Mutual Life, has discoursed upon this matter in so able and interesting a manner that I take the liberty of quoting to some extent from his lectures on the law of life insurance:

"A suit upon a life policy is an especially difficult one to defend for several reasons. In the first place, there exists in this country a very general prejudice against corporations, which inclines a jury to view with favor any claim by an individual against one of them. Then the plaintiff is usually a widow or some other dependent of the deceased, and the contrast is strongly drawn by counsel arguendo between her poverty and the heaped-up millions of the defendant, the corresponding liabilities of the latter being carefully kept in the background. . . . And to these considerations must be added another of a much higher character, that natural human instinct which leads us all to speak well, and to endeavor to think well, of the dead. The fall of the curtain upon a human life covers at the same time his faults and vices, and adds enormously to the difficulty of establishing to the satisfaction of a jury facts which are notorious, but which blacken his memory. The very neighbors, who during a man's life denounce him as a worthless sot, will, when called as witnesses in a suit upon a policy on his life, reluctantly admit that he perhaps on rare occasions drank to excess, but not to an extent to impair his usefulness or affect his health. So when a suicide takes place the associates of the deceased at once begin to think that they had previously noticed symptoms of aberration of mind, quite sufficient to justify a strong suspicion of his sanity, although no such idea had ever occurred to them before the catastrophe."
The life insurance agent is, as a rule, an appointed employee of the company and under contract to perform certain services in return for a stipulated compensation. The employment of agents is so universal that but few policies are obtained otherwise than through these representatives of the company. Out of this condition some very important legal questions and problems have arisen, aside from the occasional difficulties and misunderstandings between the company and its employees. The agent, as a rule, is the only personal representative known to the insured, and the agent's position is thus one of very considerable responsibility and importance. The company naturally aims at a narrow limitation of the agent's powers as to the issue or modification of the contract between the company and the insured, and most of the policies issued contain a clause to the effect that "no condition, provision, or privilege of this policy can be waived or modified in any case, except by an indorsement signed by an executive officer of the company."

Insurance in its relation to public policy presents some very interesting problems of law and jurisprudence. A policy of insurance is issued upon the faith of the statements made in the application for insurance, and the applicant is required to warrant the truth of his statements. The effect of warranty is to insure the accuracy of the state of affairs alleged in it; and consequently the greatest care in making a declaration of them is requisite. There has been a considerable amount of litigation and resulting decisions of the courts on the question of concealment and misrepresentation, but as a rule the decisions have been in favor of the insured. It should be manifest that it is contrary to public policy to encourage fraud, concealment, and misrepresentation, by means of which insurance is obtained under conditions which would have precluded the issue of the policy had the facts been truthfully stated to the company. A common form of misrepresentation is as to the present state of health of the insured, where even the most advanced methods of medical diagnosis cannot establish with entire accuracy the facts at the time the application for insurance is made. Losses are thus sustained by the companies to the injury and disadvantage of the honest policyholder, and by this much the true progress of the business is retarded. A strict construction of the statute of frauds is, therefore, one of the most certain means of advancing life insurance interests.

The economic theory of risk and insurance has only received the incidental consideration of writers on economics and social problems, with the notable exceptions of Willett and Macleod. This is unfortunate, for insurance, one way or another, reacts upon the whole economic life of the people, and there is no hope of a rational political economy until all the elements of social and economic progress are taken into account. The economic value and utility of insurance
are important and proper subjects of economic inquiry, and the immense progress of the business demands the impartial and critical consideration of qualified experts in economic and social science. The view of Macleod that "annuities or rights to receive a series of future payments" are negative economic quantities, under which term he comprehends all instruments of credit, shares in commercial companies, policies of insurance of different kinds, etc., does not seem to have been accepted by other writers on economic theory.

The earlier writers on the investments of the working-class gave considerable attention to life insurance and its relation to the general welfare. Gregg, among others, wrote in 1851, or three years before the practical beginnings of industrial insurance in England, that "life insurance policies offer one of the most important channels of investment for the savings of all classes;" and he adds, "Of all modes of employing small savings, there is none which we should so earnestly desire to become general among workingmen; none which appears to us so deserving of the fostering care of the legislature; none which, if universal and habitual, would do so much to diminish those cases of utter and helpless destitution which press so heavily on the resources of the community in the shape of poor-rates, and which are the fruitful parents of a long progeny of calamity and crime."

The progress of insurance since this was written challenges the admiration of the world. In the United Kingdom the industrial companies alone, excluding collecting and other friendly societies, have now some twenty-two million policies in force on the lives of workingmen and their families. The question raised by Professor Falkner as to whether "the growth of insurance in recent years has been mainly among the well-to-do," can be emphatically answered in the negative. In fact life insurance, almost from its inception, has met with greater appreciation among those who, for want of a better term, we speak of as the working-class. This aspect of the business is one of economic history rather than theory, but here again we find that, with few exceptions, writers on the progress of economic and social institutions have made little of a fact which is none the less of profound economic importance and significance.

The study of insurance history and the history of associations, gilds, and friendly societies, is a most instructive chapter in economics. Far back into ancient history careful students of commerce and navigation have traced at least a semblance of our present form of marine insurance. Anderson's History of Commerce contains some very suggestive illustrations of a possible connection of present-day methods to those of an earlier and almost forgotten time. Turner, in his History of the Anglo Saxons, and Eden, in his State of the Poor, throw much light on primitive methods of solving social problems
in conformity to the principles of association. Walford, in his work on *Gilds*, and Toulmin Smith, in his great work on *English Gilds*, with the introduction by Brentano, are indispensible sources of information to the student who would rightly understand the foundations upon which the present massive structure of insurance rests.

But other materials of great value are readily available to the student of insurance and economic history. The great work of Walford, unhappily not completed beyond the letter H in the *Insurance Cyclopædia*, published between 1871 and 1880, is a monumental work of human industry and learning. Of more recent works on insurance history I may mention Martin’s *History of Lloyds and Marine Insurance in Great Britain*, published in 1876; the century *History of the Insurance Company of North America*, published in 1885; the semi-centennial *History of the New York Life Insurance Company*, published in 1896; the quarter-century *History of the National Fire Insurance Company of Hartford*, published in 1897; the century *History of the Norwich Union Fire Society*, published in 1898; the *History of the Prudential Insurance Company of America*, published in 1900, and finally the half-century *History of the Springfield Fire and Marine Insurance Company*, published in 1901. I must also not fail to mention a reprint of *Documents Relating to the Early History of the Scottish Widows’ Fund and Life Assurance Society*, published in 1901. The student of economic history and economic institutions will find much of value in these volumes which will aid him towards a more correct interpretation of the factors which have made for social progress during the nineteenth century.

Any effort to trace the origin and growth of insurance must necessarily take into account the development of navigation and commerce during the last three hundred years. Evidence is not wanting that even among the nations of antiquity marine insurance in some form or other was not wholly unknown. Park and others have traced the beginnings of marine insurance to very early periods, but it has remained for the last three centuries to develop the system to its present state of universal utility. Even the most casual study of the history of navigation and commerce reveals the immense advantages resulting from the practice of marine and fire insurance. In the words of M’Culloch: “Without the aid that it affords, comparatively few individuals would be found disposed to expose their property to the risk of long and hazardous voyages; but by its means insecurity is changed for security, and the capital of the merchant whose ships are dispersed over every sea and exposed to all the perils of the ocean is as secure as that of the agricultural risk. He can combine his measures and arrange his plans as if they could no longer be affected by accident. He has purchased an exemption
from the effects of such casualties; and applies himself to the prosecution of his business with that confidence and energy which nothing but a feeling of security can inspire."

The principle of insurance in its application to commerce is, however, no longer limited to marine and fire insurance. The last fifty years have seen the practical development of the insurance idea in various other directions, of which I may mention the following: Accident, health, and employers' liability insurance; fidelity, surety, bond, mortgage, and title insurance; plate-glass, elevator, and boiler insurance; hail, windstorm, and tornado insurance; and finally, live-stock and burglary insurance. All of these have assumed the character of instruments of commerce and are in theory and fact an indispensable element of the commercial development of the present age.

The present-day tendency to industrial organization and the combination of capital is reflected in the status of the insurance business of the United States, which has followed the general commercial trend of the age. Of the ordinary life insurance business, six companies have 62 per cent of the total insurance in force; of the industrial business, 94 per cent of the policies are with three of the companies transacting this form of insurance; and of fraternal insurance, so-called, 64 per cent of the membership is in five of the principal organizations. The resulting gain has been very considerable, especially in the direction of enhancing the general security of the business and public confidence in this form of individual and family protection. This tendency has not operated injuriously to the development of a healthy spirit of competition, which may be illustrated by the fact that there are to-day seventy-nine ordinary and thirteen industrial insurance companies transacting business in the United States. The problem of wealth and its distribution may be summed up in the statement by Thompson that "the property of the most numerous class, that is, the poorest, is coming evermore to the front as a great problem of modern statesmanship." Life insurance is to-day one of the most important factors in the redistribution of wealth, and perhaps of all methods the most equitable and effective. It reaches every stratum of society and enables the poorest to provide for the future a sum of money which in every sense of the word represents capital obtained by individual efforts as the result of habitual saving and prudent self-denial. The insurance companies collect these savings in small amounts, which range as low as five cents per week, or assume considerable proportions per annum; the accumulations form the assets of the companies and as such they become available for profitable investment in productive industries and trades; they are redistributed through payments to policy-holders as claims or matured endow-
ments or annuities, in sums which range from an amount sufficient to pay for a burial to returns which represent a considerable fortune. As Walter Bagehot said some years ago, "People insure their lives who save in no other way," and the vast sums accumulated by life insurance companies, now exceeding two billion dollars, represent an amount of economic security and evidence of an effective adaptation to the exigencies of modern life without a parallel in economic history.

The field of insurance is primarily the city and surrounding territory, but by degrees the more sparsely populated sections of the country have become available in consequence of the development of the science of transportation. From 92,000 miles in 1880, the railway system of the United States has grown to over 200,000 miles in 1903, opening immense areas to settlement and leading to the subsequent development of cities and towns, which necessarily contribute toward the further extension of every form of insurance. The remarkable development of electric railways has opened large sections of the agricultural regions previously outside of the sphere of profitable business operations. Railway and navigation companies employ a large number of men exposed to a considerable accident liability, which requires special consideration. While great improvements have been made in railway transportation tending to diminish the mortality from fatal accidents, especially in connection with the coupling and uncoupling of cars, the mortality of certain classes of railway employees remains very considerably above the normal of men of corresponding age employed in less dangerous occupations. There has not been the reduction in the death-rate which earlier discussions and the passage of the laws relative to the prevention of accidents seemed to warrant. The problem remains one of serious concern to insurance companies transacting either a life or accident business, or both.

In still another direction are insurance companies interested in transportation science, and that is the opportunities for safe and profitable investment in railway bonds and mortgages. An incidental result of great importance has been the opening of new agricultural areas with a corresponding opportunity for profitable farm loans, which are the most advantageous and satisfactory investment of insurance companies, if made with the necessary knowledge of local conditions of soil and climate. There is, therefore, abundant evidence of the close relation of the science of transportation to the science of insurance.

Banking, currency, and public finance are fundamental factors determining insurance progress. With more than $2,000,000,000 of assets invested in interest-bearing securities, the companies have a vital stake at issue in all questions of sound money, a stable currency,
and healthful trade conditions. Of the assets of the companies, about 75 per cent are securely invested in bonds, stocks, and mortgages, including every form of approved federal, state, and municipal indebtedness, first-class railroad bonds, farm loans, etc. The necessity of earning a certain rate of interest demands the most experienced judgment in making these investments and a watchful eye on general banking and trade conditions. All of the great financial reform measures by which this country has reached its preeminent position in the world's money market—the National Banking Act of 1863, the resumption of specie payments in 1878, the defeat of the free silver craze in 1896 and 1900, and, finally, the passage of the Gold Standard Act—have contributed to the progress and stability of life insurance during the past forty years. In fact, such progress would have been out of the question as long as there existed "great dissimilarity in the laws governing banks in the several states, precluding uniformity, security, and safety." Hepburn points out that, in 1861, "there were then some seven thousand kinds and denominations of notes and fully four thousand spurious or altered varieties." It is not a matter of surprise that under these conditions, between 1851 and 1861, the actual increase in life policies in force should only have been 30,600.

But the influence of life insurance extends to every aspect of finance and trade. With its necessarily intimate relation to banks and trust companies, life insurance assumes the position of a regulating medium to which in no small degree may be attributed the more perfect control of the money market in hours of uncertainty and impending financial disaster. If crises and depressions are to-day a more remote element of business probability, and if this is due, in part at least, to "the greater skill and prudence exercised by bankers as the result of experience," I do not go too far when I hold that this gain is due in a large measure to the fact that there are few important banks and trust companies which have not on their boards of directors one or more men who are also executive officers of life and other insurance companies. Our financial history of the past ten years shows conclusively the influence of conservative life insurance finance as a restraint and preventive of a recurrence of the disastrous series of panics between 1825 and 1893.

Sociology and social science, including all the more important divisions, is so comprehensive a term as to preclude consideration in detail. Social structure alone, as revealed by the census and other statistical investigations, bears a more or less direct relation to insurance development and progress. Census inquiries are now made with more skill and accuracy than heretofore, and every new investigation brings out new facts and tendencies of society in the process of evolution from homogeneity to heterogeneity. The
mere statistics of past and present population, its distribution by rural and urban communities, its composition by sex, age, color, nativity, and occupation, are all elements of a determining nature which it is necessary to know for the more intelligent control of insurance practice. Without an accurate knowledge of the population and its distribution by age and sex, no life-tables could be worked out for the general population, and without a careful analysis of the facts of physical and social environment, no definite business policy could be established.

We may briefly consider the relation of insurance to the family. Life insurance as a social institution primarily contemplates the certain and effective protection of widows and orphans, or, in other words, an extension of conjugal duties resulting from marriage under the existing conditions of modern life. Many of the earlier insurance companies were, in fact, called "Widows' Schemes," or "Widows' and Orphans' Assurance Societies," or, in the words of Price, "Institutions for the Benefit of Widows." The biological problems resulting from marriage and its relation to insurance are of much importance, and I may point out that among the most involved calculations of insurance practice are those of survivorship in marriage. Interesting data and calculations on this subject are to be found among others in a comprehensive work on the Madras Military Fund, which includes observations on the mortality of wives, the rate of mortality and remarriage among widows, wives' chance of widowhood, etc. Westermarck has contributed the most important investigations on the "Statistics of Marriage," derived from Danish data, but he has also a discussion on the subject in his treatise on Mortality and Morbidity which, unfortunately, has not yet been translated into English.

Considerations of the chances of survivorship in marriage, the well-established lower mortality of wives than of husbands, the practical certainty of surviving children, point to life insurance as the most effective method yet devised to prevent suffering and dependence upon the charity of others. "A family," wrote Professor Sumner, some twenty years ago, "is a charge which is capable of indefinite development," and whatever may be its ultimate evolution, there can be no question but that life insurance acts as a conserving factor in human marriage and develops the altruistic impulse of the husband toward the wife and of the father toward the children. In the homely language of insurance parlance: "Wives often object to insurance, but widows never do," and I may add the glowing tribute of Gilbert Currie, one of the earlier writers on insurance, that "if we only could call from the dusty archives of these venerable institutions the huge piles of molding ledgers, and extract from their records, what tales would be unfolded of miseries pre-
vented, griefs and sorrows soothed, the briny tear wiped from off the cheek, the balm of consolation imparted, the widow's heart made to rejoice with gladness, and the helpless orphan to sing for joy! This is no flight of the imagination, no picture of fancy, no figure of speech; it is sober reality, the voice of experience, and the simplicity of truth."

Of the problems of social well-being there are few of greater importance than the development of voluntary thrift and resulting economic freedom of the masses. What Mill calls "self-regarding actions" and "actions which are not primarily or chiefly self-regarding" admirably illustrates the fundamental difference between insurance and mere saving habits. The hope of an earlier day has been realized, and life insurance at the outset of the twentieth century is a universal provident institution. The view prevails, as expressed by Marshall, that "at last we are setting ourselves seriously to inquire whether it is necessary that there should be any so-called lower class at all." Life insurance precludes the necessity of abject poverty and pauperism. Life insurance eliminates, for all but the lowest and most depraved, the possibility of a pauper burial. It has placed within the reach of the large majority at least a temporary barrier between death and dependence and the poorhouse. We are still far from having realized all that is implied in the insurance idea and we still suffer much from an unsound social philosophy. We are constantly in danger of delusive schemes of social reform not based on individual effort and voluntary adaptation to existing economic conditions. The tendency, however, I believe, is in the right direction, and every year sees an advance toward a higher degree of social well-being. Social reform of the right kind must come from within; must be the result of individual character and individual struggle. This is the social aspect of insurance — that is, prudently to economize, to save, to invest, to insure for the financial protection of self and others in old age or at death. There is nothing in the annals of the poor more remarkable than the rise and progress of provident institutions, from burial clubs and friendly societies to the different varieties of life insurance adapted to every stratum of society. For wage-earners, or the industrial element of the population, industrial insurance may rightfully claim to meet the requirements of Currie of "its being such a system as the circumstances and conditions imperatively require, namely, the provision of means whereby they are enabled to help themselves and their families without depending upon the assistance of their neighbors or compromising in the smallest degree their independence of character."

I may also quote his conclusion, applicable to the conditions of to-day, that "every poor man is now called upon to fulfill his most sacred obligation, an obligation as binding upon the hard-working,
honest man as upon the most opulent individual, parent, or husband in the world — to his wife and his helpless offspring." It is the mission, the aim, and the object of insurance, primarily and chiefly, to diminish dependence and increase by individual effort, frugality, and forethought the social and economic independence of the masses.

While insurance may rightfully claim recognition as a science, as a business pursuit it is still far from being a professional career. The general aspect of insurance as a career or business pursuit has been discussed in much detail by the Honorable John F. Dryden in a paper contributed to a series of articles on the subject to the New York Tribune. Of late years insurance education has been introduced into colleges and universities, sometimes in connection with general instruction in commerce and banking, as, for illustration, in the Charter School of Finance, University of Pennsylvania, and in the University of Wisconsin; or occasionally as an independent course of instruction, as, for illustration, at Yale. In a general way, however, it is yet too early to speak of insurance education as professional training. The general method of instruction in insurance is still of too elementary a character, the elements of success in office and field administration are too ill-defined, and the principles of business conduct are too far from being reduced to scientific uniformity to permit us to speak of insurance as a professional career.

But as a business pursuit it is deserving of the most serious consideration, and I may repeat the glowing tribute to the insurance agent by Elizur Wright that "among the honorable workers in the civilized world to whom the public as well as the insured will die indebted, we give faithful and successful life insurance agents a high place. It is hardly possible to believe that a life insurance agent can achieve any long-continued success without bringing into action some of the noblest qualities of a sterling man, and no field that we know of is more inviting to an ambition that would devote the best of talents to the benefit of society at large and individuals in particular."

A prerequisite for an effective university education is the need of comprehensive or approximately complete insurance libraries. All of the more important companies have libraries of more or less extent on insurance, statistics, and related sciences, but the three libraries deserving of special mention are the Walford collection of the Equitable Assurance Society, the Bibliothèque de l'Utrecht, and the library of the Prudential Insurance Company of America. The Prudential Library of insurance and statistics includes over twenty thousand volumes and pamphlets, supplemented by an extensive collection of data on every subject relating to insurance science. The Boston Insurance Society has a good library, of which a catalogue has been published. The Life Insurance Company of Utrecht has published a valuable catalogue, which has been reissued in a
fifth edition in 1903. No comprehensive bibliography of insurance exists, but Pocock, in 1840, published a small volume, which is now extremely rare, including a list of the more important works on insurance, the doctrine of chances, gambling, lotteries, etc., which had been printed up to that time. The list, however, is far from being complete. Probably the most comprehensive collection of works on insurance and related subjects is the library of the Institute of Actuaries of Great Britain.

The relation of insurance science to religious agencies and religious influence, both individual and social, is implied in the earlier discussion of the ethical sanction of insurance as a method of social amelioration. Professor Clark has well said that "certain modern religious problems need to be apprehended as well from the material as from the spiritual side," and of these life insurance has, almost from its inception, received the sanction and active encouragement of the Christian Church. The first name on the list of the incorporators of the Amicable Society for the Insurance of Lives, organized in 1705, is that of the Bishop of Oxford. The first comprehensive and practical work on life insurance theory was published in 1762 by the Rev. Richard Price, a Unitarian clergyman. Some of the earliest works on annuities and reversions developed out of considerations of the value of church leases and inquiries into the tenant rights of church and other foundations. Some of the first steps in the direction of improving the tables and premium rates of burial clubs and friendly societies were made by ministers of the Established Church, and I may mention the Rev. Mr. Becher, whose works are still valuable for instruction and reference. It has been for many years the practice in England to organize burial clubs and insurance societies of children of Sunday-schools, which, as far as I know, have served and continue to serve a useful purpose. The first two active insurance organizations in the United States, one of which is still in existence, were the Presbyterian Ministers' Fund, established in 1759, and the Society for Episcopal Clergymen, established in 1769. An insurance company for clergymen has been in existence in London since 1846, and among the efforts of the Salvation Army I may mention the Industrial Insurance Department, which has made satisfactory progress.

These illustrations will suffice to show that the insurance idea has the sanction of the Church and religious approval generally, although some have held and still hold that "these institutions are conducted on a principle contrary to a trust in Providence." In answer it has properly been argued that "life insurance takes its rise in one of the most respected features of human nature — foresight, or a provision against contingent evils; and having most particularly in view the succor of the widows and fatherless, it is essentially a moral and
humane institution. Life insurance should not, therefore, be considered as an interference in any degree with the course of Providence, which some rashly assume it to be, but, on the contrary, the taking advantage of a means kindly offered by Providence for our benefit." This is the view which prevails at the present time and which gives religious as well as moral sanction to the development of life insurance as a universal provident institution.

I have only given consideration to the most important departments of science in their relation to insurance, but had time permitted, a more comprehensive survey would have disclosed other important relations tending to confirm the view that insurance is by right entitled to the position assigned to it in the classification of the sciences as adopted by this Congress. As a comparatively new department of human inquiry and action, insurance found no place in the earlier classifications by Bacon, Comte, and Spencer, but no scientist of the future and certainly no economist can rightly ignore what, in time, will become a tremendous force making for the material well-being and the economic independence of the vast majority of civilized people in all portions of the earth.

It is equally certain that the insurance manager of the future will give more and more consideration to the teachings of both the abstract and concrete sciences, with the aim to adjust the practical administration of insurance to sound scientific theory derived from extensive investigations into the vast range of related sciences. For the future conduct of the business the demand will be for trained minds, qualified to deal with problems more complex and involved than the problems and difficulties of the past. As it has well been pointed out by the Honorable John F. Dryden in a paper on "Insurance as a Career": "In a general way it may be said that the scientific temperament is most likely to lead to success in home office administration, for scientific training, as well as all higher education, distinctly qualifies a man for administrative responsibility."

Insurance is to-day the foremost social institution of civilized countries. The business has assumed enormous proportions, and the tendency of the "insurance idea" is toward an ever-increasing area of general usefulness. To both the individual and the state, insurance is to-day an indispensable method and means for the maintenance of our standard of social security and progress. In the struggle of the masses for economic freedom and a more equitable distribution of wealth, insurance aids and sustains all other forces making for this much-to-be-desired end. Insurance in its final analysis is simply a business method to make the world a better place to live in, than which no aim or purpose could be a higher or more worthy one.
PRESENT PROBLEMS IN INSURANCE

BY BALTHASAR HENRY MEYER

[Balthasar Henry Meyer, Professor of Political Economy, University of Wisconsin, and member of the Railroad Commission of Wisconsin. B. Mequon, Ozaukee County, Wisconsin. B.L. University of Wisconsin, 1894; Ph.D. ibid., 1897; Post-graduate, Berlin, 1894-95; ibid. University of Wisconsin, 1895-97. Assistant Professor of Sociology, University of Wisconsin, 1897-99; conducted an investigation on fraternal societies for the Committee of Fifty in 1900; prepared a report for the United States Industrial Commission, 1901; expert special agent, representing the Bureau of the Census and the Interstate Commerce Commission, conducting an investigation on the valuation of railways in the United States, 1904-05; appointed member of the Railroad Commission of Wisconsin, June, 1905. Member of American Economic Association; Wisconsin Academy of Sciences and Arts; American Academy of Science, etc. Author of many papers and monographs dealing with transportation, special economic and educational subjects.]

Present problems in insurance are both theoretical and practical. In their theoretical aspects they have been treated in the address of my colleague on the relation of insurance to other branches of knowledge. This paper aims to deal chiefly with the more practical aspects of insurance problems in which the policy holder and the public have an interest. The point of view will be the American and only incidentally will references be made to foreign experiences and conditions. Foreign countries offer much that has value for purposes of study, and many an important lesson may be learned from the manner in which the business of insurance has been conducted in other countries and the relations which the various governments have maintained towards this business. Limitations which must obviously be imposed upon this paper make it necessary to confine the discussion primarily to conditions in the United States.

In some respects the problems with which the insurance world has been concerned ever since the institution began to assume definite form and affect a considerable part of the population, are also the insurance problems of to-day. Numerous transformations and additions have been made since the first struggles of the experimental stage, yet the problem of organization is still before us. The perplexities and diversities of the rise of the agency system have disappeared, but the agency system itself requires the attention of the best minds of the day, with the view of bringing about adjustments more in the interest of the policy-holders and of a sound public policy. The gloom of wholesale failure has been dispelled by the light of sound finance; nevertheless the wild-cat organization still prospers and the organization which makes impossible promises is passing from the scene with painful slowness. Policy contracts have been made more uniform, but the multitudinous details of endless options which are spread before the policy-holder befuddle even the
sanest minds. State regulation and supervision have been established the country over. It lies with the future to reduce these many divergent systems of supervision to one uniform and harmonious whole. One branch of insurance after another has been developed, and a number of new ones are at present in an inchoate state. Many more must be added before the entire field has been covered.

These introductory remarks need not be extended to greater length in order to suggest the variety of the problems which exist in the vast field of insurance. Without further preliminaries, attention may be directed towards one of the most important present problems, namely, that of making insurance an all-inclusive institution — all-inclusive with respect to the population insured and all-inclusive regarding the contingencies insured against.

The total number of policies in force in the old line companies has been estimated at nearly 5,000,000, with an average policy of about $2500. The total number of persons carrying industrial insurance has been estimated at nearly 14,000,000, with an average amount of insurance of $135. The membership of the fraternal societies is nearly 4,500,000. In addition, the insurance features of labor organizations and relief associations must be considered. The total number of persons who carry protection in one or more of these three great groups aggregates nearly 25,000,000. Considering that this estimated number of policy-holders includes many duplications, and that industrial insurance statistics include not only the bread-winners but all members of the family, it is obvious that many millions are without the protection of insurance. If insurance is a good thing, if it is in the interest of public and private welfare that the individual should be protected in this manner, — and I assume that it is, — then something should be done to draw into the insurance membership every person who has not won a position of economic independence so far as it is possible within the realm of human action and foresight to be independent. The exempted class is relatively insignificant, and what may constitute the tests of exemption from insurance is of little moment in comparison with the problem of ways and means which must be devised for bringing into the insurance fold the millions who are now recklessly, thoughtlessly, or criminally assuming risks for which they lack both economic and moral qualifications. Men frequently take their lives into their own hands. Sometimes this is courageous; sometimes foolhardy; always hazardous; but nothing can atone for the crime of taking into one's hands the lives of others, unless these hands have the support necessary for the successful performance of those duties upon which the safety of the precious charges depends. Over the greater part of Europe the problem before us has been solved through the establishment of systems of compulsory insurance, much of which is state insur-
ance. The people of the United States have thus far shown little inclination towards an extension of state functions comparable to the functions exercised by European states. Except within certain well-defined limits such an extension may not, at present at least, be in the interest of the population at large, whatever the future may bring and irrespective of contemporary symptoms indicative of a possible change regarding public sentiment upon certain phases of this problem. If it is in the interest of the whole population that every head of a family and every one who aspires to become such should consciously and systematically make provision for the uncertainties of life, then it becomes the function of the state to work for this end, for no arbitrary considerations can limit the functions of the state, which are coextensive with human welfare. While the state cannot say to the citizen, "You must insure in this company, and for such an amount," it can say to him, "You shall insure somewhere, and for a minimum amount." The general welfare clauses of our constitutions provide an adequate foundation for such mandates. Under existing conditions, compulsory insurance would mean insurance in established private companies or companies still to be organized. Most men find ample choice among the many excellent companies. Compulsion implies all men, and for those who, for one reason or another, might refuse to take out insurance in an existing company the state would obviously be obliged to provide the facilities for insurance. Admit the principle of compulsion and direct state action must be accepted as its corollary. In other words, compulsory insurance means state insurance for those who refuse to take out the legal minimum in existing institutions. This is compulsory insurance, but not insurance compulsion, which would coerce every eligible citizen into a specific organization. The German law expresses this difference admirably in providing for Zwangsversicherung, but not Versicherungszwang. Compulsion is generic, and the limited state action just suggested is specific for that part of the population which requires specific treatment. However divergent men's views may be with respect to the extent of state functions, there can scarcely be much difference of opinion regarding the necessity of some degree of state compulsion if we admit the universality and inclusiveness of the principle of insurance. This necessity exists, and for proof of its existence one may point to the swollen figures of charity and relief societies. There is scarcely a community which has not its poverty-stricken mothers and children left unprotected when the breadwinner was stricken down. Everywhere about us we see the evidences of want and poverty resulting from accidents for which no one may have been directly responsible, but which, nevertheless, cripple and annihilate homes. Whatever the scope of compulsory action may finally be, it must, above all,
include accident insurance. As consumers and as taxpayers the vast majority of men will cheerfully contribute their share towards compensating the wage-earner who has become completely or partially incapacitated in consequence of an accident for which no one may be responsible. Where such responsibility exists, employers’ liability and laws governing negligence can be invoked.

In view of the many opportunities offered by existing insurance institutions, it is not probable that the state will be compelled to perform the functions of an insurance company to any very great extent. The principle of compulsion, however, will oblige the state to provide insurance for the uninsured residuum, but for no more. Whatever may be required of the state in order to provide for this residuum is fully justified by the important social and economic consequences of this form of state action.

When arguing in favor of more favorable laws governing taxation, representatives of insurance companies generally allude to the philanthropic element in insurance, because the companies assume a burden which the state would otherwise be called upon to carry in the form of aid and relief for dependents. This argument applies with even greater force to state compulsion and the consequent saving in expenditures for the poor and dependent. Insurance as a preventive and remedial institution cannot be complete without direct action by the state. On a limited scale state action has already been resorted to in municipal insurance of firemen, policemen, and other special classes, and a compulsory law of Maryland has recently been declared unconstitutional.

Without attempting to establish a hierarchy of insurance problems, in which every question shall succeed every other in logical succession and in the order of its relative importance, next to the problem of making insurance an all-inclusive institution may be placed the problem of the better adaptation of the policy to the policy-holder. Jefferson is credited with having said that a fool can put his coat on better than a wise man can do it for him. A first-class agent sees to it that his client selects none but the best-fitting policy; but it is not difficult to demonstrate that for a considerable part of the agency brotherhood it is assumed as a fundamental and determining consideration that the interests of the agent’s pocketbook are in absolute harmony with the interests of his client. Hence we find men hopelessly attempting to carry high-priced investment policies, who would be served much better by purely protective policies. If, after a full, accurate, and truthful exposition, a client deliberately selects an ill-fitting policy, the policy-holder must bear the consequences, for no invention has yet eliminated the fool. But when an agent deliberately talks half-truths or falsehoods with a view to influencing a prospective policy-holder in the direction of
the agent's purse, the company which he represents thereby becomes morally responsible for the consequences. Much can be said in favor of establishing legal responsibility in addition to the formal policy contract in all cases where misrepresentations have been made to the client. For illustrations of such misrepresentations one needs only look about in any community of some size. It is probably unjust to express ethical judgments regarding any great number of men taken collectively, and the judgment here indicated does not apply to thousands and thousands of agents. It does apply to others, and a greater feeling of responsibility, leading to proper official action on the part of the administrative authorities of companies, will do much towards purging the insurance fraternity of this harmful element.

An unmistakable indication of the necessity of insisting upon the better adaptation of the policy to the policy-holder is found in the widespread and deep-seated demand for "cheaper insurance." Inquiries among agents who keep in touch with the masses of the common people elicit the reply that this demand is emphatic and imperative. By cheaper insurance these people do not mean insecure insurance, which is no insurance, but insurance which will afford them the greatest protection at the least cost. No reference is made here to so-called insurance or protection which lacks the scientific foundation of all insurance. The cry for cheaper insurance, which is most emphatic during periods of depression, emanates in part from a reaction against the excesses of so-called investment insurance. There exists a great demand for investment insurance, but the demand for pure protection is greater and includes larger numbers of the population. There is no occasion for quarreling with the man who advocates investment insurance and the man who wants to buy it. Each individual may well be left to the dictates of his own judgment with reference to the question. If he prefers to enter into a contract with an insurance company for the care of his funds, there is no reason why he should not be permitted to do so. It is essential, however, that the investment feature of insurance should remain differentiated from the purely protective element, lest the branch ruin the tree. Protection is the institution; investment is an incident of its administration. The incident should not be permitted to obscure the institution.

In further proof of the popular demand for cheaper insurance and for insurance at retail, the marvelous growth of industrial insurance and the enormous expansion of the fraternal system may be cited. The industrial companies abandoned the struggle of three dogs over one bone and pushed out into new fields where there were many bones and no dogs. Industrial insurance extended the fields of protection into the ranks of the humbler but highly self-respecting
and respectable classes. The methods of industrial insurance in collecting small premiums at brief intervals are expensive and wasteful. The army of house-to-house solicitors and collectors must be clothed and fed. But we cannot suddenly unmake the character and habits of mankind. Present methods of industrial insurance are adapted to human nature and the existing state of society. Insurance methods and conditions of society may change together, and with the lapse of time improved methods may exert an increasing beneficial influence upon the attitude of society toward insurance.

Regarding the gains in membership of fraternal societies, the reports of insurance commissioners show that in many parts of this country these gains exceed the gains made by old line life companies. In part, the gains in fraternal membership are doubtless the result of natural growth and the more or less artificial multiplication of orders; in part, they are probably due to the wholesome reforms which many of these societies have instituted; but to a large extent these gains must probably be attributed to the appeal to prospective members, successfully made, as the figures show, that old line insurance is too expensive and that fraternal insurance meets the needs of the man in moderate circumstances. No opinion is here expressed relative to the merits of this appeal. The fact of this appeal, however, must be observed. This fact carries with it a note of warning to the old line companies that they may not lose sight of the great central idea of pure protection; and to the fraternal orders that they may be prepared to assume and faithfully discharge the duties which they have assumed and are desirous of assuming. It is a matter of common knowledge that scores of fraternal orders are to-day openly and persistently violating the most elementary principles of protection. To bring about changes in legislation which shall compel every fraternal order to observe and rigidly obey these elementary principles is one of the greatest problems in the insurance world of to-day. The spectacle of conventions to determine rates of premium and mortality tables by popular vote is as absurd as a popular vote to determine the latitude and longitude of the magnetic pole. It is more than absurd; it is criminal. A popular vote on the location of the magnetic pole is simply nonsense, and science continues to advance in spite of the nonsense. A popular vote for the formulation of mathematical principles upon the accuracy of which the welfare of millions of our population may depend is arrogant ignorance deserving of the penitentiary. To continue to solicit membership at rates which have been condemned by competent authority is at least as culpable, if not worse, than to receive deposits in a bank after the same is known to be insolvent. And the latter has long been a criminal offense. Some fraternal orders have employed competent actuaries; a small number have followed the
advice given by these actuariés; but great numbers of them are still marching on to certain ruin under the impulse of morbid appeals to brotherly love and sentimental twaddle about philanthropy. Everything that has been said thus far regarding fraternal societies is meant to apply only to that portion of the fraternal system which offers definite sums of money to beneficiaries on the occurrence of certain contingencies in return for contributions made irrespective of the terms which the various societies may employ in designating these features of their system. In other words, these remarks apply exclusively to fraternal orders which are also insurance companies, and which no amount of sophistry can make anything else. No reference is made to that other portion of the fraternal world which practices genuine benevolence and brotherly love, and which expends millions of dollars annually in charitable and relief work, but which does not do an insurance business. A root and branch reform of some kind is needed for the first-named class of societies. Possibly a system of voluntary registration similar to that which eventually effected a rejuvenation of British Friendly Societies may be expedient, provided it is distinctly understood that unregistered societies are of uncertain merit. Much can even be said in favor of compulsory registration, provided a reasonable length of time is given to the unsound societies in which to do their house-cleaning. Many leaders among the fraternal orders have recognized the urgency of reform, in evidence of which the proceedings of the fraternal congresses may be offered. In fact, the volume of proceedings of the last congress stands in strong contrast to a similar volume of ten or fifteen years ago in the abundant evidences of a vigorous reform movement. But the organization of the societies is such that reforms are unusually difficult in their execution, and a single effective stroke of the law would suggest itself as the most feasible and certain method of ending a great public wrong. Granting a thorough reform of this phase of the fraternal system, its future prospects appear to be unlimited. Mutuality, self-help, rigid economy, thorough democracy, personal sympathy, genuine protection, are all in the interest of public and private welfare.

The question of mortality experience and rates is not confined exclusively to fraternal societies. On the other hand, some of the criticisms passed by fraternal societies upon the old standard mortality tables can be shown to be partially just by the published experiences of the companies and the studies of actuarial societies. During the year 1903, for instance, the companies doing business in Wisconsin saved approximately $18,000,000 out of an expected mortality charge of over $102,000,000, while on three and one half millions of expected annuities they lost $175,000. These facts show that the assumed mortality was much higher than the actual rate of
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mortality. Whether this margin of approximately 20 per cent is necessary in the interests of safety must be left to the actuaries. There are those who believe that so wide a margin is not necessary; and if the fraternal societies, by means of the homogeneity of their membership and the care of selection, can effect much more favorable experiences, so much the better for them. Great credit is due to the Actuarial Society of America for conducting the mortality investigation designed to show the actual risk incurred, on the basis of the past experience of the companies included in the investigation, in case of certain classes of policy-holders. This investigation has not only contributed to the greater accuracy of mortality statistics, but it has emphasized the relative degrees of healthfulness of certain employments, occupations, and habits of life, and thus it may exert a powerful influence upon the conditions under which men live and do their work. The investigation suggests the possibility of separate mortality tables for each important occupation, profession, or trade, with corresponding differences in the rates of premium charges, although the practical difficulties involved in the administration of the various classes may be insuperable. Perhaps this question should be excluded entirely from the scope of the present paper and consigned to the borderland between insurance and speculative philosophy. Equality of treatment among policy-holders cannot exist where men live under widely different sanitary and industrial conditions. It is in the interests of correct habits of life and wholesome surroundings that a special mortality rate be established for the greatest possible number of classes. It will then also be easier to deal equitably and intelligently with the problems of the sub-standard and special risks, and the insurance of women. All these classes must be dealt with if insurance is to become, as it seems it should, an all-inclusive institution.

The inequality among policy-holders due to different habits of life and conditions of employment suggests another source of inequality, namely, the inequalities in the proportion of the total risks assumed and benefits received arising from the different amounts of insurance carried by policy-holders in the same company. A single risk of a hundred thousand dollars is a very different thing from one hundred risks of one thousand dollars each. It has been ascertained that there are forty persons in the United States who carry more than $500,000 of insurance. A company composed exclusively of policy-holders who carry, say, $500,000 each, if large enough to enable the law of average to operate, would be perfectly equitable and safe. But no one will claim that forty is a number sufficiently large for the application of the law of average. Since these forty are scattered among different companies, the inequalities resulting from such abnormally large policies become even greater.
Most companies have established a maximum which they will not exceed in case of a single life. These maxima range from $10,000 up, $25,000 and $50,000 being most common. The heavy policies are bound to operate to the disadvantage of the smaller policies in the same company unless the rate of mortality among large policy-holders is proportionately more favorable than the average; nevertheless an insurance man who attempts to convince a client that his company possesses superior merits on the ground that it has a number of heavy policy-holders stands on ground as dangerous as that of the fraternal society which, in a published circular, maintained that the death of a brother soon after his admission increased the financial strength of the society, because, under the rules of the society, this death led to the transfer of a certain sum to the emergency fund; while if the brother had lived and paid his contributions a much smaller sum would have been thus transferred! Theoretically, equality can exist only when the policies are all of the same size and the mortality experience is the same for all age classes. This exact equality is obviously impossible, and great numbers tend to rectify the errors as applied to individual cases. Different men want different kinds of policies in varying amounts. Where the variations are not excessive a practical and substantial equality is achieved. Where policy amounts are highly disproportionate, inequality and absolute injustice must follow. Attempts have been made to justify the large policy in a company composed overwhelmingly of small policy-holders. The multiplication-table rests upon neither conviction nor opinion.

It is an axiom of insurance that the assumed rate of mortality must be greater than the rate experienced by the companies; that the interest earned must exceed the rate assumed, and that the loading, or allowance for expenses, must be greater than the actual expenses. The last member of this tripod can no longer take rank among axioms, for although the companies have been struggling to keep down the expense rate, the cost of conducting the business has in many instances exceeded the loading for expenses. In case of the life companies doing business in Wisconsin, according to the published report of the commissioner of insurance, this excess amounted to over seven and one half millions of dollars out of a total expenditure of over one hundred and fifteen million dollars during 1903. This means either that the original allowance for expenses on the part of the thirty-six companies which exceeded their loading was inadequate or that the expense rate has become excessive. If the loading was sufficient in the first place, the additional funds required in conducting the business must have been secured from other sources. Chief among these possible sources are the savings from mortality and gains in interest on investments. Both of these sources create funds
which belong to the policy-holders, and their use for excessive and unnecessary expenses is a misappropriation of trust funds. The problem of the disposition of the surplus has been thoroughly discussed in a well-known insurance case still pending in the courts. It is asserted that under present methods the companies are not held to a rigid accountability regarding surplus funds, and that the accumulation of great surpluses for long periods of time is the chief, if not the sole, cause of all the evils which exist in the life insurance business. Without affirming or denying the validity of these assertions, there can be no reasonable differences of opinion concerning the desirability of a rigid accounting for every dollar held in trust for the policy-holders as a part of the surplus to be distributed during subsequent years. There are various types of policies providing for the accumulation of funds in the hands of the company for the benefit of the policy-holder or his beneficiaries. Policies generally provide for the distribution of these funds at the termination of specified periods of time. According to some, these periods of time should be short, say, one year; or, at least not to exceed three or five years. The representatives of this line of thought are opposed to every scheme of surplus distribution which projects the distributing period five, ten, twenty or more years into the future. Their opponents ardently defend long-term distribution periods. The practice of some companies furnishes a satisfactory middle ground between these extremes. Instead of distributing surplus funds annually or once in three or five years, they keep a careful account of the surplus earnings of every deferred dividend or analogous policy, usually apportioned on the contribution plan, and then make a single payment to the policy-holder at the termination of the period. Each policy-holder knows from year to year what his share in the surplus is; hence no amount of future extravagance or mismanagement can deprive him of this money. The company is not tempted to use the funds thus assigned to policies in paying excessive commissions or doing other doubtful things, because this practice would be detected. If a man desires to employ an insurance company to accumulate a single large sum at a future date from many small contributions, there is no reason why he should not do so. On the other hand, every consideration of good public policy demands a rigid accountability on the part of the companies. The plea that the accounting required under such a method is impossible for a great company may be met by the statement of fact that some great companies have been doing this very thing for many years. Strong arguments can be advanced in favor of short periods for the distribution of the surplus; but with proper restrictions the long period plans offer advantages which the short ones do not possess. The arguments are not all on one side.
Little unanimity of opinion exists regarding the equities of policy-holders in the reserve and accumulated surplus in case of lapse or a surrender of the policy. The early hard custom of absolute forfeiture has gradually given away to more liberal privileges; and, to-day, there are not wanting those who advocate perfect freedom of withdrawal and surrender. Where the policy is a contract of pure and mutual protection, the withdrawal of a policy-holder theoretically weakens the bonds which support the whole, and to this extent it appears to be in the interest of all the policy-holders to impose a moderate fine or surrender charge upon the defaulting member. The well-known argument of adverse selection or the withdrawal of the better risks with its concomitants is generally applied at this point. Where the policy, however, is a protective contract coupled with endowment or other investment features, a different treatment of the surrendered or lapsed policy is demanded, it being assumed in this discussion and taken for granted that any extra expense incurred by the defaulting member on the part of the company be charged to his policy. An examination of the columns of statistics headed "Lapse or Surrender Values" shows conclusively that many companies levy fines on the surrender of so-called investment policies which have no more justification than if a bank were to levy a fine upon the withdrawal of deposits. In fact, deferred dividend and similar funds are very much in the nature of bank deposits, and to fine the withdrawal of the one is as unjust as to make a special charge for the reclamation of the other. The justice and expediency of a reasonable surrender charge may be admitted for the reasons usually stated in support of such charges, reasons which, it should be remembered, are discredited by competent men who take a different view of the question, without sanctioning a practice of mulcting depositors which rests upon nothing but the arbitrary dictates of an insurance company and the extravagance of a bad administrative system. It is no justification of this system to say that the companies have been struggling with agency, publication, and other reforms, which have been considered many times. This abuse exists, and it will continue to exist until policy-holders rise against it and the attendant evils which it directly supports.

At various intervals in the history of company development in the United States attempts have been made to secure for a single company the legal privilege of engaging in a variety of enterprises. Within recent years this tendency has been, perhaps, the dominating one, and companies with omnibus powers are numerous in the industrial field. Among the companies which are devoted to the newer branches of insurance, such as fidelity, casualty, plate-glass, tornado, and other relatively recent developments, there are those which
attempt to do two or more kinds of business under the same charter and over the names of the same set of officers. It is conceivable that the same set of men may be able to undertake successfully different branches of insurance at the same time. It has been done. If it is to be continued in the future, good public policy, as well as the best interests of the insured, demands that the different branches of the business shall be managed by different companies, operating under separate charters, each legally restricted to one branch of the business, each responsible to the proper supervisory authorities, and each absolutely independent as a financial institution. This point should commend itself to the legislatures of the various states in which new charters are sought. On the part of the older insurance companies the mixing of functions on the basis of express charter provisions practically does not exist. Because of their enormous financial transactions these companies have, however, become to some extent affiliated with institutions organized for other than insurance purposes. Business affiliations of this nature are extremely common in the industrial world and constitute one of the distinct characteristics of modern economic development. When such affiliations of insurance companies arise naturally out of the necessity of investing great sums of money in the most profitable manner, consistent with security, and extend no farther, no valid criticisms can be raised against them. When, however, these affiliations of insurance companies become tantamount to the assumption of banking, transportation, manufacturing, or other powers, the interests of policy-holders as well as public morality demand a peremptory abrogation of such powers and a complete separation of the affiliated institutions. By adding the columns in Wolfe’s Investment Directory of Insurance Companies for 1904, any one may ascertain that the insurance companies listed in the Directory own a total of about $21,000,000 par value of preferred, and $81,500,000 par value of common railway stock. They also own nearly $26,500,000 par value of miscellaneous industrial stocks, of which nearly $6,000,000 par value are preferred, and over $20,000,000 common. Disregarding that part of the holdings of preferred shares which represents voting-powers, the exact extent of which cannot be readily determined, the common shares represent 100,000 votes, assuming that all are $100 shares, in the election of officers and directorates of railway and industrial companies. To this extent the insurance companies concerned operate railway and manufacturing establishments. That this power is actually exercised, and occasionally with czar-like authority, can be easily confirmed by a visit to Wall Street. It may be argued that, having invested their funds in stocks carrying a franchise power, the insurance companies must participate in the management of the establishments represented by the shares held
by them in order to protect their own interests through the appointment of competent officials. It is a sufficient and final answer to say that no insurance company has a right to touch the shares of a company which requires the wisdom and experience of the insurance officials for its safe conduct. Shares of stock issued by a company with the least taint of suspicion of incompetent or dishonest management condemn themselves as investments for insurance trust funds. There is positive, direct, and immediate danger in unrestricted insurance investments in the common shares of railway and industrial companies. Preferred shares may be as good as bonds or as uncertain as inferior common shares, depending upon the particulars of the case. It should be added, however, that the moderate market fluctuations of shares, unless the shares were purchased at too high a price, do not necessarily constitute valid objections to the investments in such shares, because the insurance company is interested not only in the security of the principal, but also in the certainty and continuity of the interest or dividends, and the rate of interest earned is not necessarily affected by moderate variations in the market price of securities. Investments in railway and other first-class bonds do not offer the objections inherent in investments in stocks for the reason that bondholders do not generally have anything to do with the management of the properties upon which the bonds are issued. The quiet influences which large bondholders may exert can scarcely be made the object of unfavorable criticism from the point of view of the policy-holder.

Before dismissing the question of the affiliation of insurance companies with other kinds of business, it is desired to direct attention towards the use of names in connection with some insurance companies, notably some of the newer or weaker companies. It is well known in insurance circles that men will permit companies to use their names as officers and directors when the man who carries that name may be absolutely ignorant of both the nature of the insurance business and of the standing of the company which the public is made to believe he directs. Long lists of "advisers" and "councillors" who, in a quiet way, become interested in the company on some "ground-floor plan" are published and scattered broadcast with the view of securing as policy-holders persons who will be influenced by the fact that certain names appear in the list of officers, councilors, or advisers. Sometimes these decorative persons are promised financial rewards, abstracted as robber-tolls from the premium payments of more honest policy-holders. All this wretched business is too contemptible to deserve more attention in this place beyond the exhortation that every citizen should do his utmost to secure legislation which will forever banish the dishonest insurance prospectus and the dishonest use of names in connection
with the insurance business. Existing legislation is inadequate to accomplish this. Legislation is not regarded as a cure-all, but within limits it can direct, shape, turn, encourage, or prevent. It can preserve and promote public interests where competition and self-interest, even in their enlightened form, tend to produce undesirable results.

Indeed, a survey of the insurance laws of to-day offers a variety of suggestions. The taxation of the companies rests upon no uniform rule of administration or principle of taxation. Inequalities, anomalies, and absurdities are everywhere apparent. The barbarity of reciprocal laws continues without abatement. The diversities in state legislation and the duplications and repetitions involved in state supervision needlessly harass the companies and drain their resources. Every analysis of the situation, undertaken from whichever point of view, points toward the great advantages of a single, fundamental federal code of insurance laws. This applies especially to taxation and supervision. The insurance business is overwhelmingly an interstate business. It is by its very nature subject to a great deal of publicity. It is a centralized business and, therefore, it is relatively easy for a federal authority to supervise it. No convincing arguments have yet been presented against a system of federal supervision. A federal authority could prescribe uniform reports and uniform rules concerning the general administration of the business. Possibly there are some points which could be left to the states. That is a matter of detail which can doubtless be adjusted without difficulty when the time comes. A single examination of a company would then authorize it to do business in every state. At present a company may be compelled to submit to the inconveniences and expense of a number of examinations. The expense of a single examination, according to authentic figures, may exceed $50,000. This is the highest figure known to the writer. Possibly other examinations have cost more. A repetition of such examinations must affect the earnings on policies. Even though this should not be the case to any appreciable extent, the system of charging the cost of an examination to the companies is wrong in principle and has been condemned by scores of state insurance commissioners. Federal legislation would remedy the evil.

Federal legislation, by instituting a single supervisory authority, would also make it possible to exercise a more intelligent control over the policy contract. Under a system of multiple state supervision this would be entirely impracticable. The language of the policy contract is frequently involved and usually "composite." A simple form of contract, which any intelligent man may understand, is desirable. If, now, every form of contract were made subject to the approval of a competent supervisory authority, many
of the absurdities and unnecessary complications in present contracts would disappear. A specimen of every contract-form issued should be deposited with the supervising office, and every contract departing from the recorded and deposited types declared illegal. This is not an argument in favor of absolute uniformity among the companies, which would be undesirable in that it would deprive society of the benefits which come from individual initiative and invention. The competition of the companies in the attractiveness of their policy provisions is one of the most valuable features of the rivalry which has been keen for many years. Rivalry in benefits bestowed upon policy-holders and in economy of management brings advantages to society. The suggestion here made has for its purpose simply the elimination of objectionable features in policy contracts. It is a difficult, delicate, but not impossible task, and, with adequate provisions for appeal, entirely safe.

Turning now towards the great field of fire insurance, upon which so much of modern business rests, the most characteristic feature of recent development is the rapid extension of the use of schedules in rating risks, and the establishment of fire insurance exchanges. Not very many years ago fire insurance was accurately described as a magnificent system of guesswork. The schedule has reduced the guessing element by furnishing a basis for the classification of risks and the determination of rates, which can be made intelligible to men of average understanding. Existing schedules have laid the foundation for the classification of risks which may lead to the establishment of loss ratios for certain classes of property, similar to mortality statistics for different classes of the population. The establishment of average losses for different classes of property, such as planing-mills, breweries, foundries, warehouses, etc., is one of the most important problems of to-day. Since not every building must be destroyed, even partially, fire insurance tables of losses can never reach the degree of accuracy possessed by mortality statistics. Nor is this necessary. But up to very recent times the problem of scientific rating has received relatively little attention. Each building was regarded as a unit by itself, and a rate fixed for it in a haphazard manner. The schedule introduced a standard by which to judge the merits of different types of buildings, contents, appliances, etc. The schedule places a premium on high-class construction, good management, efficient fire protection, and thorough inspection. The value of rigid compliance with established standards is amply demonstrated by the remarkable record of the New England manufacturers' mutual fire insurance companies. By establishing and maintaining an insurance engineering station these companies are doing a most necessary and highly valuable work in applying scientific methods by which the entire fire insurance world
may profit. The fire insurance exchanges have aroused some opposition, and very recently action has been brought against one of them on the ground that it is a conspiracy in restraint of trade. I regard the exchanges as one of the most valuable and indispensable developments connected with fire insurance. They are compilers of information. They work for uniformity in the inspection of risks, in rating, in building regulations, and in every other department of the work. The exchanges might well be intrusted with the establishment of net rates, leaving it to the individual companies to compete in economy of management and in the care with which their risks are selected and inspected. The establishment of rates by an exchange is likely to arouse hostility on the ground that the exchange is a combination formed for the purpose of exacting excessive rates from the public. This is an old cry. That the danger exists is obvious. That it can be prevented is not open to reasonable doubt. The exchanges merit full legal recognition with safeguards against the abuse of the powers which they may exercise. An atomistic fire insurance world can bring advantages to no one, and it is likely seriously to prevent progress. The abolition of the exchanges would remove one of the most potent factors making for scientific methods, and it is to be hoped that no such drastic measures will be resorted to anywhere in the United States. I cannot leave the subject of fire insurance without protesting once more against valued policy legislation, because it is an encouragement to crime and subversive of private and public morality. It is no more profitable to enter into hysterics over "insurance and crime" than over "theology and crime," but the valued policy law is in itself objectionable from every point of view.

In conclusion, a few words must be devoted to those branches of insurance which are still in an inchoate state and which were referred to in an earlier paragraph of this paper, in connection with the suggestion to make insurance an all-inclusive institution concerning the contingencies covered. The urgent need of dealing fully with the problem of accident insurance has already been pointed out. Insurance against losses from flood, tornadoes, hail, and other destructive agencies is in the interest of society as a whole. In view of the fact that these causes of loss do not appear with known regularity nor within well-defined territorial limits, the question arises whether this form of insurance may properly be left to the government. Studies have been made of the destructiveness of floods and tornadoes which might be used as the basis for the imposition of a tornado or flood tax. The levees on the Mississippi were built partly through federal aid, partly through levee district taxes, and partly through state taxes. The same principle might be applied to the collection of flood, tornado, and hail taxes. These
branches of insurance do not appear to offer suitable fields for private endeavor, and conservative state action is well adapted to meet their peculiarities. Within the last year companies have been organized to insure losses resulting from strikes. Insurance against loss of employment has also been considered to a limited extent; but in this, as in so many other special forms of insurance, we have not even made a respectable beginning, and the attempts which have been made in foreign countries may be studied by Americans to great advantage. Because of the peculiar character of the contingencies to be insured against, the last-named branches of insurance represent difficulties which are unknown in life or even fire insurance.

In the concluding sentence the writer desires to remind his audience that he has written as a layman from a layman's point of view. The professional insurance man, who is responsible for the success or failure of his business, must decide to what extent a layman's judgment can find practical application.

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SHORT PAPER

James W. Alexander, of New York City, contributed a paper to this Section on the subject of "Do Governments and Law-makers Regard Life Assurance from the Right Point of View?"
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(Prepared through the courtesy of Professor Emory R. Johnson)

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(Prepared through courtesy of Professor Edward D. Jones)

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DIVISION F—SOCIAL REGULATION
DIVISION F—SOCIAL REGULATION

(Hall 2, September 20, 10 a. m.)

Speaker: Professor A. Lawrence Lowell, Harvard University.

SOCIAL REGULATION

By A. Lawrence Lowell


It has been said that the object of every writer is to draw a new diagonal line through the field of human knowledge. Men love to point out the connection between things apparently so far apart as the spots on the sun and economic crises, or as the invention of bills of exchange at Venice and the rise of the mendicant orders. But the topic assigned to me at this Congress, "The Unity and Inner Relations of the Political, Legal, and Social Efforts of Society," has little of the charm of novelty. The path is well trodden; and, until a new philosophic light breaks forth, whatever is said on this subject must be trite; what can be said in a short address must obviously be superficial.

Let us take, first, the relation between politics and jurisprudence, using the term politics, not in the narrow sense in which it is currently employed, to denote the struggles of political parties, but in the larger sense of the conduct of public affairs.

Law both provides the framework within which political life goes on, and it is also the result of that life. It is like the shell of a mollusk, or the trunk of a tree.

Whatever definition we take of law, whether we regard it as the command of a superior, or accept the theory that it rests upon intrinsic natural justice, we may say that it is that part of the rules of human conduct which is enforced, or at least may be enforced, by public authority; such a definition, although vague, is wide enough to include on the one hand primitive law, where the public authority is rudimentary, and on the other hand public international law,—a body of rules which a number of civilized nations habitually obey.

Now so far as politics does not deal with pure questions of persons,
either in the sordid form of distributing spoils, or in the higher aspect of selecting efficient persons for office, it is concerned mainly with the creation of law; not that the direct aim and object of political activity is always legislation, but legislation in some form is usually the indirect, if not the immediate, consequence of political achievement; and this is true where at first sight the connection may appear remote. Political questions concerning foreign affairs, for example, often give rise to treaties, to the recognition of some principle of international law, or to a change in the legal relations of territory. A successful effort in a city to obtain clean streets, or a pure water-supply, is almost certain ultimately to leave its mark upon the statute-book. It is hard to conceive of a struggle, even over a matter of administrative discretion, that is not likely to result in legislation, or subordinate legislative ordinance, or in the increase or diminution of taxation. That which does not exclusively concern persons almost of necessity involves principle; and if a decisive issue is reached the victorious principle is likely to be established by law. So that the political warfare of to-day leaves its traces in the legislation of to-morrow.

This may be the case, although the immediate result of the contest is not embodied in positive law. The constitutional rule about the responsibility of ministers has become firmly established in England, and all her self-governing colonies, without any recognition in the law. Yet the principle has deeply affected legislation. It has given rise to statutes that would doubtless not have been enacted otherwise, and in fact it has created the body that really initiates all the important legislation in those countries.

So far as law is the result of political struggle, it is somewhat in the rear of social evolution, and represents not the last stage of human thought, but the next to last. For a rule of conduct is usually followed by large numbers of people before an attempt is made to enforce it on the rest, and it is certainly largely recognized as a rule that ought to be observed for some time before it is made compulsory by public authority; while, on the other hand, laws that have been outgrown, and have ceased to be in harmony with social conditions, often remain in force for a considerable period before they are repealed or become quite obsolete. Law represents, therefore, the crystallized elements of social evolution, while politics deal with the fluid or transient elements. It deals with questions that arouse immediate interest, and involves a constant effort to transform current opinion into law.

Nodoubt some laws are ephemeral. They are the result of abortive political efforts to bring about a change. In that case they do not represent the next to last stage in social evolution, but an aspiration, an effort to anticipate and create a future stage, an attempt
to give effect to principles for which their advocates erroneously believe the community is prepared. The history of legislation contains many such wrecks of unseaworthy statutes, and they are not less numerous to-day, in spite of the far greater power of the state to enforce its laws. Legislation intended to promote what a friend of mine calls "righteousness by statute" is particularly common in the United States, because of the easy and irresponsible way in which statutes are enacted, and because it suits both the idealistic temper and the practical qualities of the people to pass unwise laws designed to work moral reforms, and then leave them unenforced.

Most prominent among statutes of the kind are the liquor laws in many places, the evasions of the law being sometimes clandestine, sometimes open, and sometimes done with the connivance of the authorities. Statutes of this class are passed on many subjects, out of good nature, or in deference to the urgent appeals of deputations of influential citizens. They may be enacted without any serious intention of enforcing them, or they may be such that local opinion — as is often the case with game laws — or the difficulty of proving violation — as in the case of laws concerning railway rates — makes it very difficult to enforce them. Some of these laws are harmless; others are demoralizing to the men who evade them and weaken the law-abiding character of the people; while others are a fertile source of political corruption. The author of The Boss, an exceedingly acute study of New York city politics, written under a feigned name, and far less widely known than it deserves to be, has pointed out that sumptuary laws, which can be violated on payment of a contribution to the campaign fund of the party, are almost a necessity for the support of the machine in the city.

Apart from tentative, ephemeral, and inoperative statutes, political contests are the struggles of political growth, and the political growth of a nation is eventually embodied in its laws.

All this may be supposed to refer to public rather than to private law. Napoleon expressed that idea when he said: "The legislature should legislate, i.e., construct grand laws on scientific principles of jurisprudence, but it must respect the independence of the executive as it desires its own independence to be respected. It must not criticize the government, and as its legislative labors are essentially of a scientific kind, there can be no reason why its debates should be reported."¹ In other words, he regarded private civil jurisprudence as a science, quite independent of politics and public opinion. This may be true of the construction of a code based upon existing law; but it is certainly not true of legislative changes. In countries with a popular government, deliberate alterations of the law are made to-

¹ Quoted in Ilbert's Legislative Methods and Forms, p. 208. The original letter does not appear to be extant.
day only with the consent of representative bodies, which are intended for that purpose to reflect public opinion.

Such a relation to politics is not limited to statutes. Law is created every day by bodies of learned lawyers. It takes the form of precedents established by courts of justice in the course of the decision of actual cases,—the so-called judge-made law; nor is this process confined to jurisprudence affecting private persons. The distinction, indeed, between public and private law in no way coincides with the difference between statutory and judge-made law; for, in the first place, private law is freely made or changed by statute; and in the second place, the most important body of judge-made law in Continental Europe to-day is the French droit administratif, which regulates the official rights and duties of state functionaries and is, therefore, pure public law. In this connection it may be noted, in passing, that in Anglo-Saxon countries the administration of public law can be safely intrusted to the ordinary courts, because there are always in them a number of judges who have had actual experience of public life. Chief Justice Marshall could hardly have laid, as he did, the foundations of constitutional interpretation had it not been for his knowledge of national affairs acquired in the public service, and the same principle applies to every court when called upon to deal with questions that touch administration. A certain sprinkling of judges with political experience is needed to supplement those trained simply by study and at the bar. This is one of many cases where the efficiency of a public body depends upon the presence in small quantities of what in large doses would be a poison.

A full discussion of the relation of politics in the larger sense of the word to judge-made law would entail an examination of many conflicting theories of jurisprudence. In his Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft, Savigny, the most celebrated opponent of codification, declared that, for the most part, law, like language, has developed by a process of natural growth in accordance with the character of the people. Von Ihering, pushing Savigny's comparison of the growth of law and language farther, perhaps, than the author really intended, criticised his theory, and insisted that, instead of developing by the same quiet, unconscious process as the rules of grammar, law was, and always had been, the result of a struggle between conflicting aims and principles. As this is not intended to be a discourse on jurisprudence, but merely an attempt to point out certain relations existing at the present day, it is not necessary to consider how far such doctrines are really in conflict, and how far each of them is historically true. Nor is it necessary for our purpose to analyze Austin's theory that law is a command, and that courts in establishing precedents are creating law by virtue of a legislative power delegated to them by the sover-
eign. Austin was not an historian, but a philosopher who based his theories upon the facts that came under his immediate observation. His insight into contemporary matters was keen and accurate, and although his admiration for judge-made, or as he has called it, "judiciary law," was by no means unbounded, his analysis of its real nature is one of the best parts of his book. He made, however, an admission which certainly goes far towards upsetting his theory that the courts exercise a delegated legislative power. After declaring that "the sovereign administering the law through subordinate courts of justice is the author of that measureless system of judge-made law or rules of law made judicially which has been established by those subordinate tribunals in directly exercising their judicial functions," Austin goes on to say: "In this country, where the rules of judge-made law hold a place of almost paramount importance in our legal system, it can hardly be said that Parliament (the so-called legislature) is the author of those rules. It may, indeed, be said that Parliament, by not interfering, permits them to be made, and, by not repealing them by statute, permits them to exist. But, in truth, Parliament has no effective power of preventing their being made, and to alter them is a task which often baffles the patience and skill of those who can best command parliamentary support."¹

Now this remark is interesting because it would seem that the legislature is constantly acquiring greater capacity of controlling and reversing judge-made law. In the past we have seen cases where the legislature has found it impossible to carry out its will, and where courts have virtually made a statute of no effect by their interpretation. This was true in the celebrated case of the English Statute of Uses, which was designed to prevent the creation of subordinate interests in land, but is commonly said to have resulted only in the addition of three words to every conveyance. A very striking example in later days is the decree of the French Government of National Defence in 1870 repealing the provision in the constitution of the year VIII that protected public officials from suit or prosecution. The decree was intended to remove all hindrances in the way of bringing the officials before the ordinary courts; but the Tribunal of Conflicts decided that it applied only to their personal protection, and did not affect the principle of the separation of powers which, as understood in France, forbids the ordinary judges to pass upon the legality of official acts. This example of the exercise of power by a court to defeat the intent of the legislature is certainly very recent, but it could hardly have occurred except in the revival of the ordinary functions of government after a period of revolution.

¹ Austin's Jurisprudence, Campbell's Students' Ed., p. 99. This does not appear in the original edition of Austin's work.
Austin's remark, however, still retains some truth. Even at the present day the legislature has no effective means of anticipating by statute the doctrines laid down in judicial decisions, and does not always find it easy to alter them after they have been made. A representative assembly that would reject by an overwhelming majority a bill to enact a certain principle of law may hesitate to reverse that principle when it has been sanctioned by the courts. It often happens that a negative course is the most prudent and politic for a representative chamber, and this gives real force to judicial initiative.

Nevertheless the decisions of the courts on important questions of law attract so much attention to-day, and the power and flexibility of legislatures has increased to such an extent, that the enactment of a statute to change a principle judicially declared is less difficult than it was formerly. Judge-made law has, therefore, become subject to legislative revision to a greater extent than in the past. In giving their decisions the courts are, and it is of most fundamental importance that they should be, absolutely free from political control, but the growth and stability of the law they make depends ultimately on its accord with the public sense of justice. Law cannot endure permanently upon any other basis. At the close of the Middle Ages the customary law of most of Continental Europe, having failed to develop with advancing civilization, was swept away by the advent of the Roman law. Such a legal revolution could hardly occur again, because with the growth of legislative power the control over judge-made law is more rapid and more constant. If the courts are too closely bound by precedents which are no longer adapted to social conditions, or if their judgments do not accord with the public sense of justice, their law will be changed by statute. So that judge-made law, not the decisions in particular cases, but the principles established by those cases, is to-day ultimately subject to political approval. The nineteenth century has certainly shown that in Anglo-Saxon countries the vitality of judge-made law has in no wise diminished; but it endures upon the condition that the principles of law so established must be in general accord with the sense of justice of the community; and that where this is not the case they can be and will be set aside.

Let us now turn to the relations between social science on the one hand and politics and jurisprudence on the other.

The collections of people treated in the various sections under the Department of Social Science at this Congress fall into two distinct classes. They appear to be distinguished in the programme by the terms community and group, and hence those expressions will be used in this paper, the word "group" indicating a body of people who, as the cause or result of similar conditions, display similar feelings and
opinions; while the so-called communities have in addition a sense, or at least a much stronger sense, of solidarity and of common interest, some organization, and a capacity for common action. In short, the members of one class have similar, and those of the other have common, sentiments and opinions. The line between these classes is not absolute, and the classes themselves are by no means fixed. A body of persons, that form at one period of the world's history a group, may at another form a community. The family and the local community were, of course, true communities before the dawn of history; and certain bodies of people, such as the dependent group, and still more clearly the groups of lunatics, feeble-minded, and infants, have never been, and could hardly be, communities at all; but, on the other hand, bodies of men pursuing the same occupation, though usually mere groups, have become communities at times and under exceptional conditions. The trade-guilds of the Middle Ages were communities of this kind, and many bodies of workmen that had previously been nothing more than groups have developed into communities during the last hundred years. The trade-unions of the present day are both an expression of a sense of solidarity and an attempt to turn a group of workmen into a true community.

Now, although neither of these classes can be left out of account in the study of politics and jurisprudence, the community, with its capacity for common action, is by far the more important of the two. Groups involve less difficult problems for both politics and jurisprudence, because in their case the only matter to be considered is the welfare of the group and of the public at large. In the case of communities the question is further complicated by the wishes and the action of the community itself. This may or may not lead to a more just solution according to the wisdom, moderation, and mutual respect, or the animosities and the exasperation, of the various bodies of men concerned. But in any case it adds to the elements of the problem. Whether the movement, for example, to transform bodies of workmen into communities in the form of trade-unions has been beneficial or not, it has certainly, from the point of view both of politics and of jurisprudence, made labor questions more pressing and more complex.

In treating of the relation of communities to politics and jurisprudence, we must distinguish between those that are based upon status and those that are voluntary. For although this distinction applies to groups as well as to communities, it is naturally far more important in the latter case.

The classification of social entities according as they are based upon status or upon voluntary association requires, however, both explanation and definition. In some cases the members become such without any voluntary action or possibility of choice on their part.
This is true of children born into a family, and, in an early period of society, into a tribe or local community. Then there are cases where the membership, while not assumed for the purpose of membership, is the result of a condition or status which is voluntary in the sense that in theory, at least, the condition is the result of choice, or might have been avoided. That is the case with the dependent and criminal groups. It is the case also with the urban and rural communities. A man is free to live in a city or not as he pleases, but he usually moves his abode to a city, or remains there because his occupation or engagements lead him to do so, not because he desires to be a member of an urban community. In all groups or communities of the foregoing kinds the membership is the inevitable result of a status which may itself be voluntary or not; and these are the only kinds of groups treated under the different sections of Department 22 at this Congress. But there is another kind of entity, the membership in which is purely voluntary, because the members belong to it not on account of any extrinsic condition or status, but for the sake of the group itself. How far the choice is really deliberate or free, and how far the result of environment, of the association of ideas, and of suggestion, over which the individual has little actual control, we must leave to the psychologists, and especially to the Section on Social Psychology. We are concerned here only with the political and legal aspects of the problem, and from that point of view the membership may be regarded as voluntary. Of such a character are social and learned clubs of various kinds, religious bodies, philanthropic organizations, and, let us add, political parties. In this connection it may be observed that the trade-unions are striving to become communities based upon status instead of voluntary association. This effort lies at the foundation of the conflict over the open and closed shop. The policy of the closed shop, if successful, would drive every man who pursued a certain occupation into the trade-union; while the principle of the open shop leaves the union a voluntary body, and for that reason any one familiar with the trend of civilization will be very much inclined to doubt whether the effort is likely to succeed.

As an example of the political and legal problems presented by communities based upon status, we may take the race question. This problem, in one shape or another, faces most of the great civilized nations at the present day, either in their national or their colonial administration. A number of solutions of it have been essayed. The simplest and most drastic is that of expelling or excluding the weaker race. At various times in the world's history the Jews have been expelled from different countries. The Chinese are now excluded from the United States and from Australia. But expulsion on a large scale is clearly impossible to-day among
civilized people, and exclusion is possible only under favorable conditions.

In other cases an attempt has been made to transform or absorb a race. This is the solution commonly tried by the governments of Continental Europe. It is manifestly out of the question except when the differences are not very profound. It may or may not be possible to make Slavs into Germans, or *vice versa*, but no one would expect to make Europeans and Chinese interchangeable. Even as between European races the efforts in this direction have not of late been generally successful.

The third solution is to ignore the difference of race and legislate as if it did not exist. That was the solution applied in this country after the Civil War; but it cannot be said to have fulfilled the hopes cherished by its authors, and the present generation, even in the Northern States, seems inclined to regard it as neither satisfactory nor final.

The fourth solution has been that of disregarding the rights of the weaker race altogether. This has been tried at various periods in the world's history, especially in the case of colonies. It is safe to say it will never commend itself permanently to the conscience of mankind.

Other partial solutions have been tried, more or less deliberately, and with varying degrees of success. This is not the place to follow them in detail, but merely to point out that the problem is one that will hang heavy on the hands of the twentieth century; and that with the growth of popular government and the increasing industrial, intellectual, and social opportunities throughout the world, the task of governing a people that is not homogeneous has become far more difficult. Although these very forces may tend to efface race differences where they are not profound, the differences are often so great that one can entertain little hope that they will disappear.

Except for the questions arising from race, legal and political problems connected with status have tended to decline in importance, while those connected with voluntary associations are increasing in gravity, and are likely to do so for a considerable time to come. Man's mastery over the forces of nature, and the improvement in transportation that is bringing the whole world into active competition, have made cooperation upon a large scale a necessity. One form of this has been economically highly successful. That is the combination of small amounts of capital into great corporations, and its very success has made abuses possible and legislation necessary. Transportation has also made the wants of all civilized mankind more alike, while the diffusion of a common elementary education and the ease of communication have brought about uniform-
ity of thought and the possibility of combination in all directions. Hence associations of many kinds which, being capable of good and evil, must be regulated by law, and must often be the subject of political action.

The solution of social and political questions by the progressive thinkers of the eighteenth and the early part of the nineteenth centuries was based mainly upon individualism. They considered man, not combinations of men, and they regarded all individuals as equal, isolated, and independent units. The prophets of democracy, supposing that each person would think for himself, failed to appreciate the contagious quality of ideas and the compulsory power exerted over opinions by organized bodies of men. They assumed also that the real interests of all men were fundamentally in harmony, and hence they saw no strong motive for combination. The English individualists, moreover, looked upon freedom to combine as an essential part of personal liberty, and they did not perceive a danger that the right might be so abused as to encroach upon the liberty of others. This is very clearly put in Professor Dicey’s *Law and Public Opinion in England during the Nineteenth Century*.

Rousseau, whose acumen in grasping the real nature of a problem is more striking than his good sense in finding the solution of it, perceived the difficulties that might arise in his ideal commonwealth from the presence of combinations of men. He saw that his principle of a common will, ascertained by counting votes, and then accepted as the unanimous wish of the whole people, would be futile where there was an organized minority. He declared, therefore, that a community is incapable of a common will where factions or sects exist. If he really imagined that any community would ever arise without those incumbrances, he showed that although a good philosopher, he was a bad prophet. He was a particularly luckless prophet, because he wrote just at the time when the era of invention was about to open the gates for the greatest development of voluntary combinations of men that the world has ever known, and when in public life the very democracy which he preached was about to make political parties a recognized and permanent element in the state.

He was, however, a good philosopher, because he was right in believing that the presence of associations, or groups, or bodies of men of any kind, makes the opinion or action of a community quite a different thing from what it would be if no such bodies existed; and this for several reasons.

In the first place, a composite majority made up of majorities of fractional parts is a very different thing from a majority of the whole people, and may be exactly the reverse of it. Each man in such
a case puts himself into the hands of some body of men whose will is in Rousseau’s sense general as regards him, and partial as regards the rest of the community.

Then man is only in a small degree a rational animal, and is mainly a creature of suggestion. He takes his opinions largely from the society of which he is a part. In fact he does not so much join a church, for example, or a political party, because he agrees with its objects, as he accepts its policy because he belongs to it. An association becomes indeed an end in itself, and thus a body may act in a way that the bulk of the individuals who compose it would not act if left to themselves.

In the third place, a large body of men has power to affect the destinies and curtail the freedom of action of other people in a way that individuals could not do. Even without acquiring an actual monopoly, a trust or a huge corporation can drive smaller rivals out of business, or force conditions of labor or trade, or affect the method of conducting other distinct trades, when smaller concerns would have no such power. Moreover, they can do it without resorting to any conduct that would be illegal, oppressive, or even improper in the case of individuals. The same thing is true of trade-unions, or any other combinations of men on a large scale. To take a most familiar illustration: An individual may buy or sell where he pleases, and the motives for his choice are nobody’s affair; but if a large number of men agree not to trade with a certain person it becomes a “boycott,” and a terrible engine of compulsion.

It follows that formidable combinations stand in a peculiar position. Their acts have different effects from those of individuals. Their moral rights and duties are not the same, and they must to some extent be subject to peculiar laws. The difficulty in dealing with them comes in drawing the line between freedom of combination and the liberty of the individual. The question—in some ways akin to the problem of reconciling order and progress, which has at times occupied so much attention in Europe—will loom large in the twentieth century.

While dealing with voluntary associations it is interesting to observe how far we have already gone in solving an important problem arising out of their development. I refer to the case of political parties. The greatest contribution to the art of politics in the nineteenth century is expressed in the phrase “Her Majesty’s Opposition.” It implies a recognition that organized bodies of men who are loyal to the state and to the established form of government, but who are opposed to the administration in power, have a right to exist and to carry on an active propaganda. Germs of the modern party system can, no doubt, be traced farther back in some countries, but the system cannot be said to have developed fully until the nine-
teenth century. The legitimacy of party as a factor in public life is now fully admitted in all countries which have possessed popular government for a considerable length of time, and it is admitted to some extent in all countries that have a popular element in their governments. The system is, however, based upon a number of conditions.

On the one side there must be a recognition that differences of political opinion are legitimate and may be advocated by argument and all the proper arts of persuasion.

On the other side the opposition must not urge revolutionary opinions. It must not be what is sometimes called irreconcilable, that is, it must not aim at the destruction of the existing foundations of government and of society. The limits of legitimate difference in political opinions vary, of course, from place to place and from time to time; but it is necessary that the limit should be generally recognized at any given moment, and this is one of the most important functions of a constitution.

Then again the means employed by each party for obtaining power must be proper, and for this reason many laws have been enacted in the nineteenth century against the bribery of voters, and provisions have been made to prevent intimidation—by the device, for example, of the secret ballot.

Finally, there must be a universally recognized means of determining which opinion ought to prevail. This is another function of a constitution and of constitutional law.

The party system is by no means without grave faults, but without it popular government could not have endured. The system has reconciled to a great extent liberty of political opinion and action with the stability of popular institutions.

One of the chief problems of the twentieth century will be the regulation of other combinations of men, whether based upon race or upon voluntary associations for industrial and other purposes; and that problem will involve politics, jurisprudence, and social science. The solution will not be the same as that adopted in the case of political parties, but some hints may, nevertheless, be obtained therefrom, such as the plan of leaving the right to organize free, but regulating the ends and means of operation. In one point certainly the example set in the case of political organizations must be followed. It is that of accepting the natural tendencies of a progressive age instead of trying to run counter to them. The method of approaching the problem and the principles applied to it will, no doubt, be different in different countries and under varying conditions; but just as the nineteenth century showed an inclination to lay too much stress on the individual, we may perhaps expect in the twentieth century a reactionary tendency to treat
bodies of men too much collectively. But the true and, therefore, the permanent solution must be found in keeping in mind both the individual and the group, and politics and jurisprudence can be wisely directed only by a thorough study of the psychology of the group; in other words, the effect of the group upon the mental attitude of the individual.
DEPARTMENT XX — POLITICS
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THE FUNDAMENTAL CONCEPTIONS OF NINETEENTH-CENTURY POLITICS

By William Archibald Dunning

[William Archibald Dunning, Lieber Professor of History and Political Philosophy, Columbia University, b. Plainfield, New Jersey, A.B., A.M., Ph.D., LL.D., Columbia University. Fellow, Lecturer, Adjunct Professor, and Professor, Columbia University. Member of American Historical Association; American Political Science Association; New York Historical Society; Massachusetts Historical Society (corresponding). Author of Essays on the Civil War and Reconstruction; History of Political Theories. For nine years managing editor of Political Science Quarterly.]

When Louisiana was acquired by the United States the politics of the world was centered about a single nation, and the politics of this nation was centered about a single individual. France and Napoleon epitomized the dominant principles of the day; revolutionized France meant liberty and equality, the rights of man, national democracy; Napoleon meant the resistless armed might of democratic propagandism. Before the enthusiasm of the French nation and the genius of their chosen leader the principles, the practices, and the men of the old régime vanished from Western Continental Europe. Only in Russia and in the British Isles did conservatism find a secure refuge, and from these points of support, with the principles and material resources of England as its chief dependence, it waged unrelenting war on all things French and all things Napoleonic, and in the end it was triumphant.

With 1815 came the termination of the long wars; the smoke and shouting of battle passed away and the readjustment of institutions and political systems began. Reaction was manifest everywhere; the dogmas and the men that for nearly twenty-five years had cowered in the remotest and obscurest hiding-places of the Continent, now assumed control of political life, and a war of extermination was entered upon against everything that had been identified with the Revolution. But the work of the French Republic and the Napoleonic Empire had been too thoroughly done throughout western and central Europe to permit of ready eradication, even by the drastic methods employed by Metternich and his satellites. Lib-
eralism, proscribed and hunted by the triumphant powers, lived nevertheless, and resisted its adversaries with the weapons that were nearest at hand — conspiracy, assassination, insurrection — as well as by ceaseless agitation and debate, so far as these were permitted in practical politics, and at last, but only when the middle of the century had been reached, it had secured a definitive triumph throughout the better part of Europe. After the revolutionary wave of 1848, the prevailing governmental systems, as well as the prevailing beliefs in both scientific and popular thought, expressed with more or less completeness the principles for which the liberals had contended. And far more fully than anywhere in Europe, these principles pervaded the government and the general life of that growing people across the Atlantic, whose development had already begun to make them a factor of large significance in the affairs of the civilized world.

I

This conflict between liberalism and conservatism, then, may be taken as marking in a general way a period in nineteenth-century politics. The influence of the antithesis of doctrine appeared in every phase of the political life of the time, and in most phases this influence was decisive. In the internal affairs of every country, the struggle for the realization of liberal ideas furnished the most conspicuous incidents. France was the recognized leader and gave the impulse to all Europe in this respect, and the history of her party politics is merely a recital of the strife of liberalism and conservatism. Spain and the Italian states exhibited a series of transformations in governmental institutions with the same division as the basis. The German states experienced many vicissitudes of agitation and insurrection, but the hand of Metternich was strong in central Europe, and while liberalism got a footing in some of the smaller states, the time of the greater did not come until 1848, and even then the success of the liberals was but temporary in Austria and greatly qualified in Prussia. England felt the effect of the spirit of the times in the great struggles for Catholic emancipation and Parliamentary reform and in the abortive movement of the Chartists. Even Russia had a little experience of uprising for liberal government in 1825 at the accession of the first Nicholas, and a very serious experience with the combination of liberalism and nationalism in the Polish war of 1830. And finally, at the other extreme, across the Atlantic, the United States exhibited the influence of the Zeitgeist by the transition from the Jeffersonian to the Jacksonian type of democracy.

When we glance at the international politics of the period we find the same influence largely operative. The grouping of the great
powers in reference to their policy of supervision over the affairs of Europe was frequently determined by the real or assumed bearing of the policy on the great issue between liberalism and conservatism. Metternich's astute suggestion that the Greeks, in their struggle for independence, were liberals in insurrection against their legitimate sovereign, the Sultan, illustrates the potency of the leading idea of the time, as a force for diplomats to conjure with. The policy of England toward Spain's American colonies during the twenties, with the incidental though hardly anticipated result of our own Monroe Doctrine, had for its foundation Canning's dislike of ultra-conservatism, while the long and influential entente between the English reformed government and the government of Louis Philippe rested notoriously on the sympathy between the leaders of political thought in the two countries, as opposed to the autocratic and reactionary influence represented by the three Eastern powers.

Assuming, then, that the struggle between liberalism and conservatism was the characteristic mark of the practical politics of the period extending to the middle of the century, let us consider what were the principles of political science that were involved in the struggle and its result.

Fundamentally, nineteenth-century liberalism meant democracy. Its ultimate aim was to break down the bars which excluded from political life the classes of people whose intellectual, social, and economic significance was becoming unmistakably predominant. For its immediate aim it demanded liberty and equality. The content of these much-abused terms was explained in accordance with the philosophy of the eighteenth century, that is, by the dogmas which had been demonstrated by Montesquieu and Rousseau and had been formulated in the Declaration of the Rights of Man. Liberty was held to consist in a series of rights defined by nature itself, and equality in the possession of all these rights by every man by the fact of his humanity. Within the sacred circle of these rights no governmental power could intrude. Against every claim of authority to do so as derived from God or custom or tradition was opposed the decree of supreme and beneficent nature. The precise character of nature — this kindly source of human rights — was no less variously and indeterminately defined by nineteenth-century than it had been by eighteenth-century philosophers; and the list of rights that were deduced by laborious speculation from nature in the abstract bore a suspiciously close resemblance to one which could be compiled from the very concrete constitutional law of England and the United States. Yet nature — whatever the diversity of ideas connoted by the term; and nature interpreted by reason, regardless of the skeptic's query, Whose reason? — continued throughout the period we are discussing to be the ultimate basis of the liberal creed.
It was, however, in regard to civil rather than political rights that the code of nature was considered conclusive by all shades of liberals. As to political rights, especially that of the suffrage, liberalism was much divided. The more extreme spirits in its ranks were quite sure that nature and reason immutably prescribed participation in all the functions of government as the right of every man. Less radical elements found in nature the right of representation, but not of participation, in political functions; and many were loath to admit that even participation in the designation of a representative was within nature's gift to every man. Finally those liberals who shaded imperceptibly into the ranks of conservatism itself, maintained that while nature enjoined indisputably the guarantee of civil rights to every man, the assignment and enjoyment of political authority was a matter of human expediency, varying with times, places, and circumstances, and not determinable a priori. Liberty for all, authority for the qualified, was the maxim of this school.

The list of names identified with these various shades of purpose and belief — the honor-roll of early nineteenth-century liberalism — includes many which have no meaning to the present generation, but a few which still symbolize something distinctive in theory or in practical achievement. France furnishes Benjamin Constant, Royer-Collard, Guizot, Tocqueville, Lafayette, Comte, Louis Blanc; Germany gives Fichte and Hegel (whose systems, conceived in the spirit of liberty, had, however, the defect of extremely refined abstraction, that they could be as readily adapted to the support of reaction as of progress), Rotteck, Welcker, and the ultimately Americanized Lieber; England offers Bentham and his radical followers, Grote, the two Mills, and the redoubtable Brougham; Italy gives Mazzini, and all Europe the group of devotees who worshipped the thought and carried into operation the wild schemes of that amiable fanatic.

The conservative opposition to the views and purposes represented by the foregoing names was embodied for the most part in the royal and aristocratic classes of the old régime. Its practical spirit was expressed in that curious intermonarchic agreement known as the Holy Alliance; in the forcible interference to suppress constitutional government in Italy, Spain, and elsewhere; in the rigorous espionage and censorship over thought and expression throughout Europe; in the bitter resistance of the aristocracy in England to the diminution of their ancient prerogatives by Parliamentary reform; and in the extreme assertions of aristocratic and monarchical privilege which led to the explosions of 1830 and 1848. Philosophically, conservatism expressed itself in three theories: First, that of the divine right of the old monarchic and aristocratic order — that political authority emanated from God and could not be questioned by any merely human agency; second, the theory that if nature were to
be consulted at all as to the basis of political organization, her answer would be that inequality and not equality was the universal principle among men, and that, therefore, aristocracy and not democracy was the order of nature; third, the theory that the appropriate social, legal, and political institutions for any people were to be discovered, not through any assumption as to the nature of man in general, but by a consideration of the character of the particular people as revealed in its history, and that the institutions which had come to prevail at any particular time through peaceful development must be presumed to have more inherent justice and validity than any others that might be suggested.

Of these three views, the first, which defended absolute monarchy on the ground of mystical divine right, was already antiquated, and in the prevailing rationalism found no adherents save a few obscurantists. The second view had a more intellectual support, and was sustained in a manner that at times manifests no little force by Ludwig von Haller, whose bulky volumes are now rarely opened. The third view characterized the most moderate of the conservatives and determined the actual solution of the problems of the time. It afforded a ground on which the least extreme of both liberals and conservatives were able from time to time to stand together. It triumphed in the Whig reforms in England and in the July Monarchy in France, and it profoundly influenced, if it did not fully control, the application of that principle which on the whole expresses most fully the contribution of this period of the nineteenth century to political science,—the principle, namely, of constitutionalism in both state and government.

Let us consider for a moment the source and nature of this principle. To liberals of every shade in this period, the indispensable token and guarantee of the liberty which they sought was a body of law which should to some extent control and determine the power and procedure of the persons who exercised political authority. With few exceptions, the liberals demanded that this body of law be expressed in a written document. "Constitution" came to mean specifically "written constitution," and the triumph of liberalism is no more significantly shown than by the fact that at the middle of the century a great majority of states in the civilized world were equipped with instruments of this kind. But the written constitution was so intimately associated in origin and character with revolution that the established conservative powers could never contemplate it save with abhorrence. Its earliest appearance had been in the abortive efforts of the English Independents during the Puritan Revolution to formulate an operative system that should embody their ideals; it had been resorted to in America on a large scale when the colonies separated from the mother country; and it
had figured multitudinously in France between the Bourbon of 1789 and the Bourbon of 1815.

Moreover, the content as well as the history of the written constitution made it an object of abhorrence to ultra-conservatism. Two features were generally insisted upon as indispensable: first, a distinct enumeration of the rights of the individual with which government was under no circumstances to interfere; second, a description of the organs of government and a body of rules determining their actual operation. The individual rights normally secured were those that had come to be known as natural rights, and the organs of government with which the practice of written constitutions was associated included some form of popular representative assembly. But both natural rights and popular representation were, of course, diametrically opposed to the ideas of the old régime, and, furthermore, the most fundamental conception of the nature of state and government that underlay the theory of a written constitution was unacceptable to conservatives of every shade. For to the liberals the constitution was the expression of the people's will, and had no more of permanence or immutability than that will. As Rousseau had demanded on principle, and as several of the American states had undertaken in practice, the people must assemble in convention at not infrequent intervals to declare whether they would longer maintain the existing system. State and government, in other words, were mere creations of the will of certain groups of individuals, and a constitution was merely the formal expression of that will at any given time.

Upon this view of political fundamentals conservatives of every shade made aggressive war. The high priests of autocracy saw only horrid sacrilege in any meddling by the common people with the divine mystery of the state. To suppose that any written phrases, open to the interpretation of the vulgar, could express the essentials in political life was to the obscurantists and mystics supreme foolishness. No constitution, declared Joseph de Maistre, the most brilliant exponent of this view, results from deliberation. In every constitution there is something that cannot possibly be written — that must be left in venerable obscurity under penalty of destroying the state. The more there is that is written, the feebler is the political structure. When a nation begins to reflect upon itself, its laws and its life are already determined. Sovereignty is an emanation from God himself, and man must not tamper with it.

Something of the spirit of these phrases of de Maistre appears also in the thought of the scientific and the historical schools of conservatism. To the theory that the state is made, they oppose Topsy's idea, that it merely grows. Burke's glowing denunciation of the French Revolution gives the keynote of their cry. Men are in the
state and subject to government, not through their own deliberate choice, but through an inexorable decree of their nature. The constitution of a given political society is never to be found in any document, however carefully framed and however solemnly proclaimed as the fundamental law. The bond which truly unites and determines a people in their social and political life consists in the aggregate of the numberless conventions and understandings through which in the course of ages the varying relations and institutions of the community have been developed and adapted to its greatest convenience. In other words,—and in the phrase which became the distinguishing mark of a prevailing school of political philosophy,—the state is not a mechanism, but an organism. There is, indeed, a mystery in the state, but it is the mystery of all life and growth; and the remedy for intolerable ills in the state, as in the individual, is not the charlatan’s panacea of death and resurrection, however attractive and logical the prescription may appear, but the wise physician’s careful study of the history and character of the particular condition, followed by the removal of defects in this organ and in that, without any pretense of touching the life principle itself.

This general view was that on which the practical constitutionalism of the first period of the century was worked out. It was the doctrine which the reforming Whigs in England applied, as against the demand of Bentham and the Radicals for a remodeling of institutions in accordance with their a priori scheme. It was the doctrine which inspired the famous protest of Savigny against codifying and thus assuming to stereotype German private law. It was the doctrine, finally, which is clearly revealed by an examination of the content and working of the constitutions that resulted from the agitations of the period we are discussing. These constitutions were, indeed, written constitutions; but how different in character from the type which had been conceived in the enthusiasm of the early Revolution! In many cases the actual document announced itself to be, not the deliberate expression of a people’s will, signifying their choice of government, but the grant of certain institutions by a monarch to his subjects. Liberties were indeed guaranteed to the man and the citizen, but rarely the sweeping immunities that had figured in the Declaration of the Rights of Man. A representative legislature was in every case provided for, but rarely so organized as to interfere with the ancient domination of the aristocratic classes, or endowed with such power as to insure the development of more popular institutions. And above all, there very early appeared the vexed question of the right of interpretation—the question which in the long run showed to every one that a written constitution was not a remedy for all the ills that political life is heir to, but merely a palliative for some particular evil conditions at some par-
ticular times. It was under color of an interpretation of a written constitution that Charles X of France issued his July Ordinances and precipitated the Revolution of 1830; it was by an interpretation of the Prussian constitution that Bismarck carried through his policy of the conflict time — an interpretation, moreover, which he, with characteristic cynicism, readily abandoned when it ceased to serve his purpose; and it was through interpretation that the constitution of the United States — the written constitution *par excellence*, the most wonderful instrument, according to Mr. Gladstone, ever struck off at a given moment by the thought and purpose of man — was made the basis for the resolute efforts of two great masses of fellow citizens to annihilate each other.

The written constitution had, indeed, done its work by the time it had become generally prevalent. In its true character it was found to be not an indispensable feature of every sound political system, but merely an ingenious expedient for facilitating the transition from one system to another. Through it the political ideals and characteristic principles of the eighteenth and early nineteenth centuries have been crystallized and put into form for permanent exhibition. Political antiquarians are thus enabled to study the past at their ease; lawyers can wrangle and construe and assert — sometimes with real belief at the basis of their assertion — that in the articles and sections and phrases and words of the document are to be seen the essence of the state; but behind and all around the scanty code the real life of the body politic goes serenely on, regardless of all the puny efforts to cramp and fetter it.

In the development of nineteenth-century constitutionalism, the chief types — the unwritten and the written, or, in the terms suggested by Mr. Bryce, the flexible and the rigid — have been furnished by Great Britain and the United States respectively. In the long run the British type has proved the more permanent; for the limitations on government and on sovereignty itself, which were originally the characteristic mark of American constitutionalism, have in large measure disappeared, and on the impressive but unstable foundation of necessity and destiny has arisen for the contemplation of mankind that structure which to the forefathers would have seemed such a monstrosity — the unwritten constitution of the United States.

II

The second period of the nineteenth century, embracing the decades from the sixth to the ninth inclusive, has, for the controlling topics of its politics, both theoretical and practical, nationalism and socialism. This is the period of Bismarck and Lincoln, of Karl Marx, and, equally significant in the opposite sense, of Herbert
Spencer. The constitutional liberty of the individual, secured by the strenuous struggle of the previous decades, was now subordinated to the demand for national unity in governmental organization and for majority rule in economic organization.

The idea of nationality, as the normal and natural criterion of political organization and independence, was by no means new in this period, but it now gained overwhelming importance from the practical work of Bismarck and Cavour in Europe and from the terrific struggle through which the principle was maintained in the United States. The working out of the idea was attended by a change of relative position among the European Powers. France was supplanted by Germany as the central figure. France, with a homogeneous population and a compact territory under a unified government, had only that interest in the principle of nationality which was incidental to the ambition of the third Napoleon. England, with Ireland on her hands, was necessarily cold toward the doctrine of nationality per se. Her philosophy easily conceded that the Poles were not Russians because they said they were not, and that the South Carolinians were entitled to independence of the United States because they believed they were; but it could not admit that Irishmen were not Englishmen or were entitled to independent government for any such reasons. The German, the Italian, and the American peoples, however, were able to make the principle of nationality predominant in both theory and practice. Yet, it is not to be presumed that either Bismarck or Cavour was under any illusion as to the abstract conclusiveness of nationality as a principle; to them the cause of the Hohenzollern and the Savoyard dynasties, respectively, was as much end as means in the policies which they carried through. And, even as to the United States, the time has probably now come when it will not be held unpatriotic, as it certainly is not untruthful, to say that sordid considerations of selfish sectional interest played a large, if not a decisive, part in the struggle through which national unity was preserved.

The triumph of nationalism in the seventh decade of the nineteenth century was promptly followed by a transformation in the principle that has determined in large measure the later stages of political development throughout the world. In the first period of the century nationalism had been the sister creed of liberalism. National independence and constitutional government had commonly been united as summing up what was just and natural in the aspirations of a people. In the name of both principles together the Poles had fought for independence of Russia, the Belgians had achieved their independence of the Dutch King, and the Magyars and Italians had resisted the Austrian Dominion. Nationalism had been essentially defensive in character and application; its
goal had been the release of a people from alien governmental control. But the events of the sixties revealed a new and widely different aspect of the doctrine. Nationalism passed from defense to aggression. Its chief end came to be, not the release of a people from foreign rule, but the subjection of every people to its appropriate domestic rule. In the name of the nation politicians, theoretical and practical, demanded a re-ordering of the world. God and nature and human reason and history were all triumphantly shown to have decreed that in the homogeneous population inhabiting a continuous territory should be the final and unquestionable unit of political organization. "National unity" superseded the time-honored "consent of the governed" as the justifying principle of sovereign dominion. Love of liberty and of self-government, once the noblest theme of poetry and philosophy, now became mere graceless "particularism." In the name of the nation, Hanoverians, Saxons, and Hessians were incorporated in the Prussian state; in the name of the nation eleven million Southerners were harried into subjection to the government at Washington. Political science mapped out the whole world into geographic unities, in each of which it was solemnly declared to be the end of all human destiny that some ethnic unit should be neatly and eternally ensconced.

There were difficulties in the practical application of this, as of every other ultimate principle. Ethnic homogeneity was in last analysis rather hard to define. Some clear objective test was needed to determine where one nation ended and another began. Identity of blood, of language, of religion, of traditions, of history, were all duly tried and all alike found wanting. Nor was the bounding of geographic unity any easier in practice. Alsace, we know, was and doubtless still is German, because it is east of the Vosges, but equally French because it is west of the Rhine. The Alps were undoubtedly ordained by God and nature to be the divider of nations; but it is hazardous to assert the same of the scarcely less formidable Rockies. Yet with all these difficulties perfectly apprehended, the idea still persists that there is something peculiarly natural and permanent and rational in the so-called national state. Switzerland and Russia and Austria-Hungary are all looked upon as rather out of the orbit of the scientific student of politics because they do not conform to the canons of ethnic and geographic unity.

Without examining farther the characteristics of this peculiarly nineteenth-century idea of nationality, let us look a moment at the influence which the idea has had upon the development of the conception of liberty. *Pari passu* with the realization of democratic ideals in governmental organization, there had developed the antithesis of the two systems of thought familiar to us as socialism and individualism. But vaguely and obscurely manifested during
the first half of the century, the conflict between the two became well defined and furious with the triumph of constitutionalism in 1848–1849. Both the opposing systems derived their lineage from the earlier liberalism. The socialist claimed that, with the people in control of the governmental organization, there could be no limit set to the power which they could justly exercise; restrictions that had been insisted upon before, when political authority was in the hands of the one or the few, had no justification, he declared, when authority was in the hands of all. The sovereignty of the people and the welfare of the people he interpreted as involving necessarily the supremacy and the primary interest of the classes which had just obtained political recognition, and the powers of government, he insisted, should be used as freely for the benefit of these classes as they had heretofore been used for the benefit of the classes now deposed. The individualist, on the other hand, steadfastly maintained that the rights of man had not ceased to exist with the triumph of democracy. The end of government, whether controlled by classes or by masses, was to protect these rights, not to override them. The state, indeed, had no other cause for its existence than to assist the individual in developing the powers that are in him, and any application of the public resources to other ends than this was tyranny and despotism.

This modern doctrine of individualism, having its source in the idealism of the German Fichte and Humboldt at the beginning of the nineteenth century, received a very perfect development through the works of the English Mill and Spencer in the fifties and sixties. It is, indeed, not too much to say that the whole magnificent system of Synthetic Philosophy was wrought out by Spencer to furnish a scientific foundation for the individualist thesis which he laid down in the first edition of his Social Statics. England at this date had just abandoned her ancient system of agricultural protection, and her philosophers, followed by many in other lands, were enthusiastically in favor of extending over the whole field of commerce and industry the laissez-faire which had been applied to English agriculture. The paternalism, which, after all, lies always close behind the fraternalism of the socialist, was, without doubt, distinctly overpowered by that ardor for individualistic liberty which was so widespread in the two decades following the middle of the century. If since then socialism and paternalism have gained the upper hand, and government is now conceived rather as an agency for the positive promotion of the interests of those classes who control it, the result may be traced to that passion for nationalism which supplanted the passion for constitutionalism. With the cry that industrial independence was essential to the complete national life, the United States and Germany took the lead in reversing the tendency which
England's free-trade policy had created, and gradually all the leading nations of the earth fell into line with them. In the presence of universal tariff barriers, in which the powers of government are most extensively and ingeniously employed for the primary advantage of specific classes, it is hard to find an adequate ground on which to resist the demand of any other class for a similar employment of governmental power in behalf of its interests. Nationalism has sounded the knell of individualism—whether forever or not, it remains for the future to disclose.

Another conspicuous feature of nineteenth-century politics that experienced serious if not irreparable disaster through the nationalistic movement was the doctrine of federalism. As the principle upon which the United States developed its astonishing progress in the first half-century, federalism came to be regarded as the touchstone of pure gold in governmental organization. The most logical constitution-makers in the world, the publicists of Latin America, brought forth a large crop of systems embodying this vital principle. Witness the United States of Mexico, the United States of Colombia, the United States of Venezuela, the United States of Brazil, and so on. Only yesterday our government relieved itself of the embarrassment in diplomatic intercourse caused by this very sincere flattery. By order of the Department of State, we are henceforth to be, not the "United States," but "America," distinguishing ourselves from our sister republics by simply appropriating to our exclusive use the name of the hemisphere of which they are a part. Though federalism was in its first application merely a more or less mechanical device for combining previously well-defined and independent political units into a single system, there came later to be found in it the invaluable principle of local self-government. The partition of power between central and state organizations was treated, not merely as an essential to the union of distinct sovereignties, but as a guarantee of individual liberty against all sovereignty. But the sweep of nationalizing sentiment obliterated this beneficent conception. In realizing the ends and aspirations of the nation, the autonomy of states received as little consideration as the rights of individuals. Centralization of power, in the name and for the purposes of national unity, accompanied the progress of every body politic in which federalism had for any reason obtained a hold.

III

After this very general survey of the tendencies manifested in the nationalistic stage of the century's progress, we are able to understand readily the influences which have produced the later and final stage. This, covering the last fifteen or twenty years, may with a fair degree of accuracy be designated the era of the new imperialism.
The events that have given character to the period are so recent and familiar as not to need detailed recital. The broad principle that has underlain them is that the nation, perfected through the suppression of individualism and of federalism, must break the bonds of ethnic and geographic homogeneity and project its beneficent influence into the world at large. Such, at all events, is the philosophic theory of the movement. The practical aspects of the operation have, of course, been of a rather less exalted nature. The impulse has come from the demand for markets on the part of the highly stimulated industries of Germany and the United States. It was in the eighties that the Germans instituted that picturesque world-wide hunt for colonial lands that gave such a shock to Great Britain and such amusement to the rest of mankind. It was in the early nineties that Africa was parceled out, with a brave paraphernalia of "spheres of influence" and "hinterlands" for the parcelers, but with no sign of respect for ethnic and geographic unity among the parceled. Three years later the unmistakable ambition of the American people to manifest their power beyond their national boundaries was thwarted, though with great difficulty, by President Cleveland; but in 1895 he also gave way, and by his Venezuelan message unchained the passions and aspirations which found a temporary satisfaction in the incidents and results of the war with Spain. The United States, the most perfect type of advanced democracy and nationalism, entered fully upon the task of governing distant and hopelessly alien peoples by the methods of autocracy. In the movement for the final partition of Asia into spheres of influence for the European powers — a movement to which the indomitable will and energy of one brave little Asiatic people have raised up an obstacle which at the present moment seems likely to be insuperable — the great American Republic has taken a recognized part as a regulating, if not a promoting, factor. There no longer remains one first-class nation whose conscious aim is rather internal perfection than external dominion — not one that does not see in dependencies the indispensable proof of political competence. Under such circumstances it needs no exalted intelligence to see that constitutionalism and nationalism have been definitively superseded as controlling dogmas in the world's politics.

What, now, is the meaning of this new imperialism? Is there in it anything really new? Is it any different from the imperialism of Athens in the days of Pericles or the imperialism of Rome under the late republic? Has it for its underlying principle anything different from that proclaimed by Machiavelli, that no state, whether monarchical or popular, can live a peaceful and quiet life, but each must either conquer or be conquered? Or anything other than the doctrine of the doughty Thomas Hobbes, transferred from individual
to nation, that life consists in an unceasing struggle for power that ends only with the grave? Or anything different from the principle to which the theories of evolution lend support, that a nation, like any other organism, must either grow or die, and that its growth involves the absorption of other organisms?

To very many thoughtful supporters of the new imperialism a way of escape from the implications of these questions appears in the conception that the 'modern movement is essentially altruistic,—that it is founded upon duty to others rather than satisfaction of our own desires. This is not a new idea in the history of politics. Athens pointed to the beneficent effects of her supremacy upon the subject states. The philosophical clients of the plundering Roman proconsuls could always declaim with great effect upon the rescue of suffering peoples from misrule and upon the uplifting influence of the *pax Romana*. Likewise, the supporters of our modern imperialism find comfort in the good that has been done. The British in India, it is pointed out, have abolished suttee; the French in Africa have made Timbuctoo accessible to the methods of modern commerce and to the allurements of Parisian art; the Germans have made the forms of their bureaucracy familiar in darkest Kiao-Chow; and the United States has begun at least to inspire in its Philippine subjects a longing for the English language and a respect for the clothing of the temperate zone.

Whether or not the bestowal of these and other even more important blessings of Aryan civilization upon races that yearn passionately to be uncivilized, is the true and an adequate justification of the modern imperialism, it is not the province of this paper to determine. Its function is fulfilled in merely setting forth the succession of ideals and leading principles that has characterized the past century. The constitutionalism of the first period took a form which was in some measure novel in the history of politics; the nationalism of the second period presented also certain features that had no precedent; but the imperialism that closed the century’s record can hardly be said to have manifested thus far any characteristics that distinguish it from the movements in which throughout all history the powerful governments of the earth have extended their sway over the weak and incapable.
THE TENDENCIES OF THE WORLD'S POLITICS DURING THE NINETEENTH CENTURY

BY ELISHA BENJAMIN ANDREWS

[Elisha Benjamin Andrews, Chancellor of the University of Nebraska since 1900.

b. Hinsdale, New Hampshire, January 10, 1844. A.B. Brown University, 1870; ibid. Newton Theological Institution, 1874; LL.D. Brown University; ibid. Nebraska University; ibid. Chicago University; University of Berlin, 1882; University of Munich, 1883; Massachusetts Institute of Technology. President of Denison University, Ohio, 1875–79; Professor of Homiletics, Newton Theological Institution, 1879–82; Professor of Political Economy and History, Brown University, 1882–88; Professor of Political Economy and Finance, Cornell University, 1888–89. President of Brown University, 1889–98; Superintendent of Chicago Public Schools, 1898–1900. Member of American Economic Association; Loyal Legion; United States Delegate to Brussels Monetary Conference, 1892. Author of Institutes of General History; Institutes of Political Economy; History of the United States; History of the United States in Our Own Times; Outlines of Principles of History; Outlines of Cosmology.]

In speaking of the politics of a period, I suppose that we contemplate, in the main, three orders of elements: (1) Political psychology, viz., theories, thoughts, beliefs, and feelings, so far as these are conceived of as fertile and causal; Boulanger’s influence for a time in France, for instance. (2) Political movements, whether these have attained definite results or not. Chartism in England would illustrate and so would the Abolitionist crusade in the United States. (3) New political creations, such as new states, leagues, alliances, conquests, policies, institutions, maxims, codes, modes of political procedure, or shiftings of political emphasis.

These three sets of elements may perhaps be brought together without confusion under the general caption of political movement considered in itself, in its causes, and in its results.

Reversing this order and proceeding from surface to center, we notice, as a good way to get started, alterations in the political geography of the last century. Even apart from the bouleversement wrought by Napoleon, when, for the time, Europe did not venture to stereotype any maps, the century was a rather busy cartographer. I mention only historically significant changes and omit all details.

The United States has come to embrace the whole territory lying west of the old Thirteen to the Pacific, besides Alaska, the Philippines and Porto Rico. Spain is no longer an American power; all her old dependencies here, save Porto Rico, now an appanage of the American Republic, having become sovereign states. Brazil, independent of Portugal since 1823, is a republic, the last American political community to oust a monarch.

Great Britain grew greater and still greater; South Africa became hers; so did Egypt, for, though the Union Jack is not unfurled there,
its flagstaff, in the person of the Earl of Cromer, is firmly planted by the Nile, which answers every purpose. It is understood that railway and telegraph concessions to British parties, all the way from Rhodesia to the head waters of the Nile, connect those two British poles of the African continent. Australia and New Zealand were nominally British in 1800, but their erection into veritable membership of the Empire occurred later.

British rule in India was fairly begun by Clive's victory at Plassey, June 23, 1757, but it was rickety till 1798, when Lord Mornington, later the Marquis of Wellesley, became governor-general, with his policy of uncompromising British paramountcy over all native princes,—a policy consummated when, at Disraeli's instance, Victoria was proclaimed Empress of India in 1877. Since then Upper Burma has been made British, British India thus covering the whole of southern Asia, from Baluchistan, itself a British dependency, to the meridian halving the Gulf of Siam. To this add Ceylon, the Straits, and Hong Kong, which are British out and out, and the vast and valuable sphere of British influence in China. Innumerable minor dependencies and protectorates I omit, as of no bearing on my discussion.

Since the Second Peace of Paris, France has lost Alsace and much of Lorraine, but has gained, and holds with sovereign or some looser tenure, Savoy, Algeria, and Tunis, Madagascar, rather important districts in West Africa, French India and Indo-China, Cochin China, Annam, Cambodia, and Tongking, besides minute islands and mainland patches here and there over the earth.

The Congo Free State was erected during the eighties, the United States first recognizing its flag in 1884.

On the Continent of Europe, the Congress of Vienna and the Second Peace of Paris restored the map to about the form it had in 1791. The number of states was much reduced, chiefly by quashing ecclesiastical principalities. The Germanic Confederation replaced in a very general way the Holy Roman Empire. Prussia was vastly increased in size, thus put in a way to gain, in 1866 and 1870, still more extensive increments of territory and of power, insuring her the headship, as against Austria, of the new German Empire, which, in 1871, succeeded the confederation.

The nineteenth century saw the various governments of Italy unite under a single sovereignty for the first time since Justinian; Greece independent of Turkey; Egypt, also all the northern provinces in Europe that were formerly vassals of Turkey, free from their suzerain save in name, or, in some cases, tribute.

At the Congress of Vienna originated the European concert idea,—the system of relegating the weightiest affairs of European politics to the great powers for decision, which has since become a recog-
nized part of international law. The congress was an epoch in international law. Private international law may be said to have had its birth here, as public international law had its birth at the Congress of Westphalia. Certain valuable forms and rules for international intercourse date from this congress. A lively interest now first began to be manifested in Europe's common weal. New agreements were here set in train for the free navigation of rivers having an international character. The powers united to do away with the slave trade and directed new attention to the rights of foreigners resident in any land. "The business policy of the eighteenth century had as its fundamental principle that one nation's gain is another's loss. Now for the first time a European treaty appealed to the doctrine of the new political economy, that the alleviation of commerce is for the common interest of all peoples." Only in tariff legislation has Adam Smith been ignored. In this field even Great Britain is considering whether or not to disown him.

The five powers of the Holy Alliance sought at the Congress of Aix la Chapelle and still more at the congresses of Laibach and Verona, to fix as a bottom tenet of international law the principle of dynastic legitimacy. They damned as revolution all limitation by constitutions of a sovereign's power and all tampering with the territorial lines traced at Vienna. They further assumed the duty of protecting in their possessions the sovereigns then on thrones, and of assuring and guarding the public law of Europe as they understood it.

This effort the march of events and of European public opinion, which by this time began to count for a good deal, soon brought to naught and rendered ridiculous. The Bourbons ceased to reign in France. Revolutions in Italy dispossessed a number of families restored in 1815. The Pope surrendered his temporal power. Belgium was separated from Holland, and Savoy joined to France, while Austria lost her best Italian lands. Germany became a unit and an empire, besides appropriating Alsace and most of Lorraine. The Spanish American republics remained independent of Spain.

October 27, 1860, Lord John Russell sent abroad perhaps the boldest dispatch which a British Minister ever drew: "The governments of the Pope and the King of the two Sicilies, he said, provided so ill for the welfare of their people that their subjects looked to their overthrow as a necessary preliminary to any improvement. Her Majesty's Government were bound to admit that the Italians themselves are the best judges of their own interests. Her Majesty's Government did not feel justified in declaring that the people of southern Italy had not good reasons for throwing off their allegiance to their former government. Her Majesty's Government therefore

1 V. Treitschke.
could not pretend to blame the King of Sardinia for assisting them. We cannot wonder that such words as these spread in Italy like flame, that people copied the translation from each other, weeping over it for joy and gratitude in their homes, and that it was hailed as worth more than a force of one hundred thousand men."¹

The principle of the balance of power among nations, which the Congress of Vienna applied with such mechanical fidelity, lapsed into desuetude, giving way to the maxims of non-intervention and respect for each people’s sovereignty.

Louis Napoleon’s wish to interpose for the South in the American Civil War, and Great Britain’s unwillingness, which deterred him, are remembered by all. On Prussia’s seizure of Schleswig and Holstein in 1864, and of Hannover, Electoral Hesse, Nassau and Frankfurt in 1866, powerful influences in England and France wrought for intervention, but in vain. At the Schleswig-Holstein crisis, Lords Palmerston and John Russell were for war, and bemoaned the timidity of their colleagues; but Victoria was strongly against them and prevailed. In Great Britain still louder cry for intervention was heard, first when Louis Napoleon made himself Emperor, and again as his fall became imminent; but both times the Ministry was immovable. Public sentiment in the fatherland demanded German intervention in favor of Krüger during the South African War, but the imperial government resolutely held aloof.

In fine, while the right of a nation, in certain cases, to interfere for mere equilibrium’s sake with a neighbor nation’s extension schemes may, perhaps, still be defended in abstract international law, the corresponding practice in international politics is dead and buried.

The last century also saw given up, or at least greatly decreased, ideality of aim, whether in international or in national politics, part result, perhaps, of the state’s completer freedom from church influences. Natural rights are little pleaded any more. You must claim acquired rights or get out of court. It is frankly admitted that politics has its field right here in this actual earth and that earth is not yet heaven. In politics now we do the best we can, then feeling it a duty to be satisfied, provisionally, be the results never so far from ideal. “Hope not for the republic of Plato,” says Marcus Aurelius, “but be content with ever so small an advance, and look on even that as a gain worth having.”

It would be a mistake, however, to suppose current politics less genuinely moral or humane than the politics of the seventeenth and eighteenth centuries, when it could be said:

"Earth is sick
And Heaven is weary, of the hollow words
Which states and kingdoms utter when they talk
Of truth and justice."

¹ Morley’s Gladstone II, 15, 16.
Any surmise of deterioration ought to be dissipated by noticing the numerous and momentous questions which nations have of late been settling by arbitration, the treaties of arbitration now existing, or the erection, by the fifteen most powerful states on earth, of The Hague Tribunal for quieting disputes such as once usually meant war.

I cannot subscribe to the theory that the course of history is directed wholly by economic causes,—the so-called economic interpretation of history. But there is one economic might which shapes human events to an even greater extent than the advocates of that theory have observed; I mean the money power; and it is among the philanthropist’s most gratifying notes that this incalculably strong force is at every crisis of strained relations between nations exerted on the side of peace. As a preservative of peace the money power deserves rank alongside The Hague Tribunal.

It is worth notice that the freest populations are the ones which multiply the most rapidly. The population of the United States and Great Britain with their dependencies and protectorates is now some 522,000,000. Sir Robert Giffen a little time ago made the population of Europe and of nations of European origin, like the United States, something over 500,000,000; the United States, 80,000,000; the United Kingdom, Canada, Australia, and the white population of South Africa, 55,000,000; Russia about 135,000,000; Germany, about 55,000,000; Austria-Hungary, 45,000,000; France, 40,000,000; Italy, 32,000,000; Spain and Portugal, 25,000,000; Scandinavia, 10,000,000; Holland and Belgium, 10,000,000; other European countries, 20,000,000. A century ago, adds Sir Robert, the figure corresponding to this 500,000,000 would not have been more than 170,000,000.

The point is that the development was not uniform, but the most marked in the Anglo-American section, where a population of some 20,000,000, which was about the figure for the United States and the United Kingdom together a hundred years ago, has grown to not less than 130,000,000. Russia and Germany also show remarkable increases, but nothing like the Anglo-American.

The system of “spheres of influence,” so admirably elucidated by Professor Reinsch, is a creation of the century, its chief exemplification, at present, being in China, where Russia, Germany, Great Britain, and France all have footholds.

The storm-center of world politics, always in the East, has moved on to the Far East, Great Britain and Russia continuing to be the head contestants.

Thwarted by Turkey in his resolve to connect the Black Sea for naval purposes with all the oceans, the Muscovite reconnoiters toward India, only to find the Khaibar Pass occupied by men he has seen elsewhere. Nothing daunted, the British being busy in
South Africa, the Colossus plants one foot near the ice-free water on the Persian Gulf, the other on ice-free water at Port Arthur, the tip of Chinese Manchuria, which 6500 miles of railway connect with St. Petersburg. A Russo-Japanese war ensuing from this move, the Briton counters by pocketing Tibet.

The chess-game is interesting, but hardly as yet bears out Mr. Tarde’s view that one or the other of these powers, or at any rate some nation, is destined to world-empire. Too many checks and balances are in reserve. For instance, suppose Great Britain at this moment in the ascendant; yet, as I once heard Archibald Colquhoun explain, Russia’s methods of colonization in Asia are superior to the British, being less radical. Again, the day that sees Great Britain victorious over Russia may also see Canada, Australia, and South Africa independent nations. But should Russia then swing dangerously to the fore, the entire Anglo-American world would be one flint, fire-striking rock against her, while Germany would be as likely to side with England as France with Russia.

Mr. Tarde’s theory is too a priori, too “previous;” as is that of Mr. Pearson and others who proclaim the yellow peril, whether from Chinese industrial or from Japanese military efficiency; and also that of those who, gleefully contemplating The Hague Tribunal and the rapid progress of arbitration, expect all war to end the day after to-morrow.

Having glanced at what may be considered the chief political creations, crystallizations, faits accomplis, of the century past, we go back upstream to sight the main movements whence those new formations causally sprang.

Notice, first, the centralizing tendency, including (1) the enlargement of the territories ruled from a single center, accompanied or not by the spirit of imperialism, and (2) the strengthening of the central authorities in all nations. Both forms of the tendency are observed in the United States, in Russia, in Germany, and in Italy; also in the foreign takings of England, Germany, France, and Chile, in Austria’s reluctance to end in any degree her lordship in Italy, and in the impulse which Austria shares with Russia to appropriate as much as possible of the Balkan Peninsula.

Modern means of communication by steam and telegraph immensely facilitate the unifying of large and widely separated bodies of men. Railways and telegraphy explain why our generation could witness the rise in Germany of the first solid central government there in all history, giving the lie at last to Niebuhr’s saying that anarchy was the God-ordained constitution of the German people.

But for the agencies named, the United States could not be permanently or strongly ruled as a single nation, and the victory of central government in the Civil War would have been in vain. But
for them, further, no Dominion of Canada and no Australian Federation would exist.

National expansion would undoubtedly have gone much further than it has but for the antagonism it encounters from the disposition of blood-related communities to get together under the same governments. Blood is not only thicker than water; it is thicker than the ink in which pacts are written or constitutions printed. In determining the boundaries of states, a wholly new prominence has come to be assumed by consanguinity, the nation political inclining to coincide with the nation as an affair of race.

Ireland's wish to shake off or minimize English rule illustrates this, as does the centrifugal energy tending to dirempt Hungary from Austria and Norway from Sweden. The centripetal working of the idea is seen in the unity of Germany and of Italy. Many think that the German Empire will in time embrace German Austria and Italy Italian Austria. Slavic races, too, desiderate political unity, but the feeling as yet ends in sighs, brochures, editorials, and speeches, choked there, it would seem, through dread of Russia's supposed absorption policy.

Both these tendencies — to centralize and governmentally to group consanguineous peoples — are insignificant beside the one next to be named, the republican or democratic, so pronounced in the political history of my hundred years.

When the American Revolution broke out, a method of governing states to which we of to-day can give no tenderer name than absolutism was practically universal. Even Great Britain was no true exception. Not a constitution in the sense now usual existed in all the world.

Since then absolutism in government has given way, no longer existing in any state of first rank. Only the Czar and the Sultan rule in the old fashion, and even they are bound by public opinion, local and ecumenical, considerably to heed the popular wish. Monarchy has been dispensed with by many peoples, in form as well as in substance; in the rest most of its old power is gone. Civilized lands are ruled in unprecedented measure for the people and by the people. Suffrage has been enormously extended, serfs and slaves set free. Of all the emancipation edicts and statutes on record, an overwhelming majority hail from days since the French Revolution. The list of those uttered during this period in Germany alone makes up a half-page close fine-print note in Roscher's Political Economy.

This strongly-marked democratic period had its proximate and for us its practical opening in the French Revolution, though its absolute origination must be referred to the Cromwellian revolution in England. Sir Henry Maine has pointed out that the character-
istic doctrines which that revolution propounded were then wholly new to mankind. They were, moreover, then set forth in almost the very form now familiar to all civilized men. The "Agreement of the People," issued in the name of the Commonwealth army and dated January 15, 1649, clearly enunciates that sovereignty resides in the people. It would have placed supreme legislative power in a representative assembly elected for a limited term, given equal voting privileges to all payers of taxes, established religious freedom, and separated church from state. Even the idea wrought into our governmental system, of limiting the legislature's function by certain vital principles fixed beforehand in a constitution, is clearly embodied in that Agreement.

That Agreement of 1649 and the debates and struggles by which men sought to give it effect furnished Locke and Algernon Sidney their alphabet and their inspiration, which they in turn passed on to Rousseau and to the American revolutionists.

While all this is to be admitted, still Guizot's remark that every characteristic element of modern civilization has been mediated to the world through France is substantially true of democratic government as it has come to be practiced. It is the product of the French Revolution.

Whatever opinion may be held of its character in other respects, no one can question the importance of that revolution in shaping political ideas and affairs since. Description and discussion in fact hardly hint at the radical, pervasive, and lasting changes which the revolutionary movement effected in the political condition of Europe, not a single element of which escaped positive influence therefrom.

The main significance of the revolution does not lie in the facts that France, from a condition of abject weakness, making her the scorn of Europe, suddenly rose up, changed her form of government, and in a few years forced a continent to her feet, her empire surpassing Charlemagne's in size and recalling that of Augustus; it resides rather in the irresistible will first revealed in all this against monarchical, feudal, and ecclesiastical oppression and unreason,—"organic torpor," a decayed, inefficient, and inexpressibly burdensome public system. The cause of these brilliant deeds was passion for a rational public order, educated and developed by a series of French writers and fired to frenzy by Bourbon tyranny, stupidity, and immorality.

Pressed by his Minister to attend to affairs of state, Louis XV would retort, "Bah, the crazy old machine will last out my time, and my successors must look out for themselves."

"Unhappy man"—you are hearing Carlyle—"there as thou turnest in dull agony on thy bed of weariness, what a thought is thine! Purgatory and hell-fire, now all too possible in the prospect; in the retrospect,—alas, what thing didst thou do that were not
better undone? What mortal didst thou generously help? What sorrow hadst thou mercy on? Do the five hundred thousand ghosts who sank shamefully on so many battlefields from Rossbach to Quebec, that thy harlot might take revenge for an epigram, crowd round thee in this hour? Thy foul harem! The curse of mothers, the tears and infamy of daughters! Miserable man! thou hast done evil as thou couldst; thy whole existence seems one hideous abortion and mistake of nature."

Only thus from its causes can the Revolution be justly judged. If it is so viewed, its errors and excesses may be explained and in part condoned, as the inevitable friction generated in producing a great and worthy piece of work against fearful resistance.

I cannot agree with those writers, like Taine and Sir Henry Maine, who reprobate the Revolution itself, believing that whatever good it wrought could have been accomplished without it. "The French Revolution," declares Bisset, "was the work of philosophers, and it was, compared with the English revolution, a failure and ended in Caesarism, that is, in the government of hell upon earth."

In this hostile mode of estimating the movement, Burke's Reflections led the way, swayed too much in their judgment of it as a whole by the fate of the unfortunate Marie Antoinette, who had so impressed the author when in France.

"It is now sixteen or seventeen years," he says, "since I saw the queen of France, then the dauphiness, at Versailles, and surely never lighted on this orb, which she scarcely seemed to touch, a more delightful vision. I saw her just above the horizon, decorating and cheering the elevated sphere she just began to move in, glittering like the morning star, full of life and splendor and joy. O, what a revolution! and what a heart must I have to contemplate without emotion that elevation and that fall!"

Sir James Mackintosh's Vindiciae Gallicae introduced the appreciative criticism of the Revolution, whose freshest note Frederic Harrison has sounded in saying: "The history of our entire nineteenth century is precisely the history of all the work which the Revolution left. The Revolution was a creating force even more than it was a destroying force; it was an inexhaustible source of fertile influences; it not only cleared the ground of the old society, but it manifested all the elements of the new society. It would be easy to show that the last fifty years of the eighteenth century was a period more fertile in constructive effort than any similar period of fifty years in the history of mankind... Truly we may call the Revolution the crisis of modern reconstruction.

"'When France in wrath her giant limbs upreared,  
And with that oath which smote air, earth and sea,  
Stamped her strong foot and said she would be free.'"
Bisset, of all men, should admit that the Revolution did not end in Cæsarism. "If there is one principle in all modern history," to quote Frederic Harrison again, "it is this: that the Revolution did not end with the whiff of grapeshot by which Bonaparte extinguished the dregs of the Convention."

In France the fires of republicanism never went out, though at times smouldering. They burst forth powerfully under Louis Philippe in the Second Republic, in the present republic—these republics no new creations, but adjourned sessions, as it were, of the original. Since 1789 every anti-republican policy arising in France has passed its life in unstable equilibrium.

Elsewhere in Europe as well, old style political ideas began to lose power. Constitutions were in time introduced in all the German states. A national-liberal party rose in Prussia, which at last, after so many ages, made the political unity of Germany a reality.

This result might have been attained much earlier but for the conflict of the sentiment for unity with that for constitutional rule. Prussian policy was strongly anti-republican. King William and Bismarck were, so late as 1863, still heavily tarred with Metternich's brush, repelling liberals like Rotteck, Welcker, and Gagern, in the center and south, in lands which the confederation of the Rhine had embraced, even when they were convinced that Prussian victory meant a united fatherland. Union finally came by compromise, Prussia turning more liberal, the ultra-liberals insisting less on ideally free institutions at once.

Italy, even more than Germany, took impulse towards freedom and unity from the good influences connected with French occupancy.

Great Britain, where the good seed fell into the best ground, benefited infinitely from the Revolution. Few English, to be sure, sympathized with Dr. Price in seeing a millennium at hand. "What an eventful period is this," he exclaims in a sermon, part of which Burke quotes: "I am thankful that I have lived to see it. I could almost say, Lord, now lettest thou thy servant depart in peace, for mine eyes have seen thy salvation."

Soberer men avowed sympathy with the essential in the new movement. Fox was among these. He believed Pitt's repressive measures to be of dangerous tendency.

On Pitt's death, Sir Walter Scott wrote:

"Now is the stately column broke,
The beacon light is quenched in smoke,
The trumpet's silver sound is still,
The warder silent on the hill."

One can imagine Fox reciting this, not as a threnode but as a psæan. The career of British liberalism since Fox and Pitt's day has been peculiarly proud. To it is mainly due that noble succession of
reform acts extending the franchise until manhood suffrage is realized in Britain more perfectly than in the United States. Laws have been passed unshackling British trade, greatly to the benefit of the common people. Popular election has been carried into counties and cities, placing the peasant and the mechanic in condition to hold his own against wealth and rank as he could never do before. The extra voting power of the rich has been mostly annulled, the public service purified and opened to the humblest, the administration of justice immensely improved. A system of public education has been launched, by which the poorest youth may win intelligence that shall be worthy of his freedom and enable him to utilize and enjoy it.

Nor is the train of causation starting from the French Revolution exhaustively conceived without recalling again the freedom of the Spanish-American republics, the rise and life of the democratic party and of the Monroe Doctrine in the United States, the creation of Belgium, and the liberation of Greece.

Hardly had the French Revolution democracy begun its race when it suffered serious arrest. An absolutist reaction set in: in France itself, under Napoleon, the restored Bourbons, and, later, the Second Empire; Metternich arose and the Holy Alliance; strife for free institutions was repressed in Germany, Italy, and Spain; reform became and for a time remained a hateful word all over Europe; Louis XVIII dated the state papers of 1814 as of the nineteenth year of his reign, affecting to ignore all that had passed since Louis XVI's death.

Queen Victoria once said: "As I get older I cannot understand the world. I cannot comprehend its littlenesses. When I look at men's frivolities and littlenesses it seems to me as if they were all a little mad." This insanity of petty-mindedness was never more patent than in Germany after Napoleon's fall.

The German Confederation was Metternich's tool to stay the advance of liberalism. The presence of the French in Germany had quickened and generalized the wish for constitutional and hatred of personal rule. While peril lasted the powers heeded. Czar Alexander received Poland on condition of granting it a constitution. Frederic William promised Prussia a constitution; Article 13 of the Confederation Acts declared that each of the confederate states was to have a constitution with representation. Liberals fully expected that before long constitutional methods would prevail all over the Continent as in England.

Bitter disappointment resulted, the next period being but a record of Metternich's triumphs, of monarchs' mean devices to evade their pledges and to hush the popular cry. Save Saxe-Weimar, not a state in the Confederation obtained at this time a liberal ground law.
Bavaria, Württemberg, and Baden, which had felt France most, had charters by 1820, but these modified absolutism only a little, and were given partly to spite the larger states surrendering to reaction.

The privileges which were here and there conceded were vitally vitiated by appearing as grants, not as rights. All seeking by the people to wrest concessions was viewed as Jacobinism with reign of terror behind. Press, pulpit, school, and platform were under gag laws, patriots excluded, exiled, or silenced by an infamous system of espionage, which Napoleon would have blushed to own.

All this proved in vain, however. The good leaven went on permeating the meal till all west Europe was leavened. Liberal ideas, domestic, and streaming in from Switzerland, Italy, Greece, England, and France, especially during her revolution of 1830, proved at last more than a match for Metternich; and when the new revolution of 1848 rocked to its base every throne of Continental Europe, he fell and his system was doomed.

Men had come more and more into Gladstone’s state of mind in 1851, when he wrote: “It is a great and noble secret, that of constitutional freedom, which has given us the largest liberties, with the steadiest throne and the most vigorous executive in Christendom. . . . I am deeply convinced that among us all systems, whether religious or political, which rest on a principle of absolutism, must of necessity be, not indeed tyrannical, but feeble and ineffective systems; and that methodically to enlist the members of a community, with due regard to their several capacities, in the performance of its public duties, is the way to make that community powerful and healthful, to give a firm seat to its rulers, and to engender a warm and intelligent devotion in those beneath their sway.”

Republicanism has encountered, and is still struggling therein, a second impasse, which threatens to be far graver than the first.

A wide and deep remission of philanthropy marks the intelligence of our time, partly speculative in origin, as seen in Nietzsche, who ridicules consideration for one’s enemies and for the weak, as slaves’ ethics; partly resulting from fuller acquaintance with the inferior races of men. Tongues thoroughly trained in trick gymnastics stick at vocables like “equality,” “brotherhood,” “the race,” “humanity,” much more than when only missionaries had first-hand familiarity with Bushmen and Igorrotes. Such a generalization as “man” does well enough in zoology, but in practical ethics it finds its position harder and harder to keep. The changed thought promptly sidles over on to political ground. Having radically subordinated certain races to others, we find it easier, if not inevitable, to subordinate certain classes.
Another boulder badly obstructing democracy's path is socialism. The socialists have, agreeably to their wish, convinced great multitudes that their programme is simply the logical working-out of democracy. At the same time, against their wish, they have begotten the conviction in others that socialism put in practice would mean anarchy, communism, leveling, a crusade against the highlands of men's life in the interest of the bog. It would build forth the social body utterly without regard to heterogeneity, allowing no place for the genius, the artist, the dreamer, the mugwump, the non-conformist, the rebel. The Church in its worst days never meditated rendering life so insipid. Prisoned in the iron orderliness socialism must bring, real men would cry out with Walt Whitman:

"O, something pernicious and dread,
Something far away from a puny and pious life,
Something unproved, something in a trance,
Something escaped from the anchorage and driving free."

I care not what others may say, but as for me, give me the privilege of noneformity or give me death.

The modern liberal deems a never so mountainous district preferable to a dead level. If democracy is that, and he frequently fears it is, he will none of it. Rather, he shouts, my kingdom for a horse with a man astride! If it is the only alternative, give me monarchy, aristocracy, even plutocracy, rather than the democracy which stifles and kicks the individual.

Again, liberalism has disappointed early expectations. Its devotees at first looked for economic and moral as well as political millennium as soon as men were set free from monarchic rule.

But it is clear that the device of simply knocking off men's political shackles falls short. Bare civil liberty does not constitute or assure social weal. Society sunders itself worse than ever into disparate and hostile classes. Poverty and oppression have not come to an end. This century of political equality, of status changed to contract and of a ballot for all, is precisely the one wherein pessimism has been born, which is no longer the smart hobby of a few, but the fixed conviction of multitudes.

Distracted over so many unfulfilled prophecies, a host of liberals almost conclude that they have been following an ignis fatuus, to turn from which is the beginning of wisdom.

Lastly, the gaucherie of popular government in executive functioning, and especially in war, renders it odious with a great and increasing number.

The modern mind is of a practical turn. Men theorize less than formerly, but administer better. We delight in facile practice, in bringing things to pass. Familiarity with colossal businesses, railway systems, trusts, where single minds with absolute authority
produce wonders in the way of dispatch, coördination, and com-
bination, brew relish for order and rapidity in business, and discon-
tent for the slow, lumbering, awkward methods which, to date, 
most democracies insist upon in conducting public affairs.

The inclination is, therefore, observable on every hand to allow 
executives longer rope, a freer hand, more independence in detail 
from legislatures and from the constituency. Whereunto this will 
grow, none can tell. As it is, however, clearly inconsistent with the 
democracy hitherto expounded and practiced, it helps to swell and 
spread the conviction that democracy, at least democracy as we 
know it, cannot be the final polity.
SECTIONS A AND C

POLITICAL THEORY AND NATIONAL ADMINISTRATION
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POLITICAL THEORY AND NATIONAL ADMINISTRATION

(Hall 15, September 22, 3 p. m.)

Speakers: Professor W. W. Willoughby, Johns Hopkins University.
Professor George G. Wilson, Brown University.
Secretary: Dr. Charles E. Merriam, University of Chicago.

POLITICAL PHILOSOPHY

BY WESTEL WOODBURY WILLOUGHBY

[Westel Woodbury Willoughby, Professor of Political Science, Johns Hopkins University. b. Alexandria, Virginia, July 20, 1867. A.B. Johns Hopkins University, 1888; Ph.D. ibid. 1891. Member of American Political Science Association; American Economic Association; American Historical Association; American Academy of Political and Social Science; Secretary and Treasurer of the American Political Science Association. Author of The Supreme Court of the United States; The Nature of the State; The Rights and Duties of American Citizenship; Social Justice; Political Theories of the Ancient World; The American Constitutional System, etc. Editor of The American State Series. Co-editor of the Johns Hopkins University Studies in Historical and Political Science. Managing Editor of The American Political Science Review.]

The term "political philosophy" is not so self-explanatory as to render unnecessary an inquiry into the character and value of the speculations with which it has to deal. The adjective "political" is easily reduced to its proper meaning. Correctly used, it has reference to those matters that directly pertain to the organization of men in corporate communities over which some paramount ruling authority is generally recognized as the legitimate source of all legally binding commands. We thus term "political" all matters that concern the state, its origin, history, right to be, organization, activities, administration, and aims. When, however, we turn to the meaning of the substantive "philosophy," when used in connection with the qualifying adjective "political," the matter is not quite so simple. It is clear that we cannot speak of a philosophy of politics in the metaphysical or epistemological senses of the word, nor can we employ it in its cosmic application as a synthesis of the doctrines of all the sciences. The only meaning, then, which we may properly attach to the word, when used in the phrase "political philosophy," is that which it has when we speak of the philosophy of any science as that portion of it which is concerned with the
theoretical discussion of the essential characteristics of the material and phenomena with which such science has to deal. When we thus speak of a philosophy of a science as dealing with its theoretical principles, it is not to be understood, however, that it is therefore concerned with its hypothetical or undetermined part. A philosophy in this sense is theoretical only in the sense of being abstract, that is, as dealing with generalizations rather than with particulars, and as predicating essential and fundamental qualities rather than accidental or unessential characteristics. Its results are, or should be, as exact as those reached in the corresponding sciences and arts. Indeed, the correctness of the principles reached in these latter fields is almost wholly conditioned upon the truth of the distinctions philosophically determined.

In its methods and aims, political philosophy is, upon the one side, teleological or ideal; upon the other side, scientific or analytical. Upon its ideal side it seeks to discover the nature of political society and the legitimate sphere of its authority as determined by the nature of men, that is to say, by their need of political organization for the satisfaction of their proper desires and for the realization of their possible perfections. It thus defines the state in terms of its end, and essays to determine what its activities and organization should be, rather than to describe its form and functions as they actually are. Upon its analytical side, political philosophy is wholly concerned with the state as it is, with its nature as determined by the elements of which it is composed, and by the manner in which they are united. From the innumerable and diverse ways in which political organs are framed and political authority manifested, political philosophy discovers those underlying qualities which are essential and common to them all. From its search for the real source and nature of political power or sovereignty, it returns with criteria according to which political phenomena of all kinds and all ages may logically and satisfactorily be analyzed and classified. Political philosophy thus, upon its analytical side, affords the means of uniting into an harmonious whole that multitude of phenomena which, in appearance, is so confused and confusing. It makes it no longer necessary to declare law, the state, or sovereignty to be one thing at one time and another thing at another. In its light the changes or evolutions of political institutions and activities are seen to be changes in form or manner of outward manifestation of political authority, and not alterations in nature. History shows us that neither in governmental organization nor in actual activity and social efficiency have two states ever agreed, nor has the same state remained the same in these respects at different periods of its existence. Yet the state itself, considered abstractly as a political power, has not changed in character. Its sovereignty has remained the
same that it ever has been, and always will be, so long as it exists at all. Those who deny this (as does, for instance, Professor Rowe, who says that "it is impossible to formulate a political terminology applicable to all times and to all countries") deny not only the possibility of a philosophy of politics in any sense of the word, but, by necessary implication, deny the possibility of framing definitions in political science whose validity may be unquestionably accepted. If law and sovereignty change at different times, not only in form but in character, what criteria are afforded for determining at any given time what their real characters are, and therefore the tests by which their presence may be infallibly detected; or what possible basis is there left for comparison between institutions of different times or of the same time, but among nations upon different planes of civilization? What hope will there be, reasoning from such a basis, of finally determining political legitimacy in any individual case, or of founding systems of constitutional law or international procedure upon anything but empirical and therefore largely arbitrary bases?

A survey of the history of political speculation shows that, up to comparatively recent times, political philosophy received almost no attention upon what we have termed its analytical side. The ideal, the ethical, or, as one might almost say, the metaphysical method, saw the one almost exclusively followed. The nature of the state, and especially its relation to the church, its ethical right to existence, the legitimate sphere and content of its law, the character and extent of the authority properly exercisable by its rulers, and the reciprocal rights and duties of its subjects,—these, rather than the examination of the ideas of sovereignty and law as positive legal concepts, were the questions that were over and over again discussed, and the answers to them sought not in a utilitarian consideration of existing needs and conditions, but in purely subjective examinations of the essential nature of men and the contents and character of divine or natural law.

Thus, during all this time, political philosophy, in so far as it was not theological or metaphysical, was ideal or ethical. Its inquiries extended little beyond the domain of Naturrecht or Naturrechtlehre. The existence of these so-called natural laws, absolutely binding in their force, and possible of exact and definite statement, being assumed, speculators, one after another, essayed the elaboration of codes of conduct that should govern rulers and ruled in the establishment, organization, and maintenance of political relations. Absoluteness was the one characteristic of all the systems that were elaborated. Ideal forms of government, applicable at all times and to all peoples, and systems of law, complete, and in conscience absolutely binding upon every one, were almost uniformly the results reached. Being almost purely subjective in character, the freest
possible play to the speculative abilities and inclinations of their authors was permitted, and thus, as a writer in the Quarterly (October, 1900) has remarked, the science or philosophy of natural law, while preventing the creation of a true and useful science of politics, was the apotheosis of political philosophy.

In our day, however, in both ethical and political speculation, the absolute has given way to the relative. That the best form of government and the best code of laws are not the same for all peoples, and that, though the distinction between right and wrong is absolute, no particular rules of conduct are, are now truisms.

This, however, has not meant the total, or, indeed, the considerable, destruction of political philosophy even upon its ideal or ethical side. Though we now no longer believe that it is possible to construct a political Utopia everywhere applicable, or an ideal code of laws ethically and absolutely binding upon every one, we still hold it profitable to subject existing political conditions to ethical and utilitarian criticism, and consider it possible to outline systems of governments and elaborate codes of laws, which, while admittedly imperfect, and applicable only to particular conditions, are, nevertheless, improvements upon those existing. Furthermore, we still see the necessity of discovering an ethical quo warranto both for the existence of political authority in general and for the given state or government in particular.

But it is especially upon its analytical side that political philosophy now flourishes and demonstrates its value. First of all, rigid political analysis has rendered possible the creation of a true political science.

A science has been defined as “knowledge gained and unified by exact observation and correct thinking, especially as methodically formulated and arranged in a rational system” (Standard Dictionary). Thus it is not until the related facts obtained by research, observation, and experimentation have been coordinated and logically classified that a science is created. But before this coordination and classification are possible the facts themselves have to be correctly analyzed and their essential characteristics ascertained, so that exact definitions of them may be drawn and criteria discovered that may serve as the bases of correct classifications. Thus political philosophy upon its analytical side, by ascertaining the precise connotations of such terms as law, government, state, suzerainty, sovereignty, and the like, has rendered possible the formulation of exact definitions and classifications and, consequently, the creation of a political science.

Especially in the fields of constitutional jurisprudence and of international law is the value of political analysis made manifest. Political philosophy, in fact, supplies the logic of constitutional law, and where fundamental political concepts have not been intelligently thought out and harmonized into a system, vagaries in consti-
tutional interpretation, and inconsistencies in political action, have been almost surely the result. Chief Justice Marshall was great as a political philosopher rather than as a lawyer. All of his chief opinions were essentially essays in political theory. This is evident from the fact that in them very rarely is a legal authority or precedent cited to sustain the reasoning employed or the conclusions reached. And, since his time, though references to predecided cases abound in its written opinions, the ratio decidenti of the decisions of the United States Supreme Court has in all of the more important cases been derived from the principles established by pure political theory. Thus, to cite but a few instances, this is seen in United States vs. Lee, where the right of a private citizen to recover possession of property held by a federal officer under authority of an unconstitutional executive order was sustained by basing it upon the general principle that in a republican government no authority can be so high that an act by it, unauthorized by a valid law, can operate to divest the private citizen of a legal right. So also in Texas vs. White, the distinction between a state and its government—a distinction emphasized by political theory—was seized upon by the court to enable it to assert the continuance of a state in the Union at the same time that the legitimacy of its government was denied. Finally, in the recent cases dealing with the constitutional rights of the inhabitants of our insular possessions, the decisions are based upon the purest of political theorizing regarding the nature of the rights enumerated in the first eight articles of amendment to the Constitution.

In the field of international law the sphere and service of political theory or philosophy is even more conspicuously manifested. In the beginning, the principles of international law were deduced in a purely philosophical manner, custom and precedent playing little or no part. And though convention and custom are now the chief sources of its rules, the part played by pure political theory is still very important. This is due to the fact that at the same time that the principles of international law, through the practice of nations and the efforts of commentators, have been rendered fairly definite and systematized, and the formal rights and duties of sover- reign nations towards one another thus made, in the main, evident, the application of these principles and the determination in concrete cases of these respective rights and duties have been made, if anything, more than ever difficult by the great increase in the com- plexity of constitutional and international relations which has marked the last century, and, especially, the last quarter of it. Instead of a family of nations composed of members completely autonomous in fact, as well as name, we find nations, each sovereign in name and theory, associated in the closest of constitutional and international
bonds, in some instances exercising their international powers in common, and in others surrendering up the enjoyment of their international rights in whole or in part to alien powers. In not a few cases, indeed, this surrender has extended to the exercise of domestic powers as well. Thus it has come about that just as in the Middle Ages the feudal state was the prevailing civic type, and in the early modern age the absolute monarchy, so at the present time the dominant type seems to be the composite or federative form. In Europe we have the federal state of Switzerland, the dual empire-kingdom of Austria-Hungary, and the great German hegemony under the leadership of Prussia. In the Americas we have the federal states of the United States, Canada, Mexico, and the various South and Central American federations. Australia is now a federated commonwealth. In South Africa a federal movement among the several British colonies exists, and finally, the scheme of an imperial federation of all the English colonies with their mother country is in many quarters being vigorously pressed. Each of the greater powers of the world has within comparatively recent years established political interests over the less developed peoples of Asia, Africa, and the Pacific Islands. Where these political interests have taken the definite colonial form, international conditions have not been greatly complicated; but where, as is the case in so many instances, these interests have been asserted, not as a result of the formal subjection of the territories in question to the sovereignty of the powers claiming the interest, but as based upon treaties providing for the establishment of a protectoral relation, or for the lease for a number of years of a particular tract of land, or the recognition of simply a "sphere of interest," or, most indefinite of all, for the lease of a sphere of interest,—where these have been the international relations that have been established, a host of novel international problems have been born, for the solution of which, in most instances, only pure political theory is competent. The connotations of the terms sovereignty, suzerainty, half-sovereignty, protection, vassalage, allegiance, have to be examined with a carefulness never before required. Among other problems it is necessary to determine anew what powers and attributes are incidental to the possession of sovereignty, whether its existence is an infallible and necessary test of statehood, to what extent the exercise of its powers may be delegated without parting with its possession, the distinction between governments de facto and governments de jure, whether states may be created by international compact, whether the origin of political authority in general is susceptible of a juristic interpretation, what is the essential character of positive law and whence its validity, and to what extent so-called international law is binding, or is law at all in sensu strictiore.
The Relation of Political Philosophy to Other Departments of Speculative Inquiry

From the definition and sphere of political philosophy, we turn now to a consideration of the relations in which it stands to some of the other departments of speculative inquiry.

Political Philosophy and Metaphysics

Though, as has been pointed out, political theory cannot be spoken of as a philosophy in its metaphysical sense, there is a very close relation between political philosophy and metaphysics in so far as political philosophy attempts to determine the nature of the state from its final cause, and metaphysics seeks to state teleologically man's nature. Except in so far as the existence of the state is conceived to be an end in itself, the definition of political authority in terms of its proper end is, of course, governed by what is conceived to be man's end and destiny. Thus, as a matter of fact, it is found that abstract political speculations have ever been carried on in intimate union with ontological and teleological inquiries. The aim of almost all philosophizing is the discovery not only of the essential nature of things, but the determination of their justification and purpose with reference to an ideal or end. It is, therefore, but to be expected that in all times those minds which, by nature and temperament, have been inclined to seek for the nature of reality in general, should have also searched for the nature, justification, and end of the state, the greatest of all human institutions. Thus it is found that very many of the chief political philosophers have been also conspicuous as philosophers in the general sense. This is as true of Plato and Aristotle in ancient days as it is of Aquinas and Suarez in later times, and of Spinoza, Locke, Hobbes, Mill, Kant, Fichte, Hegel, and Green of still more recent date.

Inasmuch as there is no logical connection between metaphysical and political speculations, that is to say, no syllogistic dependence of the results of the one study upon the conclusions of the other, philosophers have not attempted to deduce political principles directly from ontological premises. At the same time, however, the general cast of mind, the philosophical Tendenz of writers, has often influenced them in their political inquiries. Thus, to take a single instance, the difference in the views of Plato and Aristotle as to the relation of the individual to the state, and as to the proper sphere of control of the latter over the private life of the former, is explainable by the divergency of the views respectively held by them as to the relation between universals and their particulars. Plato, in his conception of the state, treats it as, in a sense, a universal,
the universal of man; and as, in his general philosophical system, the
general is considered as more real, more important, than the partic-
ular, so the body politic is conceived to represent, if not actually
to be, a higher type of humanity than the single individuals compre-
hended within it. Hence, in his political scheme the welfare of these
individuals is wholly subordinated to that of the civic generality,
and the citizen is treated as having no rights, no aims, indeed, 
apart from the state. Aristotle, on the other hand, while not denying
reality to ideas or universals, yet holds that they do not exist apart
from the particulars included within them. The particulars are thus
given an importance and a self-existence, as it were, of their own.
They are treated as having a life that is not and cannot be com-
pletely swallowed up in that of their universals. The reflection of
this in his political thought is seen in the increased rights and claims
which are given to individuals, *qua* individuals, as against the state.

**Political Philosophy and Ethics**

The relation between political and ethical theories has been even
more intimate than that which has existed between political philo-
sophy and metaphysics. So intimate, indeed, has this association
been that Janet, who has given us, perhaps, our best history of po-
litical speculations, has found it practicable to combine this history
with an account of the ethical systems of the writers considered.¹

Upon its theoretical side, ethics necessarily depends upon meta-
physical inquiries into the essential nature of man and of the moral
order of the universe. Upon its practical side, however, its union is
with politics. When the character of moral obligation or of sanc-
tion, or the nature of the highest good is dealt with, we are in the
realm of theoretical or abstract ethics. When the establishment of
proper norms for human conduct is essayed, the domain of practical
ethics is entered. Practical ethics is essentially a social science in
that it has for its aim the determination of just rules for the guidance
of men in their dealings with one another. The solitary individual
may be and is, in fact, a moral being, but until he is brought into
association with others of his kind there can occur to him few, if any,
obligations of a moral nature. For though we may hold that the
feeling of moral obligation is an original datum of human conscious-
ness, and that man, as a partaker in the divine or absolute reason,
is potentially a moral being, the possibility of his coming to a self-
recognition of this fact, as well as the opportunity of realizing it in
practice, is only rendered possible in the social and political state.

¹ The title of his work is *Histoire de la Science Politique dans ses Rapports
avec la Morale*. When completed, Dunning's *History of Political Theories* will
easily rank as the best account of political speculations. Thus far two volumes
have appeared, bringing the history down to the time of Montesquieu.
The concrete facts which condition the formation and exercise of ethical ideals are thus preponderantly of a political character. The influence exerted by the commands of the state in creating and molding current conceptions of right and justice is necessarily enormous. The true and desirable relation between law and ethics is, of course, for ethics to dictate the principles and distinctions which the laws embody. As a matter of fact, however, it has always been the case, and always will be the case, that until men become generally moralized and intellectualized, legal determinations have been and will be to many persons the source whence they derive their ethical distinctions.

When, from the formation of ethical conceptions, we turn to the realization of them in practice, the dependence of the ethicist upon the politician becomes in many cases absolute. In so far as ethical speculation is devoted to a search for a justification of the existence, and the manner of existence, of the authority of a political institution, its inquiries are as much political as ethical. So, conversely, in so far as the political philosopher seeks for the moral basis for institutions and authorities, his speculations are as much ethical as political. Thus, while ethics has no concern with the analytical questions of political philosophy, with its teleological problems it is intimately connected. These teleological problems have to deal with the right of the state to be, the legitimate extent to which the freedom of the individual may be restricted by public control, and the aims which a body politic should strive to realize.

Speaking upon the relation of ethics to politics, Professor Hyslop writes: "For the sake of an effective comparison, politics should be defined as the science of the regulation and restriction of human conduct by law. It thus seeks to determine how certain courses of action may be artificially induced or prevented. It aims by law to establish social order, or a condition of things which the unorganized wills of men would not spontaneously produce. It is, therefore, the science of the artificial limitations of human liberty, in the protection of rights and the regulations of external conduct. On the other hand, ethics is the science of what a man can and ought to do, whether government exists or not. It determines the justice and validity of all political principles, but it does not investigate the means of putting them into force. It is, therefore, concerned with the phenomena of free action, or the voluntary choice of the good. Hence, in contrast with politics, it may be defined as the science of the extension of human liberty or of those conditions under which morality is realized without a resort to civil law. For this reason it is strictly the science of the conditions under which morality becomes internal as well as external. Politics stops short with the attainment of the external good, an order in which free morality is
possible, though it does not and cannot affect this morality. Ethics aims with this to attain internal good or virtue, and is consequently concerned with the 'good will,' as well as with the good conduct externally considered. But it deals with morality only as it is the product of free will, while politics subordinates freedom to the attainment of social order." ¹

While substantially correct, there may, however, be room for questioning whether a false impression may not be gained from the above concerning the aim of politics. It is true that political institutions and laws are necessarily limited to the control of external acts. Men cannot be made moral by act of parliament. But the ultimate aim sought or which should be sought by all political powers is that through their influence and assisted by the environment which they create, the highest possible moral life may be lived. In final purpose, then, ethics and politics agree. Only in the instrumentalities through which they operate do they differ. The one seeks to control human conduct by direct appeals to the individual's reason and conscience; the other, to render these appeals effective by the educational influence of the institutions which it establishes and the order and formal justice which it maintains.

Thus, indeed, Plato makes politics a part of ethics, while Aristotle declares politics the major science of which ethics constitutes but one division. Despite their differences, both of these positions are based upon the fundamentally true premise that the real object of all inquiries which have to deal with the lives and conduct of men is that a "good life" shall be realized. This is the one bond that unites them all, and, whether we give to ethics or to politics the more comprehensive meaning, or include them both within some wider term, is nothing more than a matter of terminology.

Political Philosophy and Theology

No necessary or logical relation exists between political principles and theological speculations. As a matter of historical fact, however, they have often been closely associated. So long as political authority was given a directly divine character, political inquiries were necessarily limited by, and included within, religious theories. Thus the great variety of political theories which have been advanced to explain the relations which church and state bear, or should bear, to one another have in large measure been of a theologico-political character. This problem of church and state, as is well known, was, indeed, the central point around which medieval political speculation centered. Out of this general controversy sprang a host of divergent views regarding religious toleration, the right of

¹ Elements of Ethics, pp. 10, 11.
tyrannicide, the divine rights of kings, popular rights of resistance to political oppression, and especially the right of the church to determine when subjects should be released from their oaths of allegiance and obedience to their political sovereigns.

Political Philosophy and Political Economy

The use of the term "political" in the titles of each of these departments of thought indicates a more intimate relation between the two than actually exists. Voltaire is reported to have said that the Holy Roman Empire was neither holy, nor Roman, nor an empire. With equal truth it might be said that political economy, at least as the science is now conceived, is neither political nor economic in the ordinary sense of the word. When economic speculations first began to assume a form sufficiently coherent and considerable to warrant their being grouped under a distinct title and to receive treatment as a separate department of human inquiry, they were essentially cameralistic in character; that is to say, they centered around the problems of public finance. They had to do primarily with the questions of maintaining the public credit, and of securing to the state an income adequate for its needs. Thus, at the hands of the first real school of economists, the mercantilists, its relation to practical politics was so intimate that the new science did deserve the title "political economy." By the physiocrats the center of interest was taken from the state and placed in the citizen, the problems surrounding the production of wealth by the individual being the ones especially emphasized. At the same time, however, that the direct dependence of economics upon considerations of political polity was thus lessened, the relation between the philosophic bases of economic and political speculations was rendered more intimate by the founding of economic views upon those same doctrines of natural laws and inalienable individual rights which were at that time current in political thought.

In the epoch-making work of Adam Smith, An Enquiry into the Nature and Causes of the Wealth of Nations, the science of political economy assumed more nearly its modern form, but doctrines of natural rights still played a considerable part in its theory. Furthermore, as the title partly indicates, questions of political policy were everywhere emphasized. Since Smith's day, however, the uniform tendency among economists has been to consider as the primary purpose of their science the investigation of the production, distribution, and consumption of wealth; and questions of public policy are held to have a place in their inquiries only in so far as they introduce modifying conditions. This fact is shown by the general tendency of the economists of to-day to discard altogether the use of
the qualifying adjective "political" and to term their science simply "economics." It is still, of course, true that when the economists attempt to make practical applications of the principles which they have deduced, they are concerned with questions of the exercise by the state of this or that function, or the adoption by the law of this or that policy. But this is only the application of principles already determined. So far as economics is considered as a science or a philosophy, it is concerned solely with the discovery of the physical laws that control industry, and the psychic laws that regulate the conduct of men in their efforts to secure wealth and obtain the greatest amount of benefit from its consumption.

**Political Philosophy and Sociology**

Giving to the term "sociology" its broadest meaning, as the title of the comprehensive science that embraces the study of all social facts, political science is, of course, one of its subdivisions, and its philosophy a branch of social philosophy. If, however, we accept the definition of Giddings, according to which sociology is that science which has to deal with the primary psychological facts and elementary social phenomena which the students of politics and of the other social sciences assume without analysis as the foundations upon which to erect their respective scientific superstructures, sociology, in so far as it deals with political facts, covers much of the ground that the political philosopher has been wont to claim as his own. Speaking especially of political science, Giddings says in his *Principles of Sociology*: ¹ "How is it with the theory of the state? Political science, too, finds its premises in facts of human nature. The active forces of political life, as of economic life, are the desires of men, but they are no longer merely individual desires, and they are no longer desires for satisfactions that must come for the most part in material forces. They are desires massed and generalized; desires felt simultaneously and continuously by thousands, or even millions, of men who are by them simultaneously moved to concrete action. They are desires of what may be called the social mind in distinction from the individual mind, and they are chiefly for such ideal things as national power and renown, or conditions of liberty and peace. Transmuted into will, they become sovereignty—the obedience-compelling power of the state. Political science describes these gigantic forces of the social mind and studies their action; but it concerns itself with their genesis no more than political economy concerns itself with the genesis of individual desires. It simply assumes for every nation a national character, and is content that the political constitution of the state can be scientifically

¹ Page 36.
deduced from the character assumed. It takes the fact of sovereignty and builds upon it and does not speculate how sovereignty came to be, as did Hobbes and Locke and Rousseau. It starts exactly where Aristotle started, with the dictum that every man is a political animal."

In another place he says: "So far, then, as the objective interpretation is concerned, neither political economy nor politics can pretend that it goes back to the primary facts in the social category. Both frankly assume without explanation the phenomena of human association." 1

To the position thus taken that political science, in common with the other special social sciences, requires the services of another science to establish the fundamental principles and interpret the primary facts with which it has to deal, two objections lie. In the first place, it is not to be admitted that the politician takes sovereignty or any other primary political fact without inquiry as to its origin. The historical or descriptive publicist or the writer upon practical politics does not, of course, concern himself with the origin and nature of political authority, or with the basis for political right. But the political philosopher or theorist does, and many works exist in which the origin of political power has been traced back of the mere fact of its existence to its ultimate psychological genesis. In the second place, in Giddings's statement of the case for sociology as a science fundamental and logically prior to political science, it is incorrectly assumed that political societies result from an organic development of antecedent groups that are without political organization,—from groups, in other words, that are purely social in character. As a matter of fact, though the time cannot here be taken even to outline the argument, it is easily demonstrable that the psychological basis upon which the state is founded is a sentiment of unity which exists in individual wills and that the political unit is not a development from some lower social unit. The body politic is not a development from the family or the tribe. It may be that, historically speaking, the social group is earlier formed than the political group. This is due to the fact that a degree of mutual restraint and tolerance which is sufficient to maintain a slightly coherent social group is more easily established than the mutual coöperation and individual self-subjection which are necessary for the creation of a political unit. But the social group does not by a simple process of growth become a political group. Psychologically as well as teleologically the state is independent of the facts of mere social groups; and hence, that science which studies the genesis and nature of social groupings cannot be fundamental to the science of politics.

1 Giddings, Principles of Sociology, p. 31.
In taking this position we are not to be understood as denying to sociology the right and title to a place among the other social sciences as concerned with a distinct and important body of social phenomena. Our criticism extends only to the point of refusing to entertain its claim to be the science logically antecedent to political science. We fully agree with Professor Giddings that it is quite feasible, as well as eminently desirable, that special and exclusive study should be made of those peculiar and essential facts which concern the genesis, organization, and evolution of human association. It may be that from this study it is possible to obtain, upon the objective side, laws of growth which may be stated in terms of a physical process, and that upon its subjective side social phenomena may be interpreted by reference to discoverable motives or facts of human consciousness of kind. Whether, as thus pursued, sociology may claim an existence as a science independent from, but coördinated with, the other social sciences, we do not say. But we are not ready to concede either that political philosophy has yielded, or properly may yield, to the social psychologist all inquiries as to political origins.

*Political Philosophy and the Philosophy of History*

Political philosophy is related to the philosophy of history only through its own history, but here the relationship is very intimate. Political theories, however abstract their form of statement, have ever been the product of the objective conditions and needs of their times. Also, though in much less measure, they have, when formulated, influenced the course of historical movements. Thus, in tracing their development, one necessarily discovers and discusses the same fundamental motive ideas which the philosophical historian has to deal with in his efforts to explain and rationalize the past. Thus, not only does an adequate grasp upon political theory enable one correctly to determine the thoughts and intentions of men of the past, but a history of the development of political theories, in its reflection of the thoughts and actuating motives at the basis of important political movements, furnishes the historical student with an insight into the logic of events which he can obtain from no other source. Especially where, as in the history of the United States, questions of constitutional right have required practical solution, a knowledge of political theory and of its history is of the greatest value. A noteworthy illustration of this is seen in Professor McLaughlin's article, "Social Compact and Constitutional Construction," contributed to the *American Historical Review*. 
In order to understand the exact relation which the philosophy of law bears to political philosophy it will be necessary to consider for a moment the different senses in which the term "philosophy of law" is used. By a philosophy of law may be meant two things: first, an inquiry into the nature, or source of obligation, of the rules of conduct that are enforced by the governing power; or, secondly, a search for those principles which, from an ethical standpoint, should be accepted as juridical. If we accept the view of the English analytical school that all laws, in so far as they are laws at all, are the commands of the state, an inquiry into their nature and source of authority necessarily becomes a single topic of a general political philosophy. If, however, following the general lead of Continental schools, it is held that enforcement by the state is but an incidental fact, and that, in the truest sense, laws derive their authority from their inherent rationality as tested by their consonance with abstract principles of right and their suitability to the civic needs of the people whose conduct they control, a philosophy of the law becomes in effect largely an ethical undertaking.

In England those attempts which have been made to outline ideal systems of law have usually had the practical object in view of seeking to bring about immediate reform in existing laws. This being so, such efforts have been generally termed "theories of legislation." Upon the Continent, however, though the idea of ultimately bringing about legal reforms by educating the legal sense of the community may not always have been entirely absent, the immediate object sought has been by no means so practical a one. As Pollock says: 1 "The only strictly necessary difference between our 'theory of legislation' and a German philosopher's Naturrecht is that Continental schools consider this ideal of legal institutions as a thing to be contemplated in and for itself with a metaphysical interest which is, as it were, cut adrift from practice; while the Englishman's ideal is of something to be realized, or approached as near as may be, in an actual state, for actual citizens, and by the positive enactment of a legislature."

That Naturrecht, ideal law, or philosophy of law is purely an ethical inquiry is frankly recognized by Continental writers. Lasson begins his System der Rechtsphilosophie with the definite statement that legal philosophy is a branch of ethical philosophy. So also Kant, in his Philosophy of Law, says: "The science of right designates the philosophical and systematic knowledge of the principles of natural right." 2 Likewise says Friedlander, in his System of Jurisprudence

2 Hastie, transl. p. 43.
as a *Scientific Organism*:¹ "Jurisprudence is a branch of ethics. Its function as a science is to establish the essential principles of right; and as right only obtains reality among men who are united into a state, it has also to establish the fundamental principles of the state."

It is to be observed, however, that a system of *Naturrecht*, as thus defined, is not conceived to set forth a complete ethical system. To a Continental, *Recht* or *droit* includes only that portion of human conduct which is possible of enforcement by the state, without reference to the fact whether it is so enforced or not. Thus, upon the Continent, ethics is divided into two parts,—the one dealing with actions which can be enforced by external compulsion, and as such forming the subject-matter of *jurisprudence* or *Rechtslehre*, or the science of *droit* or *Recht*: the other dealing with those actions that cannot be so compelled and which must therefore be left to individual conscience, and as such forming the subject-matter of *morale* or *Tugendlehre* or *Ethik* in a narrower sense, or the science of *moralité* or *Tugend*. It will thus be seen that in France and Germany *droit* and *Recht* are applied not only to actions that actually are enforced by the state, and which the English and American jurist designates as positive law or law proper, but to all actions capable of such enforcement, whether or not they are as a fact so enforced. Correspondingly the terms *morale* and *Tugendlehre* are not made applicable to all portions of right conduct, but simply and solely to those actions that do not admit of external compulsion.

With this explanation of the meaning of the term "philosophy of law," we can see how necessarily intimate is its relation with political philosophy. In so far as laws are viewed as commands of a political superior to a political inferior, from a sovereign to a subject, a legal philosophy is, as has been already said, nothing more than a particular branch of political inquiry. Also, when viewed as a search for ideal principles of right, its connection with political speculations is very close. For, in determining these ideal principles, the considerations involved are almost identical with those that the political philosopher has to bear in mind in his attempts to ascertain the elements of an ideal commonwealth. In fact, the only important distinction between a system of ideal law and a political Utopia is that in the latter there must necessarily be included, in addition to the statement of the general principles of right which should be recognized, the outline of a scheme of governmental organization through which such principles are to be declared and enforced.

¹ Hastie, transl. p. 140.
Conclusion

By way of summary of our statement of the relation which political philosophy bears to other fields of speculative inquiry it may be said that metaphysics, ethics, and political philosophy constitute the three divisions into which any general philosophical system is logically divisible. By metaphysics are determined the nature and essential attributes of men as rational moral beings. Upon its conclusions are based the principles which the ethicist declares. Finally, the results reached by the ethicist are in turn those which it should be the aim of all political life to realize. Thus, to state the sequence in other words, metaphysics determines the possibility of human freedom, ethics lays down the principles by which it should be regulated, and politics ascertains the means through which those principles may best receive recognition and enforcement. Thus, the final aim of philosophy is fulfilled. Without ethics and politics, metaphysics is reduced to useless imaginings. Without metaphysics, ethics has no foundation for its premises, and without politics it is without the means of securing a realization of the aims which it declares desirable. Without metaphysics and ethics, politics is unable either to determine the relative values of different possible lines of public policy, or to establish grounds upon which political obedience may rightly be demanded.

By way of final word, the speaker would repeat what he has had occasion in an earlier paper to declare, that, though abundantly justified by its practical fruits, the greatest incentive to the study of political theory is that pure intellectual delight which is to be obtained from the pursuit of any speculative inquiry. Philosophy is the search for the essentially true, and alone is able to satisfy the mind’s insatiable demand for the whence, the how, and, to use a scholastic term, the whatness or quiddity of human phenomena. Its results are, therefore, satisfying apart from their practical value, and its method enticing by giving play to our highest intellectual faculties. At all times political speculation has occupied an important place in the general field of philosophy, and has attracted the attention of the greatest minds, from Plato and Aristotle, Augustine and Aquinas, Locke and Spinoza, to Kant and Hegel, Savigny and Austin, Jefferson and Mill. And, when we reflect upon it, what can be more provocative of inquiry than the nature of the corporative control to which all men submit in one form or another, and under which and because of which they have been able to progress from the lowest stages of savagery to the highest attainments of civilized life? What wonder that, apart from the pursuit of practical ends, the greatest minds should have been stirred to its critical examination!
PROBLEMS OF POLITICAL THEORY

BY GEORGE GRAFTON WILSON

[George Grafton Wilson, Professor of Social and Political Science, Brown University, and Lecturer on International Law at the United States Naval War College. A.B. Brown University, 1886; A.M. ibid. 1888; Ph.D. ibid. 1889. Member of Historical, Economic, and of Council of Political Science and International Law Associations; Author of International Law Situations; International Law Discussions; joint author of International Law; and author of articles on political science and international law and relations.]

It is not uncommon for such as call themselves "practical" to give slight regard to the serious politico-scientific presentation of a topic bearing upon the management of state affairs. They say, "O, that is the point of view of a theorist;" "he is bringing in historical illustrations. These do not apply to present conditions;" "that is all right in theory, but it will not work in practice;" or "I have no respect for those fine-spun theories that never lead to anything."

Such opinions are not confined to "practical politicians," but find expression elsewhere, even in the works of those engaged in the presentation of the claims of other than the political sciences. The critics sometimes see little reason for the existence of political science, and still less for the elaboration of political theory.

To such detractors the first problem of political theory would be for it to prove its right to exist.

It is true that practical necessities gave rise to political phenomena long before any theoretical consideration of politics was conceived. The state existed prior to political speculation and independent of it. The fact of this priority of existence does not, however, prove that political theory may not have a right to be any more than the fact of the existence of electricity before the existence of theories in regard to its nature would discredit the theories which have given such beneficent results to man. These theories have not modified the essential nature of electricity, but have made it possible for man to control electrical energy for his own purposes. The problem of political theory is in part so to reveal the nature of political energy that it may be controlled for man's benefit. If this can be done, even those who demand "practicability" would grant that political theory has a right to be.

In the consideration of the right of political theory to be, it must at the outset be admitted that, like other theories, there have been theories in the political field that have been only in small part tenable and others not at all tenable by a normal mind.

Here there arises the problem of the relation of political theory to political action. It must be admitted that political theories have
often influenced political action most profoundly. The works of Aristotle have again and again become not merely the subjects of study for those interested in Greek literature, but for those engaged in political affairs. They have been used as the sources of arguments for determining practical political action. Eginhard in his Life of Charles the Great states that the great ruler delighted in the works of St. Augustine, especially in De Civitate Dei. The influence of the works of Grotius upon the political policy of his contemporary Gustavus Adolphus is evident. In some of its aspects the French Revolution was a crude attempt to work out what was thought to be a correct political theory. The influence of the same theories is evident in the enunciation of some of the fundamental principles upon which the United States Government was founded. The debates upon the adoption of the Constitution of the United States, the Federalist Papers, and the writings of other of the early political leaders in the United States show the influence of the understanding of political theory. The political movements of the first half of the nineteenth century in Europe show how the theory that a nationality had a right to embodiment in a political unity influenced practical politics. Theories as to what a state might do in the way of determining economic prosperity have been the basis of many political party struggles, and claims based upon lack of understanding of political theories have led to the downfall of "practical politicians" and political parties.

Those widely versed in political theory have also often been leaders in the political activities of their times. This has been particularly true in Germany, and some of the great development of that state can be traced to a recognition of the worth of political theory as a guide for practical action. Where political studies have received the most careful attention and most rational consideration, there the political action has been in general most consistently progressive.

It is as reasonable to believe that practical political affairs may be more properly understood and directed when the theories underlying political action are comprehended, as it is reasonable to expect similar treatment of affairs in other lines of human activity when the underlying theories are understood.

It would seem, then, that political theory has in the past strongly influenced human activity, that men who have led in political affairs have often been guided by political theories, and that in itself political theory would have the same reasons for its existence as the theory of other studies dealing with human activities. If political theory can lead to action so disastrous to human well-being as has

1 "Delectabatur et libris sancti Augustini, praecipueque his qui De Civitate Dei praetitulati sunt." Eginhard, Vita Karoli, cap. 24.
sometimes been the case, then there is reason for an investigation in order that sound and beneficent theories may take the place of those of the opposite character.

Those who would attempt to discredit often do not know what is the nature of political theory at present nor what has been its influence in the past; indeed, while decrying the theorist, they as practical men may be acting upon principles which the theorist has enunciated, and their successes may be due to the correctness of the theory or to its fitness for the conditions at the time existing.

Again, problems of political relationship arising in consequence of the growing importance of the state itself and the extension of its powers in comparison with such institutions as the family and the church have emphasized the importance of political theories.

The growth of parties, schools, systems, governmental policies, and the like, based upon theories makes necessary attentive study of their bases. Many of these parties distinctly call themselves by the theory name, as in the case of the "socialistic party," the "nationalist party," etc. The courts of justice often incline toward a theory in accord with a political platform, and in some cases judges are elected for the purpose of supporting a party theory.

As the state is one of the most important of the products of human association in its effects upon associated life and in its influence upon the individual, there is a final and sufficient reason for the mastery of the fundamental principles of its being, and with these political theory purports to deal.

Even this brief survey shows that political theory has a right to exist and to claim respect, though it must always be admitted that there may be false as well as true theories.

Granting that political theory has a right to be, the next general problem is one of subject-matter.

One of the first difficulties in regard to the subject-matter is that of discriminating between the political and non-political in the data of human association. Much of the data relating to early human association which has been used as a basis for political theorizing is certainly very imperfectly understood, and in some cases the data are not reliable for political theorizing, as they were gathered with an entirely different purpose in view.

Some writers speak of the Hebrew theocratic state, of primitive states among aboriginal tribes, and of states bound only by family ties or by clan relationships. If the organization prevailing among the early Hebrews and these other early relationships are to be called states, then the problem of dealing with these and modern states under the same system of definitions becomes very difficult, even in theory. The points of identity in organization between a savage tribe and the British Empire would not be many, and to attempt to
give a common explanation for each would lead to absurdities. It is evident that some of the confusion and differences which have arisen are due to the attempt to account by political theory for non-political facts. Dunning, in his *History of Political Theories* (p. xvii), has observed that a history of political theories "would begin at the point at which the idea of the state, as distinct from the family and the clan, becomes a determining factor in the life of the community." It would not be maintained that any particular date or degree of civilization could be fixed upon as a prerequisite for political action. It is affirmed that there exists a problem for both the student of political theory and political science in the way of discrimination between the political and non-political in early social data.

Another important question in the consideration of the subject-matter would be as to when and under what circumstances social data would become political data properly to be used for political theorizing. Dunning, in accord with the position above taken, says, "Of all the multifarious projects for fixing the boundary which marks off political from the more general social science, that seems most satisfactory which bases the distinction on the existence of a political consciousness."

The subject-matter presents another difficulty from the fact that the data upon which political theory must draw do not remain fixed. Even if agreement were to be had upon definitions, the content would change with the change in human relations. To adapt political theory to the dynamic character of the subject-matter is an ever-recurring problem:

Much of early political theory and, to some extent, present political theorizing is concerned about the doctrine of form of the state, — the question as to whether monarchy, oligarchy, or democracy is the best form. This is a problem of some importance, but is insignificant in comparison with the problem of rendering efficient such form as may exist. The consideration of political data without predisposition in favor of any particular form of political organization will discover efficiency under varying forms and also will discover that in most instances the efficiency is not due to the form of organization.

By political theory is generally understood the theory centering upon the state. One of the primary problems would therefore be to determine what the state is, and upon this definition would depend much of the scope of the theory. After establishing a definition, which the great diversity in existing definitions shows to be no easy task, the problem of determining the relations of the states to each other, to other political institutions, and to other social institutions arises. This involves the question of the limits of state action, one of the most difficult of all problems and one upon which much dis-
discussion has been had. This will, in part, depend upon the conception of such political ideas as sovereignty, law, etc. In the field of performance of state functions and the exercise of state activities there are questions of relationships. The separation and limitation of powers, the character and range of governmental activity, and the nature of government itself become problems for political theory. The subject-matter of political theory is varied, and different writers have given it a very diverse treatment. The same general subject-matter has in some instances, particularly in the eighteenth century, given rise to theories leading to entirely opposite conclusions, and later individualistic and socialistic theorists have used the same subject-matter in support of the contentions of their respective positions.

Admitting that political theory has a right to existence, and that from the extent and nature of its subject-matter diverse conclusions may be drawn, the next general problem becomes one of method. It would need no argument to arrive at the conclusion that a theorist starting with a series of political axioms would arrive at different conclusions from those of a theorist who viewed the state as an historical evolution or that a believer in "the divine right of kings" would evolve a different theory from that of an advocate of the social contract theory. The problem of method easily becomes a significant one for the political theorist. Indeed, it has been claimed by some that the method is the most important of all the problems as to political science and theory.

Various methods have been used by political theorists.

The formal explanation of political facts which has viewed the state as static and subject to logical analysis has profoundly influenced political theory. Certain valuable conclusions can doubtless be drawn from such theorizing. The tendency of this method is toward a purely legal view of the state. The method of pure logic, as it has been called by some writers upon the Continent, tends to give a narrow point of view, while at the same time the view gains influence from its positiveness.

A more positive method was that which assumed its definitions and the reasons for them as well as assumed certain political axioms; then, by deductive reasoning in regard to the assumed state and also in regard to the assumed character of man, drew its conclusions. This doctrinaire school of theorists corresponded in some respects to the Manchester school of economists.

The historical method corrects many of the errors consequent upon the rise of the above method. It shows what analysis or logic cannot show, viz.: that reason is not the source of certain political institutions and phenomena, but rather that their source is in special conditions which arose in some earlier time. The doctrinaire
method, with its axioms and formulae, regards such phenomena as exceptions. In a negative way the historical method gives to political theory the data for correcting conclusions of the two first-mentioned methods.

In a positive manner, the historical method furnishes political data in their "time-setting," making possible the interpretation of political phenomena with reference to their conditioning circumstances. The method of comparison has also served most efficiently in political investigation and interpretation. Montesquieu gained not a little by its use. De Tocqueville says, "In America I have seen more than America; I have there sought an image of democracy itself."¹

In connection with the question of method, there is the problem of freeing political theory from the extended use of analogy which has often given a false idea of the nature of the political facts. In the case of the biological analogy which has been most extensively used, there has often been a tendency to make little or no discrimination between physical and political phenomena. This method has doubtless served a purpose in strengthening the idea of the unity of the state, but an analogy cannot take the place of correct reasoning. Of this T. H. Green says, "If it were held, then, that the state were an organized community in the same sense in which a living body is, of which the members at once contribute to the function called life, and are made what they are by that function, according to an idea of which there is no consciousness on their part, we should only be following the analogy of the established method of interpreting nature."²

As by these and other methods the facts are presented, the problem of reconciliation of the points of view thus gained comes to the political theorist. He must also recognize the modern tendency to give a sociological interpretation to many of these facts, which is now as marked as was the tendency to give a legal interpretation at an earlier time.

It is evident that each method may be capable of rendering service to the political theorist. To give to the conclusions of each the proper value and place is a problem deserving and receiving more and more attention.

In considering the more concrete problems of political theory one of the first is that which is concerned with the origin and basis of the state. This problem is one that very early received attention from political theorists and writers upon political subjects. Its solution may make a great difference in the working-out of other portions of a general theory of the state.

¹ De la Democratie en Amerique, i, p. 19.
² Principles of Political Obligation, sec. 125.
To some writers both of early and later periods, political life is innate, and man is man only as he is political. It should be observed that among those using somewhat similar terms in regard to this basis of the state in the nature of man, there is often a wide difference in the content of these terms. Some draw one conclusion along the lines of a natural law as the basis of the state and others another. Some base the state in might or force and enter upon the elaborate explanations to account for the source of this force which they claim makes the state possible.

The theory that the state is the product of "natural law" gave to the term "natural law" and its various modifications the most divergent interpretations.

The same may be said of the attempts to base the state in a "social contract."

That there are still problems in regard to the origin of the state will be evident in the comparison of the points of view of almost any of the recent discussions upon the subject. Some even question the right of the state to be.

These problems have occupied so much of the space in the books upon political topics that more than a mere mention of the fact that the problem of origin still remains seems unnecessary.

These theories as to the origin of the state serve to show that there is a problem for the political philosopher in the distinction of causes of political phenomena from conditions of political phenomena. It is possible that had this question been earlier raised, political theory would have been more advanced. The attempt to account for non-political facts by political causation has been common in the field of theory. A clear discrimination between the phenomena that condition and those that cause political activity removes many difficulties. Not all theorists would agree in regard to the respective categories. It is probable, however, that to most investigators soil, climate, configuration of the land and sea-lines would, in general, condition political development. The solution of the problem of placing conditioning phenomena in their proper relations is one which will bear valuable results. The elimination to a great extent of time and space in human relations has removed conditions favorable to the individualistic theory of the state and furnished new problems.

Before discussing further problems, it seems fitting that a question that logically might have been raised earlier should be proposed, viz.: What is the state as the subject about which political theory centers?

The problem of definition is not a simple one. There are many excellent descriptions of a state which contain an enumeration of such of the conditions of state existence as seem to the given writer
PROBLEMS OF POLITICAL THEORY

It is only too obvious that the activities of political agencies may be enlightening to a general reader, but become a source of confusion when attempt is made to use them in a definition for political theorizing, as would be the case in a chemical experiment where a bottle bearing a given name contains not merely what the name indicates, but other chemicals as well. Frequently accidental attributes are regarded as essential and are accordingly made a part of the definition. The attempt should therefore be made to exclude from the definition everything not essential to the state and to include everything essential.

While the writer of this paper was requested to set forth some of the problems of political theory only, it may not be out of place to offer a tentative definition of the state. Whether or not this definition meets the standards which the problem of definition sets forth, it has in actual use been found a convenient point of departure for political theorizing. The definition offered for consideration is that the state is a sovereign political unity.

This definition is offered in part that the proposition of subsequent problems may be somewhat more definite, and that, if possible, their solutions may be less complicated. The terms used in the definition need for themselves definition, and in their definition important theories are involved.

The term "political" has had various meanings placed upon it and its content has increased or diminished from time to time till now, in the days of world-politics, its content is very different from what it was in the days of the Grecian city-state. The word seems, however, to have attained a fairly clear meaning at present as the term for public in distinction from private affairs of men.

When coupled with the word "sovereign," the unity is marked off from any other in which men are associated. The problems connected with sovereignty will be considered later.

By the definition, the state is distinguished from a social unity. Consequently, there are many problems of the relationship between the state and voluntary organizations within and without the state. There may remain and does remain the problem of determining how far the state, e. g., shall concern itself with religious affairs, but here it will be a problem of determining the external conditions of religious life rather than the religious life itself. That the state could only condition non-political life, not create or destroy it, has been a lesson which nearly all religions have been slow to learn. It may be said of the conduct of state authorities toward other human activities that they have often mistaken the power to condition for a creative or causal power and have attempted to solve by state agencies problems which could only be solved by other means.
Whatever be the definition of the state, the doctrine of sovereignty is generally regarded as the central doctrine of political theory. Few topics have been the subject of more extended treatment, and as there does not even yet seem to be an agreement as to what is meant by the term sovereignty, it may be assumed that here will be found an important problem. The word is used in different senses by different writers and not infrequently in different senses by the same writer in succeeding pages. With comparatively few exceptions, as will be seen from Merriam's History of Sovereignty since Rousseau, the doctrine of sovereignty advocated by a given writer was based upon the grounds of temporary political expediency rather than upon philosophical reasoning. That the theorists of the present day should show the same tendency would be natural, and hence arises the necessity for guarding against the influence of psycho-political environment of the period.

Closely related in its results to this influence of environing conditions is that which leads writers to give to earlier political or other concept an importance and emphasis commensurate with that which it has previously received. This is particularly true in regard to the emphasis placed upon the doctrine of sovereignty. It might be proper to raise the question whether too much attention has not been given and is not now given to the consideration of the doctrine in its various forms. Whatever be the answer to this question the problems connected with the exercise of the supreme political authority are becoming complex to a high degree through the differentiation consequent upon new forms of dependencies and modern interstate relations.

Bryce, in his essay on "The Nature of Sovereignty," ¹ says, after discussing various confusions in regard to the subject of sovereignty, "Had the qualifying terms 'de jure' or 'de facto' been added every time the word 'sovereignty' was used, most of these difficulties would have disappeared." Later (p. 546), he says in speaking of international relations, "Nevertheless, where some legal tie has been created between two or more states, placing one in a lower position, we may say that inferiority exists de jure, while if there is an actual and continuing disposition of the weaker one to comply with the wishes of the stronger, there is inferiority de facto. Where the laws made by the legislative authority of one state directly bind the subjects of another state, the latter state cannot be called in any sense sovereign." Burgess ² says: "Really the state cannot be conceived without sovereignty, i. e., without unlimited power over its subjects; that is its very essence." These quotations show the tendency shared also by many writers to establish an extreme definition for sovereignty.

¹ Studies in History and Jurisprudence, p. 542.
² Political Science and Constitutional Law, 1, p. 57.
Such definitions give rise to the problem of classification and determination of the character of the so-called half-sovereign, parti-sovereign states, or fragments of states. At the same time the extreme definition of sovereignty gives rise to the problem of the political status of members of federal states, confederations, and other unions. To this problem some give the terse solution that such are not states at all, but retain their names as such only by courtesy and should receive consideration only as administrative divisions. This is the position which has been growing more and more into the political theory of the past forty years. The question arises as to whether this theory has not simply reflected the actual political development of the period.

Are states which voluntarily make treaties limiting the range of their freedom of action therefore no longer sovereign? If so, just what kind of a treaty renders the loss of sovereignty certain? Is it such a treaty as the defensive treaty between Great Britain and Japan, the Triple Alliance Agreement, the Arbitration Treaties of 1904, or the Anglo-Franco Agreement in regard to North Africa? All of these limit the free exercise of sovereign powers in certain respects. What is the position of neutralized states? Such problems as these become of practical importance for international law. While international law admits that “it is not inconsistent with sovereignty that a state should voluntarily take upon itself obligations to other states, even though the obligations be assumed under stress of war, or fear of evil,” yet there remains the problem of determining the limit to which obligations may be assumed without loss of sovereignty. A state may be deeply in debt and still be classed as sovereign, may be neutralized, may be closely bound to another or to several other states, may be internally disorganized, may be insignificant in area, population, and power, or seemingly may lack all attributes but recognition in the family of nations, and still be regarded as sovereign in international law. Is it necessary to answer that some of these “are sovereign because they are states and are states because they are sovereign”?

The problem arises as to how far sovereignty may be said to exist among these so-called states, and further, how such conceptions as spheres of influence and the like shall be regarded, and, again, how far sovereignty can be divided in states of various forms. Indeed, the question may be seriously raised whether there is at the present day with the close system of international relationships any sovereign state and whether with an extreme definition of sovereignty theorists will not soon be discussing a political phenomenon which has no corresponding entity in fact.

1 Jellinek, Ueber Staatsfragmente.
With such political doctrines as the "concert of powers," "dominant influence," "Monroe Doctrine," "world conferences," etc., will not new and wide modification of a theory enunciated in the sixteenth century be necessary?

There are also numerous problems centering about sovereignty as viewed from an internal as well as from the international standpoint. Here the problems of federation, confederation, colonies, protectorates and other subdivisions need merely to be mentioned as suggestive of fruitful fields for discussion.

Again, such questions as the residence of sovereignty, the divisibility of sovereignty, the nature of the legal sovereign, and many others offer problems which are not yet fully solved.

All definitions of the state recognize its political nature and that it may exercise its authority in political affairs. This does not, however, solve the ancient problem of the limit to which the state may extend its authority. In ancient days, when the state was everything and man was held to exist for the state, the problem was much more simple than in the days of pronounced individualism. The problem of the limits of state interference has always been a difficult one. The reaction against the medieval state with its privileged classes left a strong prejudice against state interference which the doctrines of individualism strengthened. The problem is to establish the proper degree of state regulation. As the state is political, its action should be for public ends. The solution of the limits of interference with and regulation of individual action can in part be determined by theory as to what is individual and what public; e. g., religion is now generally regarded as personal and not subject to state regulation, while freedom to worship is regarded as something to be secured by public authority as conducive to public well-being. The state exists for civic purposes. The individual considers his life as his own to be lived in freedom. To determine at what point the state authority may properly begin or cease is easy in extreme instances. There is, however, a wide zone in which this question is open to debate; e. g., undoubtedly the proper education of children is a moral duty resting upon the parent, and to relieve the parent of this duty may weaken him morally, yet the state in many instances educates the child and compels him to attend school even when the parent may object. The question of the nature of the interference aids in clearing the problem of interference of some difficulties. If interference is classified, as with (a) beliefs, (b) property, and (c) conduct, a general solution of the problem can be more easily reached. Beliefs would in general be individual. Property is at least protected by the state, if not made possible by the state. Conduct may be individual or may affect the state. With beliefs the state would not interfere; over
property the state must have jurisdiction, and in regard to conduct the state itself must judge.

The problem of how far the state may regulate conduct is partly solved by reference to the existing body of law, which gives to the state extreme rights, even to the power of putting an end to a subject's existence in some instances. This gives rise to the problems centering upon the right to punish crime which has received much theoretical attention. It is granted that certain acts should lead to the exercise of counter acts by the person who suffers, by his family or friends, by the community, or by some properly constituted power. There might be danger both to the offended and offender if the exercise of force was uncontrolled. The right to exercise such force has therefore in most cases been asserted to belong to the state. The problem of the efficient and just exercise of force therefore appears.

What political weight should be given to a particular individual because of his possessions, status, capacities, etc., is a problem once thought to be solved, but again arising.

The problems centering about the varied ideas of liberty, freedom, and equality have been greatly modified by the influence of the theory of evolution. The problems formerly having an individualistic basis are now calling for a sociological solution.

Other such problems as rest upon the attempts to regulate power and responsibility in state agents, to create a form of state control that shall be adapted to political needs, and problems having practical ends in view demand theoretical consideration.

From the theoretical point of view all these problems must be solved in the light of the solution of another problem to which all bear a relationship, viz.: the problem of the end or ideal for which the state exists. Bluntschli\(^1\) formulates as the proper and direct end of the state, "the development of the national capacities, the perfecting of the national life, and, finally, its completion, provided, of course, that the process of moral and political development shall not be opposed to the destiny of humanity." This is an excellent example of the influence of the time-spirit upon political theory.

The development of the theory of nationality and the emphasis upon the embodiment of nationality in state form was a mark of his time and is reflected in his theory. Other theories as to the end of the state reflect the influence of the times as well. Sometimes it is protection of the individual, sometimes development of culture, sometimes perfection of liberty, and so through a long list of special ends.

The solution of the problem of the end of the state will depend upon the theory of the nature of the state. If the state be regarded

\(^1\) *Theory of the State*, p. 300.
as an organism, the end will naturally be found within itself. If the state be regarded as an organization, the problem of the end becomes open to broader discussion. Is the state ever anything other than political? Can its acts ever be other than public acts? Does the state exist for other than political ends? There are varying answers to such questions, though the tendency is to answer all in the negative. If answered in the negative, then a step toward the setting-forth of the end of the state is taken. Will not the end be in line of progressive public well-being, as the state is an organization based upon the will of human beings?

Even if all these problems were set forth in proper form and solved, if there is to be progress in human association and organization, and such seems to be the destiny, the political theorist has the great problem which early confronted Plato, the problem of formulating such political ideas and ideals as shall cause mankind to aspire to the progressive realization of the possibilities of human development.
NATIONAL ADMINISTRATION

BY JAMES BRYCE

[James Bryce, Member of the British Privy Council, M. P. for Aberdeen. b. Belfast, May 10, 1838. B.A. Oxford University, 1862; D.C.L. ibid. 1870; Hon. L.L.D. Edinburgh, St. Andrew's, and Glasgow Universities, Columbia University, Dartmouth College, University of Toronto, University of Michigan; Litt.D. University of Cambridge, Victoria University; Doctor of Political Science, Buda Pesth University. Post-graduate of Oxford and Heidelberg. Barrister-at-Law, Lincoln's Inn, 1868; Regius Professor of Civil Law, Oxford, 1870-93; Under-Secretary of State for Foreign Affairs, 1886; Chancellor of the Duchy of Lancaster, and Member of Cabinet in Mr. Gladstone's last Ministry, 1892-94. Foreign member of the Institute of France and Royal Academies of Turin, Brussels, and Naples; Società Romana di Storia Patria; Corresponding Member of the Massachusetts Historical Society, Royal Academy of Canada, and Literary Society of Iceland. Author of The Holy Roman Empire; The American Commonwealth; Studies in History and Jurisprudence; Impressions of South Africa; Studies in Contemporary Biography; and many other works.]

The subject of national administration, on which I am invited to address you, is one of wide scope as well as great importance. It covers so large a field, it ramifies into so many branches of inquiry, that all I can attempt in the limited time allotted is to sketch its outline and to indicate the chief topics which would need to be discussed in detail were a detailed discussion possible. It is a bird's-eye survey of the landscape rather than a description of its features that I must proceed to attempt.

By national administration I understand the whole action of the state in maintaining and defending itself and in securing for its members, the citizens, what it undertakes to do for them. It is that organization which the community has created for the two great purposes of self-preservation and of mutual benefit. Speaking more precisely, it has four aims. The first is the defense of the community against external forces, i.e., neighbor states or tribes, who were in early times presumably enemies. The second is the defense of the persons or bodies that govern the community against internal forces that may assail it, i.e., against rebellion. The third is to provide for the members of the community the things for the sake of which the state is primarily formed, viz., order and the enforcement of civil rights, or, in other words, peace and justice. The fourth is to extend to members of the community various advantages which they might conceivably provide for themselves, but which it is supposed that the state through its servants can provide more efficiently. I omit the provision of religion, because many modern states leave it on one side and do not touch on the administration of dependencies, because this is frequently absent.
Of these aims, the first three have always existed in every community desiring to be called a state, and till quite recent times they covered all the services an administration was expected to render. Government existed for the sake of defense or conquest—in rude time defense passes naturally into conquest—and of order. In other words, the work of a national administration might be summed up as war and justice, and of these justice came second. But within the last two centuries, and especially during the nineteenth century, the last of the four grew apace, and now in the more advanced countries, more than half of the functionaries whom a national administration employs, as well as a considerable part of the money it spends, go to providing the citizens with things which in earlier times they either did without or provided for themselves. Such, for instance, are police, the transmission of letters and other articles, internal communications by railway or telegraph, the instruction of the young, the health or safety of persons engaged in various employments, the construction of works of real or supposed public utility, the development of material resources (agriculture, forests, fisheries), the supplying of information serviceable for commerce or industry.

It is in this direction that new work is being undertaken in so many ways and on a daily increasing scale. But in all branches of administration there has been a prodigious extension of state action. It is not only that the progress of civilization creates new wants and leads to new demands; the old functions also have become more complicated with the progress of science. Armies are larger; navies are larger; both are incomparably more costly, because all the processes of war are more elaborate. These two services cost in England to-day nearly $300,000,000, as much as the total expenditure of the national government was for all purposes sixty years ago. At the siege of Port Arthur, Japan has probably already spent $5,000,000 in projectiles discharged and ships destroyed, not to speak of the loss of men. The whole tendency of recent years has been to throw upon national administration more work, to require from it more knowledge and skill, to intrust it with the expenditure of more money, to make its efficiency more essential, since it is expected to help the nation in competition with other nations, and to expose its members, the civil servants of the state, to more frequent and stronger temptations. This evident tendency to widen the sphere of national administration raises the question, What kinds of work ought it to undertake, and from what ought it to abstain? Here we have a topic more than large enough for a whole course of lectures, so I will indicate only the most general considerations that apply to it. These considerations are not the same for all countries. In some countries the people are backward, ignorant, uninnventive,
and may need more leading from their government than is needed in other countries. In some countries the standard of honor and purity among officials may be comparatively low, and it may, therefore, be unsafe to intrust to such officials the disposal of large sums of money or the management of costly enterprises. Apart, however, from these local sources of difference, there are three general considerations tending to dissuade a wide extension of such functions of a government as are not essential to the defense and internal order of a country. One is the danger of discouraging or superseding individual enterprise. The greatness of a state depends in the last resort on the vigor, the alertness, the self-reliance of its citizens. To reduce their initiative, to teach them to follow passively instead of leading and guiding their administration, may be the worst service you can do them. A second ground for caution is the risk of reducing the amount of care and forethought which people take for their own interests. If you carry too far your efforts to protect them either against physical harm or against self-indulgence, or against fraud, evils which their own activity, self-control, or prudence might avert, you may so discourage the habit of looking after their own interests as ultimately to do more harm than you prevent. Leading-strings destroy the sense of individual responsibility. Lastly, you may incur the danger of making the administration too powerful a factor in the social and political life of the country; you may teach it to feel itself a master instead of a servant; you may form the wholesome habit of obedience to the law into the slavish habit of obedience to the official. Did time permit one could illustrate these risks from the examples of some modern countries, which have been led, partly by an exaggerated conception of the all-pervading grandeur of the state, partly by the natural tendency of officials to grasp at more power, partly by an honest wish to effect improvements with the utmost speed, to push far beyond the old limits the interference of public authorities in fields formerly left to the individual. Doubtless there is one important argument on the other side to be regarded. It does not follow that what government leaves alone is left alone for the benefit of the individual citizen. The monopolist — be he a man or a combination of men who are rich, who are active, who are able, who are perhaps also unscrupulous, though not necessarily unscrupulous, for we must not allow the resentment which some combinations have evoked to prejudice us against all those who try, possibly by fair means, to draw vast branches of business within their grasp — is in the field; and he may not only extrude the individual, but may appropriate to himself immense gains which the action of government might have secured for the community. These are cases, therefore, in which national administration may undertake work which otherwise it would have declined, because in doing so
it is really protecting the interests of the individual as a business man and a taxpayer, and preventing the growth of a power which might reach dimensions dangerous to the community as a whole. Nevertheless, it may safely be said that the general presumption is in favor of leaving individuals to do whatever it is not either necessary or, at least obviously, advantageous that the state should do for them. State intervention can doubtless often be shown to be desirable, even where it is not essential. But the burden of proof lies on those who would introduce it, for natural laws generally, though I repeat not always, work better than human devices intended to modify them.

Before leaving this question let me note that I am speaking primarily of national administration, not of public administration generally. There are some kinds of work not safe or suitable for the government of the state, which local authorities may properly undertake. The objections above indicated need to be qualified when we apply them to local elected bodies, through which the energy of the private citizen may exert itself and which may check the dominance either of private monopolists or of an organized bureaucracy. In England, for instance, we are now experimenting in large extensions of the work of local municipal and county councils, and we hope for good results.

Let us pass to consider what are the principles that should determine the character of a national administration, and what are the conditions of its efficiency. I do not enter into the question of its structure, nor into the distribution of functions between it and the local authorities of the country, for these matters depend largely on the political constitution. They are different in a federation like yours from what they are in a unitary country like Great Britain; they are different in free states and in absolute monarchies. They are different in highly centralized countries like France from what they are in England. Yet one point deserves to be noted: To be strong for national purposes a government need not be centralized. For all administrative purposes the United States supplies an obvious example, and an administration which controls all local affairs may not only reduce the habit of independence among the people, but may also, if the country is managed on a party system, become an engine of mischief. The best scheme seems to be one which leaves to local authorities, and preferably to elected local authorities, all such functions as can safely be intrusted to them, together with a limited power of taxation for local purposes, while retaining some measure of control by the central administration in case they overstep either the statutory limits of their powers or the limit of a discretion exercisable in good faith, and in a spirit neither corrupt nor oppressive. To fix the precise amount of control to be so reserved for the central administration is no easy task. But it is
not an impossible task, for in England, where it has been tried, we find that comparatively few difficulties arise in practice.

Passing on to principles which apply to administrative systems in general, there are some points that may be taken for granted. There must be a systematic organization of the work in each department of administration; there must be proper regulation for promotion and for discipline among the officials. But the question of providing for the representatives of each great department in the political scheme of the national government, whether in the private council of an autocrat or in the cabinet of a constitutional country, or in the ruling assembly, presents grave and interesting problems.

It is essential that those who do the departmental work of a country in all its main branches, such as collection and expenditure of revenue, preservation of order, education, carrying-out of various administrative statutes, should be in close touch with the political organs of national life; and this in several ways. They must be responsive to public opinion; they must be liable to have their action criticised publicly and freely; they must have opportunities of defending their conduct when so criticised; they must have means of suggesting changes in the law which their administrative experience shows to be necessary, and of tendering to the legislative power evidence and arguments in support of their proposals. These are matters which an autocratic government can deal with readily enough if it has the wisdom and public spirit to do so, for there the executive which conducts the administration is also the legislative authority which changes the law. The weak point of such a government is the want of control by public opinion. But in a popular government administration and legislation may be quite disjoined. I will endeavor presently to show how in England and her colonies provisions have been made for conjoining them which have, on the whole, worked well and given satisfaction to the people.

Now let us come to what is the most material thing, the persons who compose the administration, i.e., the civil service of the country.

Their first and highest merit is honesty, and the rules of the service must be such as to help them to be honest by removing temptation as far as possible from their path and by keeping them under vigilant supervision. The second requisite is capacity, that is to say, not merely general ability and diligence, but also such special knowledge and skill as their particular line of duties requires. The increasing specialization of all kinds of work, due to the progress of science and the further division of labor in a civilized society, makes this need more urgent than formerly. It is, however, still imperfectly recognized, except perhaps in Germany, where persons entering official life receive an elaborate special training.
In order to secure capable and diligent men, the civil service must be made attractive; that is, it must offer advantages such as to draw into it persons who might expect to obtain wealth or distinction in other occupations, as, for instance, in the legal or medical or literary or engineering professions, or in commercial business. How is this to be done? Many things go to make people seek public employment. Nowhere, perhaps, is it so much sought as in Greece, — a poor country offering few careers to a surplus of educated and aspiring men; yet those who know Greece know that the attractiveness of the profession has not given Greece an exceptionally efficient civil service. But, speaking generally, the way to draw talent into state service is to make it perfectly open to all citizens, to make it permanent, to pay it well, and to make it socially respected. Posts ought to be filled by appointment or other than by election. Election by the people is almost sure to be made on party grounds, and party views are no guide to the finding of a capable man whose business it will be to do official work into which party views do not or ought not to enter. Election by a legislative body, such as an assembly or a city council, may give better opportunities than does a vote at the polls for ascertaining the qualifications of a candidate; but it is likely to be made for other reasons than the candidate's fitness,—possibly party reasons, possibly the wish to please a candidate's friends. The only way to fix responsibility is to give the function of selection to a single person and make it his interest as well as his duty to select carefully and honestly. To secure even this is so difficult that an examination either fixing a minimum level of knowledge or awarding posts by open competition has been found a valuable expedient.

The reasons for making the civil service a permanent service are no less obvious. Unless a man is sure that he will not be dismissed except for some fault, he will not spend his time and money in getting a proper preparatory training, and will not feel that sort of interest in his work and loyalty to the nation as his employer which go so far to make him do his work well. If, moreover, the occupants of the posts are frequently changed, the experience they have acquired will be lost to the public and the new appointee will be for a time less competent, because he will have to learn his work. As respects payment, it ought to be on a scale properly adjusted to the cost of living and to the incomes made in other occupations requiring a similar amount of knowledge and skill, though, of course, the scale may fairly be fixed somewhat lower in respect of the permanence of the employment as compared with the risks which the professional or commercial man has to face. It is a good plan to let part of the remuneration take the form of a pension, which is practically deferred pay contingent on good conduct. Where poverty forbids
the public servant to live in a style corresponding to his social position, he is more likely to yield to the temptation of supplementing his salary in an illicit way. The social status of the civil service does not indeed wholly depend on what the government gives as payment. Much turns on the habits and traditions of the people, though the amount of payment is a considerable factor in making men seek that career. In Germany, for instance, and in France official salaries are lower in proportion to the cost of living and to the incomes of professional and business men generally than are the salaries of civil servants of the same class in England, while their average ability is as good. It would seem that employment is more sought after in the two former countries than in England because Frenchmen and Germans have a relatively stronger sense of the grandeur of the state and because state service carries a relatively higher social standing.

Not less important is the principle, amply approved by experience, that the servants of the state must be kept entirely out of strife of political parties. Appointments ought not to be made on party grounds; promotion ought to be made either by seniority or by merit; no political work ought to be expected from officials, nor should they be suffered, even if they desire it, to join in political agitation. It may, indeed, be doubted whether they and the country would not benefit by their exclusion from the suffrage, but no one who knows the temper of democracies will suggest this as a practical measure. Rather may it be deemed what is called a "counsel of perfection," for no nation seems to have adopted or to be in the least likely to adopt it. The mode of promotion raises difficult questions. If it is by seniority only, able men will be kept out of the higher posts until perhaps the best working years of their life are over, while dull men may happen to be at the top. If seniority is disregarded, there will be many jealousies and heart-burnings among the veterans who are passed over, and imputations of favoritism will be made, possibly often with reason, for it is so hard to say who are the men most worthy of advancement that an unconscientious head of an office may indulge his personal predilections or yield to the pressure of his friends urging the claims of their friends. An old Scotch official is reported to have said that he always gave the posts to the best men, but he usually found that his relatives, belonging to the same vigorous stock as that from which he came, were the men. I can say from experience that the exercise of patronage is one of the most difficult as well as the most disagreeable parts of an administrative work. Whatever care one takes, mistakes will occur, and for one friend you make three enemies.

Between the political form of a government and the excellence
of its administration there is no necessary connection. It used to be thought that despotisms were favorable to efficiency, and doubtless such autocratic eighteenth-century reforming monarchs as Frederick the Great did improve the management of their state affairs. The example of Rome supported this view: her provincial administration, bad under the Republic, improved immensely under the earlier Empire, and it was indeed the strong and skilled civil service that more than anything else enabled the Eastern Empire so long to resist the foes that encompassed it on every side. But the least pure, and probably one of the least efficient, administrations in Europe, is that of Russia; Turkey is, of course, much worse, but then the Turks are still a barbarous people. The civil service of England under a polity practically democratic is better to-day than it was under the oligarchical rule which lasted till 1832, and it may, along with that of France, claim to be the best in Europe after the German, which is, probably, the most efficient in the world.

It is, however, true that in popular governments the civil service is exposed to some special dangers. There is a danger that it may be used in the game of politics; a danger that its members may try to secure their own ends by bringing pressure to bear upon politicians. In Australia, where the railways belong to the state governments, the railway employees, forming in some places a considerable proportion of the electors, gave so much trouble by their efforts to obtain higher pay that they were at last taken out of the local constituencies and given separate representation. A difficulty of a quite different kind is that the masses of the people, not realizing how much skill and capacity are needed in officials holding the highest kinds of posts, may be unwilling to pay adequate salaries. The voter to whom $1000 (£200) a year seems vast wealth does not see why he should pay one of his servants $10,000 (£2000). Yet a capable official may save the nation twice that sum annually by his exceptional skill.

It may give some concrete vitality to these general observations if I illustrate them by a few references to the administration of Great Britain, of which I know something practically, having been at one time at the head of one of the largest public departments. In Britain, the national administration is practically a growth of the last seventy years. Before the Reform Act of 1832 the only public offices were the Treasury, the Foreign Office (the names were not then the same), the departments of the Navy and Army. There was a Home Office and a Board of Trade and Foreign Plantations, which pretended to look after North America (not very successfully) and the West Indies, but they had very few duties and a very small staff. There was no India Office (though a germ of it existed in the Board of Control), no Colonial Office (colonial work went along with
war), no Education Office, no Local Government Board, no Post-Office, no Board of Agriculture, no Scottish Office. Yet this increase of the central departments in England is not due to a suppression of local authorities, for these are far more numerous and more important now than they were in 1832, and are more important than in any other of the large countries of Europe. Each of the great departments is presided over by a leading politician; the chief among these have seats in the Cabinet. The civil service, which is under these chiefs, has for a long time been a permanent service, the members of which are not dismissed except for misconduct or inefficiency. A few of the highest posts are political, and change with a change of government, but these are little more than forty in number. Ambassadors are members of the permanent service, and so are colonial governors, though occasionally some person of special fitness is brought in from outside. Every one is obliged to retire not later than at sixty-five years of age and is then entitled to a pension, which may, after forty years' service, be as high as two thirds of the salary which was being received when the time for retirement came. Till 1855 posts were filled by the patronage of the head of the office, which was usually exercised either by favoritism or else to win or to reward political support. In 1855 a strict entrance examination was instituted, and in 1870 the great majority of the posts, higher as well as lower, were thrown open to competition, an experiment that had already been made with the large and highly paid civil service of India. A few posts at the top and the bottom still remain outside the competitive system. The former, among which, of course, were embassies and governorships, may, in some cases, only with the sanction of the Treasury, be filled by the appointment of an outsider; and in this way good men are occasionally brought in where the office may contain no man specially qualified, while there are also occasional jobs, which personal friendship or party affiliation have prompted. The places at the bottom not awarded by examination are now not numerous and receive quite small salaries; they are mostly petty appointments in the customs, needing nothing more than honesty and diligence. Even those are a vexation to members of Parliament to whom their constituents apply for recommendations, and there is a general wish to take them altogether out of the sphere of political patronage, as postmasterships recently have been taken out. In one or two offices there still exists a system of what is called limited competition, i. e., the candidate must be nominated by the head of the department and a competitive examination is held to select the best men from among the nominees. This prevails in the F—— O——. It is not hard to obtain a nomination, and the nomination is deemed to afford some guarantee that the candidate is in the position of a gentleman.
and may be trusted not to betray or misuse whatever knowledge of confidential matters he may obtain.

All the examinations are conducted by a body called C. S. G., under regulations regarding subjects and marks for excellence approved by the Treasury and published. Complaints are sometimes made that an examination in literary and scientific subjects does not prove a man's fitness for practical life, and least of all for the work to which in India a youth of twenty-six may be set, of governing hundreds of thousands of people. But the answer is that neither does a system of political patronage secure fitness in point of character, while it offers far less security for intellectual competence. Accordingly, the competitive system has taken root and is not likely to be abandoned. It satisfies the popular desire for equality, and it has raised the level of ability without lowering the level of integrity in the civil service. The officers employed by local authorities (such as city and county councils) are usually also permanent, i.e., are not removed except for misconduct or inefficiency. No executive officer is elected by the people.

The British civil service is broadly divided, omitting some minor details, into two sets of officials, who correspond, roughly speaking, to that distinction which holds its ground in England between those who are and who are not what is conventionally called "gentlemen." The second division clerks have duties of a more mechanical and less responsible kind, which needs a less complete education, and they receive salaries of from £70 ($350) to £300 ($1500) a year, a very few going as high as £500 ($2500). There are about three thousand in all, and the competition is keen and copious. The first division, higher class, or men who have received a high education, usually at a University, have salaries which, beginning at £200 ($1000), rise in the first class of this division to £1000 ($5000) by gradual increment. Some few of the great posts have a salary of £1500 ($7500) or even £2000 ($10,000). In the Indian colonial service the salaries are generally higher and the length of service does not exceed, except in very special cases, twenty-five years, after which the official can retire at £1000 ($5000) a year pension.

Promotion in the lower grades of both divisions is by seniority, but for important posts this is disregarded, and men may rise by merit. Where exceptional ability is shown, a person may be raised from the second into the first division.

Those who have had experience in the working of an office generally wish that they had a freer hand in promotion than our system allows. They would like not only to secure quicker advancement to capable men, but also more frequently to bring in from outside men of exceptional talent, and to be able to offer them exceptional salaries. I have already indicated the dangers incident to the giv-
ing this freedom to the head of a department. It might be allowed to the best Ministers and the best permanent heads of departments; they, of course, have more to do with all promotions, save those to the highest places, than the Minister has, for they know the staff much more intimately. But it would be abused by all but the most conscientious.

Three other topics need a passing mention. One is the general control which the Treasury exercises over all the departments, through its power of fixing salaries, through the fact that it has to approve and present to Parliament and defend in the House of Commons the estimates for the expenses the departments incur in the public service, and through the fact that in some cases statutes make its consent necessary to certain acts of the other departments. The Treasury is really the keystone of the British official system, holding the various departments together; and I remember how frequently it used to happen that when some change in organization was desired, or when some new kind of work was to be undertaken, one had to say to the permanent head, "We must now see the Treasurer about this. He can meet the objections they will probably raise."

A second point has already been adverted to. It is the supervision of local authorities all over the country by some of the central departments, and to some extent by the Home Office, to a still larger extent by the Board of Education and the Local Government Board. This last in particular has received by various acts important functions in watching, and if need be, arresting or controlling the action of county and district councils and of city and borough councils. This control, however, is not arbitrary and hardly even discretionary, for it chief consists in requiring them to observe strictly the provisions of the statute law. Nor dare the local government board act in an arbitrary way. The county councils are powerful bodies, powerful socially as well as legally, for they contain many men of high position and great influence. The borough councils are also strong, and have great strength in the House of Commons through their parliamentary representatives. There is, therefore, little risk of encroachment by the central government on the powers of these local bodies.

A third topic has been already mentioned in passing, viz., the relation between the civil service of the country and the political organs of government,—the Cabinet and Parliament. In Britain this relation is secured by the plan which places a leading parliamentary politician, who is necessarily also prominent in one of the two great parties, at the head of each of the great departments, about twelve in number. He, sitting in Parliament, speaks for the department to Parliament and to the nation. He is
responsible for everything the department does or omits to do. He has to explain its policy, to defend its acts, to stand the fire of parliamentary criticism. He may be every day publicly questioned, and he is bound to answer, unless he can say that the matter is confidential and that the interests of the public service require him to keep silence. It is to him that suggestions are made by members of Parliament and others regarding needed legislation or administrative action. It is he who receives deputations complaining of something done amiss, or asking that something should be done. It is he who appoints royal commissions or departmental committees to investigate and report on difficult problems. When his permanent departmental advisers think that legislation on any topic is needed, it is he and his parliamentary under-secretary, if he has one, who bring in the bill and argue for it in Parliament. So through him the department obtains the means of extending the scope of, or improving, its own action, and thus of better serving the country. Finally, as he is a member of the Cabinet, he consults his colleagues on such departmental questions as involve exceptionally large interests or have a political bearing, obtains their sanction for any new departure, and thus sees that the policy of the department is in harmony with the general policy which the Cabinet is following and which its supporters presumably approve. Thus the harmonious working of the whole machinery is insured and the department is kept in that close touch with public opinion which is essential to the proper conduct of affairs under a free constitution. It is a further advantage that as the parliamentary opposition almost always contains some person who has been head (or under-secretary) of each department, there are always men in Parliament besides the men actually in office who can bring practical experience to bear on departmental questions when they come up. It is now our custom that a former head of a department, though he is expected to watch and to attack (when necessary) the action of his successor in office, helps his successor to pass department bills which raise no controversy over the principles on which the two parties are opposed. There are almost always friendly and often confidential relations between the present Minister and the ex-Minister for each department, and the advantage of these relations is so evident that the rank and file of the two hostile parties, though seldom backward in their criticism of what are called "the two front benches," take no serious objection to the custom just described.

The English civil service impressed me, when I saw it at close quarters, as being an efficient service. Twenty years ago it had not quite as much first-class ability, either at home or in India, that is, quite as large a proportion of the available talent of the country as perhaps it ought. But with the coming up of younger men ad-
mitted under the competitive system, the level of capacity has been rising. Many of the best men from the great universities now enter it. It is, perhaps, still deficient in special training for the scientific side of administrative work, but this defect diminishes as better provision is made for instruction in these subjects, a matter heretofore neglected in England. It is not always abreast of new ideas and expedients, but one can hardly expect a public service using public money to be as bold and enterprising as private firms. It maintains an extremely high level of purity, scandals being almost unknown. It has a strong corporate public spirit and sense of duty to its own reputation and to the country. It exerts a great and, I think, a growing influence upon legislation and upon the way in which legislation is carried out in practice. This it does, not because the law allows a wide stretch of power to officials, for in this respect England resembles the United States, and gives no such free hand as France and Germany do, but because each department has formed its own settled habits and traditions, and impresses these traditions and its own views upon its parliamentary head. That head is, no doubt, its absolute master. But he is obliged by his want of special knowledge to lean upon the experience and judgment of his staff, and he needs a keen mind and a firm will if he is to overrule their counsels. The permanent officials usually serve him loyally, whatever their private political views may be. The trust he reposes in them and the credit they enjoy in the country are due to the fact that a civil servant is understood to have no politics and must not meddle with party controversies, either by speaking at meetings or by writing in the press. It is against constitutional doctrine to impute any blame or attribute any policy or any responsibility to a member of the permanent civil service. Policy and responsibility belong to the parliamentary head, because he has the power of controlling and, if necessary, of dismissing, for serious fault, his subordinates.

In my own country of Scotland a sermon—and this sermon would be for Scotland a short one—usually winds up with what is called "The Application." If I am to append an application to this discourse, in extenuation of the dryness of which I must plead the overmastering necessity of severe compression, the practical lesson to be enforced is the following:

Every country which desires to be well administered must keep two things vital. One is to keep its public service pure. To keep it pure it ought, in these days of increased temptation, to be well paid. If it is well paid, it is sure to attract plenty of ability, and ability may be trusted, under an honest and careful system of promotion, to find its way to the top.

The other thing is to make appointments by merit and promotions by seniority and merit combined. For this purpose it must be
kept out of politics. Let admission to the public service and advancement in the public service be altogether removed from the political pressure of legislators and unaffected by the political opinions of candidates. Forbid the civil servant to canvass or to speak or to write on any party political questions. Teach him to regard himself as the servant of the whole nation, and not of a party in the nation. You are no doubt debarring him from one of the privileges of a citizen. But he has other privileges which the ordinary citizen does not possess, and his special powers carry with them special disabilities. He must submit to the latter if he is to be trusted in the exercise of the former.

The chief danger which seems to threaten political life in our times is the growing power of wealth and the tendency to abuse public authority and public office for the sake of private gain. This was a gross evil under the despotisms and oligarchies of former days, and an evil from which it was hoped that democratic government would deliver us. It has, however, reappeared under new forms, and in many countries it threatens the honest and efficient working both of the elective and of the administrative machinery of the nation.

The grander and the wider the part which administration plays in the highly developed modern state, attempting a hundred new tasks and handling sums of money of unexampled magnitude, so much the more essential has it become that the machinery of government should be worked with a high-minded and single-minded devotion to the interests of the whole people.

It is for the people themselves to secure this by showing that keen and sympathetic watchfulness over administration which the founders of the American Republic nearly three hundred years ago gave to those simple and homely institutions, the product of long English centuries, out of which the vast fabric of your present national government has grown. The state is no doubt only a name for the totality of the individuals who compose it. But it represents, or ought to represent, those individual citizens in their highest aspect, in their most earnest hopes. It embodies the hallowed traditions of their past. It looks forward to an ever-widening collective effort after progress in the future. A state wisely, purely, energetically administered is not only itself the product of an enlightened and upright people; it is a mighty factor in helping to cure their faults, to cultivate their virtues, to bring them nearer and nearer to their ideal of a happy and noble life.
SECTION B — DIPLOMACY
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(Hall 1, September 23, 3. p. m.)

SPEAKERS: HONORABLE JOHN W. FOSTER, Ex-Secretary of State.
HONORABLE DAVID JAYNE HILL, Minister of the United States to Switzerland.

THE PROPER GRADE OF DIPLOMATIC REPRESENTATIVES

BY JOHN WATSON FOSTER

[John Watson Foster, Lawyer, Washington, D. C. b. Pike County, Indiana, March 2, 1836. A.B., A.M. Indiana University, 1855; LL.D. Wabash College, Princeton and Yale Universities. United States Minister to Mexico, 1873-80; to Russia, 1880-81; to Spain, 1883-85; Special Ambassador to Russia, 1897; President of National Arbitration Conference, 1904-05. Member of Washington Academy of Sciences; President of Washington Archeological Society, etc. Author of various magazine articles and diplomatic subjects; also many books.]

In the letter inviting me to speak on this occasion, I have been requested to prepare a paper on present problems in diplomacy.

Had I been asked to treat of present problems in international law, I would have found a wide field open for our consideration. That branch of jurisprudence is a progressive science. Old theories, such as mare clausum and the three-mile ocean limit, are being discarded or modified by the changing conditions of commerce and invention, and new principles are sought to be introduced into the code of nations. The question of the exemption of private property from seizure on the high seas in time of war, advocated more than a hundred years ago, is still under discussion and likely at no distant day to be accepted by the nations. The practice of blockade has undergone marked changes in the past century, and the theory of peaceful blockade is under present-day discussion. Modern warfare has created new questions. It is requiring a revision of the contraband list and a more accurate definition of the rights of neutral ports, accepting more humane methods, and raising new topics, as the use of mines on the high seas and the proper restrictions as to wireless telegraphy.

But in diplomacy, strictly so-called, we find few topics of present-day discussion. The one which I consider of most importance is that to which I ask your attention — the proper grade of diplomatic representatives.

International law is of modern origin and recent growth, the attempt at its codification only dating to the seventeenth century, and it scarcely came to be recognized as binding upon nations before
the nineteenth; but the practice of sending and receiving ambassadors or diplomatic representatives has existed among nations from the earliest recorded history. The ancient Egyptians are known to have frequently observed the practice; early biblical history contains references to the custom; it was quite common among the Greek states, and observed by Rome both during the Republic and the Empire.

But in all these cases and during the early period of modern European nations, embassies or missions were only used on special or extraordinary occasions, and were of a temporary character. Not until late in the fifteenth century did the diplomatic service become permanent in its character and the governments establish resident embassies or missions. This stage of organized growth was reached, however, a century and a half before Grotius began the task of giving shape and authority to international law. Still, the rights and duties of diplomatic representatives were at that period imperfectly defined. This is seen in the accounts of the great congresses or conferences, following the long wars of the European powers — those of Westphalia, Ryswick, and Utrecht; and the controversies then developed over the rank or relative standing of the respective ambassadors had a marked influence in fixing more accurately their status, but not until the Congress of Vienna in 1815 did the grade of the members of the diplomatic corps become authoritatively established.

It is a matter of some interest or curiosity in this connection to recall the fact that the question has been mooted, both in Europe and America, whether, in the existing conditions of the world, the diplomatic system is necessary and its utility justifies its expense. It is claimed that with the present development in steam communication, the rapid transmission of intelligence by electricity, and the general diffusion of news by the press, diplomatic negotiations might readily be carried on directly between the foreign offices of the various governments, that the interests of citizens and subjects might be attended to by consuls, and that on extraordinary occasions the business might be intrusted to special temporary missions. With many the diplomatic service is regarded as a purely ornamental branch of government and its maintenance a useless expenditure of public money.

This subject was, some years ago, considered by a special committee of the Parliament of Great Britain. Lord Palmerston, the Prime Minister, and the best informed and most experienced statesman of his day in international affairs, was examined. John Bright put to him the question, "Whether it would not be practicable to transact the ordinary business by means of written communications between the two foreign offices, and when anything arose requiring particular attention to have a special mission of some member of the Cabinet?"
Lord Palmerston replied: "I do not think it would;" and proceeded to give the reasons for his belief.

Mr. Cobden propounded the following: "If you go back two or three hundred years ago, when there were no newspapers, when there was scarcely such a thing as international postal communication, when affairs of state turned upon a court intrigue, or the caprice of a mistress, or a Pope's Bull, or a marriage, was it not of a great deal more consequence at that time to have ministers at foreign courts . . . than it is in these constitutional times, when affairs of state are discussed in the public newspapers and in the legislative assemblies? . . . Under these circumstances, are not the functions of an ambassador less important now than they were two or three hundred years ago?"

Lord Palmerston replied: "I should humbly conceive that they are more important on account of the very circumstances which have just been stated. . . . I should think that the change which has taken place with regard to the transaction of public affairs in Europe tends to make diplomatic agents of more importance rather than of less importance."

This question has been made more than once the subject of inquiry by the Congress of the United States, and the various Presidents and Secretaries of State have given their opinion in favor of the utility and necessity of the service, and the Congress has continued to authorize it. The controlling judgment is well expressed in the language of Secretary Frelinghuysen to Congress: "Diplomatic representation is a definite factor in the political economy of the world; and no better scheme has yet been devised for the dispatch of international affairs, or for the preservation of friendly relations between governments." President Harrison, after his retirement from public life, left on record his view of it as follows:

"The diplomatic service has sometimes been assailed in Congress as a purely ornamental one; and while the evident necessity of maintaining the service is such as ought to save it from the destructionists, it is quite true that our diplomatic relations with some of the powers are more ceremonious than practical. But we must be equipped for emergencies, and every now and then, even at the smallest and most remote courts, there is a critical need of an American representative to protect American citizens or American interests."

The grade or rank of diplomatic representatives has been the subject of discussion and fierce controversy from the date of the first establishment of permanent missions, more than four centuries ago, and although it was thought to have been finally and definitely settled at the Congress of Vienna in 1815, and that settlement was accepted and followed by the United States, it has recently been a
source of discussion and embarrassment at Washington. To fully understand the question, it will be proper to make some reference to this controversy in the past.

A diplomatic envoy is the representative of his government or sovereign, and his claim of rank is for his country and not for himself; so that the controversy in the past has been one of nations rather than of persons. During the medieval period the struggle of the European nations for prééminence in rank was the special feature of the era, and it gave rise often to the most absurd pretensions. It was sought to be maintained for various reasons, such as: The title of the sovereign, the size of the dominions, the antiquity of the royal family or date of independence of the country, the nature of the government (whether monarchy or republic), the population, its achievements in arms, the date of the conversion of the people to Christianity, and even the services rendered to the Pope or the Church. Up to the time of the Reformation, the Pope was universally recognized in Christendom as having precedence over all sovereigns; next in order was the Emperor of Germany, as successor of the Roman Emperor, and below them a constant strife existed among the nations. For a time the republics were refused what were termed "royal honors," but finally Venice, the United Netherland, and Switzerland were accorded recognition in the order of precedence here named. The title of Emperor was sought to be made exclusive to the old German Empire, and Russia was forced to wait several generations after its ruler assumed that title before being accorded recognition as such. Four centuries ago the Pope of Rome, by virtue of his conceded prééminence and ecclesiastical authority, sought to settle the vexed question by issuing an order fixing the relative rank of the then existing nations of Christendom. It illustrates the intensity of feeling which the question had aroused to state that, notwithstanding the high papal authority of that date, this arbitrary settlement was not accepted and was only observed in Rome, and even there merely for a brief period. It also illustrates the evanescent character of the honor and the changes of the governments of the world, to note that of the score and a half of nations enumerated in the papal order, only three (England, Spain, and Portugal) exist to-day with the royal titles then accorded them. It is also curious to note that in this table of precedence England stood eighth in order and Russia does not appear in the list.

A large part of the deliberations of the great congresses of European nations, up to and even including the early part of the last century, was taken up in settling the question of precedence among the envoys or delegates. This was notably so at the Conference of Westphalia. At the Congress of Ryswick a warm debate occurred over the demand of the ambassadors of the Emperor of Germany that
a particular space should be set apart for their carriages, and that
this should be the post of honor; a fierce quarrel occurred over the
allotment of rooms, and in the conference-room a single table had
been provided; but no agreement could be reached as to the order
of seating, and so in that room they all stood, and another room was
provided in which there was no table, and the envoys sat in a circle.
At the Diet of Regensberg the precedence of the ambassadors
was decided by an arithmetical rule by which each had precedence
over the rest twice in ten days. At Utrecht a round table was used,
but this lost its accommodating qualities when it was discovered that
the place of honor was opposite the door of entrance, and that every
place of honor has a right and left. At this congress a quarrel for
precedence took place between the footmen of the several ambassa-
dors, in the account of which it is recorded that it "threatened to
retard the peace of Christendom." Addison gives an amusing
account in the Spectator of a discussion over it which he heard in one
of the coffee-houses of London, the result of which he sums up in
these words: "All I could learn at last from these honest gentlemen
was that the matter in debate was of too high a nature for such heads
as theirs, or mine, to comprehend." Macaulay, in his History of
England, describes in his best vein the Congress of Ryswick, which
well illustrates these idle controversies.

The contest of envoys to these international congresses of the past
have not been more animated and absurd than those of the envoys to
the several courts of Europe. Many amusing and sometimes tragic
incidents have been narrated of the latter, from which I give some
instances. It is related that the Spanish ambassador to England, in
1661, in order to secure a place in the royal procession next to the
King and before his French colleague, attacked the latter's coach in
the streets of London, hamstrung his horses, and killed his men,
thus vindicating his country's greatness. When the plenipoten-
tiaries of France and Austria met to settle the conditions of marriage
between Louis XIV and Maria Teresa, in order to preserve the full
dignity of their nations, they stepped together, with the right foot,
side by side, into a council chamber hung in corresponding halves
with their respective colors, and sat down at the same instant,
precisely opposite each other, at a square table, on two mathemati-
cally equivalent armchairs. A story is told of two newly arrived
envoys from Italy and Germany, who, being unable to agree on which
should first present his credentials to the King of France, stipulated
that whoever reached Versailles the soonest on the day of their
reception should take precedence of the other. The Prussian went
the night before the audience and sat on a bench before the palace
until dawn. The Italian, arriving early in the morning, saw the
Prussian there before him and slipped surreptitiously through
the door of the King’s bedroom and commenced his salutation. The
Prussian rushed after him, pulled him back by the skirts, and com-
menced his harangue. The memoirs of diplomatists and the his-
tories of Europe are full of the exalted and absurd contentions of
envoys, but the foregoing are sufficient to illustrate their extreme
and often farcical pretensions.

None of the monarchs of Europe was more insistent upon his
rank than the “Little Corporal” when he made himself Emperor of
France. On inviting the Pope to attend his coronation, it was
stipulated that the same ceremonies should be observed as at the
coronation of the ancient Kings of France; but on the arrival of the
Holy Father, the latter was astonished to see Napoleon take pre-
cedence over him, as if there were no question about it. In 1808 he
caused the edition of the Almanach de Gotha to be seized, because, as
was its custom, it arranged the reigning houses alphabetically and
did not place Napoleon first.

The question of the precedence of nations extends into the nego-
tiation and framing of treaties. In former times the more powerful
or more ancient of nations claimed the right to be first named in
conventions and other diplomatic instruments, and not until the
nineteenth century has it been yielded. As one of the younger
nations, the experience of the United States illustrates the progress
made toward equality of treatment. In all of its treaties made in
the eighteenth century it was named last. France first recognized
with the United States in its treaty of 1803 (the Louisiana Purchase)
the practice of the alternat, that is, the right of each chief of state
to have his name and the name of his plenipotentiary appear first
in the original copy of the treaty or other instrument which he
retains. Great Britain refused to concede this right to the United
States in the treaty of peace of 1814 and in anterior conventions, but,
on the insistence of the latter, yielded it in the treaty of 1815 and
thenceforward. It was first conceded by Spain in the treaty of
1819. The Spanish negotiator in consenting intimated that on
signing he might deliver a protocol against its use being made a
precedent for the future; whereupon the stout John Quincy Adams
informed him that the United States would never make a treaty
with Spain without it.

The contest as to the rank of the states, which had been waged for
centuries, was sought to be settled at the Congress of Vienna of
1815. A committee was appointed with instructions to fix the
principles which should regulate the rank of reigning monarchs and
all questions connected therewith. The committee submitted a
report to that end; but after a long discussion, the powers abandoned
the project as one too difficult to realize, and confined their action to
prescribing the composition and rank of the diplomatic corps only
at their respective courts. But since that period, by the practice of
governments, it has come to be recognized by them all that there
can be no rank or precedence among independent and sovereign
nations, but that all must stand on an equality in their negotiations.
For instance, at the Conference of Paris in 1856, one of the most
important in that century, the representatives sat at a round table
in the alphabetical order, in the French language, of their national
titles. In the Bering Sea Tribunal of Arbitration of 1893 the
United States had precedence over Great Britain because of this
order of arrangement. The same practice was observed at The
Hague Peace Conference of 1899. At that conference it was expressly
declared by the representatives of the great powers of Europe, "Here
there are no great, no small powers; all are equal, in view of the task
to be accomplished."

The United States, when at its independence it entered the family
of nations, accepted the order prescribed by the Congress of Vienna
in 1815, which, with the addition made in 1818, recognized the com-
position of the diplomatic corps in four classes, to wit: ambassadors,
ministers plenipotentiary, ministers resident, and chargés d'affaires,
with rank in the order named. For more than a century this country
sent abroad, as its highest diplomatic representatives, those of the
second class, and this practice was observed up to a recent date.
But the ministers plenipotentiary of the United States at the capitals
of the great powers of Europe where ambassadors were maintained,
have repeatedly complained that they were often humiliated and
their usefulness sometimes impaired by the lower rank which they
were assigned in the diplomatic corps, and this assertion gained
general currency and acceptance through the press. It is true that
ambassadors take precedence over ministers in the order of reception
and seating on public occasions, at entertainments, and, at some
European capitals, in order of their admission to interviews at the
foreign office. It certainly is not agreeable to a minister of the great
American Republic, who arrives first at the foreign office, to be re-
quired to step aside and give place to the representative of Turkey
or Spain and wait till the latter's audience is concluded with the
Secretary of Foreign Affairs, simply because he bears the title of
ambassador. Mr. Bancroft, the American minister at Berlin, when
subjected to this treatment protested against it, and Prince Bismarck
decided that the practice should not be continued. Other American
ministers who were made to suffer inconvenience or humiliation
from the custom might possibly, by firm or considerate remonstrance,
have obtained relief. The remedy uniformly suggested has been
to raise the grade of representatives at the capitals named to that
of ambassador; but the successive secretaries of state declined to
make the recommendation to Congress. Such was the action of
Secretary Marcy in 1856. Secretary Frelinghuysen said that the department could not, "in justice to its ministers abroad, ask Congress to give them higher rank with their present salaries; neither could it with propriety appeal to Congress for an allowance commensurate with the necessary mode of life of an ambassador." When, in 1885, Mr. Phelps, the American minister to Great Britain, urged that the mission be raised to an embassy, Secretary Bayard replied: "The question of sending and receiving ambassadors, under the existing authorization of the Constitution and statutes, has on several occasions had more or less formal consideration, but I cannot find that at any time the benefits attending a higher grade of ceremonial treatment have been deemed to outweigh the inconveniences which, in our simple social democracy, might attend the reception in this country of an extraordinarily foreign privileged class."

Notwithstanding the reasons given by successive secretaries of state against the creation of the grade of ambassador, the Congress of the United States in 1893 did just what Secretary Frelinghuysen said would be an injustice to American ministers—authorize the grade without increasing the pay of its representatives. The legislation to this effect was inserted as a clause in one of the regular appropriation bills, and was passed through both chambers without a word of discussion or comment. If its effect in changing a practice of the government for a hundred years had been made known at the time, it is extremely doubtful whether it would have secured the approval of the Congress.

An ambassador has been held in Europe to be the special or personal representative of his sovereign, and to stand in his place at the foreign court, with the right to claim audience at any time with the head of the state, and entitled to privileges and honors not accorded to other envoys of nations. This claim had some force when the monarch could boast, "I am the state;" but with the establishment of constitutional government and a responsible ministry, all foundation for such a claim was removed, and it certainly should have no place under a republican form of government.

Events in Washington following the passage of the law creating the grade of ambassador in the American diplomatic service have shown that Secretary Bayard was not astray in his fears as to "the inconvenience which in our simple social democracy might attend the reception in this country of an extraordinarily foreign privileged class." The reception of ambassadors from Great Britain, France, Germany, Russia, and Italy, in reciprocity for the nomination of American ambassadors to those countries, was followed by the scandalous scenes in the Senate Chamber on the first inauguration day following their appointment, when in the zeal of the subordinate officials to show special honor to those newly created and exalted digni-
taries, all the other members of the diplomatic body were neglected and left to find their way to their residences without an opportunity to witness and honor the induction of the new President into office; and, if the press reports are to be credited, further trouble was occasioned by the question of the proper location of the ambassadors at the last inauguration. Then came the problem whether the Vice-President of the United States should make the first call upon the new ambassadors, and the further question whether the Secretary of State, who stands second in succession to the presidency, and on the death of the Vice-President first in succession, should give place at entertainments and public functions to those dignitaries. These momentous questions were doubtless settled aright in the light of European precedents, and the good sense and prudence of the eminent gentlemen who hold the ambassadorial rank have, it is probable, prevented other embarrassing and foolish questions from arising; but these events and those which attended the advent of the Mexican ambassador, whose coming was resented by the European ambassadors, as well as the recent unpleasant incident at the White House, when the ambassadors collided with the Supreme Court, would have been avoided if the Act of 1893 had not been passed. When the act creating ambassadors was passed by Congress, the government of the United States had grown to recognized greatness and dignity in the eyes of European sovereigns, its diplomatic service had in the past hundred years and more won deserved honor and distinction, and it did not require the bauble of a title to give its envoy greater standing or efficiency. I doubt very much whether the absence of rank has ever prevented any really able minister of the United States from rendering his country a needed service.

I have referred to the theory that ambassadors, because of their supposed investiture of a special capacity to represent their sovereign or head of their state, have the right to demand an audience at any time with the chief of the nation to which they are accredited, and that such right does not pertain to diplomats of the next lower grade of ministers plenipotentiary. It is a theory which has come down from the medieval period, but in modern times has become pure fiction. Vattel says of ambassadors that their "representation is in reality of the same nature as that of the envoy" or minister plenipotentiary. Calvo, one of the highest living authorities on international law, referring to the claim that ambassadors "have a formal right of treating directly with the sovereign, of which the others [ministers] are deprived," says: "This is a distinction without a meaning, especially since the organization of modern nations no longer rests exclusively upon the monarchical principle, and therefore renders it impossible for sovereigns personally to conduct international negotiations. . . . In our eyes the agents of the first two
classes are exactly on the same line from the point of view of their character as of their duties and powers." Martens, the leading authority on diplomatic ceremonies and practice, writes: "Considered from the point of view of international law, all diplomatic agents, without regard to their class, are equal. This equality is shown by their all possessing, in a like degree, all diplomatic rights. . . Many writers have tried to infer from the rules of Vienna that ambassadors, as representing the person of their sovereign, have, in distinction from other diplomatic agents, the formal right of treating with the sovereign to whom they are sent, and of being received in audience by him at any time. We cannot admit this inference. As Prince Bismarck opportunely remarked, 'No ambassador has a right to demand a personal interview with the sovereign.' The constitutional government of West European monarchies compels ambassadors to treat with the minister of foreign affairs." Lawrence (T. J.), one of the latest authors on international law, says: "Ambassadors, as representing the person and dignity of their sovereign, are held to possess a right of having personal interviews, whenever they choose to demand them, with the sovereign of the state to which they are accredited. But modern practice grants such interviews on suitable occasions to all representatives of foreign powers, whatever may be their rank in the diplomatic hierarchy. Moreover, the privilege can have no particular value, because the verbal statements of a monarch are not state acts. Formal and binding international negotiations can be conducted only through the minister of foreign affairs."

It has been seen that the increased expense of maintaining an embassy was one of the reasons given by American secretaries of state against the creation of the grade of ambassador. The style of living or the establishment which a diplomatic representative maintains has been given great importance, especially in the European capitals. It is a curious fact that in the early period after the establishment of embassies or legations it was the practice for the government to which the ambassador was accredited to defray his expenses. For instance, we have the record that the Court of Vienna in 1679 appropriated a sum equal to $2000 per week to meet the expenses of the Russian embassy, and of the Turkish embassy something over $1000. A century later the Turkish embassy at the same court cost the latter 2000 rubles daily. The papal legate at Paris in 1625 cost the King of France 2500 livres daily. The celebrated Lord Macartney, British embassy to China, is said to have cost the Chinese Government a sum equal to $850,000.

But in the course of time these splendid and extravagant expenditures became both burdensome to the court which furnished them and humiliating to the representatives of the country receiving
them, and it came to be the practice of each government to defray the expenses of its own mission; but it was assumed that this should be done on a scale befitting the dignity and standing of the nation, and governments are supposed to keep this standard in view in making their appropriations for the diplomatic service. An envoy who is sent abroad to represent his country ought not to be expected to maintain a more expensive establishment than is warranted by the salary paid him, and yet every American ambassador accredited to the capitals of Europe, who in any degree meets the expectations of his countrymen, spends annually much more than he receives from the national treasury.

But the government of the United States is not the only one which fails to meet the expenses of its embassies. In his testimony before the parliamentary committee from which I have already made extracts, Lord Palmerston stated that the salary of the British ambassador in Paris was not sufficient to meet the outlay actually made by him; and yet the salary and allowances of the British ambassador are more than three times as great as those received by the American ambassador to that capital. I have been informed on the best authority that when the post of British ambassador in Paris became vacant a few years ago by the retirement of Lord Dufferin, it was offered in succession to three British statesmen of prominence, who declined the honor on the ground that they could not afford the extra expense that would necessarily have to be met from their private purse.

This fact may suggest the inquiry whether the style of living of ambassadors and the demands made upon them have not exceeded the proper bounds, and whether there is not some force in the argument used to justify Congress in its course, that it is not becoming our democratic representatives abroad to maintain such an ostentatious and extravagant style of living. The change of the American legations to embassies in the European capitals seems to have called for the maintenance of large houses or palaces and a much more lavish style of living, which have so greatly increased their expenditures that only persons of wealth can afford to accept these posts. It is a sad day for any country, but more especially for a republic, when its highest offices cease to be rewards of merit and fitness and when they can only be filled by rich men.

Many incongruities and embarrassments result from the continued adherence to the several grades or rank in the diplomatic service established a century ago by the Congress of Vienna. The great powers of Europe, the United States, and Mexico send to other governments respectively the four grades of diplomatic representatives, and even a fifth grade has been added by some of them, who clothe consular officers with diplomatic functions under the title of
"diplomatic agent," but no uniformity of action is observed. France, for instance, accredits an ambassador to Switzerland, but ministers plenipotentiary are sent by the other neighboring powers—Germany, Austria, and Italy. On the other hand, France accredits only a minister plenipotentiary to its neighbor, Belgium. Another illustration of irregularity or inconsistency is found in the diplomatic body to the independent government of Morocco. There are ministers plenipotentiary from Germany, Great Britain, France, Italy, and Spain, ministers resident from Austria and Russia, chargés d'affaires from Denmark, and the United States is represented by a consul-general, who acts in a diplomatic capacity, but in grade stands below all other powers.

Each government determines for itself the grade of representative it will send to other countries, but the government to which the representative is sent claims and exercises the right of receiving or rejecting such person because of grade. But reciprocity of grade is not always observed. A representative of a lower grade is sometimes received from a country to which one of a higher grade is sent. The irregularity of rank is likely at any time to create diplomatic embarrassments, as it already has in more than one instance. We have seen that the reception at Washington of an ambassador from Mexico was resented by the ambassadors of the European powers. As one of them remarked to me, they did not regard Mexico as sufficient in population and importance to exercise the right of ambassadorial appointment. Suppose China, embracing more than one fourth of the population of the earth, older by thousands of years than the oldest of the so-called great powers of Europe, and possessing a high grade of civilization and intellectual attainments, should accredit ambassadors to those powers—upon what reasonable ground could they be rejected? And yet should they have an intimation that such was the intention of that ancient empire, it is more than probable that its foreign office would receive such representations as would lead it to desist from its intention.

The most serious embarrassment resulting from this difference in grade of diplomatic representation is furnished by the relations at present existing between the United States and Turkey. For a number of years past these relations have been in a most unsatisfactory condition. In no country of the Western world could the old fiction of the ambassador as the personal representative of the sovereign to-day approach so nearly a reality as in Turkey, as the Sultan is more fully than any other monarch the personal ruler of the state. All the great powers of Europe, and even the Shah of Persia, are represented at Constantinople by ambassadors, and they exercise the right of access to the Sultan at will to discuss official matters. The American ministers plenipotentiary have represented
to their country that it is very difficult to get any just and proper consideration and dispatch of their business, because of the irresponsible character of the Secretary for Foreign Affairs or even of the Grand Vizier, as all important matters are determined by the Sultan; and that, as they do not possess the ambassadorial character, they cannot without great difficulty have audience with him to discuss official business.

To remedy this embarrassment, President McKinley caused application to be made to the Turkish Government for the appointment by the two governments respectively of ambassadors; but the proposition was not accepted by Turkey. The condition of the interests of American citizens in that empire continuing to be very unsatisfactory, President Roosevelt renewed the application for the appointment of ambassadors; but it was again rejected. It cannot well be understood in the United States why this application should be refused, when ambassadors from much smaller and less powerful countries, like Italy and Persia, are received at Constantinople.

Last year a delegation of some of the most prominent citizens of the United States, representing large property interests in the Turkish Empire, made a visit to Washington and laid before the President a memorial, setting forth that American citizens and property in that empire were denied the rights and protection which had been secured by the ambassadors of the great powers of Europe to their subjects and property interests. The President, being impressed with the justice of the memorial, caused a cable instruction to be sent to the American minister in Constantinople, directing him to ask for an audience of the Sultan in the name of the President, to enable him to communicate a message from the President to the Sultan on the subject of the memorial. After a delay of some weeks an audience was granted on the express condition that the minister should be limited to delivering the message of the President, but that he would not be permitted to discuss the subject with the Sultan.

Even this decisive action of the President seems to have had no effect, as the American citizens continued to be deprived of the rights and privileges enjoyed by the subjects of the great powers of Europe, and for a third time an application has been made and rejected for the reception of an American representative with the grade of ambassador. The press has informed us that the American minister at Constantinople, under renewed and urgent instructions from Washington, pressed for a settlement of the question at issue, but that he was greatly delayed and embarrassed by the fact that the ministry have no real power to dispatch any important public business, because the Sultan reserves to himself that prerogative, and that, not being an ambassador, he found great difficulty in reaching
the Sultan. Meanwhile this important question remained undetermined, and it became necessary to dispatch a formidable American fleet to Turkish waters to evidence the President's interest in the question, and the fleet was held in the Turkish port until the demand of the United States was complied with. What more striking argument can be presented against the maintenance of the various grades in the diplomatic service?

There is no good reason why the representative of the smallest American republic or European principality should have a different standing, for instance, at the foreign office in London from that freely conceded to him in the Peace Conference of the nations at The Hague; neither should it be expected that any government would be forced, because of a mere grade in the diplomatic hierarchy, to maintain a more lavish display at a foreign court than its principles or convenience would determine.

The remedy for the embarrassments arising from diplomatic rank is a simple one. In the reference I have made to the foolish contests which were carried on for centuries by the nations of Christendom, great and small, for precedence, we have seen that only one solution of the problem could be found, and that was so simple we wonder now that so fierce a warfare could have been possible, that is, recognition of the equality of sovereign nations, so that to-day the smallest republic of Central America is equal in negotiations and at international conferences with the most powerful empire of Europe. There will be no satisfactory settlement of diplomatic rank until all distinctions and special privileges are abolished and a single grade is established in all the capitals of the world.
THE CONTEMPORARY DEVELOPMENT OF DIPLOMACY

BY DAVID JAYNE HILL

[David Jayne Hill, LL.D., Envoy Extraordinary and Minister Plenipotentiary of the United States, American Legation, The Hague, Netherlands. b. Plainfield, New Jersey, 1850. A.B. Bucknell University, 1874; Graduate Student, Universities of Berlin and Paris, and of Ecole Libre des Sciences Politiques, Paris, in 1888 and in 1897; Honorary LL.D. Colgate University, 1884; Union University, 1902; University of Pennsylvania, 1902. Professor of Rhetoric, Bucknell University, 1877-80; President, ibid. 1880-88; President of University of Rochester, N. Y., 1889-90; Assistant Secretary of State of the United States, 1898-1903; Professor of European Diplomacy, Columbian University, 1899-1903; Envoy Extraordinary and Minister Plenipotentiary of the United States to Switzerland, 1903-05; Envoy Extraordinary and Minister Plenipotentiary to the Netherlands, 1905. Fellow of the Association for the Advancement of Science; Member of American Academy of Political and Social Science; Member of American Historical Association. Author of various text-books of rhetoric, psychology, and economics; Genetic Philosophy, 1893; International Justice, with a Plan for its Organization, 1894; The Conception and Realization of Neutrality, 1902; A History of Diplomacy in the International Development of Europe, 1905.]

Among the great interests of modern times, none is more deserving of public attention than the transaction of international business. Every ship that discharges a cargo in a foreign port, every telegraphic message from beyond the sea, every exchange of commodities across a national frontier, imparts to the world a deeper sense of its unity and solidarity.

While private enterprise, seeking legitimate extension, is thus becoming international, public functions are passing through a significant process of development. Politically and legally, the surface of the earth is held under the sovereignty of independent governments, sometimes remote in space from the territories over which they exercise control, and all intent upon extending their power and importance. At a moment when industry and commerce have become most keenly aware of a world-wide interest, the political system is most vigorously emphasizing the power of territorial control. The situation thus created presents the most intricate diplomatic problem of our time,—the reconciliation of political conceptions originating in an age of national isolation and general hostility with the rising tide of human activity which is asserting, and will never cease to assert, the rights of commercial intercourse.

I. The Classic Conception of Diplomacy

The fundamental doctrine of diplomacy is the absolute sovereignty of the state. Raised by this theory above all laws, each state exists for itself alone. Without distinction of governmental forms, empires, kingdoms, and republics alike all pretend to possess those
unqualified attributes which ancient Roman theory accorded to a practically universal empire. When the great national monarchies rose out of the ruins of the ancient system, each assumed the \textit{imperium} which Rome had formerly exercised, and subsequent constitutional transformations, while profoundly modifying the state as regarded from within, have never affected its sovereign pretensions. The existing international system, therefore, presents the contradiction of merely territorial sovereignties claiming the prerogatives of absolute power. The tardy recognition of formal equality among them has, indeed, conceded something to the order of fact; but this concession confronts us with the anomaly of actually limited and theoretically co-equal political entities, all assuming to possess supreme authority.

The diplomacy based on this conception has been rendered classic by gifted writers, who draw their inspiration from these pretensions. Its patron saint is Machiavelli, its consummate apostle, Talleyrand. Its maxims, creations of eighteenth century philosophy, — half imagination and half metaphysics, — have been formulated by Ancillon and Count de Garden. "Whoever can do us harm, wishes, or will wish, to injure us. Whoever, by superiority of force or geographic position, can injure us is our natural enemy. Whoever is unable to harm us, but can, by the extent of his power or the advantage of his position, injure our neighbor, is our natural friend. These propositions," concludes Ancillon, "are the pivots upon which all international intercourse turns."

The forces of a state are grouped by Count de Garden under four rubrics: territorial, pecuniary, military, and federative. A nation becomes strong by extending its frontiers, augmenting its material wealth and credit, maintaining a powerful military organization, and entering into conventional arrangements with other powers for its own exclusive advantage.

All this implies that national prosperity consists in acquisition and expansion, unlimited in principle and measured only by the energies of the nation. It is egoism made public, systematic, and absolute. Self-aggrandizement being the mainspring of national life, all our neighbors are our natural enemies; for they will take all that we do not appropriate, and when they are able, will strip us of what we already possess. The only means of preserving national existence is, therefore, to appropriate so much and to possess it so securely that we may become irresistible.

The normal relation of human societies, according to this conception, being one of permanent hostility, material greatness is the one purpose of public action, and armed force the only safeguard of existence. In this system, the diplomatist has no other function than to exercise his personal cunning in securing the preponderance
of his sovereign master. Since the destruction of competitors is an indirect method of increasing our own superiority, the aims of diplomacy — according to this school of thought — are not only to keep our own secrets, but to discover those of our neighbors; not only to form favorable relations with other powers, but to destroy those of our rivals; not only to establish our own commerce, but to undermine and defeat the commercial enterprises of others. Depth of knowledge, rectitude of principle, elevation of character, and regard for the common good may be personal adornments; but they are not indispensable to a diplomatic agent, and may even embarrass his success.

Let us admit that nations cannot exist without a primary regard for their own interests; that force is the final safeguard of justice in every form of human society; and that war may sometimes be necessary and even become a duty. But is it true that suspicion and hostility, rather than mutual confidence and friendship, are the natural basis of international relations? Is it true that honor, justice, and cooperation can produce a reign of prosperity and security within the boundaries of particular states, but must obstinately halt at the national frontiers and refuse to pass beyond them?

It is time to treat the classic axioms of diplomacy as economists have treated the fictions that so long separated economic philosophy from the realm of fact. The theory of the physiocrats, that a nation can be prosperous only as it develops agriculture; and the doctrine of the mercantile school, that national prosperity consists in the accumulation of precious metals, are both now seen to be without foundation. Production is a vital process as manifold as human wants and human faculties, and wealth a state of satisfaction not capable of being measured in the terms of one commodity. Modern thought has made it plain that the deductive method has crippled and disfigured every science which it has ever attempted to organize; for no concrete being is the incarnation of a single principle, and no living thing is incapable of transformation. The law of evolution is as applicable to the forms and elements of human society as it is to the natural world. The sociology of nations presents no exception; and diplomacy needs to be brought down from the realm of false abstractions and unverified traditions, and made to grasp the full significance of the facts and forces of contemporary progress.

Since the great classic masters of diplomatic science formulated its theories, a profound transformation, half-conscious but wholly inevitable, has taken place. Public attention may accelerate this movement and public indifference may retard it, but no conceivable influence can wholly destroy its work. Since the era of absolutism — which the French Revolution interrupted and the Congress of
Vienna attempted to restore — the constitutional movement has placed charters of popular rights in the hands of nearly all civilized peoples, and the work of national unification has thrown new light on the moral nature of the state. In place of chance aggregations of disparate elements, held together by arbitrary force, homogeneous nations have come into the foreground of history to work out their natural destinies. Within these states, law, order, justice, and security have come to be respected. But the crown and completion of the political system — the establishment of law, order, justice, and security between nations — still remains inchoate.

How are these great aggregations of humanity to be brought under the laws of social well-being and progress? Diplomacy must seek the answer from those historic forces and those forms of human knowledge which have modified and still continue to modify the conditions under which its task is to be accomplished. In a general sense, the whole onward movement of human knowledge and culture — including the art of warfare, the means of transportation and communication by steam and electricity, the influence of the press, the diffusion of education and culture, the expansion of the horizon of public interest by trade, travel, and the prompt publicity of remote occurrences — has transformed the organization of society. But we may, in particular, better comprehend the task of modern diplomacy by considering some of its relations to history, jurisprudence, ethics, economics, and education.

II. The Relation of Diplomacy to History

"History," as De Tocqueville has remarked, "is the breviary of the diplomatist." It not only explains the nature of his functions, but it is the record of his achievements. It recalls the former existence of a vast intercontinental state, — comprising parts of Asia and Africa, and nearly all of civilized Europe, — embracing a single faith, governed by a single code of law, and comprising nearly all that then existed of human civilization. It shows how the political unity that held in the embrace of one universal empire the Britain and the Numidian, the Spaniard and the Assyrian, and for centuries made of the Mediterranean a Roman lake, realized a state that included a great part of humanity. It explains how an organization so complete and powerful was finally overwhelmed and dismembered by a mistaken policy toward the despised barbarians who surrounded it. It reveals the psychological and moral unity of Europe in that marvelous transformation of the barbarian kingdoms into another vast empire founded on community of religious faith, the reunion of free assemblies, and the organizing capacity of Charles the Great. It proves the practical futility of the imperial
conception by the whole course of subsequent events. The inevitable dismemberment of the medieval empire into independent kingdoms, the development of feudal society as a means of local defense, the inadequacy of merely local government for the necessities of industrial and commercial growth, the rise of the great monarchies as a means of emancipation from feudal servitude, and the reconciliation of local sovereignty and universal authority in the formation of modern states, are all consecutive links in a chain of irrefutable argument by which the diplomatist vindicates the indispensability of his science to the world.

It is an historical certainty that the permanent organization of mankind must henceforth rest on the basis of independent political communities. No one familiar with history can imagine the possibility of re-establishing a universal empire. No thinker permeated with the historical spirit entertains a serious hope of a general federation of sovereign states. Smaller political communities may, perhaps, be gradually absorbed in the larger; but the great powers give no promise of coalescence, and no indication of uniting to form a permanent confederation. These great masses of organized human energy may still modify their frontiers, but they will continue for centuries to confront one another, as fixed and enduring on the surface of the earth as the stars in the firmament.

The task of the diplomatist is, therefore, neither a vanishing nor a declining enterprise. It is one which, on the contrary, in the presence of the bristling array of terrific instruments of destruction on sea and land, assumes an ever-increasing solemnity and responsibility. The diplomatist should know the history of these great national entities, and of their relations to one another, as a competent physician would wish to know the life-record of a delicate or dangerous patient; for the present — in nature and in life, individual and national — is but the epitome and expression of the past. The future knows no other guide, and it is from history that we are to gather the formulas of present action.

In view of its importance, it is astonishing that no complete history of diplomacy exists in any language. Such a history would include not only an account of the rise and progress of international intercourse, but an exposition of the motives by which it has been inspired and the results which it has accomplished. But even this statement does not fully define the scope of such an undertaking; for an intelligent comprehension of diplomacy must also include a consideration of the genesis of the entire international system, and of its progress through the successive stages of its development. Thus regarded, it would be seen that diplomacy — taken in its largest sense, and including the foreign policy of nations — possesses the deepest qualities of human interest; for the whole fabric of present
international relations, embracing its laws, usages, privileges, and obligations, is the result of past diplomatic activity.

If, therefore, the diplomatist is deeply indebted to the historian and would gladly increase his indebtedness, his guild is prepared to make a rich return in compensation. It is from his archives that the most precious and trustworthy materials of history are to be derived. It is his dispatches that explain the origin and causes of every war and the terms and conditions of every peace. It is in the correspondence and records of his government and in the details of his letters, memoirs, and reminiscences that the whole psychology of international policy must be sought.

A new type of history came into being when Von Ranke in Germany and Mignet in France turned their attention to unused diplomatic sources. For fifty years past, innumerable scholars have ransacked the archives of the European governments, gathering a rich harvest of data and documents relating to special questions; and thus, at last, international events, studied from many angles of observation, as from a multitude of photographs, begin to assume their just proportions. On some future day, when the scientific historian has made full use of this authentic material, a mirror will be held up to nature, in which not only the diplomatist may perceive the lessons of past negotiations, but citizens of once opposing nationalities may discern the true merits of great controversies, so easily distorted by patriotic pride and popular tradition. Every such revelation, by diminishing the rôle of passion and prejudice, will narrow the chasm which separates peoples, by enabling them to discover that in their most bitter contentions there were two sides where they have been accustomed to see but one.

Passing over a multitude of instances, a single example may serve to illustrate what remains to be accomplished in the vast and fertile field of diplomatic history. Toward the close of his reign, his Holiness, the late Pope Leo XIII, opened to the use of historical scholars the secret Archives of the Vatican. Thus, for the first time, were presented to the scrutiny of the historian the records and correspondence of the most ancient international institution in the world. The reports of the papal nuncios alone fill more than four thousand volumes, divided into twenty-one groups, according to the places from which they were written. There are, besides, letters of importance covering centuries of intercourse by kings, princes, cardinals, bishops, and eminent individuals.

The labor bestowed upon this rich collection of documents has already borne precious fruits, but a vast proportion of its contents still remains to be explored. The Austrian and Prussian Institutes have published a part of the reports of the nuncios emanating from Germany, but the great mass of these reports still remains untouched.
The French School at Rome has published many valuable documents found in the papal archives, including the registers of several popes, and also a number of special studies, such as the scholarly works of Déprez and Pélissier, which exemplify what may yet be done for the history of diplomacy, now, for the first time, rendered possible in the scientific sense.

But even when made accessible in printed form, the contents of diplomatic archives have little human interest until they are placed in those relations which render them significant to the public mind. No text-book of mathematics is more dull and unattractive than a volume of treaties; yet, when we enliven its dreary text by bringing upon the scene the national interests involved, the deep, human sentiments affected, the exciting drama of negotiation, the deadly struggle and ardent aspiration which its contents represent; when we follow the conflict of which this dull document forms the conclusion, and perceive in it a victory of peace and intelligence that swallows up and symbolizes the victories of war; when we see in it the triumph of a just cause, the sepulchre of a false ambition, the ruin of a hopeless system, or the consecration of a great principle, we realize that nothing serves better to mark the rising tide of human progress. But when a treaty of peace becomes a yoke of servitude imposed by force upon a prostrate people, defeated in a just cause, we learn how infinitely far the triumphs of arms are removed from the triumphs of reason; and that the least certain path to equity is that appeal to force which adds to the misfortune of injustice the calamity of defeat.

III. The Relation of Diplomacy to Jurisprudence

Trial by battle has long since been suppressed in all civilized communities, as essentially barbaric and irrational; yet great nations continue to arm themselves for future conflicts, and appeal to the God of battles to crown them with victory. What is it, then, which justifies the use of armed force by the state, while the forcible avenging of private wrongs is condemned in the individual? What is it that dignifies with the honorable name of "war" the confiscation of property and the taking of human life by public determination, when these are punished as "robbery" and "homicide" if perpetrated by private persons?

Jurisprudence replies that the state is an association of human beings organized for the attainment of common ends,—among them public peace, justice, and security of life and property,—acting in the interests of all, not for the benefit of one or a few. Its laws are the necessary antidote for anarchy, and its authority to make and enforce them is derived from its "sovereignty."
It is precisely this conception of "sovereignty" that reveals the transformation of human thought with regard to the organization and relations of the state. In the Roman Republic, it signified simply "the majesty" of the Roman people, but under the Empire it lost its connection with the constituent elements of the state, and was translated into "the will of the Emperor." In the revival of Roman law that accompanied the formation of modern states, it assumed the form of absolute monarchy, and accepted the formula, "Whatever is pleasing to the Prince has the force of law." In the philosophy of the revolutionary era, the source of authority was sought in the people, but without losing its absolute character. The doctrine of "popular sovereignty," in its crude and unanalyzed form, suggests that whatever is pleasing to the majority has the force of law,—an inference which might be used to justify any enormity which a vicious or misguided multitude might choose to perpetrate upon the few, or upon the rights of foreign peoples.

Such a conception of the state would be as false as it is inadequate, and no thoughtful and well instructed jurist would defend it. The essence and justification of the state lie in the social purpose which it seeks to accomplish, as defined in its constitution, for the bare and formless will of a people cannot serve as its foundation. A state is not a chance or arbitrary association of men bent on a predatory expedition. Such a group of human beings would be called a mob rather than a commonwealth. Nor can such an aggregation of men rise to the dignity of a state by mere organization and discipline, as a band of highwaymen might be subordinated to the direction of a chief. A state is brought into being by historic conditions which unite men in a body politic for the purpose of self-regulation and the realization of common ends of order, justice, and security. The state, therefore, is a moral entity, in which all private benefits are subordinated to public well-being.

It is only as a moral entity,—or, as it has even been called, as a "moral person,"—possessed of will, intelligence, and determining principles, that a form of human society can claim the attributes of a state. Otherwise, it is merely a form of force, without prerogatives founded on juridical conceptions. What, then, is "sovereignty," if not the prerogative of a state to command its own constituents, to make and enforce laws, to guard its own being and independence from aggression, and to be recognized as a moral entity?

Such is the modern juristic conception of the state, and as such it holds its place in the family of nations. Is it, then, a moral entity when seen from within, and devoid of all relation to law and justice when regarded from without? The qualities which support and justify its claim to "sovereignty" within establish its place as a
responsible agent in all its intercourse with other bodies politic. To say that the state exists solely for itself, and is subject to no law or principle which it chooses to deny or disregard, is to destroy at its root all civil authority whatever. The individual does not voluntarily enter the state; he is placed in it by an act of nature. By another act of nature, nations of men exist side by side, forming separate political communities. Whatever principle of natural right subordinates the subject or citizen to the legal jurisdiction of his birth, coördinates coexisting sovereign states and creates between them reciprocal rights and obligations.

Before the time of Gentilis and Grotius, the states of Europe had as little regard for each other's rights as rival bands of brigands; but these great jurists and their successors, appealing to the intelligence of all nations, by disclosing the existence of universal principles inherent in human nature, convinced mankind that even in a state of war, laws are not wholly silent.

In his great work on *The Laws of War and Peace*, Grotius, appealing to the universal rights of humanity, pointed out that the state, existing for the realization of justice, must apply just principles even in its use of force. A body politic, refusing to be governed by rules of justice, thereby forfeits its claim to sovereignty; for, in declining to perform its obligations, it destroys the only logical foundation of its rights.

It is for the recognition of this universal juridical bond between all nations that international jurists have labored during the last three centuries. Natural law, the Christian religion, the jurisprudence of Rome, general custom, common consent, and conventional agreement have all been advanced as furnishing proper elements for the construction of that international code which all jurists have agreed does, or should, exist; and all these elements have afforded contributions to that great body of principles and usages which constitute the present system of international law.

Vague and undetermined as this body of jurisprudence is, no civilized nation denies its existence and its general authority. On the contrary, most nations not only recognize it, apply it, and appeal to it, but in some manner formally adopt it as a part of their own municipal law. The United States of America has not only done this, but has by constitutional provision declared that treaties with foreign powers constitute "the supreme law of the land;" and has attempted, in a digest prepared at public expense and by official direction, to define with minute exactness the whole body of international law. Such a course, if followed by all nations, would furnish the materials for the ultimate formation of that formal international code which jurists like Bluntschli and David Dudley Field have endeavored to construct.
What, then, is necessary to establish between nations the observance of those principles of equity which are universally recognized in civilized communities? International law possesses no guaranty except the good faith of nations and of their public men, and no penalty for open violation except such as the injured party may be able to inflict. In the society of nations, there is neither legislature, nor judiciary, nor executive.

For this reason, one of the most important events of the nineteenth century was the establishment of a permanent international tribunal at The Hague. As in the case of the Supreme Court of the United States, which to-day regulates the most important controversies of forty-five great commonwealths, its inauguration was greeted with doubt and distrust; and because it has not in the few years of its existence proved a preventive of wars and a touchstone of universal peace and concord, it is still, perhaps, regarded in some quarters as a mere chimera.

It is true that The Hague Tribunal at present appeals to us by its possibilities rather than by its actual achievements, but its mere existence, composed of jurists among the most distinguished in the world, is an immense gain to civilization, and cannot fail to promote the pacific settlement of international disputes. It adds to the dignity of this tribunal that, by the munificence of a wise, generous, and cosmopolitan benefactor, a splendid palace of justice is soon to be erected for its use, in a country whose thrift, integrity, and place in history make it a fitting seat of international mediation.

But the progress of this movement is not merely theoretical and material. One of the founders of The Hague Court has initiated parliamentary action that is spreading out into a network of treaties by which questions not affecting national honor and independence are, henceforth, to be referred to this tribunal. His Majesty the King of England has been especially active in promoting these conventions; and their Majesties the German Emperor, the King of Italy, and the King of Spain, and his Excellency the President of France, have united in concluding treaties by which these great powers are setting the example to smaller states of an appeal to law and justice as the normal standard of public action.

While the age is fortunate in possessing among its rulers and public men enlightened leaders who truly represent the progress of thought and society, it would be visionary to expect that, hereafter, rivalry or misunderstanding may not again bring into violent collision the vast armaments which continue to increase rather than diminish. The raison d'état which has so often plunged nations into armed conflict still controls public policy; and although there may be a growing disposition to respect acquired rights, there are still abundant opportunities for contention.
IV. The Relation of Diplomacy to Economics

The most potential source of peril to public peace and international justice is, at present, the conflict of economic interests. The irresistible increase of population, the demand for territorial expansion, the development of the colonial system, and the struggle for new spheres of influence, in the quest for raw materials and foreign markets, create a situation fraught with danger.

It is to the science of economics that diplomacy must turn for the means of averting this danger. Questions of far-reaching consequence still remain unanswered. Is the political control of territory necessary to the enjoyment of its commercial advantages? Is it a profitable enterprise to divide the world into purely national markets, thereby excluding ourselves from the areas of trade held by other nations? Is it more remunerative to acquire, control, and defend colonial possessions than it would be to share their advantages with others under the protection, wherever necessary, of an international police? Is it not possible to diminish the cost of modern navies by intrusting the defense of commerce to an international marine governed by an international code?

These questions are not addressed to any particular nation, nor is it intended to answer them in any definite sense; but simply to call attention to the problems that press equally upon all, and to inquire if there is not a pacific solution of them based on the principle of general welfare.

The classic maxims of diplomacy forbid all cosmopolitan benevolence and represent the hostility of national interests as inherent, inevitable, and permanent; but those maxims, if logically applied, would have prevented all political progress founded on the sacrifice of private interests for the public good. Every advance which the world has made in civilization has resulted from the perception that mutual advantage might be obtained by harmonizing conflicting interests. The formation of the American Union, the unification of Italy, and the consolidation of the German Empire are among the greatest achievements of modern history, and illustrate the prosperity that may be realized from mutual concession for the common good. Out of struggling colonies and rival principalities great states came into being, blessed with unexampled prosperity, because their constituent parts ceased to waste their energies in obstructing one another's welfare and joined their forces for mutual benefit.

Beneath the surface of political phenomena flows a great historical current which deserves the attention of thoughtful men. The expansive instinct of humanity changes its direction of action according to the obstacles it has to overcome. In the era of political inequality,
the general aspiration was for liberty, which created in the eighteenth century a struggle for national independence; but in the constitutional era that followed, the larger human relations were revealed, and in the nineteenth century was developed the idea that modern nations are essentially interdependent. The special task of the twentieth century will be to reconcile these two great conceptions, and to unite independent states in bonds of peace, amity, and fruitful intercourse.

This, in the broadest sense, is a task of diplomacy, but it is also a problem of economics; and its most vital energies will be derived from economic considerations. At present, the cost of national armaments has reached an overwhelming height, and raises the practical questions: How long will the wealth-producing population continue in silence to support this burden? and, How long will the wealth-possessing population confide in the ability of governments to meet their financial obligations?

Diplomacy would be untrue to its high vocation if it did not direct public attention to this costly guardianship of peace. It is true that it is not for aggressive warfare and inconsiderate bloodshed that these millions are expended; and that, so long as great nations continue to arm themselves, others must do likewise in self-defense; but the day is coming when humanity, feeling its kinship of suffering more keenly than its hereditary fears, will cry out in universal protest against a system which does violence to its better instincts. No process of thought or of negotiation will be too costly if it can open the door of exit from the condition of mutual distrust that arrays great nations against one another in constant apprehension of hostile intentions. Next to national honor, which need never be sacrificed, the one great interest of mankind is peace.

**V. The Relation of Diplomacy to Ethics**

But there is a deeper spring of human action than the desire for material welfare, and the costly sacrifices of war are its best witness. We must not, in the name of economic selfishness, nor even of mistaken moral sentiment, condemn the measures needful for national defense. A morbid idealism has proclaimed the dogma that no war is just, that bloodshed is never right, and that all exercise of force is wrong. Such a doctrine owes its very possibility to the protection of institutions that would not exist for a single day if society had not the force and determination to destroy its enemies. There is no idea of "right" except in opposition to that of "wrong," and because existence itself is an equilibrium of energies, force is the necessary basis of society. It is in the awful heat of battle that the state has triumphed over anarchy and justice established a
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thrones upon the earth. In a world of mingled good and evil, there can be no perpetual peace.

Of this no one is more fully conscious than the diplomatist, whose negotiations would degenerate into empty words if they were not supported by a material force capable of vindicating disregarded rights. But certainly the measure of force is in no sense the measure of international rights and obligations, which exist independently of military strength. The little states have the same right to existence and to respect as the great powers; for, as moral entities, all civilized nations, pursuing a common end, have an equal claim to ethical consideration.

It will be a great advance in education when our text-books on ethics devote their concluding chapter to international morality, for no ethical system can be complete, either in a public or a scientific sense, which does not include in the scope of its theory the moral functions of the state and the ethics of international intercourse. When, in the schools of all civilized countries, the young are taught that moral obligation does not end with national frontiers, that states are moral entities subject to the great principles of ethics, and that treaties once freely accepted are sacred; when national history has learned to be fair and honest in its representation of other nations, a new era of human development will be opened, and diplomacy will enter upon a new period of efficiency.

The national conscience of every people cannot fail to be touched by the mere recital of the decalogue which will be written in that new Book of Genesis:

I am the God of truth and righteousness, and thou shalt have no other gods before me;
Thou shalt not steal;
Thou shalt do no murder;
Thou shalt not covet thy neighbor's industries, nor his foreign commerce, nor his colonial possessions, nor anything that is thy neighbor's;
Thou shalt honor thy wise men and thy teachers of righteousness, that thy name may be long in the land which the Lord thy God giveth thee.

Who will venture to complete that august code of public duty? Who, bravest of all, will dare to apply it in practice? Yet, who will be so bold as to deny its application to the affairs of nations?

Diplomacy already reveals the influence of that growth in public morality which is characteristic of our time. The day has passed away forever when intelligent men would accept Sir Henry Wotton's definition of an ambassador as "a clever man sent abroad to lie for his country." Permanent diplomatic success cannot be based on falsehood; and the highest attribute of a statesman is to discern
just and enduring relations, and build his policy upon them. A venerable and experienced ambassador once confessed to the writer that he had for months deceived himself and seriously misled his government by assuming that a certain minister of foreign affairs meant the opposite of what he said. Afterward, with shame and humiliation, he was obliged to confess his error.

VI. The Relation of Diplomacy to Education

The advance made since the middle of the last century in the principles and methods of diplomacy are chiefly owing to two causes, both of which are educational. The first of these is the better preparation of men for the work of establishing just and reasonable international relations. In nearly all the countries of the world — except the United States of America — candidates for the diplomatic service are rigorously examined before they are received, not only in international law and history, but in the laws, languages, and constitutions of other countries, and especially in commercial geography and the statistics of foreign trade. The result is that the men who serve modern governments as diplomatic representatives are coming to have, in general, a knowledge of what is true, what is just, what is expedient, and what is right in the relations and conduct of foreign states. They constitute a valuable body of peacemakers and public advisers, whose counsel is useful because it is based on knowledge.

The second cause is the enlightenment of public opinion by means of travel, the press, and the increased interest in foreign trade. Even where the people do not participate in affairs of state, they are beginning to regard with a new solicitude the part their governments are taking in the great field of international politics. Statesmen and diplomatists are, therefore, working in the presence of a public interest more keen and intelligent than has ever before been awakened in questions of foreign policy.

To train men for the diplomatic service and to create and guide public opinion in the right way, through the knowledge and influence of properly qualified journalists, legislators, and other public officers, special schools, like the Ecole Libre des Sciences Politiques at Paris, have been established in several countries, in which international subjects are receiving increased attention, but no educational enterprise of a truly international character has yet been undertaken.

Here is a vast, fruitful, and wholly uncultivated field for public benefaction. One can imagine a time when teachers and students of different nationalities will meet at a common center, or pass from country to country to examine and discuss, in a scientific spirit, questions which concern the general welfare. If it is true that at
the heart of every controversy there is a right unsatisfied, it is equally true that for every right intelligence can devise a mode of satisfaction. It is not by force, or the menace of force, that human differences are finally to be adjusted; it is by the calm verdict of unruffled reason, pursuing an honest path to an honest end.

Intelligent patriotism is as sensitive to national honor as it is solicitous for national success, and good men everywhere wish for nothing so ardently as to be understood. The sword has had its day of glory; great states have come into being; public order has fought its way to the seat of power; and from the elevation of the throne and the parliament, men may at last reason together in tones that are audible. True patriots will everywhere feel a new thrill of pride and confidence in their rulers and leaders when they behold in them the triumph of great principles of reason and conscience; for these are the elements that dignify our human nature, lifting it above the passions of the moment, and connecting it with the permanent interests of mankind.
SECTION D — COLONIAL ADMINISTRATION
SECTION D — COLONIAL ADMINISTRATION

(Hall 4, September 24, 10 a. m.)

CHAIRMAN: PROFESSOR HARRY P. JUDSON, University of Chicago.
SPEAKERS: PROFESSOR BERNARD MOSES, University of California.
PROFESSOR PAUL S. REINsch, University of Wisconsin.

THE CONTROL OF DEPENDENCIES INHABITED BY THE LESS DEVELOPED RACES

BY BERNARD MOSES

[Bernard Moses, Ph.D., LL.D., Professor of History and Political Science, University of California, b. Burlington, Connecticut, 1846. Ph.B. University of Michigan, 1870; Ph.D. Heidelberg, 1873. Professor of History, Albion College, 1875; Professor of History and Political Science, University of California, 1875—. Member of the United States Philippine Commission, 1900–02. Author of Politics (with W. W. Crane); The Federal Government of Switzerland; The Establishment of Municipal Government in San Francisco; Democracy and Social Growth in America; The Establishment of Spanish Rule in America.]

It is one of the simplest and most evident facts of social growth that in the early history of peoples now civilized one generation succeeded another with very few changes either in character or outward condition. If some of these peoples developed peculiar institutions, and established independently peculiar manners, customs, and ordinances, this result was made possible by their long isolation, or their freedom from external influences through extensive periods of time. Such isolation and such freedom were characteristic of the early ages of social life. The barbarians of long ago were left undisturbed through centuries, and if they had capacity, they had also the opportunity to develop an indigenous civilization. The barbarians of to-day, if they have the capacity, have not the time at their disposal, have not the opportunity, to effect an independent development.

The creation of the means of communication, the desire and the ability of the strong, enlightened nations to expand the field of their dominion, and the economic need felt by civilized society for the resources of the whole world, take away from the undeveloped peoples the opportunity for a centuries-long process of slow, independent, social growth. If it were assumed that the American Indians, left to themselves for a thousand years longer, would have advanced to a state of civilization, this capacity would have been of no avail because the other factor, the period of a thousand years, was not accorded to them. In the days of old it might have been reasonable
to urge the leaving of each barbarian people to work out its own progress independently. Such a policy then might have been effective. There were few and imperfect means of communication. There were strong prejudices holding one tribe or race aloof from another. The commercial motive that leads civilized men to invade every corner of the world was almost entirely wanting. Then it might have been possible for a people to have a thousand years of isolation in which either to stagnate or to develop its institutions.

All this is now changed. Modern means of communication have drawn together the ends of the earth. They have made every country contiguous to every other country. The representatives of modern enlightenment have laid aside most of the barbarian’s race prejudices, and their commercial relations bring them into relations with the inhabitants of every quarter of the world. No tribe or nation, whether rude or civilized, can now maintain its isolation. The view that a rude people should be permitted to develop its own life without foreign interference may have involved a practicable policy in the beginnings of social growth. As applied to the present, it is utopian. Dominated by notions founded on ancient traditions, we may think that a policy involving this view ought to prevail; but our opinions of what ought to be the attitude of one people to another have no necessary relation to the facts in the case. The curiosity of the civilized nations and their economic needs have thrown down all partition walls. If there is any people now in the state of barbarism with capacity for independent development under long isolation, it is safe to affirm that it will not achieve such development. The spirit of contemporary civilization is intolerant of barbarian isolation. The peoples of the uncultivated races may not now have the same time for independent development and the same freedom from interference that they might have had in the earlier ages of social progress. There is thus no vital question now between the independence of Java and Dutch control, or between the independence of the Philippines and American control. The real question in these and similar cases is between control by the present superiors and control by other superiors. The present tendency in the world politics is not to create new sovereign states, but to enlarge the jurisdiction of a few of those already existing. The continent of Africa has been divided by lines of political demarkation without calling into existence a single new sovereign; and some of the regions that have hitherto been politically independent appear destined to fall under foreign control. It would not be difficult to recognize in such an event, particularly in the subjection of Morocco to the government of France, a movement to advance the interests and increase the realm of civilization.
Having celebrated annually for more than a hundred years the attainment of independence as our greatest national festival, we are likely to lay much stress on political independence and regard it, everywhere and under all conditions, as the paramount political good. But it is quite possible that this is an exaggerated view. An impartial examination of it is presupposed in a critical discussion of a nation’s colonial policy and administration; and when it is determined that in the present state of international politics the barbarian tribes or rude peoples have not, under the actual demand for universal intercourse, the opportunity for independent development, part of the basis of the claim that such tribes or peoples should be independent appears to fall away.

In view of these considerations, it becomes necessary to recognize dependence, or union with some great nation, as inevitable in these cases. For the inhabitants of regions like the Dutch East Indies, the Philippines, and similar countries there is practically no alternative to control by some superior power. The question of the independence of such countries in the present political state of the world is a purely academic question. Dependence in these cases is not only inevitable, but it may also be advantageous for the social body over which authority is exercised. The advantage, however, does not appear in all cases. The advantage to such communities brought under foreign control appears when that control is exercised by a liberal and enlightened nation. They become associated with representatives of a higher form of life, and acquire a knowledge of the arts by which wealth is increased and the physical well-being of a community is promoted. They become familiar with the more effective modes of social organization. They learn the language of an enlightened people, and through it they are brought under the influences that make for cultivation. The dependent body is drawn into the current of the superior nation’s life, and is carried along by the momentum of its progress. There is, moreover, no necessary connection between political independence and personal liberty. Paraguay threw off the rule of Spain and was politically independent under Dr. Francia. After the death of Francia, the Paraguayans, still independent, fell under the even more brutal domination of Lopez. To them independence brought only tyranny and disaster. Under independence the nation was broken under the heel of an absolute ruler and led into wars that brought it to the verge of extinction. Independence is not a universal social remedy, nor everywhere a sure introduction to a higher phase of political life.

The dominant political ideal of the societies now on the lower level of civilization is that of arbitrary personal rule. The Javanese accepted the decrees of their native princes as if they were the inevitable decrees of fate. The subjects of the native princes of India have
practically no initiative, and submit without question to the will of a ruler whose conduct is not modified by any organized expression of a popular desire. The brief struggle for independence in the Philippines was not a movement to establish the liberty of the people, but an effort to set up the rule of a limited oligarchy. Before the occupation of the islands by the Americans there were probably not forty persons in the whole population who desired to see political power pass into the hands of the great body of the people. Independence for a people on the social level of the Javanese or of the bulk of the inhabitants of the Philippines means the establishment, immediately or ultimately, of some form of absolute rule, destined to manifest the qualities of a more or less oppressive tyranny. In spite of the exactions of the Dutch in the East Indies, or of the strong rule of the English in India, there is a vastly higher grade of popular prosperity and personal liberty in those parts of Java or of India where the people are directly under the Dutch or English control than in the native states where the immediate government of the people is in the hands of the native princes. This is not a far-reaching argument, but it is a sufficient refutation of the statement that the rule of the Anglo-Saxons or kindred peoples never tends to elevate the lower races brought under their control.

The question of vital importance for the inhabitants of dependencies is essentially the same question as that which is important for the members of the dominant nation itself. The popular welfare in both cases depends largely upon the character of the national government. If the authority of a reckless and tyrannical government is extended over a semi-barbarous people, it is not to be expected that the inhabitants of the dependency will be greatly benefited or have abundant reasons for rejoicing. On the other hand, the extension of a wise and beneficent government's authority over a rude people may furnish it an impulse and guidance toward the attainment of a higher form of life and larger liberty for the individual citizens. Even a nation not especially noteworthy for political wisdom may, in the position of a superior, materially assist a rude people to take important steps toward civilization. The political wisdom of Spain has never been adequate to her great opportunities, yet the inhabitants of the Philippines owe to Spain their most important achievements in social progress. Practically all the qualities they now have distinguishing them from the non-Christian barbarians of the East Indian Archipelago have been acquired under the direction of their European superiors.

In passing under American control, the inhabitants of the Philippines fell under the influences of a new form of society and a new system of instruction. The cultivation of a rude people begun by the Spaniards is continued on more practical lines by the United
States, and no good reason has hitherto been advanced for withdrawing instruction from them and leaving them with their lessons half-learned, particularly in view of the fact that, without the stimulating and directing influences proceeding from union with a civilized nation, the bulk of the inhabitants would tend to revert to a condition not greatly unlike their ancient barbarism. No people is so conservative as the barbarian. The restraining force of centuries of tradition make it difficult if not impossible to take a step forward without a helping hand.

For these and other reasons it is safe to assume that the question of Javanese independence, or Indian independence, or Philippine independence may be ignored in a practical discussion, or relegated to the limbo of academic debate. Neither the past nor the present gives any indication that any change is practicable beyond a change of superiors. If the Dutch should ever be willing to lay down the burden of their East Indian administration, other nations would be found who would not hesitate to take it up. If the people of the United States should conclude that they are too arbitrary or cruel in their dealings with dependencies, too corrupt or incompetent to continue a directing hand over the government of the Philippines, candidates for the suzerainty will not be wanting.

The permanent control of certain dependencies appears thus to be part of the general policy of the leading Western nations, and there is no doubt that by this policy, taking into consideration the whole history of colonies, the well-being of the inhabitants of dependencies has been materially advanced by influences that have come to them in consequence of their relation to a superior nation. And the result on the superior nation has been scarcely less advantageous. It has tended to substitute a generous view of humanity for the narrow conceit which made even the wisest nations of antiquity regard all nations beyond their borders as barbarians. Working with another people or members of another race for the advancement of public interests and the welfare of all members of society tends to establish common views and sentiments of mutual sympathy. England's character and standing among the nations have been greatly influenced by her experience outside of her insular boundaries. The wealth that has come to her from trade with her dependencies has been less important than other results of her political association with strange peoples and her cooperation with them for the promotion of a higher form of civilization. And it may be expected that conspicuous responsibilities for dependencies will tend to steady the political mind of America. The policy of holding dependencies is, however, not new for the United States, although its continental dependencies have been inhabited by men having part in the inheritance and cultivation of the rest of the nation.
This policy is older than the Constitution. The government of the Northwestern Territory had originally no source of authority but the central government of the nation. It was strictly a colonial government, even if we sometimes balk at the name. The changes effected in it as it passed from the earlier to the later stages correspond with the development observed as an English crown colony advances from its original position to the state of a colony with representative institutions. Moreover, the status of the Northwestern Territory, as also that of the subsequent territories under the Union, was essentially that of a British colony. The organic law of the British colony is an Act of Parliament as the organic law of an American territory is an Act of Congress. The inhabitants of the American territory have, however, generally escaped the unpleasant suggestions that might have been made to attach to their position as colonists. The fact of their dependence on a political superior outside of their borders was never especially emphasized, and even the political division to which they have belonged was given the colorless designation of territory. An important point of difference between the continental territory as it has hitherto existed under the United States and the British colony consists in the fact that the status of the territory has been regarded as transitory; that the territorial organization has been regarded as the first step toward statehood. As long as we had to do in the territories with societies made up of emigrants from the states, it was not difficult to carry out this idea practically. But when a colonial territory was annexed that was largely populated by members of an alien race, whose antecedents and ideas, traditions and customs, differ widely from those of the bulk of the nation, the colonial question for the United States assumed a new aspect. It was no longer possible to emphasize the idea that the dependency will ultimately grow into a state. It is not alone the number of inhabitants that determines whether or not a territory shall be transformed into a state and admitted into the Union. The character of the population is also considered. New Mexico, with a population of 195,000, remained a territory, while Idaho, with 161,000 inhabitants, Nevada, with 42,000, and Wyoming, with 92,000, became states. The determination of the time when a territory or dependency shall be converted into a state is with Congress. If Congress in its wisdom finds that it is not advisable to transform a territory into a state after fifty years, there appears to be no constitutional power in the present organization of the government to override it if it adheres to this view after four hundred years. The United States has had territorial dependencies throughout the whole period of its existence under the Constitution. It would not, therefore, be doing great violence to tradition or to the Constitution if it should continue to
hold dependencies throughout the future periods of its existence. If this should happen, made advisable by the character of the inhabitants of the districts in question, there is no reason to suppose that our institutions would, on this account, suffer deterioration. There is, moreover, no reason to suppose that the inhabitants of territories so held would be deprived of any privileges essential to their well-being. If, in the future, the discussion on this subject should refer to the Filipinos, evidence will probably not be wanting to show that in their relation to the government of the United States the Filipino people will enjoy more rights and privileges and a greater degree of security and prosperity than under any government that would be created for them if they were politically independent; for all their traditions, whether from the days of their tribal barbarism or from the days of Spanish occupation, are traditions of absolute rule. They entertain only such conceptions of political organization and administration as are consistent with their antecedents. Whatever political ideas they derive from the United States will be ideas of individual liberty and of a tolerant government.

America's undertaking in the control of dependencies, whether within the limits of the continental territory or elsewhere, represents or emphasizes the administrative policy which the enlightened nations have been and are gradually approaching. When England, France, and Portugal made their first settlements in India, they had no plans for changing the condition of the people among whom they settled. They sought to trade with them as they were. Gradually it has become clear to the leading nations that highly developed peoples are both better producers and better purchasers than rude nations in the beginning of their economic development. California is of more advantage to the commercial world to-day than it was when its population consisted of a few thousand domesticated Indians and their contented masters, and its wealth was measured by the herds that roamed over its hillsides and along its fertile valleys. The dependency of great natural resources manifests its full commercial significance only when its population has developed the higher as well as the lower needs of a civilized society. Herein is a justification of the new colonial administration. To undertake to develop the wealth of a dependency peopled with semi-civilized inhabitants, without at the same time bringing about that social differentiation characteristic of a high grade of society, is simply to exploit that dependency, for without the forms and institutions of a cultivated society, accumulated wealth will not be largely sought and cannot be maintained. Sometimes a differentiated society is formed in a dependency by introducing members of the dominant nation to constitute the higher ranks. These members then assume all the higher occupations, while the natives are rele-
gated to agricultural and unskilled employments. This is essentially the state of things in Java. The native Javanese constitute only a fragment of a society. The positions requiring mechanical, clerical, or professional skill or ability are held by Europeans or their descendants. There has been little or no attempt made to draw out of the body of the people persons trained to fill the civil offices or perform any of the higher functions of society. If, therefore, the European element were withdrawn, there would remain the cultivators of rice and the other limited classes of unskilled laborers, but the social structure would collapse. The administrative policy of Java is a survival from another age. It draws a hard line between the natives and the Europeans, and determines the position of persons with mixed blood in such a way as to discriminate unjustly between the pure Javanese and persons having a slight trace of European blood. It appears to maintain the view that the white race should rule, not because it can lift the dependent people to a higher plane of life, but simply because it is the white race and has the necessary power.

The extreme of liberalism in dealing with colonies of an alien race in the tropics is represented by America’s government of the Philippines. Of course, England’s great dependencies of English stock are practically self-governing commonwealths, and even her dependencies within the tropics are no longer dealt with in the ancient manner. But the new policy of colonial administration, involving a people of another race, is more thoroughly carried out under the United States than elsewhere.

No line is drawn between the American and the Asiatic. By this order many difficulties are destroyed before they are born. The questions which arise in Java concerning the status of persons of mixed blood do not appear in the Philippines. There is one law for all and one system of tribunals, before which every offender, regardless of his race or descent, must be brought for trial. Abundant means for popular education are provided, which persons of all classes and conditions are free to use. There are no forbidden subjects. There is no attempt to uphold the prestige of the dominant nation by limiting the field of the Filipino’s knowledge. The local government rests entirely on a popular basis. Any office in any municipality may be held by any resident who has the qualifications of a voter, and is able to secure the suffrage of the other voters of the municipality. The governors of the province are elected by an electoral college composed of the members of the town councils within the province. The insular legislation is to rest in the hands of an elective assembly coöperating with the governor and a smaller appointed body acting in the double capacity of upper house and executive council. Internal peace and order are maintained by a
body of Filipinos organized and trained as an insular constabulary. The power and prestige of the United States constitute a sufficient guaranty that the archipelago will not be invaded by a foreign enemy.

Under these conditions the inhabitants of the islands enjoy opportunities for their intellectual and political development which were never extended to them before. The essential feature of the new phase of colonial administration is that it sets a higher estimate on the dependent people than was usual when Europeans began to exercise political authority over communities composed of members of other races. It recognizes racial differences, but at the same time it finds in the less developed races other sentiments than fear to which it may successfully appeal. Of the old system of controlling dependencies the rule of the Dutch in Java furnishes an illustration. The government of the United States in the Philippines furnishes an example of the new system. In the social affairs of Java nothing is more conspicuous than the line that separates the Dutch from the Javanese. The extreme humility and submissiveness of the Javanese in the presence of their political superiors have not been maintained without reason on the part of the natives, or without design on the part of the Dutch. Even to-day the representative thought of the Dutch in Java lays stress on this attitude of the Javanese as indicating the efficiency of the Dutch rule. The natives have been made to understand that intercourse between themselves and the Dutch is something different from intercourse among the Dutch, where men address one another as equals. That this idea might be impressed upon them, the Javanese have not been encouraged to learn the Dutch language or allowed to use it in addressing the Dutch residents of the islands, and as a consequence of this a social barrier has been erected between the two elements of the population.

Under the policy established in the Philippines other sentiments than fear are made use of in adjusting the relations between the two peoples. The Filipino has a strong desire to be counted in with the members of the dominant nation, whether Spaniards or Americans. Nothing affords this ambition a more immediate gratification than the opportunity to learn the language of the nation in power. If the inhabitants of a dependency speak the same tongue and read the same books and periodicals as their political superiors, they not only seem to themselves to belong to the controlling class, but, in fact, by these means they become rapidly assimilated to that class.

The eagerness with which the Filipinos have seized the opportunity to learn the English language is a strong indication of their desire to be affiliated with the Americans. If two peoples, or parts of two peoples, are politically united, and one adopts the speech of the other, the strongest barrier between them falls away, and racial
discrimination, with respect to all spheres of activity, tends to disappear.

In view of the political assimilation involved in the modern plan for colonial administration, the question naturally arises as to the bearing of this on social assimilation. For Anglo-Saxons this question is of special interest. It is interesting to know whether their rigid race-respect, which has hitherto held them aloof from strange peoples, is to be overthrown in the pursuit of a political ideal. The Anglo-Saxon's instinct has kept his stock free from the contamination of foreign blood, and herein is one of the sources of his strength. By this he has been able to keep the gains of his progress. The Spaniards, on the other hand, in their colonization, mingled their blood with the blood of the less developed races, and their descendants counted, in many instances, less for the continuance of Spanish strength than for the upbuilding of Indian nations. But as the Anglo-Saxon has moved upon foreign territory and established himself among rude peoples, his increase has always counted for civilization. In his early colonial administration of branches of alien races he assumed not only the political but also the social inferiority of the aliens. Under the newer plan of colonial administration the two elements of the population cooperate in conducting the government, and thus the Anglo-Saxons are brought into a relation to the dependent people different from that which they held in the early history of their colonization.

The experience of the Anglo-Saxon and kindred peoples does not furnish adequate data for a satisfactory solution of the problem here suggested. Questions concerning the social relations that will ultimately exist between members of dominant Western nations and the inhabitants of alien dependencies are conspicuous among the unsettled questions of colonial policy. It is evident that there are to continue to be instances of members of widely different races living in the same community and participating in a common government. The negroes of the South appear destined to abide in this country yet many generations, and also to have some part in the government. The English are not likely soon to withdraw from India; and if the Dutch cease to rule in the East Indies, it is quite probable that a nation of the white race will succeed them. The living together of parts of different races is evidently one of the facts that must be accepted for the future, and the coming generations will be under the necessity of elaborating some basis of coexistence and common participation in public affairs. The only alternative is the relegation of one or the other of the races to a position of social and political subjection, and this is less probable than some adjustment of the different elements to one another and the management of their common interests in common.
CONTROL OF DEPENDENCIES

It might be suggested with some plausibility that this condition of things, where Anglo-Saxons are involved, necessitates a departure from that people's traditional policy of social exclusiveness. A careful observation, however, seems to indicate that under present conditions there may be coöperation in government as well as in business without social amalgamation. It was once thought that there could be no coöperation in political affairs except among persons of a common descent or a common religious faith. But recent experience has given us a new view. Men may have the most diverse private interests, and move along separate lines in the ordinary concerns of life, and yet have a strong common interest in the affairs of their government. It is not necessary that the Anglo-Saxons should be shaded off into the indigenous inhabitants by a system of cross-breeding in order that social peace and political harmony may be preserved. There is mutual respect between races of pure blood, and the mestizo is seldom a source of political strength. Yet it is possible that the peaceful coöperation of two races is more difficult under a liberal colonial administration than where the members of the controlling nation exercise an uncompromising domination. The more liberal administration will doubtless advance the well-being of all concerned, but it will require for its successful prosecution the exercise of qualities which the Anglo-Saxons have only imperfectly cultivated. If the Dutch policy is to be carried out, there is need of a certain amount of force, but it may not be necessary to lay great stress on conciliation or the compromising spirit. It is more difficult to administer the present than the earlier form of colonial control, for it is more difficult to acquire the wisdom with which to govern under freedom than the force with which to rule arbitrarily.

As to form of control, our race appears to be limited to a narrow range. The colonial governments established by Western nations, as well as the national governments themselves, seem to be determined by the force of a political instinct, and are in large measure merely reproductions of an original type. The original tribal chief, council, and assembly which are reproduced in the King, Lords, and Commons, and in the President, Senate, and House of Representatives, reappear in the governmental forms of the most important modern colonies. Where the colonial organization falls short of this elaborate form, the limitation appears to be determined by the quality of the inhabitants or by some external physical condition. The suggestion that we should govern as dependencies branches of an alien race under the forms and according to the ideas of the inhabitants has not great practical force; for wherever we govern, we are moved to govern by our hereditary rules. We know only imperfectly the governmental forms of other races, and we know less about
their ideas of administration. Our governments, to illustrate, are based on the idea of individual responsibility to established authority, and we should probably make a very poor display in attempting to apply, for example, a scheme of control under which a clan or an association was found to be responsible for each of its individual members.

If this government, or any other enlightened government, assumes to exercise authority over territory occupied by members of an alien race, it may maintain temporarily the institutions and usages of the adopted society, but ultimately it must stand for its own laws and the acceptance of its own social ideas. It is not worth the while to proceed practically as if the institutions and customs of the undeveloped peoples were to be permanently preserved. Their customs and institutions are often their shackles which make it impossible for them to run the course of progress. Nobody supposes that the institution of caste and its attendant customs are anything but a hindrance to the social progress of India. The spirit of many of the institutions of the less developed races is the spirit of domination and bondage. The spirit of civilization or enlightenment is liberty. The undeveloped tribes or nations may be politically independent, and yet in bondage to their traditions. If America has any mission outside of her continental limits, it is not to preserve among less developed peoples such institutions and customs as make for bondage and social stagnation, but to put in their place the ideas that have made for freedom, and the laws by which this nation has been enabled to preserve its freedom.
THE PROBLEMS OF COLONIAL ADMINISTRATION

BY PAUL S. REINSCHE

[F. Paul S. Reinsch, Professor of Political Science, University of Wisconsin. b. Milwaukee, Wisconsin, June 10, 1869. A.B. University of Wisconsin, 1892; L.L.B. ibid. 1894; Ph.D. ibid. 1898; Post-graduate, Berlin, London, Paris, and Rome. Member of American Historical Association; American Political Science Association; American Economic Association. Author of The Common Law in the American Colonies; World-Politics at the End of the Nineteenth Century; Colonial Government; Colonial Administration.]

Future students of political evolution will note a strange similarity between the theories which are now being advanced to defend imperialistic expansion and that humanitarian optimism which animated the period of the French Revolution. The ideas through which the French Revolution attempted to conquer the world were based upon an intense and undoubting belief in the equality and uniform virtue of human nature. Freed from the shackles which perverted forms of society had formed, humanity would again be true to itself, would follow its rational impulses, and under sane institutions, inherit a millennium of peace and happiness. These hopes of the young century were bitterly disappointed in its later years. It became impossible to realize the unity of civilized mankind, and the narrower feelings of nationalism and race antipathy took the place of the earlier enthusiasms. But at present, when a new and universal forward movement of civilized society is taking place, the same ideals are again appealed to. Humanity is one, and the members of the brotherhood who through barbarous customs and irrational institutions are kept in a state of backwardness are to be led out into the light of freedom and reason and endowed with the multiform blessings of civilization. Many of the races embraced in this ideal love are as little inclined to accept the dispensations of a human providence as were the European nations who resisted the spread of revolutionary ideas as interpreted by Napoleon. Their resistance may, however, turn out to be less formidable, and so the course of history may not repeat itself. The experiment may be more successful this time than it was before, and a new era may actually be dawning upon the outlying regions of the world.

But if this forecast is to come true, it will be due primarily not to the general ideas to which we have just referred, but to certain great economic changes which have taken place during the last century and which have laid a material foundation for a world-wide organization of social life. The movement began a few centuries ago with the creation of commercial stations along the coasts of distant continents. The basis of intercourse was then frankly commercial. There
was no attempt to interfere with the interior social and political arrangements of the native races, and only in India, where the British were spurred onward in the course of empire by the ambitions of the French conquerors, and in the Dutch possessions and other plantation colonies, which were looked upon as estates waiting exploitation, was there any penetration of the interior regions. But after the middle of the last century, the great advance made in the rapidity and ease of communication revolutionized the entire movement of colonial activity. Being brought so much nearer to the European countries, the undeveloped regions in general became looked upon as promising fields for the investment of capital in the extractive and agricultural industries. This implied a far different relation to internal affairs than had obtained before. While the merchant was satisfied with small trading-stations or river-hulks, the colonial entrepreneur looked to the interior regions for an investment of his capital. It was essential to him that these regions should be made accessible, and that within them law and orderly conditions should be established; that a steady labor-supply should be provided, and that so far as possible the mechanism of Western industrial life should be introduced. The inevitable result of such changes was the demand for political sovereignty over extensive tracts of territory. The struggle for colonial possessions commenced, and with great rapidity Africa was divided among the colonizing nations, while preemption rights were claimed in other unoccupied regions. Having thus forcibly seized upon large tracts of land and established a claim of sovereignty over their inhabitants, the nations engaged in this movement looked for some moral principle upon which this procedure could be defended. At this juncture it was very natural to fall back upon the earlier theories of the unity of mankind and of the destiny of rational civilization to embrace the entire globe. The missionary spirit was evoked, the duties of the civilized nations towards the less fortunate were unfolded, and the whole movement was represented as one of altruism and benevolence.

This intermixture of economic forces and idealistic moral impulses has brought great confusion into the entire political thought of our period. So chaotic is its condition that many minds have despaired of discovering in the entire movement of expansion any vestige of the moral sense. They are ready to stamp the entire idealistic theory as pure cant, consciously designed to veil a most selfish type of aggression. They point out that while we preach the doctrine of universal brotherly love, we look with disdain upon nations, no matter how highly civilized, who differ from us in the least shade of color; we abolish slavery, and under the pretext of providing a moral education for the natives, introduce forced labor; we preach peace while we are stirring up into warlike feelings societies that
for ages have lived in a condition of peacefulness; we cry for the open door, meanwhile plotting all the time to reserve to ourselves the markets over which we can exercise any control; and while our science has made the idea of evolution an ingrained part of our being, we carve up the world into artificial tracts and attempt to impose upon the natives an alien system of social institutions. Such contradictions invite the suspicion that we have here to do with a vast aggressive movement of national selfishness, which is simply paying a bare and empty respect to ideas of morality which in practice are totally disregarded. And yet such a conclusion would hardly be just. In the complex system of thought which directs the action of our time, the enthusiasm for the ends and purposes of civilization is more than a mere veil of selfishness; but it remains to be determined how this idea can have any effectual influence in the constructive work of colonial administration.

Like strong personalities, the modern nations are filled with a desire to impress the mark of their genius upon the world. While there are many ways in which this may be done, one of the most obvious is that of gaining followers for their ideas of life and civilization. Nations desire wealth, and expand their trade; they desire prowess; they create great industries and maintain powerful navies and armies; but in their heart of hearts there can be no truer gratification than that of hearing their language spoken in a strange land, than having their customs and institutions acknowledged as superior by other races. This leads to the conception — surely not ignoble — that the area of civilization is expanding, and that by the patient efforts of centuries one nation after another will be raised to a higher level of social efficiency and allowed a greater share of social happiness. As from the small altar of civilization in Greece the torches were carried to the east and west, even by the armies of Alexander and Caesar, the imperialists hope that this same heritage, enriched by the achievements of many intervening centuries, will henceforth be spread throughout the globe through the peaceful means of economic development, supported only when absolutely necessary by the arm of force. But we have already seen how unsafe a guide an ideological conception like this will ever be. In order that it should become useful, we must avoid the danger of a vagueness which would include all manifestations of expansive energy under its mantle of approval. We must analyze the forces at work in order to determine which of them are really in accordance with the aims and the character of civilization. We must inquire what our civilization demands, and what constructive elements in a colonial policy may be judged to flow from its character and essence. Our own civilization is the only criterion we can apply, because, while we may despair of being able to bestow its outward blessings upon alien races, we
must, in our relations with them, be governed by the inherent laws of our own rational nature. An attempt to act otherwise would imply a claim to the wisdom of providence in ordering the destinies of alien races. But we are on safer grounds when we conclude that we are entitled to do what is natural to our own civilization and what its character demands, and as long as we do not depart from its principles in our intercourse with other races, we shall not have to reproach ourselves, at any rate, with having deserted the only clear guide we have.

Colonial expansion must first be judged from the point of view of the needs of our own civilization. To what extent is it a normal result of those forces which constitute the civilization of the West? The conception that the whole movement is undertaken in an unselfish spirit in order to help the less fortunate races cannot be seriously considered. Nations that have so many unsolved problems at home would be stultifying themselves by trying to straighten out the difficulties of others. Unless a vital need of our own civilization for this very expansion and interference with other races can be shown, it cannot claim any justification on humanitarian grounds, because we have no way of proving that our interference with others will be necessarily beneficial to them. When we inquire what are the truly essential characteristics of our civilization which distinguish it from all others, we shall perhaps find in the last analysis that they are mobility, concentration, and mastery over the forces of nature. In no other society are the individual members so independent, so able to move within the social body, to determine their own development, and to bring their energies to bear in a variety of places and manners. No other society has so high a concentration of individual forces or social ends. No other society has achieved so complete a mastery over the productive and impellent forces of nature. Out of these characteristics the expansion movement has naturally developed. It was impossible to restrict the mobility of social forces to national boundaries. Passing beyond, they for a time escaped social control, and the action of the individual adventurers by no means always redounded to the credit of civilization. It was found necessary to follow them up and to bring social conscience and control to bear upon them in the new regions which they had penetrated. The principle of concentration naturally led to the demand that the new regions whose resources were being opened up should be brought into close relations with the national industrial life to which they are subsidiary. Finally, the great problems of the control and utilization of the vast productive forces of the new continents invited the ability trained in the narrower European field to prove its mettle in coping with greater difficulties.

It has been urged that since the characteristic mark of modern
economic life is the intensiveness of its methods, the attempt to spread economic effort over larger areas would necessarily mean the return to the barbarian system of exploitation. According to this view we have to choose between the constantly more productive intensive culture of a smaller territory and the extensive exploitation of ever-widening areas. A real danger is here pointed out. If, on account of the rapid and easy profits gained through a reckless exploitation of the natural wealth of new regions, our capital should neglect the steady intensive improvement of industry at home, a marked retrogression would soon set in. Our industrial supremacy would be threatened and our social life corrupted, on the one hand by a degeneration of industries at home, on the other hand by a wealth too easily gained and by the consequent rigid stratification of society. The lesson to be drawn from this objection, therefore, is that by all means reckless exploitation in the new countries is to be made impossible, not only in order to protect the inhabitants of these regions, but also to prevent a very dangerous reaction upon our own industrial and social life. But if a sane and rational policy of economic development should be followed, it is difficult to see why it is not justifiable to extend intensive methods to wider areas, and to introduce a productive economy into regions where at the present time barbarian exploitation alone holds sway. It has also been urged that the present movement only emphasizes the nervous restlessness of Western civilization. We have given, it is said, too much attention to means, too little to the ends of life, and in the great movement that we are now undertaking, we are striving simply for new means, we are erecting a vast mechanism which will embrace the entire world and crush it in a dreary uniformity. What result are we aiming at in the construction of this vast machine? Who is to be happier for it? How can it conceivably increase our happiness or the happiness of the native populations who are turned from their natural mode of existence, and forced to adopt a new and irksome way of life? Questions like this are too general in their reach to admit of a conclusive answer. We may grant that our civilization is lacking in definiteness of aim, that its general tendencies are confused and uncertain; but may it not be that in the contact with the older civilizations of the Orient, it will be led to a new interpretation of life? Such would seem to be the natural outcome. When once the world has been organized as a system of civilized states and future expansion becomes impossible, it will, of necessity, have to seek satisfaction in static rather than in dynamic ideals.

In contemporary thought the idea is often expressed, or at least suggested, that our civilization is to be the ruling force in the future in this sense, that all other civilizations are to be subservient to it, and that the Western races are to form a privileged caste. A concep-
tion such as this is untrue to the fundamental characteristics of our civilization. A return to the caste system, even with our race as the ruling order, would be a denial of the essential principle of social mobility. The wealth that would be drawn from the subject territories under a system of this kind would inevitably lead to national degeneracy. The social and political attitude thus introduced would have a most pernicious reflex influence upon the internal institutions of the Western nations. As they are not so constituted as to form in themselves a compact caste, the result would be that an inflexible social stratification would be developed within them, and the laboring classes reduced again to a position of virtual servitude. It is due, therefore, to the very ideals which constitute our superiority and secure our welfare that we should allow to the territories which come under the control of the Western nations the same freedom of economic development which has rendered the latter powerful and prosperous.

The movement which we are considering carries with it the danger of a revival of actual slavery. As the former stages of evolution which our civilization has passed through began with the existence of a large slave population,—in the ancient cities and in the societies of medieval Europe,—so there is now, with the entry upon that phase in which the whole world will constitute a unified economic organism, an unavowed but powerful tendency to reduce a large part of mankind to a position of servitude. The belief in the perfectibility and ultimate unity of the human race is on the wane, and present inferiority is treated as necessarily permanent. With the economic development of the new regions that are now coming under European control there is created a great demand for unskilled labor, far greater than the slight inclination of the black races to work prompts them to fill. It is not surprising, therefore, that the introduction of a system of compulsory labor is advocated. The dignity of labor is to be taught the natives by force, and methods which we have been accustomed to consider among the worst abuses of slavery are freely advocated as the only means of endowing the backward races with the progressive spirit of industry. Should this tendency continue to gain strength, it is clear that the world will have to fight the anti-slavery struggle over again from the beginning, but on a far wider area and involving far more powerful interests than the recent national anti-slavery crusade which we had thus far considered as the final word in this matter.

We have thus far looked at the movement of expansion from the point of view of the interests of our own civilization. We now approach the far more difficult question as to what is to be our attitude towards the civilizations and social systems with which we have to deal in colonial administration. At first sight it would seem an
eminently proper policy to favor the introduction of our own institutions among all the populations that come under our control. Every nation considers its own institutions as the highest products of social evolution, and no better destiny could be conceived for other races than that they should be allowed to share in the benefits which rational laws would bestow upon them. Moreover, it is exceedingly difficult to understand alien social systems and to judge correctly the trend of their evolution. It would indeed require the wisdom of a platonic philosopher to forecast properly the spontaneous development of such societies. With our own institutions we are familiar. Their virtues we believe in. They seem simple and rational; we can easily put them in the form of legal enactments and thus bestow them upon our dependents as a complete and satisfying whole. Moreover, the general desire to set the impress of our national genius upon the world finds no better expression than this propaganda of institutions. In fact, to many people the entire justification of the expansion movement lies in the promise of the spread of better institutions of the European or American type. When we, therefore, ask ourselves the question, Which is the better policy, — not to interfere with native customs and civilization, in fact to foster their natural development, or to sweep away the customs of backward races which so often seem but the bonds which hold them in slavery and to put in their stead the liberal institutions of our own society? — the answer is most readily given in favor of the latter alternative.

And yet the policy of assimilation has thus far in practice proved unsuccessful and at times even disastrous. Experience seems to show that even those institutions which are by us considered the very foundation of good government may have harmful results when introduced into another society. The most striking example of this is found in the experience of Great Britain in India. The English are not an assimilating race. They have always had clearly in mind the economic purposes of expansion, and have allowed the political missionary spirit comparatively little sway. They have not been filled with the desire of transforming native societies. Still, they have introduced certain institutional reforms, which to them seemed absolutely essential and not attended with any risk. Thus, who would not agree that the impartial enforcement of contracts, the system of judicial appeals, representative government, the institution of the jury system, a free press, and liberal education are things about the usefulness of which among us there can be no two opinions? The British introduced these institutions into India, with the best of intentions, and yet with such results that their opponents can now plausibly argue that they must have been animated with the sinister purpose of disrupting and undermining Indian society. The most
unforeseen consequences have resulted. Through the rigid enforce-
ment of contract the vast agricultural debtor class has been gradu-
ally enslaved to the money-lenders and is being ousted from its ances-
tral holdings. As the government upholds the principle of
freedom of contract and will not fix the price of grain in times of
shortage, the calculating native capitalist is enabled to hold his
stock of food for higher prices regardless of the fact that people may
be dying of famine by the thousand in the neighborhood. The sci-
entific system of appeals favors the machinations of unscrupulous
native pleaders, who gain a livelihood by stirring up litigation and
making the most of judicial delays, with the result that the confidence
of the Indian population in the justice and efficiency of the law has
been impaired. The granting of representative government in
municipalities has led to the sharp accentuation of religious and
racial animosities, and has especially increased the bitter feeling
between Mohammedans and Hindus, the former of whom oppose
strongly any system of representation based upon numbers. The
same result has been brought about by the creation of a free press,
which uses its freedom not only for the purpose of constant agitation
against the British, but also to stir up and perpetuate the feeling of
mutual hatred between the various great religions of India. The
jury system has undermined the confidence of the natives in the
justice of the British, because no white jury can be found to con-
demn a white man for the murder of a native. And finally, the sys-
tem of higher literary education, conceived by Lord Macaulay for the
purpose of initiating the Oriental mind into the philosophy and
literature of the West, has resulted in the destruction of native
morale among the educated classes and in the creation of a literary
proletariat, hungry for public employment. The complete bearing
of these social changes deserves more careful study than we can here
give it, but the above brief indication may suffice to point out how
incalculable are the results of the importation of foreign institutions
into a native society.

France is the classical land of assimilation. The colonies that
were left to France after the Napoleonic era were few and small. A
certain romantic and sentimental interest attached to Martinique
and Guadeloupe, and they became the spoiled children among colon-
ies. Most of the institutions of the mother country were extended
to them. When in the middle of the last century the colonial empire
of France again expanded, through the acquisition of territory in
Africa and Asia, the older principles of action were not abandoned.
The new territories were treated as regions within which French
civilization was to be forthwith established. The most radical belief
in constructive meliorism still governed French political thought.
The results of this policy are now before our eyes. Algeria has long
been treated as a part of France. The attempt has been made to give
the natives a personal status, to destroy the family and the tribe, to
break up the communal land-holdings, to apply to the forests the
stringent regulations of the French forest laws, with the result that
to-day the natives look upon the French as their arch enemies, bent
upon destroying their social life and utterly ruining them. It is in
the matter of individualism that the assimilating policy is apt to
make its most radical attempts at reform. The grouping of popula-
tions in families and tribes is looked upon as a mark of barbarism,
and it is regarded as the first principle of a liberating policy to
recognize the right of the individual fully to control his property.
While this is apparently a liberalizing movement, its results are usu-
ally far from those aimed at. Not prepared by gradual social evo-
lution for the individual status, the native when artificially placed
in this position is helpless and becomes a victim of shrewder persons
ready to take advantage of his weakness. Thus the natives of India,
the fellaheen of Egypt, and the Kabyles of Algeria, when legally
individualized, soon lose all effective economic liberty.

In Indo-China the French began by remodeling and destroying
the native institutions and even attempting to introduce the entire
legislation of Continental France. But they discovered in time that
such a policy, of doubtful wisdom in Algeria, is totally unsuitable
for a tropical colony like Indo-China, and at present they show a
tendency to maintain such native institutions as the Annamite com-
mune and even allow the mandarinate a certain influence. Wherever
the French elective and representative institutions have been intro-
duced into tropical colonies they have led to the most grotesque
results. In the Indian possessions as well as in Senegal, the elections
have become a pure formality. Thus, while thousands of votes are
officially returned, hardly a native is seen to enter the polling-place
on election day, the entire reports being prepared in advance by
public officials. During the last decade a powerful opposition has
arisen in France to the continuance of the policy of assimilation.
This movement has received much support from the success of the
French administration in Tunis, where the native institutions,
beliefs, and customs have not been unduly interfered with. In West
Africa and in Madagascar there has also been a certain willingness
to acknowledge the justification of divergent social institutions.
But the essential character of French colonial policy is still assimil-
ating in the main, although a greater willingness is shown to make
concessions to the natural obstacles opposed to such a policy.

The policy of assimilation rests upon the old rationalist doctrine
of the universality of human reason. An institution once declared
rational must as such be applicable at all times and in all places; and
though individuals may at first in the darkness of superstition resist
the introduction of such institutions, they will, if forced to accept them, be ultimately liberated thereby and raised to a higher plane of existence and civilization. The essential element in this belief is that reason is the one controlling force in human conduct, and that rational institutions are productive of rational action, and hence are the sole requirement for well-ordered and civilized life. As a matter of fact, however, the science of the nineteenth century has abandoned this belief in the universal supremacy of the conscious rational faculty. Men are governed far more by their inherited beliefs, customs, and instincts, than by a conscious choice between different courses of action. This is true among ourselves, and it is so to an exceedingly greater extent among more aboriginal peoples. The doctrine of assimilation makes a demand upon the rational element in human nature which not even the action of the most highly developed individuals, not to say nations, could justify. The natives are to abandon the entire complex of customs and beliefs which have thus far guided them through life, and by an act of selective reason, to adopt institutions foreign to their social experience. Modern science is agreed that inherited psychological elements — the constitution of the mind — are the most persistent phenomena of which we have any knowledge. New ideas may be poured into the consciousness, may even be understood by the rational faculties, but they will leave no trace upon the mental constitution and upon the real spring of action. The most conclusive proof of this is found in the psychology of those races which have come, through the chance of history, under the control of different conquerors. Through numberless generations under the most varied historical conditions and environments, the descendants of the same race will continue to develop similar psychological traits. Thus, parts of the Malay race have been for centuries under the rule of three different European peoples, and nevertheless the Filipinos, with their Spanish instruction, the Javans trained under the Dutch colonial system, and the Malays of the mainland who have been under English tutelage, all display identical characteristics and have the same intellectual constitution which the earliest explorers noted in their day. In the same way we may trace among the negroes of the United States, of Hayti, and of Martinique, the same psychological tendencies which are found among their distant relatives in the African forests. The actual experience of colonizing nations and the results of scientific investigation leave room for but one opinion upon the policy of assimilation, that it rests upon a purely ideological basis and runs counter to the scientific laws of psychic development.

The very first requirement in laying the foundations of a colonial policy is, therefore, the careful study of the ethnical character of the
races with whom we come in contact. The ethnological survey is the most important part of colonial administration. We must learn to respect the psychological and social character of the people with whom we have to deal,—respect it sufficiently at least to become acquainted with it, to study it carefully, and to analyze its elements.  
When we consider the difference between the highly trained, industrious, peaceable, frugal Chinese and the shiftless, indolent Malys; between the dreamy, philosophical Burmans and the warlike, laborious tribes of Central India; between the fellaheen of Egypt, the Moors of Algeria, and the multitude of negro races in Central and Southern Africa; the very idea that one set of institutions, one form of social practice, could be applicable to all these multiform societies, would seem the result of pure ignorance. What the colonial administrator needs above all else is imagination. Not the abstract imagination which would create an artificial system, but the reconstructive imagination which is able to understand the social conditions of an alien population. In colonial affairs we are in need more of the sense of justice than of benevolence. Nothing is more dangerous than an active benevolence without a proper knowledge of the civilizations with which it interferes. But the sense of justice which accords them a certain right to live, which agrees that there may be a justification for divergence from our standards, is absolutely essential for lasting results in colonial administration. Native societies themselves desire justice rather than benevolent interference, and appreciate far more a ruler who respects their customs while governing them with a strong hand, than one who, under the claim of humanity and benevolence, meddles with their every social arrangement and institution.

But, we may well ask, if we are not to use our civilization as a criterion for our colonial activities, how shall we be guided in the construction of a colonial policy? Are we to follow simply the most material needs of our commerce and industry, and, totally disregarding the higher civilization of the natives, allow them to shift for themselves; or is there some way in which we can understand the needs of their own civilizations and assist them in realizing their destiny? The simplest answer, and one that appeals to many minds, is that we should let all these alien societies alone, and allow them to develop unhindered, because no nation has the right to regard itself as a providence for the social regeneration of other races. But when we consider that we have actually become responsible for the destiny of great multitudes of people, and that this responsibility

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1 The most successful investigation into the psychology of native populations has been carried on by the ethnological department of the Dutch colonial government under the councilor on native affairs, Mr. Snouck-Hurgronje.

2 It is an Arab proverb that one day of justice is better than seventy years of prayer.
cannot practically be avoided, we shall not be satisfied with any such negative statement of our duties and relations. We need a more positive guide, one also that will harmonize our attitude toward the various elements in civilization. May we not, after all, find in our own civilization the guidance which we seek? We have found that, statically considered, as a definite system of customs and institutions, we cannot apply it directly in solving the problems of colonial development. It is clear that we cannot confer by acts of legislation the results of our social and political evolution upon an alien people. The fruits of civilization cannot thus be transferred. But will not a study of the dynamic elements that have assured our social progress give us some clue as to a proper colonial policy? While we may well despair of bestowing upon an alien race the entire complex of our civilized institutions and customs and beliefs, may it not be possible to modify their social evolution in accordance with our experience and thus to obtain for them gradually a higher degree of social well-being and efficiency? The evolutionary and structural ideals of our civilization may be of greater value in this matter than its positive standards and its resultants in our social life.

Defined from the structural point of view, civilization implies a social organization of highly centralized energy combined with great mobility of the individual parts. This mobility involves the absence of a deadening fixation of activities by custom or caste, leaving the individual free to seek the line of endeavor in which his own energies may find their best and most fruitful expression. It involves a constant betterment of the condition of humanity through invention, and consequently an intensive cultivation of the natural resources of the civilized state. The surplus thus obtained enables the civilized society to devote a large part of its energies to the advancement of education, art, and science. The distinction between civilization and barbarism lies, therefore, primarily in the mobility of social forces and in the readiness with which they are able to concentrate their efforts at any given point. The impact thus produced, no barbarian society can withstand. The positive superiority of a given society is thus not due to the presence of a large armed force, but to the maintenance of conditions which will enable it to bring to bear at any time and at any given point the entire national energy.

It is imperative that we should clearly see that in colonial politics we have to deal with societies in their broadest aspects, — with civilization and not with individuals. The greatest mischief is wrought by looking upon the natives as so many individuals, clay to the hands of the potter, to be fashioned with ease into some resemblance to European or American. It is only as we modify the structure, principles, and customs of native societies, that we can exert any lasting influence upon individuals. Just as the quality of our
Western civilization depends closely upon social structure, so—though in a much larger degree as social cohesion is much stronger in the lower strata of mankind—the civilization of a Hindu, or a Malay, or a Hausa, depends not upon what we can teach him individually, but how we can affect the structural character of the society to which he belongs. To modify the direction of social evolution by slow and natural methods, that is the most ambitious program we can in reason set for ourselves; to take a Tagalog and make of him an American is the naïve impulse of inexperience. For though isolated individuals may adopt the best thought of a higher civilization,—we need but think of the negro valedictorians in our universities and of men like the Maharajah Dhuleep Singh,—they cannot hold out against the social influences of their own race nor can they impart to it their acquired civilization. Societies must be viewed as a whole, united by the strong bonds of tradition and of lasting and intimate relations among the members. There is a life purpose, unconscious though it be, even in the lowest forms of civilization. This we cannot simply suppress by rough-shod measures, and substitute for it point blank and indiscriminately the purposes and methods of our own civilization. Indeed, we can do no more than, by gradually substituting new economic forces and new social motives, to foster a development in the general direction of our own civilization.

Bearing in mind constantly the path which our own social evolution has traveled, and analyzing the conditions of its development and progress, we shall give attention, first of all, to the creation of a sound economic basis for social life in the colonies. The development of a productive, in place of a purely consumptive, economy, and an assurance of the increasing mobility of all factors in economic life, are the first desiderata. All the higher elements of civilization can be obtained only as the fruit of a wise and perfectly adjusted economic system. The art of Florence arose after medieval humanity had served a long and laborious apprenticeship in industrial life, and the dramas of Shakespeare could not have been written had the nation been living merely from hand to mouth. The most elementary purpose of a civilized colonial policy would therefore seem to be the prevention of the reckless and destructive use of the natural wealth in forests and mines for mere private profit, and the encouragement of settled agricultural and industrial pursuits. The greatest among the American negroes clearly perceives and founds his life-work upon the fact that a race cannot be given a self-sufficing position in civilized life unless it has a sound economic organization, and unless it has trained itself to a productive industry.

Among the essential duties of a civilized state there is none more important than the guaranty to every individual under its rule of
the conditions which make healthy life possible. As long as a state has not solved this elementary problem, as long as periodical famines sweep away large numbers of peasants, or accumulations of filth make residence in the towns a constant danger to health and life, the state or society which permits such conditions cannot be called fully civilized. No efforts should, therefore, be spared in the prevention of plague and famine, the two dark thunder-clouds which overhang backward communities and which relentlessly threaten suffering and destruction. No society, no group of individuals, can attain to a state of self-realization and of true inward freedom, as long as it is under the spell of such sinister powers.

It is, however, not only our duty to free these populations from terrors and dangers inherent in their civilization and surroundings, but to protect them against the even more serious risks which are involved in the meeting of civilizations on different planes of development. These dangers are twofold,—arising from the use of deleterious substances and modes of life, or from the creation of an apparent individual freedom of contract, which, however, usually results in the entire destruction of economic independence. The surest means of protection against these risks lie in a scrupulous maintenance of the native morale and social organization; any attempt to deal with natives merely as individuals in the Western sense will, without fail, endanger their independence, their health, and their life. It has been abundantly experienced that when the ordinary members of a backward race are dissociated from the organism to which they belong and are brought into direct contact with a higher society, they will usually lose their native morale and add only the dangerous and even vicious sides of the advanced civilization. The only way to protect the individual is to protect the society to which he belongs, and if any improvement of his condition be attempted, it should not involve the weakening of social relations.

To foster the cohesion and self-realization of native societies, while at the same time providing the economic basis for a higher form of organization, — that should be the substructure of an enlightened colonial policy. We can conceive of no greater crime than the wanton destruction of such societies, for it involves the moral and physical degeneration of their members. This is true of even the lower forms; there is no excuse for destroying the tribal organization; it should be allowed to develop into the higher phases of social life. But when we have to deal with such nations as the Annamites, Burmans, and Chinese, the insensate folly and criminal cruelty of treating their civilization as mere rubbish to be cleared away would seem too apparent to need further emphasis. Such nations should rather be encouraged to take pride in their own historic character, to develop their marvelous inborn artistic talents, and thus to impart to the
general civilization of the world new and rare treasures, than to be treated as unworthy savages fit only for work as beasts of burden and for an apish imitation of European forms.

When we consider the specific basis of a colonial policy with respect to the native races, we shall see that it rests upon a foundation composed of a few simple economic principles. In such an investigation it becomes clear that while Western societies in their contact with the natives of Africa and Asia will be able to accomplish certain useful results, they are, on the other hand, attempting many things which it will be impossible to attain under the present methods. The one indisputable blessing which Western nations are bestowing on primitive races is that of peace. This is the greatest achievement of the European régime in India and in Africa. The terrible inter-tribal warfare and the bloody raids organized by Arab slave-drivers in Africa have largely been put an end to and have given place to more peaceful ambitions. In connection with this, a civilizing colonial policy will also improve the general conditions of life. The introduction of a scientific medical service and of advanced principles of sanitation is a primary duty of colonial administration. The most fundamental conditions of life being thus assured, it is necessary that mobility of the elements in economic action and free mutual intercourse be made possible by the opening-up of routes connecting the various regions and making them accessible to the populations of one another. The construction of roads and railways is therefore one of the most potent agencies of civilization. In that way alone is the penetration of the methods and products of civilization to the interior regions made possible. In order to provide for improvements such as these as well as to undertake lines of industrial development which surpass the capacity of the natives, it is necessary that capital should be invited to participate in the development of new regions and that such investments should be rendered as safe as possible. The native population should be trained in industrial pursuits as well as in the arts of agriculture so as to utilize the natural resources without exhausting or destroying them. The substitution of intensive methods for the exhaustive barbarian exploitation which is now the rule throughout Africa as well as in other undeveloped regions of the world is the essential purpose of the civilizing policy.

But when we come to the higher elements in civilization,—intellectual culture and religion,—the road is not so plain nor is it at all certain that an attempt directly to influence the more primitive races will at first be successful. In this connection we must again remember that we are dealing not with individuals, but with societies, and that it is impossible to change the complexion, the character, and the morale of a society by giving a certain intellectual education
to a few among its members. We have already dwelt upon the fact that civilization can affect the condition of backward societies only by setting in operation economic forces which will gradually modify the social structure. But the attempt to eradicate the intellectual character of these peoples and to substitute for it the complex intellectual and moral culture of Western civilization through the process of instruction, cannot in the nature of things be accompanied with any large measure of success. Psychological characteristics are among the most stable and fixed phenomena of which we have any knowledge. They are undoubtedly subject to modification, but only very gradually in the course of centuries and as a result of radical structural modifications.

The British policy of educating the Hindus according to European methods has failed and has produced lamentable results, because it entirely overlooked the truth that we cannot modify societies by giving them the accessories, even the highest, of another civilization, but only by influencing structural development. As in this case of India, so in general, this can be effected only by changing the economic basis on which the social structure rests. The form of education which will yield the greatest results is technical training, accompanying the actual development of economic life and the growing consciousness of control over natural forces. The political organization that will be most potent in influencing social growth is the city; and through the creation of a true communal life in towns and cities lies the road to the ultimate self-realization of native societies, just as national life in the West is only an expansion and development of the ideals and institutions of the classic and medieval city-state.

A more rapid and direct influence could be looked for should race mixture between Europeans in India and in the tropics become general. Were the conditions in the tropics such that the Europeans could freely intermarry with the native populations the problems we are considering would assume an entirely different aspect, for, as in the white population of the United States, there would come into being a new race. Through the amalgamation of racial characteristics there would arise new beliefs, customs, and ideals, in fact a new philosophy of life and a new intellectual constitution. Though in the past there has been some mixture of European and native blood, and especially the Latin races have shown themselves willing to enter more freely into alliance with dependent races, it still remains true that the results of such racial union have not been of the most encouraging nature. The mixed breeds have at times, as in the case of the mulattoes, shown great excellence of physique and considerable power of mind; in most cases, however, they have appeared rather as degenerate types. They have occupied an unfortunate social
position, being looked down upon and suspected by both of the races from whom they have descended, and becoming the easy prey to vice and to general decadence. At the present time the tendency toward race mixture is less strong than ever before. Races are becoming mutually exclusive, and especially those which consider themselves higher show a strong desire of keeping their blood pure. It is therefore not to be expected that the psychological differences which separate white and colored mankind will be modified by racial mixture.

The side from which the intellectual nature of the non-European races will, perhaps, prove most accessible is that which is connected with the mastery of nature. The people of both Asia and Africa have lived under the overpowering influence of resistless phenomena of nature. The primeval forest world of Africa, the typhoons and floods of the East Indian islands, the famine and pestilence of India, her vast mountains, and the ferocious rivers of China, which bring destruction to millions every few decades,—these are phenomena the like of which the Western world does not know. With us nature is more docile and of greater amenity. It is consequently not a matter of surprise that the forces of nature should have been understood and mastered first by the Western mind. It is through this mastery that the Western peoples can impress other nations most successfully with a sense of their superiority. By relieving the tyranny which nature now exercises in the primitive forests of Africa and in plague-stricken India, Western civilization may become the Prometheus of the nations that are yet in bondage. The mastery of the resources and forces of nature has given us a new conception of life, it has relieved us from the fear of the capricious powers by which primitive man sees himself threatened on all sides. When we look back at the medieval man, whose belief in miracles, amulets, and incantations do not put him at a very great distance from modern barbarians, we feel that our command over natural forces makes a return to the medieval point of view hardly conceivable. As we prepare the more backward races to share in this mastery over nature, they will also have a better understanding of our intellectual life and of our beliefs. The haughtiest Brahman even stops to wonder as he sees the processes of electrical industry and notes the sure grasp with which the forces of nature are made subject to the human will.

"From the ground up" should be the motto of an intelligent colonial policy. Not to attempt to bestow upon the backward races the blessings of a civilization which they cannot understand and which may be a deadly poison in the form in which they are offered, but to work in alliance with the universal forces of social evolution, to battle against the exploitative tendencies which would carry us
back into another age of barbarism more cruel and more difficult to overcome than any former one, and to give to the more primitive societies a secure economic foundation for future progress and development,—these should constitute the elements of a sound colonial policy. If we restrict our efforts to those things which we clearly see can be accomplished,—to the maintenance of peace, the protection of health, the creation of adequate means of communication, and assistance in industrial development; if we set our face firmly against slavery and exhaustive exploitation in all its forms, we may rely upon the working-out of the colonial problem with the same confidence that we place in the mechanism of a complicated electrical motor. But in order to obtain such results patience is most needful. Civilization cannot be transferred as a whole. To deal with intellectual and spiritual matters directly involves such difficult psychological considerations, such incalculable contingencies, that in an effort to develop a constructive colonial policy, it seems wiser to make sure first of the things in which at least a somewhat clearer forecast of results and a somewhat safer calculation of effects can be had, than is the case with impulses and enthusiasms the range of which passes at present the scope of careful analysis. Activities along these lines are by no means to be discouraged, but they fall into a different sphere from that which the legislator and administrator can hope to deal with successfully. One principle seems clear enough, namely, that our moral civilization cannot be propagated by laws, perhaps not even by exhortation, but that the only true civilizing influence is example freely followed. Thus the primitive Germans voluntarily chose their Roman neighbors as models for their action, and Japan to-day is of her free will imitating our institutions and methods because she recognizes in them a certain superiority. By setting up models of action and conduct which will be gladly and spontaneously imitated by other races, the Western nations may, indeed, hope to exert a powerful civilizing influence.

It will, therefore, be wise for the colonial legislator not to attempt too much, not to have too ambitious a programme. But if rightly planned, the economic reforms which it is in his power to effect with success, may, like the massive architecture of a cathedral crypt, in time upbear an edifice which will answer larger purposes than those of mere economic welfare and progress.

SHORT PAPER

Professor Albert G. Keller, of Yale University, presented a short paper to this Section on "The Value of the Study of Colonies from a Sociological Standpoint."
SECTION E — MUNICIPAL ADMINISTRATION
SECTION E — MUNICIPAL ADMINISTRATION

(Hall 15, September 24, 3 p. m.)

Speakers: Mr. Albert Shaw, Editor American Monthly Review of Reviews.
Miss Jane Addams, Hull House, Chicago.
Secretary: Professor John A. Fairlie, University of Michigan.

RELATIONS OF MUNICIPAL ADMINISTRATION

• BY ALBERT SHAW

[Albert Shaw, Editor of American Monthly Review of Reviews. b. Shandon, Butler County, Ohio, July 23, 1857. A.B. Iowa College, 1879; A.M. ibid. 1882; Ph.D. Johns Hopkins University, 1884; LL.D. University of Wisconsin, 1904; Post-graduate of Johns Hopkins University and universities of Europe. Editor of the Minneapolis Tribune. Member of Academy of Political Science, American Statistical Association, American Historical Association, American Forestry Association, and many others. Author of Icaria, A Chapter in the History of Communism; The National Revenue; Cooperation in the Northwest; Municipal Government in Great Britain; Municipal Government in Continental Europe.]

The century whose progress this Exposition celebrates has been for nothing else more remarkable than for its creation, not merely in this new world, but also in the old world, of the modern urban community. Speaking broadly, the cities of Great Britain and Germany in their present characteristics are as recent phenomena as the cities of this Louisiana Purchase region itself. Where five million people live under urban conditions as a part of a great community adjacent to New York Harbor, there were not one hundred thousand people when the Louisiana Purchase was consummated. London and Paris were ancient cities, with their splendors of old architecture and their pride of municipal and local tradition. But all that vast and complex development of the metropolis that London and Paris, Berlin and Vienna, have to deal with to-day, is of as late emergence as Buenos Ayres or Chicago. The modern city, whether of cosmopolitan character or merely commercial and industrial, is in all its larger aspects, for political and social purposes, the outgrowth of new conditions which began to make themselves powerfully effective only in the nineteenth century. Those conditions were brought about chiefly by the utilization of steam power for manufacturing and for locomotion. In the economic world the predominant modern factor has been the creation of productive capital. Capital has aggregated itself principally in machines and instruments of transportation. The result has been that we live under material conditions that have become more profoundly transformed since
the days of Napoleon and Jefferson than during any previous ten or twenty centuries of the world's history.

The new economic efficiency resulting from the creation and employment of productive capital has multiplied the population of all civilized countries. It has placed a premium upon intelligence, moreover, and has been the most potent agency in the banishment of popular ignorance. Its inevitable concomitant, moreover, has been the wide diffusion of the means of subsistence and the steady reduction of the domain of poverty.

Not only, however, has the modern system of economic production multiplied population and lifted the people up in the scale of physical well-being, but it has had a most striking and even sensational effect upon the re-grouping of population. It is this re-grouping that has created the modern conditions of industry and of transportation, and that has concentrated the steadily increasing surplus of the population in centers of manufacturing and trade.

The growth of capital and the average increase in wealth have created many new wants, which in turn have been supplied by the products of new forms of trade and industry. And these differentiations have in turn increased the town population and added to the complexity of town life.

The same conditions of industry and transportation which have created our modern cities and multiplied their population have had a striking though not revolutionary effect upon agriculture and the rural industries. They have tended to bring about the opposite condition of a relative sparsity of rural population. This has been due to two principal facts: first, the introduction of machinery, which has made possible the cultivation of a given area of land by a smaller number of people; second, and more important, the new prevalence of extensive, as opposed to intensive, methods in agriculture, as a result of the opening-up of vast areas of new and virgin soil through the construction of railways.

The competition of the new soils, with their access to markets, will continue for some time to come to keep the older lands depressed in value and subject to extensive rather than intensive methods of culture. So long as this condition remains, surplus population will continue to flow from the agricultural to the manufacturing neighborhoods, that is to say, from country to town. These tendencies can be amply illustrated by facts derived from every country within which Occidental civilization prevails. Even here in the states which have been built up upon the soil of the Louisiana Purchase, — in all the older parts of states like Missouri, Iowa, or Minnesota, — the agricultural population has been a fixed or slightly diminishing factor for two or three decades past, while the town population has been increasing by leaps and bounds.
The general statistics showing the growth of urban population in Europe and America are accessible and familiar, and it would be needless to cite them at this point in evidence of a tendency that could not have been different under existing conditions and that cannot be changed for a considerable time yet to come. In the older parts of the United States, as in Great Britain and the more highly developed industrial parts of the Continent of Europe, the urban population already far outnumbers the strictly rural population.

Modern municipal government, which forms the topic of our conference this afternoon, has to deal with a variety of political and social problems that arise from this modern growth and radical re-grouping of population. These problems relate, on the one hand, to forms of organization, — that is, to the framework and method of the machinery of municipal government; and, on the other hand, to the objects and scope of the government of urban communities, that is to say, to the functions, political and social, that pertain to the municipal authority.

During the first half or even three quarters of this century of urban development now under consideration, the typical new industrial community was enormously hampered through the existence of evils that for a long time were not clearly understood to be curable. With the creation of factories and the concentration of industry in towns, rural hamlets were depopulated by the decay of old handicrafts, and a rustic population crowded into towns that were in no manner prepared to receive such accessions.

The results were painful and seemingly disastrous. There was overcrowding to an extent now almost incredible. So unwholesome were the surroundings that epidemics were the rule rather than the exception. Invalidism reduced the economic effectiveness of the workers; the average expectancy of life was very low; infant mortality was so sweeping that only a small percentage escaped; and thus, as a net result, the death-rate of every considerable urban community was to a marked extent higher than the birth-rate, and town life and industrial progress could only be maintained by the influx of surplus population from the country districts for fresh sacrifice on the altar of modern industrialism.

It is true enough that there had been an earlier phase of urban life which had also to some extent produced overcrowding and distress, and intramural life in walled cities in the Middle Ages had been frequently characterized by unwholesome conditions and decimating infections. But in those days the overcrowding in its worst aspects was usually a temporary condition due to war or to disorders which obliged the country folk to seek shelter within fortified walls. Generally speaking, no European countries were very densely populated. The town dwellers were in a very small minority. Epidemics were
regarded as divine visitations. Political economy, social science, and bacteriology had not entered into the vital consciousness of men. And thus the conditions with which municipal activity in our time has been most deeply concerned, were in those periods for the most part disregarded.

There were, to be sure, other aspects in which towns and their life were of much significance. The seaport towns were the centers of maritime trade, and many of them became rich and famous through traffic and merchandise. Witness the Hansa towns, Venice, and many another. Other cities, as centers of governing activity and as capitals of kings or of princes or grand dukes, had distinctions and splendors that have furnished them with a continuity of life very dignified and ennobling. Most or all of the old-time towns had their organizations or guilds of handicraftsmen, these in the aggregate constituting a free citizen or burgher body, which body in turn had secured from the reigning authority a charter or grant of communal privilege and corporate self-direction.

The municipal corporations thus formed almost invariably had their old town halls centrally placed on the market square and of imposing and beautiful civic architecture. The survival of great numbers of these old buildings as centers of a wholly new kind of municipal corporate activity helps not a little to carry the mind in imagination over the chasm that separates medieval from modern ways of life, thought, and action. But, although in the case of many towns there has been unbroken use for several centuries of town halls and other appurtenances of the Gemeinde, or organized community, and although also in many cases there has been legally no break in the continuity of the incorporated municipal body, there has in reality come about a change not merely profound, but altogether revolutionary in the characteristics of town life and in the aims and methods of the municipal corporations themselves. It is in this sense that Vienna is new rather than old, and that the thriving urban communities of the Rhine Valley are of as recent development as those in the Mississippi Valley.

For a considerable time, as I have said, after the development of the factory system and the building of railroads had brought us fairly into the midst of present-day conditions,—in which population is everywhere forming in the new urban groups with which we are now concerned,—for a considerable time this re-grouping was regarded even by those who extolled the new agencies of production and the new implements of exchange, as a thing deeply to be deplored by reason of attending ills that seemed beyond remedy. Those ills went farther than the physical maladies that invalidated the workers and crowded the cemeteries. Town life seemed to foster every sort of crime and vice, and to threaten the swift decay of civic
character and private virtue. Thus, looking into the future, one seemed to face the paradox that the very methods which were multiplying wealth, diffusing comfort, gradually shortening hours of brutalizing toil, and promising, theoretically at least, to emancipate and elevate the masses, were so working themselves out in practice as to devitalize and degenerate whole nations through the many-sided and incurable evils under conditions of life prevailing in the densely inhabited centers of new industry. This seeming paradox confused and alarmed many minds until a very recent period.

The paradox disappeared with the great discovery that, after all, the evils of city life cannot only be abated, but so fully removed as to make conditions in populous towns both endurable and advantageous. The remedial measures have been worked out along many lines at the same time, all having to do with the growth of intelligence, the application of science, the improvement of the mechanism of public administration, and last, but not least, the achievements of modern commerce and industry in creating masses of wealth that can be drawn upon in a large way for the common welfare.

The recognition of the possibility of making city life positively desirable has in some places been tardy, and even now the political reformer and the social worker sometimes doubt and sometimes despair; but hope and confidence have everywhere triumphed, the best evidence of which is found in the dazzling array of public improvements and ameliorations of the general welfare that every important urban center of Europe and of America has accomplished within the past fifteen or twenty years. For every serious malady that continues to afflict any given community, the remedy has been discovered and successfully applied in one or another great town elsewhere under analogous conditions.

As respects the application of the different forms of remedy, we must, in a general way, assign the first place to British municipal life. The various phenomena of modern industrialism had an earlier and a more pronounced development in Great Britain than anywhere else. The rapid upbuilding and over-population of factory towns compelled the attention of English and Scotch reformers to the new conditions as requiring public treatment. It might be more logical to take up first the progress that has been made in the application of these remedies, — in other words to discuss the growth of municipal functions. But since I must also speak somewhat of reforms in municipal structure, it may be well to allude first to these questions having to do with the forms of town government.

The reconstruction of English municipal government belongs to the reform period of seventy years ago. It was that same re-grouping of population which had by that time created the factory towns that had compelled the reform of representation in Parliament. The
enfranchisement of the populous new boroughs for parliamentary purposes was attended by inquiries and discussions which showed the necessity of reforming the inner or municipal structure of these new communities. Some of these were without any form whatever of municipal government, while others were subject to serious abuses under outgrown medieval charters, which practically excluded the people themselves from a share in the control of their own local affairs.

The Municipal Government Act of 1835 is the great legal landmark in the development of modern town organization. Its lines were so broad and so simple that its essential features have sufficed for nearly three quarters of a century, and will undoubtedly continue through the new century upon which we have entered. Many old forms and old terms were retained, and the chartered life of the county cities and the medieval boroughs seemed to go on without a shock or a break. Nevertheless, the Municipal Government Act brought new life into the old forms, while it cut off unjust privileges and monopolies, and enlarged the conception of the municipal corporation from a narrow, close, self-perpetuating body to a body made up of all the resident householders and occupiers.

Under this elastic common framework it has been possible from time to time to enlarge the municipal electorate as English life has grown more completely democratic. The central fact in the administration has been and will continue to be the popularly elected municipal council, sitting in one chamber, acting as a board of directors for the conduct of municipal affairs, and carrying on the various departments of executive work under the supervision of standing committees.

Each working department is carried on under the direction of an employed expert head, whose tenure is presumably permanent, and who has in a large measure the authority to appoint and dismiss as well as to direct all the subordinates in his branch of the municipal service. The municipal or town council is a financial as well as an administrative body, and, under parliamentary authority and a certain measure of central supervision, it levies local rates and taxes, contracts interest-bearing loans, and in general carries on the work of municipal administration very much as the directors of a railway company, or of any other large industrial or financial enterprise, carry on the business with which they have been intrusted by the shareholders.

In this British system, the mayor is simply the presiding officer of the municipal council, is selected by the council itself, and is almost invariably one of its oldest members. By way of exception, the administration of the schools falls to a separately elected school board, and the care of the poor in like manner devolves upon a sepa-
rately organized administrative group. In sound logic, there is no important reason why the schools and the department of public relief should not also come under the control of the municipal council, and the oversight of its standing committees. But in both instances there have been reasons of history and tradition for the separate control of these two functions.

Speaking in general, the enormous demands of an expanded and ever-improving municipal life have constantly added to the volume and the variety of the work intrusted to the British municipal councils. Yet these boards of directors have been fully equal to the new tasks imposed upon them, and it will be generally agreed that from the standpoint of the framework or organization of municipal government, the British cities have no serious problems remaining to be solved. As science and the arts of civilized life point out new and better ways to promote the well-being of the people through municipal effort, the British town councils show themselves fully competent to initiate and to administer the new services.

Similar though less acute and less aggravated conditions of urban growth had required municipal reorganization in other countries. Those most important for our present purposes are the municipal codes of France and of Prussia. It was characteristic of the law-giving work of the Napoleonic period that it should have been at once drastic and of uniform and logical character. Making an exception of Paris, — as the English system has made an exception of London, — the French communal and municipal code of the early part of the nineteenth century created a system which was made applicable to the entire territory of France. The central feature of the system was the communal council. The number of members of the council varied in the ratio of population of the communes. As the rural commune grew into the urban community or municipality, its organization became more elaborate, but all upon a sliding-scale plan prescribed in the terms of a universally applicable statute.

In the long struggle between centralized authority on the one hand and the spirit of local self-government on the other, this municipal mechanism has sometimes been administered by the higher authorities through a system of central appointments, quite as bureaucratic as the institutions of Russia itself. At other times, this mechanism has worked with something like English local freedom. In either case, however, its outer forms have changed very little.

The most important thing about this legislation was its scientific character, its thoroughly modern aspect, and its well-nigh incredible achievements in sweeping away the anomalies which had grown up through the centuries. Thus, the Napoleonic administrative laws prepared the way for the municipal growth of the nineteenth
century, and French urban life has, accordingly, developed under orderly forms with a system elastic enough to meet changes, and in accordance with the genius of modern French life.

Prussia was hardly less fortunate in the opening part of the last century in its great administrative reformers, who created a system for provincial, municipal, and local government that in the main has stood the test of time and has served for the exigencies of a wholly unforeseen growth of industry, population, and urban life. Saxony and the other German states, meanwhile, had also provided themselves with reformed systems of municipal and local government, different in details, but in a general way similar to the system of Prussia. Belgium, Spain, Italy, Switzerland, and the Latinic countries in general, followed sooner or later the model of France in shaping for themselves uniform codes of administrative law for the organization of local and municipal corporations. Austria and the eastern part of Europe have more generally followed the German model.

The keynote of the German system is to be found in a very highly organized, well-trained, non-political, permanent civil service. Every department of municipal administration is in the hands of expert functionaries, each man holding his place as a life career. At the head of the municipality is the burgomaster, himself the most highly trained administrative functionary of all. His position is wholly different from that of the non-salaried English citizen, who holds temporarily the honorary rank of Lord Mayor.

In like manner, the headship of the police department, of the legal department, of the education department, and of the various services concerned with the supply of water, the maintenance of the streets; the sewer system, the public cleansing, the administration of the health services, and so on, is vested in a permanent professional expert administrator under whom are many other permanent and specially trained experts, who hold their places for life on condition of efficiency and good behavior.

The burgomaster and the head officials of the principal departments constitute a body known as the council of magistrates. The citizenship of the community is represented in another body known as the Gemeindesrath, or common council. This council is popularly elected, and is a body of great authority. It sits in one chamber, but is elected upon a plan which recognizes the large taxpayers as entitled to much more consideration than those who pay small taxes. With the development of democracy, these property distinctions will probably be modified and in the course of time they may be abolished.

Meanwhile, however, admission to the trained civil service is open upon merit to the very humblest, and promotion in the civil and municipal services also goes without favor upon merit. The selection
of the burgomaster and of the other chief functionaries, at those rare times when vacancies occur, devolves upon the elected council, which also has general budgetary power and coöperates with the magistrates' council in matters of municipal policy.

The permanence of the municipal service makes it possible to carry on with patience and unbroken effect every sort of public improvement and also renders it comparatively easy to imbue German municipal administration with the spirit of scientific progress. Thus, while from the point of view of French, British, or American democracy, German municipal government is unpopular and reactionary, it is, nevertheless, in the very forefront of progress as respects the application of scientific knowledge to the public services. It is a municipal government whose standards are prescribed by the bacteriologist, the electrical and civil engineer, the sociologist, the financial and legal expert, the trained architect, the botanist, and the man of technical equipment in a hundred different directions.

It is at least open to question whether or not a community may not be regarded as governing itself as truly where its civil service is perfectly organized and dominated by scientific and humane ideas, though its electorate be restricted and non-democratic, as a community which, like those of the United States, throws its electorate open without conditions even to the vagrant, but which denies itself the benefit of a thoroughly efficient and highly enlightened civil service.

The United States is the only country which has not worked out for itself a fairly uniform system of municipal government. There are in this country to-day more varieties, not merely in the details of organization, but in the fundamental features of the framework of municipal government, than in all the countries of Europe taken together, from Scotland to Bulgaria and Greece.

I cannot deny the opinion that it has been unfortunate for the best development of civilized life in American cities that there had not been devised before the middle of the nineteenth century some simple standard system of organization for American municipal corporations. Along with many advantages, our federal system has had some grave disadvantages. To that system undoubtedly must be attributed many of our difficulties in dealing with the city problem, and especially those difficulties that arise from defective legislation.

Our cities are scattered through a large number of states and derive their forms of administration and their various powers from as many legislatures. Some of the states have worked out uniform systems, while others have followed the practice of granting individual charters to each incorporated town or city. Almost every city in the country can show an experience of charter change, revision,
and renewal, so bewildering and so capricious in frequency of repeal and in violence of sudden resort from one device to another, totally different, that it becomes more difficult in many instances to follow the structural changes of government in a moderate-sized American town than to grasp the whole administrative history of municipal corporations for England or for France.

In theory, the municipal corporations are minor divisions or entities of the state, but in many cases their relative importance is so great that they are not held in proper subordination. Under these circumstances the state lacks power to legislate wisely and on stable and permanent lines for its growing and assertive municipalities. On the one hand, the great town disturbs the even tenor of the life of the commonwealth; on the other hand, the rural commonwealth fails to understand the needs of the great town, and attempts in futile and vexatious ways to hamper it and circumscribe its powers.

Thus to meet local or temporary exigencies, rather than to serve the abiding ends of good administration, there is constant meddling with charters and change of method and system. All American cities, however, have some form of an elective municipal council. In a few instances these councils have power almost as complete as in England, in most others much less power, and so on to the vanishing-point. Nearly all American cities have been at one time or another the complete victims of an attempt to separate the so-called legislative from the executive function, in oversight of the fact that practically the whole work of a municipal corporation is administrative, and that the enactment of by-laws is a very minor detail.

Practically everywhere throughout the United States the cities provide themselves with a mayor elected by the whole voting body. In many cities the mayor has very small actual power; in many others he appoints and removes all heads of departments, controls the police system, and runs a sort of periodic autocracy. In many American cities, the different departments of administration are farmed out to boards and commissions. In some places these boards are elected by the people, in others they are appointed by the mayor. In still others they are chosen by the municipal council. Yet more frequently they come into being through ingenious combinations of all these methods.

It is useless to try to generalize, or to attempt, for purposes of description, to work out of all our varying forms some average sort of arrangement that we might call the American system. Yet some creditable attempts have been made in this direction, and a body of excellent theoretical, legal, and practical students of the subject, organized as the National Municipal League, has worked out a so-called model charter, which is having no slight degree of influence upon charter-framers and legislatures, as from year to year they go
on prosecuting this ceaseless American industry of making and un-making municipal charters.

Most municipal reformers in the United States have, however, openly or tacitly agreed to give over for the present all very strenuous attempts to secure their ideals in the matter of charters. They are working, rather, for good practical results under any sort of mechanism, however complicated or arbitrary. They recognize the fact, nevertheless, that the innumerable so-called checks and balances and the baffling division and dispersion of authority, far from preventing misgovernment, afford the wrong-doers their best opportunities.

It has thus far proved impossible to persuade the charter-makers that the safest and best plan is to abolish nine tenths of the machinery and provide a simple, direct way by which cities may exercise self-government as respects the range of power granted them by the state.

The earlier powers to be exercised within municipal limits are those of a negative and purely protective sort. The police authority is everywhere recognized as belonging to the higher sovereignty of the state. It has, however, in nearly all countries been found convenient to turn over to the municipal authorities the organization and control of the police work. An exception has generally been made of the great metropolitan cities, in which the whole state has so much concern, that it makes direct exercise of the police authority, and declines to admit the municipal corporation to any share in the maintenance of public order. In some countries, as in England, police standards and methods are national, while organization and ordinary control are municipal. In such cases there is national inspection, and the higher government pays some part of the cost of maintenance.

In the United States many of the most serious disturbances of municipal life grow out of the difficulty of defining properly the sphere of the police administration, and the further difficulty of securing permanent and non-partisan direction. It is highly important that a sharp distinction be noted between the evils in American municipal life that associate themselves with the conduct of the police department and the other very different problems of municipal government that have to do with the raising and expenditure of the corporate revenue, and the management of water-supply, drainage systems, cleansing services, streets, parks, schools, and various other lines of municipal activity. While it is evident that inefficient or corrupt police administration has a tendency to infect and corrupt other departments, it has often been strikingly true that alongside of scandalously bad police administration there has been found fiscal integrity and efficient management of the health services, the schools, and various public works.
Upon municipal corporations in general, it may be said that the state has devolved not merely the ordinary protection of life and property with which the police department is charged, and such special forms of protection as are illustrated in the fire departments, but also the newer forms of service that relate to the protection of the public health, the older sort of regulation that relates to the preservation of public morals, and the local enforcement of a variety of general statutes. For all these purposes the municipality is in fact the local agent of the state. There is nothing new in the legal or theoretical nature of any of these functions, but there is a vast deal that is new in the manner in which the functions are exercised.

Thus the enormous development of public lighting grows out of the primitive function of the night watchman. The modern development of water-supply is essentially a health protective service. The same thing may be said of the sewer system, the cleansing of the streets, and the removal and disposal of garbage and waste. All these are public functions in the highest sense. In the opinion of most municipal authorities, the question whether or not street-illumination, water-supply, sewers and drainage, street-cleaning, and garbage removal should be exercised as public or as private functions is no longer open to discussion. None of these services can be properly rendered for private profit. They relate too essentially to the public welfare. Fortunately, in all these matters, modern municipal life is making an unexpectedly rapid and fortunate progress, with results that are shown directly in the reduction of death-rates, and indirectly in a score of other ways.

Forty or fifty years ago, as I have already said, epidemics were frequent in most cities of Europe and America. Now they are of rare occurrence. The cholera, at Hamburg, eleven years ago, resulted in making German municipal government more than ever a matter for the bacteriologist and the high sanitary and engineering authorities. The best American cities are advancing to these German and British standards.

Nothing else has such far-reaching importance in the more recent life of cities in Great Britain and Europe, and even more obviously in America, as the physical changes due to electric transit and the upbuilding of suburban zones. Within the past ten years the extent of electric street railways in America has increased many-fold. This movement is doing a hundred times more to relieve the congestion of population in cities and to make possible an effectual dealing with the evils of overcrowding than has been accomplished by the direct application of remedies to slum conditions.

Fifteen or twenty years ago the word "slum" was of constant recurrence in any discussion of the problems of municipal life. Every city, even the small ones, had its area of overcrowding, of
unsanitary conditions, of great infant mortality, of epidemic tendency, of criminal resort, and of degeneracy and decadence. Most people believed that such slum areas were inevitable and could not be wiped out. It was observed that the drastic clearing-out of one slum spot was followed by the rapid creation of another. There has come about, however, a complete change of opinion on this subject. The rapid tide of the better class of families to new and sanitary districts, opened up by trolley lines, is so relieving the pressure upon old residence properties in central districts that demolition can proceed with advantage, and rules against overcrowding can be enforced with good results.

Along with this tendency to annex the suburbs and expand the municipal area are to be observed many hopeful accompanying tendencies. One finds immense progress in the art of street-making. Municipal landscape art, as shown in open squares and in smaller and greater parks, has advanced with magnificent progress since Mr. Olmsted and his associates laid out Central Park in New York. Water-supply, sewers, and all that belongs to the functions of good municipal housekeeping are no longer in doubt. With some mistakes, with some extravagance, and with some reaction, the main victory has, nevertheless, been won all along this line.

The people have grasped the conception of orderliness, beauty, and sanitary safety in town life, and they will work these ideals out without fail in all modern industrial countries where there is prosperity enough to keep the forces of civilization alive and energetic. Thus the opportunities and conditions of the average working-man or mechanic dwelling in our cities have been completely revolutionized within ten or twenty years. The plain man may educate his children in admirable free schools under municipal control. The schools have learned to adapt themselves to the needs of the working-man's family, so that they no longer unfit for practical life, but on the contrary contribute to the ability of the boy or the girl to earn a living in his own town, as well as to be a good citizen and an intelligent member of society. The working-man has the best of water, the assurance of good health conditions, admirable opportunities for recreation and instructive amusement, great public libraries and reading-rooms made accessible to him, and a hundred advantages scarcely dreamed of fifty years ago. Thus evil has been turned into good, and where once it was seemingly disastrous for men to be living together under urban conditions in modern industrial communities, it is now, for the great majority, a source of positive and unquestioned advantage.

I am not unduly optimistic. I do not for a moment ignore the many and grave difficulties that beset the work of municipal government and the task of social reform in the industrial centers.
What I hold is that the problems are now defined, the remedies are fairly understood, and the work can progress with good courage. We have, in the United States, made enormous progress since, more than twenty years ago, Mr. Bryce made the studies which are embodied in the chapters of his American Commonwealth that relate to our city life. In some respects the very best illustrations of the triumphs and the difficulties of American urban life are afforded by this great city of St. Louis that has grown up as the chief center of the states formed out of the Louisiana Purchase territory. There have been evils and scandals in its municipal governmental career that have of late been widely advertised to the world. I have, on the other hand, known something for years past of other phases of its municipal life, and I must assert that, in the main, it stands not only as a creditable, but as a brilliant, example of modern municipal progress. It has at least managed to make a comfortable and a beautiful dwelling-place for its inhabitants, and to provide for them those facilities that contribute to the safety and enjoyment of life.

Here, as elsewhere in America just now,—as in Chicago, San Francisco, New York, Boston, Philadelphia, and many another city,—the most important phase of municipal life is the struggle for a higher type of civic virtue. This is coming about in the gradual detachment of what we may call "municipal politics" from the domination of the national and the state politics, which have no proper place in the direction of the corporate activities of towns and cities.

In spite of the difficulties that I have mentioned, there is some tendency to improvement in the structure of municipal government. There is almost revolutionary improvement and progress in the application of American prosperity and advanced material civilization to the appointments of town life. Finally, there is also unquestionable progress in the direction of civic honesty. It need not be said that with the massing of population in the urban centers it becomes almost a question of life or death for the state itself that the citizenship of the populous communities be at least of as high a grade and standard, as fit for the exercise of the privileges of democracy, as the citizenship of the rural neighborhoods. But for the rapidity with which we have received and enfranchised masses of non-English-speaking immigrants who have for the most part taken up their homes in our cities, I believe we should already have brought the standards of civic life in our towns up to the average of the country at large. As to the future, I have no doubts at all upon this score.

In British, German, and other European industrial centers, the greatest difficulties that now have to be faced grow out of the pov-
erty and degradation of a considerable percentage of the urban population. The remedies for this condition are not exclusively in the hands of municipal authorities. They must be worked out with the progress of economic conditions, and the gradual diffusion of realized wealth.

From the standpoint of the social and political philosopher, as well as of the political economist, it must never be forgotten that the modern city is the creation of those very industrial conditions that have created the whole mass of modern wealth, that have elevated the standards of life, and that are certainly destined in their turn to improve and finally to transform the cities which their own instrumentalities have created.
PROBLEMS OF MUNICIPAL ADMINISTRATION

BY JANE ADDAMS

[Jane Addams, Head of Hull House Settlement, Chicago. b. Cedarville, Illinois, September 6, 1860. B.A. Rockford College; L.L.D. University of Wisconsin. President of Hull House Association since 1889. Author of part of Philanthropy and Social Progress; Democracy and Social Ethics.]

We are accustomed to say that the machinery of government incorporated in the charters of the early American cities, as in the federal and state constitutions, was worked out by men who were strongly under the influence of the historians and doctrinaires of the eighteenth century. The most significant representative of these men is Thomas Jefferson, whose foresight and genius we are here to commemorate, and their most telling phrase is the familiar opening that "all men are created free and equal."

We are only now, however, beginning to suspect that the present admitted failure in municipal administration, the so-called "shame of American cities," may be largely due to the inadequacy of those eighteenth-century ideals, with the breakdown of the machinery which they provided, and, further, to the weakness inherent in the historic and doctrinaire method when it attempts to deal with growing and human institutions.

These men were the legitimate successors of the seventeenth-century Puritans in their devotion to pure principle, but they had read poets and philosophers unknown to the Pilgrim fathers, and represented that first type of humanitarian who loves the people without really knowing them, which is by no means an impossible achievement. "The love of those whom a man does not know is quite as elemental a sentiment as the love of those whom a man does know," but with this difference, that he expects the people whom he does not know to forswear altogether the right of going their own way, and to be convinced of the beauty and value of his way.

Because their idealism was of the type that is afraid of experience, these founders of our American cities refused to look at the difficulties and blunders which a self-governing people was sure to encounter, and insisted that the people would walk only in the paths of justice and righteousness. It was inevitable, therefore, that they should have remained quite untouched by that worldly wisdom which counsels us to know life as it is, and by that very modern belief that, if the world is ever right at all, it must go right in its own way.
A man of this generation easily discerns the crudeness of that eighteenth-century conception of essentially unprogressive human nature, in all the empty dignity of its "inborn rights of man," because he has grown familiar with a more passionate human creed, with the modern evolutionary conception of the slowly advancing race whose rights are not "inalienable," but are hard won in the tragic processes of civilization. Were self-government to be inaugurated by the advanced men of the present moment, as the founders were doubtless the advanced men of their time, they would make the most careful research into those early organizations of village communities, folkmotes, and mîrs, those primary cells of both social and political organization where the people knew no difference between the two, but quite simply met to consider in common discussion all that concerned their common life. They would investigate the craft guilds and arțels, which combined government with daily occupation, as did the self-governing university and free town. They would seek for the connection between the liberty-loving medieval city and its free creative architecture, that most social of all the arts.

But our eighteenth-century idealists, unconscious of the compulsions of origins and of the fact that self-government had an origin of its own, timidly took the English law as their prototype, "whose very root is in the relation between sovereign and subject, between lawmaker and those whom the law restrains," and which has traditionally concerned itself more with the guarding of prerogative and with the rights of property than with the spontaneous life of the people. They serenely incorporated laws and survivals which registered the successful struggle of the barons against the aggression of the sovereign, although the new country lacked both nobles and kings. Misled by the name of government, they founded their new cities by an involuntary reference to a lower social state than that which they actually saw about them. They depended upon penalties, coercion, compulsion, and remnants of military codes to hold the community together; and it may be possible to trace much of the maladministration of our cities to these survivals, to the fact that our early democracy was a moral romanticism, rather than a well-grounded belief in social capacity and in the efficiency of the popular will.

It has further happened that, as the machinery, groaning under the pressure of the new social demand put upon it, has broken down from time to time, we have mended it by giving more power to administrative officers, distrusting still further the will of the people. We are willing to cut off the dislocated part, or tighten the gearing, but we are afraid to substitute a machine of newer invention and greater capacity.
A little examination will easily show that, in spite of the fine phrases of the founders, the government became an entity by itself away from the daily life of the people; not meant to be set off against them with power to oppress, as in the case of the traditional European governments, but simply because its machinery was so largely copied from the historic governments which did distrust the people, that it failed to provide the vehicle for a vital and genuinely organized expression of the popular will. The founders carefully defined what was germane to government and that which was quite outside its realm; whereas the very crux of local self-government, as has been well said, is involved in the "right locally to determine the scope of the local government," in response to the local needs as they arise.

They were anxious to keep the strings in the hands of the good and professedly public-spirited, because, having staked so much upon the people, whom they really knew so little, they became eager that they should appear well, and should not be given enough power to enable them to betray their weaknesses; as a kind lady may permit herself to give a tramp five cents, believing that, although he may spend it for drink, he cannot get very drunk upon so small a sum.

All might have gone well upon this doctrinaire plan, as it still does in many country places, if there had not been a phenomenally rapid growth in cities upon an entirely changed basis. Multitudes of men were suddenly brought together in response to the nineteenth-century concentration of industry and commerce—a purely impersonal tie; whereas the eighteenth-century city attracted the country people in response to the more normal and slowly formed ties of domestic service, family affection, and apprenticeship. Added to this unprecedented growth from industrial causes, we have in American cities multitudes of immigrants coming in successive migrations, often breaking social ties which are as old as the human family, and renouncing customs which may be traced to the habits of primitive man. Both the country-bred and immigrant city-dwellers would be ready to adapt themselves to a new and vigorous civic life founded upon a synthesis of their social needs, but the framers of our carefully prepared city charters did not provide for this expanding demand at the points of congestion. They did not foresee that after the universal franchise has once been granted, social needs and ideals are bound to enter in as legitimate objects of political action; while, on the other hand, the only people in a democracy who can legitimately become the objects of repressive government are those who are too underdeveloped to use the franchise, or those who have forfeited their right to full citizenship. We have, therefore, a municipal administration in America which is largely reduced
to the administration of restrictive measures. The people who come most directly in contact with its executive officials, who are the legitimate objects of its control, are the vicious, who need to be repressed; the poor and semi-dependent, who appeal to it in their dire need; or, from quite the reverse reason, those who are trying to avoid an undue taxation, resenting the fact that they should be made to support that which, from the nature of the case, is too barren to excite their real enthusiasm.

The instinctive protest against this mechanical method of civic control, with the lack of adjustment between the natural democratic impulse and the fixed external condition, inevitably produces the indifferent citizen and the so-called "professional politician;" the first who, because he is not vicious, feels that the real processes of government do not concern him, and wishes only to be let alone; and the other who easily adapts himself to an illegal avoidance of the external fixed conditions by assuming that those conditions have been settled by doctrinaires who did not in the least understand the people, while he, the politician, makes his appeal beyond those to the real desires of the people themselves. He is thus not only the "people's friend," but their interpreter. It is interesting to note how often simple people refer to "them," meaning the good and great who govern but do not understand, and to "him," meaning the alderman who represents them in these incomprehensible halls of state, as an ambassador to a foreign country to whose borders they could not possibly penetrate and whose language they do not speak.

In addition to this difficulty, inherent in the difference between the traditional and actual situation, is another, which constantly arises on the purely administrative side. The traditional governments which the founders had copied, in proceeding to define the vicious by fixed standards from the good, and then to legislate against them, had enforced these restrictive measures by trained officials, usually with a military background. In a democracy, however, the officers intrusted with the enforcement of this restrictive legislation, if not actually elected by the people themselves, are still the appointments of those thus elected, and are therefore good-natured men who have made friends by their kindness and social qualities.

The carrying-out of repressive legislation, the remnant of a military state of society, is, in a democracy, at last put into the hands of men who have attained office because of political "pull," and the repressive measures must be enforced by those sympathizing with and belonging to the people against whom the measures operate. This anomalous situation produces almost inevitably one result: that the police authorities themselves are turned into allies of vice
and crime, as may be illustrated from almost any of the large American cities, in the relation existing between the police force and the gambling and other illicit life. The officers are often flatly told that the enforcement of an ordinance which the better element of the city has insisted upon passing is impossible; that they are only expected to control the robbery and crime that so often associate themselves with vice. As Mr. Wilcox has pointed out in *The American City*, public sentiment itself assumes a certain hypocrisy, and in the end we have "the abnormal conditions which are created when vice is protected by the authorities;" in the very worst cases there develops a sort of municipal blackmail in which the administration itself profits by the violation of law. The officer is thoroughly confused by the human element in the situation, and his very kindness and human understanding are that which leads to his downfall.

There is no doubt that the reasonableness of keeping the saloons in lower New York open on Sunday was apparent to the policemen on the East Side force long before it dawned upon the reform administration, and yet that the policemen were allowed to connive at law-breaking was the cause of their corruption and downfall.

In order to meet this situation, there is almost inevitably developed a politician of the corrupt type so familiar in American cities, who has become successful because he has made friends with the vicious. The semi-criminal, who are constantly brought in contact with administrative government, are naturally much interested in its operations, and, having much at stake, as a matter of course attend the primaries and all the other election processes which so quickly bore the good citizen whose interest in them is a self-imposed duty. To illustrate: It is a matter of much moment to a gambler whether there is to be a "wide-open town" or not; it means the success or failure of his business; it involves not only the pleasure, but the livelihood, of all his friends. He naturally attends to the election of the alderman, and to the appointment and retention of the police-man; he is found at the caucus "every time," and would be much amused if he were praised for the performance of his civic duty. But because he and the others who are concerned in semi-illicit business do attend the primaries, the corrupt politician is nominated over and over again.

As this type of politician is successful from his alliance with crime, there also inevitably arises from time to time a so-called reformer, who is shocked to discover this state of affairs, this easy partnership between vice and administrative government. He dramatically uncovers the situation, and arouses great indignation against it on the part of the good citizen. If this indignation is enough, he creates a political fervor which constitutes a claim upon public gratitude. In portraying the evil he is fighting, he does not recog-
nize, or at least does not make clear, all the human kindness upon which it has grown. In his speeches he inevitably offends a popular audience, who know that the political evil exists in all degrees and forms of human weakness, but who also know that these evils are by no means always hideous. They resent his overdrawn pictures of vice and of the life of the vicious; their sense of fair play and their deep-rooted desire for charity and justice are all outraged.

If I may illustrate from a personal experience: Some years ago a famous New York reformer came to Chicago to tell us of his phenomenal success and his trenchant methods of dealing with the city "gambling-hells," as he chose to call them. He proceeded to describe the criminals of lower New York in terms and phrases which struck at least one of his auditors as sheer blasphemy against our common human nature. I thought of the criminals whom I knew, of the gambler for whom each Saturday I regularly collected his weekly wage of $24, keeping $18 for his wife and children, and giving him $6 on Monday morning. His despairing statement, "The thing is growing on me, and I can never give it up," was the cry of a man who, through much tribulation, had at least kept the loyal intention. I recalled three girls who had come to me with a paltry sum of money collected from the pawn and sale of their tawdry finery, that one of their number might be spared a death in the almshouse and have that wretched comfort during the closing weeks of her outcast life. I recalled the first murderer whom I had ever known,—a young man who was singing his baby to sleep, and stopped to lay it in its cradle before he rushed downstairs into his father's saloon, to scatter the gang of boys who were teasing the old man by giving him orders in English which he could not understand, and refusing to pay for the drinks which they had consumed, but technically had not ordered.

For one short moment I saw the situation from the point of view of humbler people, who sin often through weakness and passion, but seldom through hardness of heart; and I felt that such sweeping condemnations and conclusions as the speaker was pouring forth could never be accounted for righteousness in a democratic community.

The policeman who makes terms with vice, and almost inevitably slides into making gain from vice, merely represents the type of politician who is living off the weakness of his fellows, as the overzealous reformer, who exaggerates vice until the public is scared and awestruck, represents the type of politician who is living off the timidity of his fellows. With the lack of civic machinery for simple democratic expression, for a direct dealing with human nature as it is, we seem doomed to one type or the other—corruptionists or anti-crime committees. And one sort or the other we shall continue to have so long as we distrust the very energy of existence, the
craving for enjoyment, the pushing of vital forces, the very right of every citizen to be what he is, without pretense or assumption of virtues which he does not really admire himself, but which he imagines to have been set up as a standard somewhere else by the virtuous whom he does not know. That old Frankenstein, that ideal man of the eighteenth century, is still haunting us, although he never existed save in the brain of the doctrinaire.

This dramatic and feverish triumph of the self-seeker, see-sawing with that of the interested reformer, does more than anything else, perhaps, to keep the American citizen away from the ideals of genuine evolutionary democracy. Whereas repressive government, from the nature of the case, has to do with the wicked, who are happily always in a minority in the community, a normal government would have to do with the great majority of the population in their normal relations to each other.

After all, the daring of the so-called "slum politician," when he ventures his success upon an appeal to human sentiment and generosity, has something fine about it. It often results in an alliance of the popular politician with the least desirable type of trade-unionist as the reformer who stands for an honest business administration becomes allied with the type of business man whose chief concern it is to guard his treasure and to prevent a rise in taxation.

May I use, in illustration of the last two statements, the great strike in the Chicago Stock Yards, which occurred a few weeks ago? The immediate object of the strike was the protection of the wages of the unskilled men from a cut of one cent per hour, although of course the unions of skilled men felt that this first invasion of the wages, increased through the efforts of the unions, would be but the entering-wedge of an attempt to cut wages in all the trades represented in the Stock Yards. Owing to the refusal on the part of the unions to accept the arbitration very tardily offered by the packers, and to their failure to carry out the terms of the contract which they made ten days later, the strike in its early stages completely lost the sympathy of that large part of the public dominated by ideals of business honor and fair dealing, and of that growing body of organized labor which is steadily advancing in a regard for the validity of the contract and cherishing the hope that in time the trades-unions may universally attain an accredited business standing.

The leaders, after the first ten days, were therefore forced to make the most of the purely human appeal which lay in the situation itself, that thirty thousand men, including the allied trades, were losing weeks of wages and savings, with a possible chance of the destruction of their unions, on behalf of the unskilled, the newly arrived Poles and Lithuanians who had not yet learned to look out
for themselves. Owing to the irregular and limited hours of work—a condition quite like that prevailing on the London Docks before the great strike of the dockers—the weekly wage of these unskilled men was exceptionally low, and the plea was based almost wholly upon the duty of the strong to the weak. A chivalric call was issued that the standard of life might be raised to that designated as American, and that this mass of unskilled men might secure an education for their children. Of course, no other appeal could have been so strong as this purely human one, which united for weeks thousands of men of a score of nationalities into that solidarity which comes only through a self-sacrificing devotion to an absorbing cause.

The strike involved much suffering and many unforeseen complications. At the end of eight weeks the union leaders made the best terms possible, which, though the skilled workers were guaranteed against reduction in wages, made no provision for the unskilled, in whose behalf the strike had been at first undertaken. Although the hard-pressed union leaders were willing to make this concession, the local politicians in the mean while had seen the great value of the human sentiment, which bases its appeal on the need of the "under dog," and which had successfully united this mass of skilled men into a new comradeship with those whom they had lately learned to call compatriots. It was infinitely more valuable than any merely political cry, and the fact that the final terms of settlement were submitted to a referendum vote at once gave the local politicians a chance to avail themselves of this big, loosely defined sympathy. They did this in so dramatic a manner that they almost succeeded, solely upon that appeal, in taking the strike out of the hands of the legitimate officers and using it to further their own political ends.

The situation would have been a typical one, exemplifying the real aim of popular government, with its concern for primitive needs, forced to seek expression outside of the organized channels of government, if the militia could have been called in to support the situation, and thus have placed government even more dramatically on the side of the opposition. The comparative lack of violence on the part of the striking workmen gave no chance for the bringing in of the militia, much to the disappointment of the politicians, who, of course, would have been glad to have put the odium of this traditional opposition of government to the wishes of the people, which has always been dramatically embodied in the soldier, upon the political party dominating the state but not the city. It would have given the city politician an excellent opportunity to show the concern of himself and his party for the real people, as over against the attitude of the party dominating the state. But because the militia were not called his scheme fell through, and the legitimate
strike leaders, who, although they passed through much tribulation because of the political interference, did not eventually lose control.

The situation in the Chicago Stock Yards is an excellent epitome of the fact that government so often finds itself, not only in opposition to the expressed will of the people making the demand at the moment, but apparently against the best instincts of the mass of the citizens as a whole.

For years the city administrations, one after another, have protected the money interests invested in the Stock Yards, so that none of the sanitary ordinances have ever been properly enforced, until the sickening stench and the scum on the branch of the river known as "Bubbly Creek" at times make that section of the city unendurable. The smoke ordinances are openly ignored, nor did the city meat inspector ever seriously interfere with business, as a recent civil-service investigation has demonstrated, while the water-steals for which the Stock Yards finally became notorious must have been more or less known to certain officials. But all of this merely corrupted a limited number of inspectors, and although their corruption was complete and involved the entire administration, it did not actually touch large numbers of people. During the recent strike, however, twelve hundred policemen were called upon to patrol the yards inside and out — actual men possessed of human sensibilities. There is no doubt that the police inspector of the district thoroughly represented the alliance of the city hall and the business interests, and that he did not mean to discover anything which was derogatory to the packers, nor to embarrass them in any way during the conduct of the strike. But these twelve hundred men themselves were called upon to face a very peculiar situation because of the type of men and women who formed the bulk of the strike-breakers, and because in the first weeks of the strike these men and women were kept constantly inside the yards during day and night. In order to hold them there at all, discipline outside the working hours was thoroughly relaxed, and the policemen in charge of the yards, while there ostensibly to enforce law and order, were obliged every night to connive at prize-fighting, at open gambling, and at the most flagrant disregard of decency. They were there, not to enforce law and order as it defines itself in the minds of the bulk of healthy-minded citizens, but only to keep the strikers from molesting the non-union workers, which was certainly commendable, but, after all, only part of their real duty. They were shocked by the law-breaking which they were ordered to protect, and much drawn in sympathy to those whom they were supposed to regard as public enemies.

An investigator who interviewed one hundred policemen found only one who did not frankly extol the restraint of the strikers as over against the laxity of the imported men. This, of course, was
an extreme case, brought about by the unusual and peculiar type of the imported strike-breakers, of which there is much trustworthy evidence, incorporated in affidavits submitted to the mayor of Chicago.

It was hard for a patriot not to feel jealous of the trades-unions and of the enthusiasm of those newly arrived citizens. They poured out their gratitude and affection upon this first big, friendly force which had offered them help in their desperate struggle in a new world. This devotion, this comradeship and fine esprit de corps, should have been won by the government itself from these scared and untrained citizens. The union was that which had concerned itself with real life, shelter, a chance to work, and bread for their children. It had come to them in a language they could understand, and through men with interests akin to their own, and it gave them their first chance to express themselves through a democratic vote, to register by a ballot their real opinion upon a very important matter.

They used the referendum vote, the latest and perhaps most clever device of democratic government, and yet they were using it to decide a question which the government presupposed to be quite outside its realm. When they left the old country, the government of America held their deepest hopes and represented that which they believed would obtain for them an opportunity for that fullness of life which had been denied them in the lands of oppressive government.

It is a curious commentary on the fact that we have not yet attained self-government, when the real and legitimate objects of men's desires must still be incorporated in those voluntary groups, for which the government, when it does its best, can afford only protection from interference. As the religious revivalist looks with longing upon the fervor of a single-tax meeting, and as the orthodox Jew sees his son staying away from Yom Kippur, but to pour all his religious fervor, his precious zeal for righteousness which has been gathered through the centuries, into the Socialist Labor party, so a patriot finds himself exclaiming, like Browning's Andrea del Sarto: "Ah, but what do they, what do they, to please you more?"

So timid are American cities in dealing with this perfectly reasonable subject of wages in its relation to municipal employees that when they do prescribe a minimum wage for city contract work, they allow it to fall into the hands of the petty politician and to become part of a political game, making no effort to give it a dignified treatment in relation to cost of living and to margin of leisure. In this the English cities have anticipated us, both as to time and legitimate procedure. Have Americans formed a sort of "impe-
rialism of virtue," holding on to the preconceived ideas of self-government, and insisting that they must fit all the people who come to our shores, even although we crush the most promising bits of self-government and self-expression in the process? Is the American's attitude toward self-government like that of his British cousin toward Anglo-Saxon civilization, save that he goes forth to rule all the nations of the earth by one pattern whether it fits or not, while we sit at home and bid them to rule themselves by one set pattern? — both of us many times ruining the most precious experiments which embody ages of travail and experience.

In the midst of the city, which at moments seems to stand only for the triumph of the strongest, the successful exploitation of the weak, the ruthlessness and hidden crime which follow in the wake of the struggle for mere existence on its lowest terms, there come daily accretions of simple people, who carry in their hearts the desire for mere goodness, who regularly deplete their scanty livelihood in response to a primitive pity, and who, independently of the religions which they have professed, of the wrongs which they have suffered, or of the fixed morality which they have been taught, have an unquenchable desire that charity and simple justice shall regulate men's relations.

This disinterestedness, although as yet an intangible ideal, is taking hold of men's hopes and imaginations in every direction. Even now we only dimly comprehend the strength and irresistible power of those "universal and imperious ideals which are formed in the depths of anonymous life," and which the people insist shall come to realization, not because they have been tested by logic or history, but because the mass of men are eager that they should be tried, should be made a living experience in time and in reality.

In this country it seems to be only the politician at the bottom, the man nearest the people, who understands this. He often plays upon it and betrays it, but at least he knows it is there.

This is perhaps easily explained, for, after all, the man in this century who realizes human equality is not he who repeats the formula of the eighteenth century, but he who has learned, if I may quote again from Mr. Wilcox, that the "idea of equality is an outgrowth of man's primary relations in nature. Birth, growth, nutrition, reproduction, death, are the great levelers that remind us of the essential equality of human life. It is with the guaranty of equal opportunities to play our parts well in these primary processes that government is actually concerned," and not merely in the repression of the vicious nor in guarding the rights of property. There is no doubt that the rapid growth of the Socialist party in all crowded centers is largely due to their recognition of those primary needs and experiences which the well-established governments so
stupidly ignore, and also to the fact that they are preaching industrial government to an industrial age which recognizes it as vital and adapted to its needs. All of that devotion, all of that speculative philosophy concerning the real issues of life could, of course, easily be turned into a passion for self-government and the development of the national life, if we were really democratic from the modern evolutionary standpoint, and did we but hold our town meetings upon topics that most concern us.

In point of fact, government ignores industrial questions as the traditional ostrich hides his head in the sand, for no great strike is without its political significance, nor without the attempt of political interference, quite as none of the mammoth business combinations of manufacturers or distributors are without their lobbyists in the city council, unless they are fortunate enough to own aldermen outright. It is merely a question as to whether industry in relation to government is to be discussed as a matter of popular interest and concern at the moment when that relation might be modified and controlled, or whether we prefer to wait a decade and to read about it later in the magazines, horrified that such interference of business with government should have taken place.

Again we see the doctrinaire of the eighteenth century preferring to hold to his theory of government and ignoring the facts, as over against the open-minded scientist of the present day who would scorn to ignore facts because they might disturb his theory.

The two points at which government is developing most rapidly at the present moment are naturally the two in which it genuinely exercises its function,—in relation to the vicious and in relation to the poor and dependent.

The juvenile courts which the large cities are inaugurating are supplied with probation officers, whose duty it is to encourage the wavering virtues of the wayward boy, and to keep him out of the police courts with their consequent penal institutions,—a real recognition of social obligation. In one of the most successful of these courts, that of Denver, the judge, who can point to a remarkable record with the bad boys of the city, plays a veritable game with them against the police force, he and the boys undertaking to be "good" without the help of repression, and in spite of the machinations of the police. For instance, if the boys who have been sentenced to the State Reform School at Golden deliver themselves without the aid of the sheriff, whose duty it is to take them there, they not only vindicate their manliness and readiness "to take their medicine," but they beat the sheriff, who belongs to the penal machinery, out of his five-dollar fee, over which fact they openly triumph. A simple example, perhaps, but significant of the attitude of the well-intentioned toward repression government.
As the juvenile courts are beginning to take an interest in the social life of the child, in order to prevent arrest, on the same principle the reform schools are inaugurating the most advanced education in agriculture and manual arts. A bewildered foreign parent comes from time to time to Hull House, asking that his boy be sent to a school to learn farming, basing his request upon the fact that his neighbor's boy has been sent to "a nice green country place." It is carefully explained that the neighbor's boy was bad, and was arrested and sent away because of his badness, and it is quite possible sometimes to make clear to the man that the city assumes that he is looking out for himself and taking care of his own boy; but it ought to be further possible to make him see that, if he feels that his son needs the education of a farm school, it lies with him to agitate the subject and to vote for the candidate who will secure such schools. He might well look amazed, were this advice tendered him, for these questions have never been presented to him to vote upon. Because he does not easily discuss the tariff, or other remote subjects, which the political parties present to him from time to time, we assume that he is not to be trusted to vote on the education of his child; and in Chicago, at least, the school board is not elective. The ancestors of this same immigrant, from the days of bows and arrows, doubtless taught their children those activities which seemed valuable to them.

Again, we build enormous city hospitals and almshouses for the defective and dependent, but for that great mass of people just beyond the line from which they are constantly recruited we do practically nothing. We are afraid of the notion of governmental function which would minister to the primitive needs of the mass of people, although we are quite ready to care for him whom misfortune or disease has made the exception. It is really the rank and file, the average citizen, who is ignored by government, while he works out his real problems through other agencies, and is seold at home on election day.

It is comparatively easy to understand the punitive point of view, which seeks to suppress, or the philanthropic, which seeks to palliate; but it is much more difficult to formulate that city government which is adapted to our present normal living. As over against the survival of the first two, excellent and necessary as they are, we have the many municipal activities of which Mr. Shaw has told us, but we have attained them surreptitiously, as it were, by means of appointed commissions, through boards of health endowed with exceptional powers, or through the energy of a mayor who has pushed his executive function beyond the charter limit. The people themselves have not voted on these measures, and they have lost both the education and the nourishing of the democratic
ideal, which their free discussion would have secured and to which they were more entitled than to the benefits themselves.

In the department of social economy in this Exposition is an enormous copy of Charles Booth's monumental survey of the standard of living for the people of London. From his accompanying twelve volumes may be deduced the occupations of the people, with their real wages, their family budget, their culture-level, and to a certain extent their recreations and spiritual life. If one gives one's self over to a moment of musing on this mass of information, so huge and so accurate, one is almost instinctively aware that any radical changes, so much needed in the blackest and the bluest districts, must largely come from forces outside the life of the people: enlarged mental life from the educationalist, increased wages from the business interests, alleviation of suffering from the philanthropists. What vehicle of correction is provided for the people themselves? What broad basis has been laid for modification of their most genuine and pressing needs through their own initiative? What device has been invented for conserving, in the interests of the nation, that kindliness and mutual aid which is the marvel of all charity workers who know the poor? So conservative an economist as Marshall has pointed out that, in the fear of crushing "individual initiative," we every year allow to go to waste untold capacity, talent, and even genius, among the children of the poor, whose parents are unable to shelter them from premature labor; or among the adults, whose vital force is exhausted long before the allotted span of life. We distrust the instinct to shelter and care for them, although it is as old and as much at the foundation of human progress as is individual initiative itself.

The traditional government of East London expresses its activity in keeping the streets clean, and the district lighted and policed. It is only during the last quarter of the century that the London County Council has erected decent houses, public baths, and many other devices for the purer social life of the people; while American cities have gone no farther, although they presumably started at workingmen's representation a hundred years ago, so completely were the founders misled by the name of government, and the temptation to substitute the form of political democracy for real self-government, dealing with advancing social ideals. Even now London has twenty-eight borough councils in addition to the London County Council itself, and fifteen hundred direct representatives of the people, as over against seventy in Chicago, with a population one half as large. Paris has twenty mayors with corresponding machinery for local government, as over against New York's concentration in one huge city hall, too often corrupt.

In Germany, as the municipal and social-economic exhibits of
this Exposition so magnificently show, the government has come to concern itself with the primitive essential needs of its working-
people. In their behalf the government has forced industry, in the person of the large manufacturers, to make an alliance with it, and they are taxed for accident insurance of working-men, for old-
age pensions, and for sick benefits; indeed, a project is being formed in which they shall bear the large share of insurance against non-
employment, when it has been made clear that non-employment is the result of financial crisis brought about through the malad-
ministration of finance. And yet industry in Germany has flour-
ished, and this control on behalf of the normal working-man, as he faces life in the pursuit of his daily vocation, has apparently not checked its systematic growth nor limited its place in the world’s market.

Almost every Sunday, in the Italian quarter in which I live, various mutual benefit societies march with fife and drum and with a brave showing of banners, celebrating their achievement in having surrounded themselves by at least a thin wall of protection against disaster, setting up their mutual good will against the day of misfortune. These parades have all the emblems of patriotism; indeed, the associations represent the core of patriotism — brothers standing by each other against hostile forces from without. I assure you that no Fourth of July celebration, no rejoicing over the birth of an heir to the Italian throne, equals in heartiness and sincerity these simple celebrations. Again, one longs to pour into the gov-
ernment of their adopted country all this affection and zeal, this real patriotism.

Germany affords, perhaps, the best example of this concern of government for the affairs of the daily living of its wage-earners, although Belgium and France, with their combination of state savings-banks, with life-insurance and building-associations, backed by the state, afford a close second in ingenuity and success. All this would be impossible in America, because it would be hotly resented by the American business man, who will not brook any governmental interference in industrial affairs. Is this due to the inherited instinct that government is naturally oppressive, and that its inroads must be checked? Are we in America retaining this tradition, while Europe is gradually evolving governments logically fitted to cope with the industrial situation?

Did the founders cling too hard to that which they had won through persecution, hardship, and finally through a war of revolu-
tion? Did these doctrines seem so precious to them that they were determined to tie men up to them as long as possible, and allow them no chance to go on to new devices of government, lest they slight these that had been so hardly won? Did they estimate, not
too highly, but by too exclusive a valuation, that which they had secured through the shedding of blood?

Man has ever overestimated the spoils of war and tended to lose his sense of proportion in regard to their value. He has ever surrounded them with a glamour beyond their deserts. This is quite harmless when the booty is an enemy’s sword hung over a household fire, or a battered flag decorating a city hall; but when the spoil of war is an idea which is bound on the forehead of the victor till it cramps his growth, a theory which he cherishes in his bosom until it grows so large and so near that it afflicts its possessor with a sort of disease of responsibility for its preservation, it may easily overshadow the very people for whose cause the warrior issued forth.

We have not yet apprehended what the scientists call “the doctrine of the unspecialized,” what the religious man calls “the counsel of imperfection,” and the wise educator calls “the wisdom of the little child.” If successful struggle ends in survival, in blatant and tangible success, and, as it is popularly supposed to do, in a certain hardness of heart, with an invincible desire to cling fast to the booty which has been thus hardly acquired, government will also have to reckon with the many who have been beaten in this struggle, with the effect upon them of the contest and the defeat; for, after all, they will always represent the majority of citizens, and it is with its large majority that self-government must eventually deal, whatever else other governments may determine for themselves.

We are told that mere successful struggle breeds emotion, not strength; that the hard-pressed races are the emotional races; and that wherever struggle has long prevailed emotion is the dominant force in fixing social relations. Because of this emotional necessity all the more does it seem a pity that American municipal administration has so long confined itself to cold and emotionless areas, dealing as it must with the immigrants who come to us in largest numbers from the lands of oppression, and who vote quite simply for the man who is kind to them. We do much loose talking in regard to American immigration; we use the phrase “the scum of Europe,” and other unwarranted words, without realizing that the underdeveloped peasant may be much more valuable to us here than the more highly developed, but also more highly specialized town-dweller, who may much less readily develop the acquired characteristics which the new environment demands.

To demand protection from these so-called barbarians in our midst, who are supposed to issue forth from the shallows of the city and to seize upon the life and treasure of the citizens, as barbarians of old came from outside the city walls, is, of course, not to have read the first lessons of self-government in the light of evolu-
tionary science, and to have scarcely apprehended the truth that it is, after all, from the mass, from the unspecialized, that reforms proceed.

In spite of the danger of bringing biology bodily over into the social field, it is well to remember that all biologists agree that when any growth of new tissue must take place it cannot come from the highly specialized cell, whose powers are already turned in one direction, but that it must come from the primitive cell, which has never perfected any special function and is capable of development in any direction.

Professor Weaver, of Columbia, has lately pointed out that "the cities have traditionally been the cradles of liberty, as they are to-day the centers of radicalism," and that it is natural that brute selfishness should first be curbed and social feeling created at the point of the greatest congestion. If we once admit the human dynamic character of progress, then we must look to the cities as the focal points of that progress; and it is not without significance that the most vigorous effort at governmental reform, as well as the most generous experiments in ministering to social needs, have come from the largest cities. Are we beginning to see the first timid, forward reach of one of those instinctive movements which carry forward the goodness of the race?

If we could trust democratic government as over against and distinct from the older types,—from those which repress, rather than release, the power of the people,—then we should begin to know what democracy really is, and our municipal administration would at last be free to attain Aristotle's ideal of a city, "where men live a common life for a noble end."

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SHORT PAPER

Dr. Henry Dickson Bruns, of New Orleans, Louisiana, presented a paper on "Elements of Improvement in Municipal Government."
WORKS OF REFERENCE RELATING TO POLITICAL THEORY

(Prepared through courtesy of Professor W. W. Willoughby)

AUSTIN, The Province of Jurisprudence Determined.
BLUNTSCHLI, Allgemeine Staatslehre. (English translation, The Theory of the State.)
BORNHAK, Allgemeine Staatslehre.
BOSANQUET, The Philosophical Theory of the State.
BRYCE, Studies in History and Jurisprudence.
BURGESS, Political Science and Comparative Constitutional Law.
CARLYLE, A History of Medieval Political Theory.
DICEY, Law of the Constitution.
DUGUIT, L'Etat, le droit objectif et la loi positive.
DUNNING, A History of Political Theories, vols. I and II.
GERKE, Die Staats- und Korporationslehre. (One section translated into English, with an introduction by Maitland, under title "Political Theories of the Middle Age."
GREEN, Lectures on the Principles of Political Obligation.
HOLLAND, The Elements of Jurisprudence.
IHERING, Der Zweck im Recht.
JANET, Histoire de la science politique dans ses rapports avec la morale.
JELLINEK, Das Recht des modernen Staates.
   Die Lehre von den Staatenverbindungen.
   Gesetz und Verordnung.
MERRIAM, American Political Theories.
OSTROGORSKI, Democracy and the Organization of Political Parties.
POLLOCK, History of the Science of Politics.
REHM, Allgemeine Staatslehre.
RITCHIE, Natural Rights.
SCHMIDT, B., Der Staat.
SCHMIDT, R., Allgemeine Staatslehre.
SEELEY, Introduction to Political Science.
SIDGWICK, The Elements of Politics.
   The Development of European Polity.
WILLoughby, The Nature of the State.
   Social Justice.
   The Political Theories of the Ancient World.
WORKS OF REFERENCE RELATING TO THE SECTION OF DIPLOMACY

(Prepared through courtesy of David Jayne Hill, LL.D.)

No general bibliography of this subject can be attempted here, but the following special indications may be found useful:


II. On the relations of diplomacy to history, special references are hardly practicable, owing partly to the great mass of details and to their technical character. Some idea of the labor already expended upon the Archives of Venice, so important for the history of diplomacy, may be obtained from Toderini and Cecchetti, *L'archivio di stato in Venezia nel decennio 1866-1875*, Venice, 1876; and of the historical value of the Papal Archives, hitherto imperfectly explored, from Cachard, *Les archives du Vatican*, Brussels, 1874, compared with the use subsequently made of them. The examples cited, Déprez, *Les préliminaires de la guerre de cent ans*, Paris, 1902, and Pélissier, *Louis XII et Ludovic Sforza*, Paris, 1896, published in the *Bibliothèque des Ecoles françaises d'Athènes et de Rome*, are intended only to illustrate the class of work lately done, and still remaining to be done, with these sources.


For the International Tribunal at The Hague, see Holls, *The Peace Conference at The Hague*, New York, 1900; Foster, *Arbitration and The Hague Court*, Boston 1904; Desamps, *Mémoire sur le fonctionnement du premier tribunal d'arbitrage constitué au sein de la Cour Permanente de La Haye*, Louvain, 1903; Penfield,
Some Problems of International Arbitration, address before the New York State Bar Association, January 20, 1904; Dean, Preserving the World's Peace, in The World's Work for March, 1905.

IV. The literature bearing on the relation of diplomacy to economics is too varied and voluminous for even a partial citation here, for it includes the entire theory and history of population, production, commerce, and colonization. Many interesting facts may be found in Mill, The International Geography, New York, 1900; and Adams, A Textbook of Commercial Geography, New York, 1901. Synthetic treatment is much to be desired.

The problem of cosmopolitanism versus nationalism is discussed from many points of view in Novicow, Die Föderation Europas, Berlin, 1901, and other works in French and Italian by the same author.

V. The relation of diplomacy to ethics has received practically no specific treatment, which can proceed only from a moral conception of the state and the conscience of enlightened peoples.

VI. For a knowledge of the place accorded to diplomacy in modern education, reference may be made to the programmes of colleges and universities. Among these, the courses of study offered by the Ecole Libre des Sciences Politiques at Paris and by the School of Jurisprudence and Diplomacy of The George Washington University, at Washington, D. C., are the most complete. For the educational attainments required for admission to the diplomatic service of the various countries, see their respective official foreign office publications.
WORKS OF REFERENCE RELATING TO THE SECTION OF
COLONIAL ADMINISTRATION

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LEWIS, Sir George C., On the Government of Dependencies, Oxford, 1891. (Origin-
ally published in 1841, this book is valuable, not only as a most philosoph-
ically discussion, but also as expressing the general attitude toward colonies
during the middle period of the nineteenth century.)
LEROY-BEAULIEU, P., De la Colonisation chez les peuples modernes, Paris, 1902.
LUCAS, C. P., Historical Geography of the British Colonies, Oxford, 1887-1901.
MOUREY ET BRUNEL, L’Année coloniale, published annually in Paris. Contains
a bibliography of French books and articles.

Colonial Administration, New York, 1905.

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Supplement, 1901.
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the administration of the various British colonies. (List published by P. S.
King & Son, Westminster.)
Statistical Abstract for the Several Colonial and other Possessions of the United
Kingdom.
Administrative reports published in the various colonies.
Annuaire Colonial; appears since 1888, and is now published by the French
Colonial Office.
Each of the French colonies also publishes an annuaire, a summary of the administrative organization with lists of officials, e. g.:
L’Annuaire général commercial et administratif de l’Indo-Chine française, Paris and Hanoi.
The German Parliamentary papers (Weissbücher) on colonial affairs.
Deutsches Kolonialblatt and Koloniales Jahrbuch, both published by the German Colonial Office.
The Seven Colonies of Australia, annual.
The Wealth and Progress of New South Wales, annual.
The New Zealand Official Year-Book, annual.
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ADDITIONAL WORKS OF REFERENCE RELATING TO THE SECTION OF COLONIAL ADMINISTRATION

(Prepared through courtesy of Professor Bernard Moses)

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DEPARTMENT XXI—JURISPRUDENCE
THE FUNDAMENTAL IDEAS AND CONCEPTIONS OF JURISPRUDENCE

BY CHARLES WILLIS NEEDHAM

[Charles Willis Needham, President of The George Washington University.  b. Castile, Wyoming County, New York, September 30, 1848.  B.L. Albany Law School, 1870;  L.L.D. University of Rochester and Georgetown College, Kentucky.  Trustee of Columbian University, 1893-98;  Dean of School of Comparative Jurisprudence and Diplomacy, 1898-1902;  Professor of Transportation and Interstate Commerce, Trusts, and Trade-Unions, Columbian University;  appointed by President McKinley in 1900 a delegate to Congrès internationale du Droit comparé.  Member of American Bar Association;  Geographic Society;  American Economic Society;  Cosmos Club, Washington, D. C.]

The limit of this paper will not permit me to state, certainly not to discuss, the definitions and opinions of many distinguished authors who have written upon this subject.  My aim shall be to state and illustrate what seems to me to be the true fundamental ideas and conceptions of what is called jurisprudence.

Like all concepts, the idea conveyed by the word "jurisprudence" has passed through stages of change and development.  To define clearly the present, and may I say the highest, conception, it is necessary to review briefly these changes and thus arrive at a definition of the subject to be discussed.

In its earlier, if not its original use, this word "jurisprudence" signified simply a knowledge of the laws of state.  Among the Romans it meant the knowledge of the laws recognized, administered, and enforced under the Roman rule.  This idea required the student pursuing the subject to learn the rules of human conduct, of rights, of obligations, and of remedies laid down by the juris-consults and enforced by the courts within the Roman dominion.  The study of jurisprudence meant the study of the positive, municipal law enforced or enforceable within a given territory.  In short, it was the "study of law," using a phrase now in common use and familiar to every member of the profession.  This original use of the word marks the beginning of what is termed the systematic study of the laws of a nation — the classification and codification of law.
With the growth of the philosophical spirit and the scientific method in the domain of learning, this original and practical conception of jurisprudence gradually changed. Scholars and writers arose who wanted to know the reasons for these rules of human conduct and the sources of the positive law enforced by the state. The spirit of investigation led to metaphysical discussions as to what the law ought to be, and not a little speculation as to the original source of authority. The philosophical spirit was strong and prevalent; the scientific method was of slower growth. Speculative theology was dominant among the educated classes in the early development of systematic law; its theories, dogmatic rules, and creeds were sacred and therefore above human authority, and by some thought to be above ordinary criticism. All human authority must, it was urged, conform to the letter of the conception and statement in creeds of divine power and divine will. The growth of the state and the increasing complexity of human affairs requiring new rules of conduct, together with a widening spirit of inquiry after truth, led to the discussion and the development of what was termed the law of nature. This phrase was at least less sacred, and opened the field of politics and law to freer discussion, and the human mind began its search after right as disclosed, in some degree at least, by human experience.

Other theories arose which need not be mentioned; speculation was everywhere seeking authority for government and sources of law outside of the human mind and will. These metaphysical studies are interesting as a part of the history and development of the subject, but time will not permit, nor does my aim require us to review them. It is sufficient and a relief to observe that in the course of human affairs some theologians and many jurists discovered the truth contained in the statement, "The letter killeth, but the spirit maketh alive." Then investigation and search after the spirit of the law — the principle within the rule, a knowledge of right — became the aim and work of some of the most profound writers. Then the scientific method began to develop, and with some to supersede the speculative spirit. The principle of a law was sought by a study of the rule, and its rightness determined by its beneficial operation in human society and its harmony with other principles embodied in other rules of conduct. These principles, as they are discovered and stated, form a body of fundamental truth pertaining to the character and operation of positive human law. The principles are not formulated rules of conduct, for they can be stated in a variety of phrases, but they are the essence of all formulated law.

Behind the manifestation of every visible thing there is the conception of it in the human mind. Is it a painting or a statue? If
so, it lived in the mind of the artist before his hand ever touched the brush or the chisel. We call this an ideal, and sometimes ideals are spoken of with derision; but ideals are as real and as essential as the things we touch and handle. Within every living organism there is the spirit or unseen force that we call the principle of life. The form remains when the spirit is gone out of it, but there is no longer a living organism. So every rule of conduct expresses more or less accurately a principle—a theory of right—and by this principle or theory the visible or formulated rule must be known and judged. The principle is the source of the rule more or less definitely fixed in the mind or minds that formed the rule, but in a much higher sense, because more clearly understood by the study and consideration of the rule and its operation, the principle becomes the measure or standard by which the rightness or wrongness of the rule is finally determined.

Architecture is a science. There may be speculation as to its origin, but we know as a matter of fact that the science grew out of the study of structures. Man ceased to be a savage when he became a carpenter; he became civilized when he became an architect. The science grew out of a study of many visible subjects, the work of men's hands. It involved the adaptation of things to some need in civilized life, right proportions and some adornment. The conceptions and principles which were the result of this study and comparison came into being; the study and the comparison of things cultured and enriched the mind, and in that unseen and mysterious workshop created new and higher ideals and conceptions, which in time were manifested in new visible forms. These principles, systematized, formed a body and made the science which became the standard by which all structures are judged. Looking at a building we inquire, Is it good architecturally? That depends upon its adaptation to the uses to which it is to be put; its ability to stand the strains that will come upon it; proper proportions and conformity in all its lines to the beautiful. We measure or determine it by the rules of the science. This same intellectual process is equally true in the domain of formulated law. Is the rule expressed in a given formula adapted to establish and maintain a right or to cure an evil? Does it fit into and become an harmonious part of the general system of law? These inquiries must be answered by applying as a test the principle which ought to govern in the particular case and which presumably it was sought to make prevalent by the formulated rule. It will be observed, therefore, that there is a study that is deeper and more far-reaching than the mere memorizing of rules. The rule is the visible sign; it may be committed to memory and mechanically applied to a condition or to conduct in human society; but the true conception of the rule and its right application in nearly
all cases arising under it require a knowledge of the conception or principle behind the formulated rule. These rules are the facts that are to be investigated, and in these, or by their aid, the principles of law are to be found and a true science established. Every science must rest upon the facts within its realm. As the facts multiply in a given sphere of human knowledge, the conceptions increase in number, and as these are fitly joined together a body of principles is created, and this constitutes a science; it may be of astronomy, or geology, or of law.

We have now reached a definition which is the modern conception of the word "jurisprudence." It is the science of law; not the body of positive laws enforced by a particular state, but the body of principles and generalizations regarding all those "relations of mankind which are generally recognized as having legal consequences."

But our definition must be defined. To say the science of law raises the question at once, What laws are included? To be scientific the field of inquiry must have reasonably clear boundaries. There are many laws. The word is sometimes misused, but we need not stop for the purposes of this definition to notice these inaccuracies. We have spoken of the divine law, the natural law, and we may now add the moral law and the laws of polite society. Are these within the field of investigation and study in constructing this science? They are in themselves important, but they certainly do not fall within the meaning of the word "law" as used in our definition. It is difficult to formulate a definition exactly covering the field of inquiry, and excluding that which belongs in the field of pure philosophy or metaphysics. Take that old definition, law is "a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong" — a very good one for some purposes, assuming that all laws are prescribed and are commands of the state; but there are rules of conduct to be studied which cannot be called commands of the state. If we say all laws are commands determining what is right and prohibiting what is wrong, we shall find ourselves limited to public law, statutory law, and judicial determination. This definition, therefore, is too narrow.

The moral law and what are termed the laws of polite society are certainly worthy of study and are to be observed; but these laws do not fall within our definition.

I do not say that an understanding of what is termed ethics is not necessary for the student of the science of law; it is important; without it the reasoning of the scholar will be quite wanting in essential quality and strength. But these laws fall within another science and do not come within our definition. Like most of the principles
of science, this word "law" may be defined in a variety of ways, and
taken together these definitions may include all that is to be con-
sidered; but it seems preferable to have some fixed guide outside
the wording of a rule; therefore, adding international law, I like the
definition of Sir Frederick Pollock, who says law is "the sum of those
rules of conduct which courts of justice enforce, the conditions on
which they become applicable, and the manner and consequence of
their application." This refers us to the jurisdiction of courts.

I do not say that in determining the principles contained in the
rules of conduct to be studied we may not call to our aid as tests
rules and recognized principles that lie outside of this definition.
What I claim is that to constitute the science of law, as the phrase
is here used, it must be a system or group of principles which pertain
to and should be embodied in the rules coming within this definition
of law. To determine whether a given rule comes within the general
definition quoted, we have only to inquire whether it be, first, an
international law recognized by the civilized nations of the earth,
a principle which dominates states in their intercourse with each
other; or, second, whether it be a rule which the courts of justice
of a civilized nation enforce, or follow in determining the conditions
on which the substantive law becomes applicable, and the manner
and consequence of its application. This includes the whole field
of the judicial and professional action of judges and lawyers.

Having limited the science to the laws falling within this jurisdic-
tion, we may now say that the first and highest conception of
jurisprudence is, that it is the knowledge of a body of principles co-
ordinated and systematized, pertaining to the fundamental laws
which states and the courts of states recognize and enforce in deter-
mining the conduct of a state in its dealing with other states, the
privileges of citizens temporarily within foreign territory, the rela-
tions and obligations of inhabitants to the state, and the relations
of these inhabitants with each other.

This conception gives a well-defined field to jurisprudence. It is
not the "study of law" as that phrase is usually and properly under-
stood, meaning the study of formulated law stated in maxims,
constitutions, statutes, opinions, and decrees of court, but it is the
field which in a sense lies back of all this; it is the body of principles,
the spirit of the law, which enlightened authority will seek to embody
in the visible formula.

And now let me ask whether there is not another meaning, sec-
ondary it is true, that may properly be given to this word "juris-
prudence." It is a science; may it not also be called an art? The
proper application of a science to the construction of visible things
is something more than the putting together of material. A car-
penter can build a house, but only an architect can apply the princi-
amples of the science of architecture in the building of a house. The carpenter and the architect in common use stone, brick, mortar, and wood; the structure made by the carpenter may be strong and may serve as a shelter from the storm; but the architect puts some things into his building which are not material. We call this adaptation to a particular use; proper proportion, adornment. The one has a knowledge of a body of principles which the other does not possess. This knowledge is science. The application of it in the construction of a building is an art. Is there an art in formulating law for the conduct of peoples? A tyro may put together words and create a law. It will have authority, and may chance to express some true principle of government, but it will not have proper limitations; it may disregard conditions; it may destroy or impair the operation of other principles of equal value, or create the very evil it seeks to destroy.

Suppose a legislature, impelled by some sentimental reason, exercising its political and legislative power, should undertake to determine the primary evidence of a contract in an action thereon between principal and agent, and should enact that the paper containing the order to which the principal affixed his name with his own hand should be the best evidence of the authority given. This would give expression to a very sound principle, for is not my letter to my agent the true and best evidence of what he is to do for me? But what about orders by telegraph under such a statute? This great agency of commerce is overlooked. The agent will not act upon the message delivered to him, for it is not the best evidence of his authority under such a statute. Wise jurists have worked the problem out differently in the best interest of trade by making the dispatch delivered and to be acted upon the best evidence. Under a statute such as we have supposed, the use of one of the greatest facilities of commerce would be practically destroyed, while under the rule formulated by the jurists the telegraph has become an efficient factor in modern business.

Again, a legislative body determines in its legislative capacity that it will prevent the formation of industrial "trusts" and passes an act declaring all contracts, combinations in the form of trusts or otherwise in restraint of trade, void, and the persons making them guilty of a misdemeanor; now, suppose that the common carriers, the railroads, to protect themselves against the demands of powerful corporations for special rates and privileges, enter into contracts fixing a fair rate to be charged all shippers alike, and providing heavy penalties to be paid by the company violating the contract. A case comes before the proper tribunal involving the contract between the railroad companies, and this act by its wording is declared to apply not only to the trusts but also to the railroads — these quasi-
public corporations carrying on the business of transportation — and the railroad contracts are declared void. Thereupon a great corporation, which the legislature so much feared, now demands special rates and privileges over the public highways; it insists upon lower rates and better services than are accorded to its competitors in order that by such favoritism it may crush out competition and secure a monopoly. It sends millions of tons of freight, and the manager of every line of railroad is anxious to get the business. Will the manager yield to the demand and give the special rate to get the business? Will he give better rates and facilities than his competitor across the way in order to secure the traffic of this producer and shipper of enormous quantities? It is competition, and that is what the legislature wanted. There is now no mutual contract between these quasi-public servants, with penalties attending the violation of the agreement, to prevent acceding to the demand. The special rate will be given and the industrial trust which this legislation sought to curb thrives under the law. The great corporations could hardly have done better for themselves had they formulated the statute.

All who formulate law, be they legislators or jurists, must use words; but the jurist, having a knowledge of the science of law, will put into his formula limitations which will recognize existing agencies and conditions in society, and while he gives force to the principle invoked he will not allow its operation, through the careless wording of the rule, to destroy or impair the operation of other principles of equal value. He has a knowledge of the science of law and formulates his rule according to its principles, using words covering all the conditions and principles involved. This is the use of the science; the application of the science; the art of jurisprudence.

We may next inquire whether it is proper to affix any territorial limits to the investigation. In other words, can there be a jurisprudence of a particular state? Is it proper to speak of the jurisprudence of England, or of France, or of Germany, or of any other nation? Can there be more than one science of law? We must recognize that there is a diversity in the forms of government which formulate and enforce rules of conduct. Peoples differ in language, pursuits, knowledge, and many of the things embraced within the word "civilization." May there not, therefore, be a principle good for one nation, which is error, or at least half truth, for another nation?

Take the two great systems,—the Roman law and the English common law. The Roman, at least as finally codified, was the product of cultured minds selecting and creating rules according to their best judgment of right and expediency. On the other hand, the common law was the product of the people adjusting themselves
to community life, and in the adjustment contending, one class insisting upon a certain rule of conduct and another class claiming another rule with reference to a particular matter; neither party obtained what it claimed, but they agreed at last upon a rule that should be observed by both. A common practice was thus established, which in time was recognized and enforced by the courts and became a common law. For illustration, the feudal lord demanded unlimited service from his vassal with undefined rights in the land, and the vassal made like demands upon those under him. The sturdy Saxon, loving definiteness, demanded that the amount of service which he was to render to his overlord should be defined and for that service he should have a particular interest in the soil. Out of these controversies, extending through years of time, there came at last a complex system of real-estate law, with its multitudinous tenements and rights. Again, the king contended for absolute sovereignty; the lords and their followers asked for certain liberties and rules of conduct, to be obeyed not only by the people, but by the king himself. There was stubborn contention, and out of it came the English constitution. These differences in origin between the two great systems would certainly give the greatest opportunity for two sciences of law. But can it be said that the fundamental principles of right which control those relations of men, generally recognized as having legal consequences, are so very different in the two systems? There may be a difference of theory, difference of application, possibly a difference of condition upon which the law becomes applicable, but, so far as substantive right is concerned, there is remarkable similarity in the two systems.

Doctor Holland, in his admirable work upon jurisprudence, says: "A science of law might undoubtedly be constructed from a knowledge of the law of England alone, as a science of geology might be, and in great part was, constructed from an observation of the strata in England only; yet as there is no particular science of geology, so neither is there a particular science of law. For a science is a system of generalizations which, though they may be derived from observations extending over a limited area, will nevertheless hold good everywhere; assuming the object-matter of the science to possess everywhere the same characteristics." It is true, as again stated, that "the wider the field of observation, the greater, of course, will be the chance of the principles of a science being rightly and completely enunciated; but, so far as they are scientific truths at all, they are always general and of universal application."

After careful study of the subject, the foregoing position taken by this distinguished author seems to be correct in speaking of jurisprudence as a science. We shall find, as the science of law develops, that the tendency will be to a clear statement and co-
ordination of principles which will be of universal application, and this will tend to the unity of the spirit of the law in all civilized nations, and the result will be of world-wide benefit to mankind.

As to the art of applying the science — my second definition — a different use of the word may be permitted. In America the formulation of statutory law is performed by the legislator chosen from political considerations and not because of juristic attainment; in England, having determined that a law shall be formulated, the work of doing this is turned over to lawyers. Again, in America the judge or member of the court formulates the opinion of the court and it is published without change; in England, a distinguished jurist edits the opinions, or quite often formulates in writing the opinion delivered orally by the court. In other countries there are other variations in practice. I do not say which system is the best; I simply note the difference in the method of applying the science in the business of formulating law. In painting there is a science made up of generalizations regarding color, shading, perspective, but in the application of these universal principles in putting a picture upon the canvas, there are differences which constitute schools of art, as the French, the Flemish, and others; so when jurisprudence is spoken of as an art we may, I think, properly speak of the English, the French, the German, or the American jurisprudence.

Having now defined our definition, we may next inquire as to the best methods of obtaining the principles which go to make up and which form the body of this science. First, there is the metaphysical method — the attempt to arrive at these conceptions by pure philosophy or reasoning. This method begins with the divine law, or the law of nature, so called, and traverses the field of ethical study, reaching certain conclusions; it is largely speculative, in that it does not rest upon experience as a test of its rightness; it is theory, not practice, that forms the basis of this method. The theory of the structure of the earth and of the heavens was at one time determined in this way, but it is found that more accurate and correct results are reached from the study and observation of strata of earth and rock. It was a better astronomy that came from careful observation of the motion of the planets. Safer conclusions are reached in all sciences by the study of simple known facts; things visible to the eye; matter which can be touched and handled; practices which can be investigated. So we have learned to arrive at the true principles of law by studying actual rules of conduct which are or have been enforced by courts of justice. Each rule is considered not as a perfect rule, but as an attempt to establish some right; to prevent some evil in society; to confer a remedy. Analyzing the rule and noting its operation in human relations and conditions, it has been discovered that it had a certain amount of truth,
and that in certain particulars it failed to attain the purposes intended. Like the lines which the surveyor first runs, which are not expected to be right, they are studied in order to find out how far wrong they are and thus determine where right lies. Thus fundamental principles or generalizations are reached which are derived from and rest upon human experience in the administration of states. The study of the rule itself, its applicability, and its operation are the only facts from which we may determine at last the true principle which ought to govern in a particular case.

All law, wherever administered, has a certain object in view. Generally speaking, it is the well-being of society; the greatest possible freedom of action to the law-abiding; the establishment and clear definition of rights and obligations; the righting of wrongs — all in the interest of the peace and the integrity of the community. Does a given law tend toward these results in any particular, as shown by its operation in any state? If so, we may assume that there is in it a true principle which may be taken into the account.

We are not only to discover principles, but the operation of each must be clearly observed in order to put it in right relations with others, and thus form an harmonious system. Every principle has its limitations; it cannot work independently. For example, the rule that all law shall be equally applied to every person within the state is good, but the moment we undertake to apply this principle we find that its operation is limited by what is called the status of persons. It applies with all its force to persons of normal status, but must be suspended to some extent where the status of the individual is abnormal, as, for instance, where he is a lunatic or an infant. Other principles must be taken into consideration in determining the rights or the protection which should be extended to these persons occupying an abnormal status: Conditions also change the operation of law. Take, for illustration, the rule that certain contracts in restraint of trade are against public policy and void. Under the old and simple conditions of business and the very limited territory of competition, the rule needed very little safeguarding, but with the modern development of trade and commerce, the introduction of steam, the extension of territory, and the growth of population, the word "reasonable" must be introduced and defined and given its proper force and effect in applying this rule. Not all contracts in restraint of trade are void, but only those contracts which are an unreasonable restraint of trade.

The method, therefore, must be the historical investigation of formulated law, a careful analysis of each rule, with close observation of its operation and of the ever-changing conditions of society. This method will give us the true foundation for generalization and an harmonious system.
The comparative study of law is of the greatest importance, for in the wider observation of law and of its operation under varying social conditions, the better and sounder will be the conclusions reached.

This science will never become fixed and determined; it is necessarily progressive. Conditions of life are continually changing, and laws must be modified and changed to meet the new conditions. There are certain great principles governing the relations of mankind which will always remain the same, but in their application the formulated rule will have to be changed to meet the growing and developing life of man.

The science is adaptable, easy of administration, for it is not bound by any mere verbal statement; here the spirit, not the letter, of the law prevails. The formulated rule may need revision, but a system made up of true principles, all in right relation to each other, will meet changes in social, industrial, and economic conditions in any state, and form the basis and right standard for rules of conduct in every nation. The world may not realize the dream of the poet for the federation of man under one universal government, nor may we expect, under varying forms of government and different methods of applying the science, a uniformity in formulated rules, but it is not unreasonable to hope that in the development of jurisprudence as a universal science there will come a unity of the spirit of the law throughout the civilized world.
JURISPRUDENCE: ITS DEVELOPMENT DURING THE PAST CENTURY

BY JOSEPH HENRY BEALE, JR.

Joseph Henry Beale, Jr., Bussey Professor of Law, Harvard University. b. Dorchester, Mass., 1861. A.B. Harvard, 1882; A.M. ibid., 1887; LL.B. ibid. 1887; LL.D. University of Wisconsin, and University of Chicago. Professor of Law, Harvard University, University of Chicago, and Dean of the Law School. Author of several legal treatises and books of cases for the use of students of law.

I. Introduction

The term "jurisprudence" has been used with so many meanings and each meaning is so vague, that it is necessary at the outset of any discussion of it to limit in some way the meaning intended to be put upon it. By jurisprudence, as used in the programme of this Congress, I understand to be meant the whole body of law of the European and American nations, regarded as a philosophical system or systems; in short, the science of justice, as practiced in civilized nations. My own topic, therefore, is to describe the changes in the law or in the understanding of law in the civilized world during the past century.

So broad a subject cannot, of course, be treated exhaustively nor can any part of it be examined in detail. My effort will be merely to suggest, in case of a few branches of law where the changes seem to be typical, the course and reason of the changes.

II. General Description of the Amount of Change

If we compare the condition of the law at the beginning of the century with its present condition, we shall gain some idea of the amount of change in the law itself and its administration. In England conservatism and privilege and the dread inspired in the heart of the people by the excesses of the French Revolution conspired to retain in the law the medieval subtleties and crudities, though the reason of them had been forgotten and the true application of them often mistaken. The criminal law was administered with ferocity tempered by ignorance; all the anomalies and mistakes which have disfigured its logical perfection are traceable to the period just before the beginning of the last century. Criminal procedure was still crude and cruel. The accused could neither testify nor be assisted by counsel; death was the legal, a small fine or at most transportation the actual, punishment for most seri-
ous offenses. The amount of crime in proportion to the population was enormously greater than now; there were no preventive measures, no police, not even street lights. The law of torts occupied almost as small a place as it did in the proposed codes; the law of contracts was so unformed that it was not certain whether Lord Mansfield's doctrine that a written commercial agreement needed no consideration would prevail or not. Business corporations were hardly known; almost the whole field of equity was hidden by a portentous cloud. Lord Eldon had just become chancellor. What the law of England was, such with little difference was the law of our own country. Its application to the complex life of the present was not dreamed of; and it must be greatly changed before it could be adapted to the needs of the present. Yet to say of it, as did Bentham, that it was rotten to the core and incapable of amendment, was grotesquely incorrect; to say as one of his latest disciples did that it was the laughing-stock of the Continental nations is strangely to misread history. In 1803, with all its imperfections and crudities, it was probably the most just and humane system of law under which human beings were then living.

On the Continent, feudal rights characterized civil law; torture was the basis of the administration of criminal law. And in no country of any size had the people yet obtained what had been given to Englishmen by their greatest king more than six hundred years before,—a common law. Each province throughout southern and western Europe had its custom, each land-owner his own jurisdiction. The rigor of the criminal law had been somewhat modified in France by the legislation of the Revolution, and just at the beginning of our century the Civil Code, first of the French codes, was adopted. These codes, temporarily or permanently impressed on a large part of Europe outside of France, constituted the beginning of modern legislative reform.

III. General Direction of Change

The spirit of the time molds and shapes its law, as it molds and shapes its manner of thought and the whole current of its life. For law is the effort of a people to express its idea of right; and while right itself cannot change, man's conception of right changes from age to age, as his knowledge grows. The spirit of the age, therefore, affecting as it must man's conception of right, affects the growth both of the common law and of the statute law. But the progress toward ideal right is not along a straight line. The storms of ignorance and passion blow strong against it; and the ship of progress must beat against the wind. Each successive tack brings us nearer the ideal; yet each seems a more or less abrupt
departure from the preceding course. The radicals of one period become the conservatives of the next, and are sure that the change is a retrogression; but the experience of the past assures us that it is progress.

Two such changes have come in the century under consideration. The eighteenth had been on the whole a self-sufficient century; the leaders of thought were usually content with the world as it was, and their ideal was a classical one. The prophets of individuality were few and little heeded. But at the end of the century, following the American and French revolutions, an abrupt change came over the prevailing current of thought throughout the civilized world; and, at the beginning of the period under discussion, the rights of man and of nations became subjects not merely of theoretical discussion, but of political action. The age became one of daring speculation. Precedent received scant consideration. The American Revolution had established the right of the common people to a voice in the government. The French Revolution had swept feudal rights from the civilized world. The French Republic was, to be sure, just passing into the French Empire; but it was an empire which belonged to the people, and one of which they were proud. The Emperor was the representative and the idol, not of an aristocracy, but of his peasants and his common soldiers. The dreams of Napoleon himself, to be sure, were not of an individualistic paradise, where each man's personality should have free play and restraint on his inclinations be reduced to the minimum; but so far as he was able to put his centralizing ideals into execution he raised but a temporary dam, which first spread the flood of liberty over all Europe and was finally swept away by the force of the current.

Starting from this point, the spirit of the time for more than a generation was humanitarian and individualistic. In political affairs independence was attempted by almost every subordinate people in the civilized world, and was attained by the South American colonies, by Greece, and by Belgium. In religion free thinking prevailed, and every creed was on the defensive. In society women and children were emancipated. Slavery was abolished and the prisons were reformed. It was rather a destructive than a constructive age, and its thinkers were iconoclasts.

But a change, beginning with the second third of the century, was gradually accomplished. The application of the forces of steam and electricity to manufacture and transportation has had a greater effect on human life and thought than any event of modern times. The enormous power exerted by these forces required great collections of labor and capital to make them effective. Association became the rule in business affairs, and as it proved effectual there, the principle of association became more and more readily accepted
in social and political affairs, until it has finally become the dominating idea of the time. The balance has swung; the men of our time are more interested in the rights of men than in the rights of man; the whole has come to be regarded as of more value than the separate parts. Beginning with the construction of railroads, the idea attained a firm standing in politics in the sixties. Whereas, before that time, the movement had been toward separation, now it was toward consolidation. People felt the tie of nationality stronger than the aspiration for individual development. The unification of Italy and of Germany, the federation of Canada, the prevalence of corporate feeling in America which, first passionately expressed by Webster, prevailed in 1865, mark the principle of association in political affairs. In business, the great combinations of capital have been the salient features of the change.

Professor Dicey, in a most suggestive series of lectures a few years ago, pointed out many ways in which the English law had been affected by this progress of thought during the nineteenth century; but since the thought of the whole world has been similarly affected we should expect to find, and we do find, that not merely English law but universal jurisprudence has developed in the direction of the progress of thought: during the first period in the direction of strengthening and preserving individual rights, both of small states and of individuals; in the second period in the direction of creating, recognizing, and regulating great combinations, whether of states or of individuals. Let us develop this line of thought by examining the progress of law in a few striking particulars.

IV. International Law

The most striking development of the law of nations during the last century has been in the direction, if I may so call it, of international constitutional law rather than of the substantive private law of nations. At the beginning of the period, the fundamental doctrine of international law was the equality of all states, great or small, and this idea, as one might expect, was fully recognized and insisted on during the first fifty years of the century. There was little development in the law otherwise. Each nation adopted and enforced its own idea of national rights, and was powerless to force its ideas upon other nations; when, at the beginning of the century, France set up her absurd notions of her own national rights, the other nations were powerless to restrain or to teach her. There was no international legislature or court; no method of declaring or of developing the law of nations. Each state was a law to itself; giving little more than lip service to a vague body of rather generally accepted principles. The alliance to conquer Napoleon, to be sure,
brought several great nations into a common undertaking, but this alliance, while of political importance, added nothing to the development of the law.

In the last half of the century, however, there has been an enormous development of combinations, both to affect and to enforce law; and resulting therefrom a development of the substance of the law itself. The associations of civilized nations to suppress the slave trade both made and enforced a new law. The concert on the Eastern Question, the Congress of Paris, the joint action of the powers in case of Greece and Crete, and in the settlement of the questions raised by the Russo-Turkish and Japanese wars, the Geneva and Hague conventions, are all proofs of the increasing readiness of the great powers to make, declare, and enforce doctrines of law, and they have not hesitated, in case of need, to make their action binding upon weaker states, disregarding, for the good of the world, the technical theory of the equality of all states. While all independent states are still free, they are not now regarded as free to become a nuisance to the world. Perhaps the most striking change in the substance of international law has been the extraordinary development of the law of neutrality. A hundred years ago the rights and the obligations of neutrals were ill defined and little enforced. To-day they form a principal theme of discussion in every war; and the neutral nations, for the good of the whole world, force the belligerents to abate somewhat from their freedom of action.

It may be worth while, in order to see how far this constitutional change has progressed, to look for a moment at the present condition of the constitutional law of nations. We have, in the first place, a body of states known as the "Great Powers," which have taken to themselves the regulation of the conduct of all nations. In this hemisphere the United States is sponsor for all the smaller independent nations. In Europe the Great Powers exercise control over the whole of Europe and Africa, and a large part of Asia, while in the extreme Orient, Japan seems likely to occupy a similar position to our own in the Western hemisphere. The constitutional position of this confederation of powers is not unlike that of the states of the American Confederation of 1780, and in certain ways it is even further developed. Its legislation is not in the hands of a single permanent congress, but it is accomplished by mutual consultation. For action, as Lord Salisbury once informed the world, "unanimous consent is required," as was the case in our confederation. Executive power has been exercised several times, either by the joint show of force by two or more powers, or by deputing one power to accomplish the desired result. The judiciary, as a result of The Hague Convention, is much further developed than was that of the Confed-
eration, even after 1781. All of this has been accomplished in fifty years, and the prospect of peace and prosperity for the whole world as a result of its further development is most promising.

V. Codification

The progress that has been described is well indicated by the course of the movement for codification.

Just a hundred years ago the first of the French codes was adopted. These codes had two purposes, first to unify the law, which, before the adoption of the codes, had differed in every province and every commune of France; second, to simplify it so that every one might know the law. The first purpose appealed most strongly to lawyers and to statesmen. The second appealed to the people generally. Whatever reason weighed most with Napoleon, there is no doubt which made the codes permanent. The people of France, and of the other countries where they were introduced, hailed them as creating a law for the common people. They persisted in most countries where they had been introduced by Napoleon’s arms in spite of the later change of government; whether the country on which they had been imposed was Flemish, German, Swiss, or Italian, it retained the codes after the defeat of Napoleon, and they have remained almost the sole relic of his rule, the only governmental affairs which retain his name, and, except Pan-Germanism, the only lasting monument of his labor. They persisted because they were in consonance with the individualistic feelings of the times.

Bentham urged codification on England for the same reason.

“That which we have need of (need we say it?) is a body of law, from the respective parts of which we may each of us, by reading them or hearing them read, learn, and on each occasion know, what are his rights and what his duties.”

The code, in his plan, was to make every man his own lawyer; and the spirit of individualism could go no farther than that. Conservative England would not take the step which Bentham urged; but a code prepared by one of his disciples upon his principles was finally adopted (by belated action) in Dakota and California, and was acclaimed as doing away with the science of law and the need of lawyers.

The result of the adoption of the French codes and the Benthamite codes has been far from what was hoped and expected. They were to make the law certain and thus diminish litigation and avoid judge-made law. That litigation has not been diminished by codification can easily be shown by comparing the number of reported cases in the states which have adopted the codes and in states which have not adopted the codes. As a result of this comparison, we find that
France has over 15 volumes a year of reports of decisions on points of law, 4 of them containing over 2500 cases each; England has about 10 volumes a year of reports of decisions on points of law containing about 900 cases. California has from 3 to 4 volumes of reports of decisions on points of law each year, 100 since the adoption of the Code in 1871; Massachusetts has 2 to 3 volumes of reports of decisions on points of law, 76 in all during the same period. As bearing on the avoidance of judge-made law, which, by a curious ignorance one is perhaps not quite justified in calling insane, Bentham regarded as inferior to legislature-made law, the result of the codes in one or two points will be instructive. The French code provided that all actions \textit{ex delicto} should be decided by the court as questions of fact, without appeal for error of law. Notwithstanding this provision, recourse has been had to the Court of Cassation and a system of law has been built up on judicial decisions similar in character and comparable in amount to that built up in England in the same way during the same period. There is, for instance, a French law of libel which must be learned, not from the code, but from the pages of Dalloz and the \textit{Pandectes Françaises}, just as our law of libel must be studied in the law reports and the digests. Even if a point is apparently covered by an express provision of the code, judicial decisions may affix a meaning to the provision which can only be known to a student of law. Thus the French code appears to lay down the proposition that capacity to contract is governed by the law of the party’s nation, yet the French courts refuse to apply this principle and instead of it apply the French law of capacity in each case where the other party to the agreement is a Frenchman who acted \textit{bona fide} or where the party to be bound was commorant and doing business in France. These are two examples only out of many that might be cited of the failure of the code to fulfill the hopes of its individual sponsors. If we leave the French code and come to those in our own country, we shall find the same process going on. The law of California has been developed in much the same way since the adoption of the code as before, and the common-law decisions of other states are as freely cited by her courts as authority as if their own law had never been codified. The uncertainty and confusion caused by the adoption of the New York Code of Civil Procedure is a well-known scandal.

It is true that Bentham objected to the French code as imperfect and made upon the wrong principle, and that Field objected to the New York Code of Civil Procedure as finally adopted. These objections were most characteristic. Every codifier desires not merely a code, but his own code, and will not be satisfied with any other. Hence, it follows that no complete code can be adopted which would be satisfactory to many experts in law. Furthermore,
no codifier will be satisfied to accept the judgment of a court or any body of other men upon the meaning of his code, nor to accept the interpretation of the executive department on the proper execution of the law. It will follow that each codifier of the Benthamite type must be legislature, judge and sheriff, and the logical result (like the logical result of all individualism carried to an extreme) is anarchy.

This failure of the hope of the individualistic codifiers and the change in the spirit of the age have affected our ideal of codification. The purpose of the modern codifiers is not to state the law completely, but to unify the law of a country which at present has many systems of law, or to state the law in a more artistic way. In other words, the spirit of the modern codifiers is not individualistic, but centralizing. Thus the modern European codes of Italy, Spain, and Germany were adopted in countries where a number of different systems of law prevailed, and the purpose of codification in each state was principally to adopt one system of law for the whole country and incidentally to make the expression of the law conform to the results of legal scholarship. The same purpose is at the basis of the American Commission for the Uniformity of Legislation. The purpose of the English codifiers appears to be merely an artistic one. It cannot be better expressed than by the last great disciple of Bentham, Professor Holland. The law expressed in a code, he says, has "no greater pretensions to finality than when expressed in statutes and reported cases. Clearness, not finality, is the object of a code. It does not attempt impossibilities, for it is satisfied with presenting the law at the precise stage of elaboration at which it finds it; neither is it obstructively rigid, for deductions from the general to the particular and the competition of opposite analogies are as available for the decision of new cases under a code as under any other form in which the law may be embodied." "It defines the terminus a quo, the general principle from which all legal arguments must start."

"The task to which Bentham devoted the best powers of his intellect has still to be commenced. The form in which our law is expressed remains just what it was."

Such a code as he describes is really very far from the ideal of Bentham. It does not do away with judge-made law; it does not enable the individual to know the law for himself; its only claim is that it facilitates the acquisition of knowledge by the lawyer by placing his material for study in a more orderly and logical form. The cherished ideals of the reformers of a hundred years ago have been abandoned, and an ideal has been substituted which is quite in accordance with the spirit of our own times.
VI. Individual Rights

The most striking characteristic of the progress of jurisprudence in the first half of the century was its increasing recognition of individual rights and protection of individuals. Humanity was the watchword of legislation; liberty was its fetish. Slavery was abolished, married women were emancipated from the control of their husbands, the head of the family was deprived of many of his arbitrary powers, and the rights of dependent individuals were carefully guarded. In the administration of criminal law this is seen notably. At the beginning of the century torture prevailed in every country outside of the jurisdiction of the common law and the French codes, but torture was abolished in every civilized state during this period. Many crimes at the beginning of the century were punishable with death. Few remained so punishable at the end of fifty years. The accused acquired in reality the rights of an innocent person until he was found guilty. He could testify, he could employ counsel, and could be informed of the charge against him in language that he was able to understand; and, even after conviction, his punishment was inflicted in accordance with the dictates of humanity. Imprisonment for debt was abolished. Bankruptcy was treated as a misfortune, not a crime.

As with the emancipation of individuals, so it was with the emancipation of states. The spirit of the times favored the freedom of oppressed nations as well as of individual slaves. The whole civilized world helped the Greeks gain their independence. The American people hailed with touching unanimity the struggles of Poland and of Hungary for freedom, and even the black republics of the West Indies were loved for their name, though they had no other admirable qualities.

While there has been little actual reaction in the last half-century against this earlier development of the law in the direction of liberty, there have been few further steps in that direction. The zeal for emancipation has in fact spent its force, because freedom, quite as great as is consistent with the present state of civilization, has already been obtained. So far as there has been any change of sentiment and of law in the last generation it has been in the direction of disregarding or of limiting rights newly acquired in the earlier period. France, which secured the freedom of Italy, threatens the independence of Siam; England, which was foremost in the emancipation of the slaves, introduces coolie labor into the mines of South Africa; America, which clamored for an immediate recognition of the independence of Hungary, finds objections to recognizing the independence of Panama and refuses independence to the Philippines. In the criminal law there has been no reform, though there has been much im-
provement since 1850. Married women have obtained few further rights, principally because there were few left for them to acquire, and while we have freed our slaves, we have encouraged trade-unionism. In short, the humanitarian movement of two generations ago, which profoundly affected the law of the civilized world for fifty years, has ceased to influence the course of jurisprudence.

VII. Association

The most characteristic development of the law during the last fifty years has been in the direction of business combination and association. A few great trading companies had existed in the Middle Ages; the Hanse merchants, the Italian, Dutch, and English companies wielded great power. They were exceptional organizations and almost all had ceased to act by 1860. The modern form of business association, the private corporation with limited liability, is a recent invention. Such corporations were created by special action of sovereign or legislature, in small though increasing numbers, all through the last century; but during the last generation every civilized country has provided general laws under which they might be formed by mere agreement of the individuals associated. Now the anonymous societies of the Continent, the joint-stock companies of England and her colonies, and the corporations of the United States, all different forms of the limited liability association for business, have engrossed the important industries of the world. Different countries are competing for the privilege of endowing these associations with legal existence. Corporations are formed in one state to act in all other states or in some one other state; or it may be anywhere in the world except in the state which gave them being; and so in the last fifty years an elaborate law of foreign corporations has grown up all over the civilized world. But the corporation is only one form of business combination which has become important. Greater combinations of capital have been formed, that is, the so-called trusts; great combinations of laboring men have been formed, the so-called unions; and the enormous power wielded by such combinations has been exercised through monopolies, strikes and boycotts. All these combinations have been formed under the law as it has been developed, and all are legal. Furthermore, the great business operations have come to depend more and more upon facilities for transportation, and great railroads and other common carriers have come to be equal factors with the trusts and the unions in the operations of modern business. The first effect, then, of the ideals of the present age upon the law is its development in the direction of forming great commercial associations into legal entities wielding enormous commercial power.
If such associations had been formed seventy-five years ago, the spirit of the age would have left them free to act as they pleased. Freedom from restraint being the spirit of the times, it would have been thought unwise to restrain that freedom in the case of a powerful monopoly as much as in the case of a poor slave. But at the present time we are more anxious for the public welfare than for the welfare of any individual, even of so powerful a one as a labor union or a trust, and in accordance with the genius of our age the law has developed and is now developing in the direction of restraint upon the freedom of action of these great combinations, so far as such restraint is necessary to serve the public interest. For centuries innkeepers and carriers have been subject to such control, though little restraint was in fact exercised until within the last fifty years. To-day the law not only requires every public service company to refrain from discrimination and from aggrandizing itself at the expense of the public, but the trusts and the unions also are similarly restricted. The principle of freedom of action, the courts in all questions now agree, rests upon the doctrine that the interests of the public are best subserved thereby, and applies only so far as that is true. When freedom of action is injurious to the public, it not only may be but it must be restrained in the public interest. That is the spirit of our age and that is the present position of the law when face to face with combinations such as have been created in the last generation. An interesting example of restriction is that almost universally placed upon foreign corporations; in the competition of certain states for the privilege of issuing charters, great powers and privileges have been conferred, which were regarded as against the public policy of the states in which the corporations desired to act. Strict regulations for the action of such corporations have resulted, imposed in the European countries usually by treaty, in England and America by statute.

VIII. Scientific Study of Law

A summary of the history of jurisprudence in the last hundred years would be incomplete without a consideration of legal scholarship during the period, and of the results of the scientific study of law. The reformers of a hundred years ago were profoundly indifferent to the history of law. Bentham, the founder of so-called analytic jurisprudence, wished not to understand the existing law, but to abolish it, root and branch, and to build a new system, the principles of which should be arrived at merely by deductive reasoning. It seems to us now almost impossible that such a man should have believed himself more capable of framing a practicable and just system of law than all his wise predecessors, but Bentham
was a marvel of egotism and self-conceit, and his reasoning powers were far from sound. He seems to have been incapable of understanding the nature of law. "If," he said, "we ask who it is that the common law has been made by, we learn to our inexpressible surprise that it has been made by nobody; that it is not made by King, Lords and Commons, nor by anybody else; that the words of it are not to be found anywhere; that, in short, it has no existence; it is a mere fiction; and that to speak of it as having any existence is what no man can do without giving currency to an imposture." Employing the same reasoning he would have concluded that justice, not being made by King, Lords or Commons, nor by anybody else, had no existence; that truth, since the words of it are not to be found anywhere, is a mere fiction. But these defects are too often found in reformers. The humanitarian age brought enormous benefits to the world, but its ideas were often ignorant, crude, and impracticable, and needed to be modified by the better instructed minds of the present constructive age. While Bentham was at the height of his power, the historical school of jurists in Germany was beginning its great work. Savigny was already preaching the necessity of understanding the history of law before it was reformed. Mittermaier and Brunner were to follow and carry on the work of the master. The unity of the past and present, and the need of conforming the law of a people to its needs were among their fundamental principles. Bentham had said, "If a foreigner can make a better code than an Englishman, we should adopt it." Savigny said, with greater truth and knowledge of human nature, that "no system of law, however theoretically good, could be successfully imposed upon a people which had not by its past experience become prepared for it."

The impulse given to legal study by the work of Savigny and his school has in the last generation spread over the civilized world and profoundly influenced its legal thought. The Italians, the natural lawyers of the world, have increased their power by adopting his principles. In England a small but important school of legal thinkers have followed the historical method, and in the United States it has obtained a powerful hold. The spirit of the age here too has supported it. We are living in an age of scientific scholarship. We have abandoned the subjective and inductive philosophy of the Middle Ages, and we learn from scientific observation, and from historical discovery. The newly accepted principles of observation and induction, applied to the law, have given us a generation of legal scholars for the first time since the modern world began; and the work of these scholars has at last made possible the intelligent statement of the principles of law.
SECTION A—INTERNATIONAL LAW
SECTION A — INTERNATIONAL LAW

(CHALL 14, September 22, 10 a.m.)

CHAIRMAN: PROFESSOR JAMES B. SCOTT, Columbia University.

SPEAKERS: PROFESSOR HENRI LA FONTAINE, Member of the Senate, Brussels, Belgium.

PROFESSOR CHARLES NOBLE GREGORY, University of Iowa.

COUNT ALBERT APPONYI, Hungary.


THE LEGAL NATURE OF INTERNATIONAL LAW

BY JAMES BROWN SCOTT, A.M., J.U.D.

Assembled as we are to discuss various phases of international law, we naturally assume its existence, and we need no argument to convince us that as international law has the force of law, it is and must be law. To state the case is to prove it; yet the legal nature of international law has been seriously questioned and denied by a few Continental jurists and by the analytical school of English jurisprudence.

The law of nations, it is insisted, cannot be law in the technical sense, for law is a rule of civil conduct prescribed and enforced by a superior. The rule of law contemplated in the definition must, it is said, be certain, precise, and universal in its application within the given jurisdiction. Tried by this standard, even municipal law fails, because it is anything but certain and precise except in rare instances. The existence of courts of appeal negatives the idea of certainty and precision. If it be admitted that the law of nations is still less certain, is less precise, that means only that international law is less perfect than municipal law, but imperfect law is nevertheless law. The universality of international law appears from its name, and the common law of nations is a fact, not a phrase or myth.

In the next place, even admitting the existence of an ill-defined law of nations, still there is, it is said, no supreme court of nations.

1 The Chairman of this Section, Professor James Brown Scott, of Columbia University (recently appointed Solicitor for the Department of State, Washington), opened the proceedings by an introductory address so comprehensive and so valuable to the general treatment of the subject, and so in keeping with the theory underlying the sectional work of our Congress, that it is reprinted in full.

2 For a more elaborate treatment of the same subject, see two articles by the present writer in the Columbia Law Review for June, 1904, and February, 1905.
or international tribunal in which it can be enforced, as is the case with municipal law. If we point to The Hague as a partial refu-
tion of the objection, the immediate and triumphant reply is that
the international sheriff is lacking or powerless to execute the
judgment, and necessarily so, for is not the law of nations based
upon the equality of states? It is evident, therefore, that neither
superior nor inferior can exist. There is doubtless much in this
criticism, but in fact as well as in theory international law does
exist and is accepted, applied, and observed in its entirety by all
civilized nations in their constant and common intercourse. We
may readily admit that force may be necessary to cause the observ-
ance of municipal law; but if we find international law observed
as a whole we must presume that a sanction lies back of it, whether
it be physical or moral force, or the force of public opinion. The
compelling force is, in any case, a sufficient and satisfactory sanc-
tion.

Nor is this the dream of the enthusiast; it is the sober claim
of the patient and unemotional jurist. To quote von Savigny:
"There may be developed among different peoples a community
of legal consciousness analogous to that created in a single people
by positive law. The foundation of this intellectual community is
constituted partly by a community of race, but principally by a
community of religious belief. Such is the basis of international
law, which obtains principally among the Christian and European
states, but which was not unknown to the peoples of antiquity, as
is evident by the Roman Jus fæciale. This law we may consider as
positive law, although it is not yet a completed legal system." 
(System des Heutigen Römischen Rechts (1840), vol. 1, sec. 11.)
To which may be added the statement of one hardly less distin-
guished, Von Jhering, who states his opinion unhesitatingly and
unequivocally in a single sentence: "The legal nature of inter-
national law cannot be doubted." (Zweck im Recht (1877), vol. 1,
p. 223.)

If we reject the testimony of the civilian and question the inter-
national lawyer, the answer is equally positive and convincing.
For example, the late Professor Rivier thus expressed the prevail-
ing view of Continental specialists: "The law of nations, founded
not upon simple abstractions, but upon facts, is a system of posi-
tive law. Its principles are veritable legal principles, recognized
as such and consequently as binding by the common conscience
of the states forming the family of nations." (Droit de Gens, vol. 1,
p. 18.)

If we turn now from the Continent to the English-speaking
world, the answer is indeed even more positive, if less reasoned and
philosophical. In England, international law has been declared by
the highest authorities known to the law to be a part of the municipal or common law of the realm. In the case of Triquet v. Bath (1764), 3 Burr. 1478, Lord Mansfield, in commenting upon the case of Buvot v. Barbut (1736). Talbot's Cases, 281, tried before Lord Talbot, said: "Lord Talbot declared a clear opinion: 'That the law of nations, in its full extent, was part of the law of England. . . . That the law of nations was to be collected from the practice of different nations, and the authority of writers.' Accordingly, he argued and determined from such instances, and the authority of Grotius, Barbeyrac, Brinkershoek, Wiquefort, etc., there being no English writer of eminence upon the subject. I was counsel in the case, and have a full note of it." His Lordship also remarked: "I remember, too, Lord Hardwicke's declaring his opinion to the same effect; and denying that Lord Chief Justice Holt ever had any doubt as to the law of nations being part of the law of England, upon the occasion of the arrest of the Russian ambassador." When it is noted that Messrs. Blackstone, Thurlow, and Dunning appeared for the plaintiff, it is at once evident that the case was carefully argued, thus giving additional weight to the measured judgment of the court. Three years later, in Heathfield v. Chilton (1767), 4 Burr. 2015, the same learned judge said: "The privileges of public ministers and their retinue depend upon the law of nations, which is part of the common law of England. And the Act of Parliament of 7 Anne, chap. 12 [concerning the immunities of diplomatic agents], did not intend to alter, nor can alter, the law of nations."  

And in Blackstone's Commentaries, published in the four years from 1765 to 1769, the learned commentator, who had been of counsel in Triquet v. Bath, and, therefore, spoke with peculiar knowledge and authority, said: "The law of nations (wherever any question arises which is properly the object of its jurisdiction) is here adopted to its full extent by the common law, and is held to be a part of the law of the land. And those Acts of Parliament which have from time to time been made to enforce this universal law, or to facilitate the execution of its decisions, are not to be considered as introdutive of any new rule, but merely as declaratory of the old fundamental constitution of the kingdom, without which it must cease to be a part of the civilized world."  

(Commentaries, bk. iv, chap. 5, p. 67.)

1 The language of our own Supreme Court is in point: "Sections 4062, 4063, 4064, and 4065 were originally sections 25, 26, 27, and 28 of the Crimes Act of April 30, 1570, chap. 9, I Stat. 118; and these were drawn from the statute of Anne, chap. 12, which was declaratory of the law of nations, which Lord Mansfield observed in Heathfield v. Chilton, 4 Burr. 2015, 2016, did not intend to alter, and could not alter." Per Fuller, C. J., in Re Ruiz (1859), 135 U. S. 403, 420.

2 It may not be without interest to note that Sir Robert Phillimore, likewise commentator and judge of wide experience, says briefly in confirmation of
And such is the language of the law courts in the Great Britain of to-day, although the contrary was held by a majority of one in Regina v. Keyn (1876), L. R. 2 Ex. Div. 63. To overrule this decision and make the laws of England conform to the law of nations, the declaratory Act of 41 and 42 Vict. chap. 73 was passed within two years of this discredited and universally criticised judgment. The important part of the Act for the purposes of this article is as follows: "The territorial waters of her Majesty’s dominions, in reference to the sea, means such part of the sea adjacent to the coast of the United Kingdom, or the coast of some other part of her Majesty’s dominions, as is deemed by international law to be within the territorial sovereignty of her Majesty." The preamble declares that "the rightful jurisdiction of her Majesty . . . extends and has always extended " over such bodies of water.

Or to quote the language of Sir Henry Maine: "In one celebrated case [Regina v. Keyn], only the other day, the English judges, though by a majority of one only, founded their decision on a very different principle, and a special Act of Parliament was required to reëstablish the authority of international law on the footing on which the rest of the world had placed it." (International Law, pp. 38 et seq.)

But the matter does not rest here, for in the year of grace, 1905, an English court has had occasion to consider carefully the nature and relation of the law of nations to the law of England. The various decisions of Lords Talbot and Mansfield in Buvot v. Barbut, Triquet v. Bath, Heathfield v. Chilton, were referred to and followed as correct and, therefore, binding expositions of the law.

The far-reaching importance of the case makes it advisable to state in some detail the facts as well as the opinion of the court in West Rand Central Gold Mining Company v. The King (1905), L. R. 2 K. B. 391. It appeared that, within the month preceding the outbreak of the war between the South African Republic and Great Britain, certain officials, acting on behalf of the Transvaal Government, seized a quantity of gold, the product of the plaintiff’s mine, and it further appeared as a matter of law that the Transvaal Government was liable to return the gold or its value to the plaintiff.

The counsel for plaintiff based the right to recover upon three grounds: first, that by international law the sovereign of a con-

Blakstone: "In England it has always been considered as a part of the law of the land." (Commentaries on International Law, vol. 1, p. 78.)

And the late Mr. Joel P. Bishop cites this very passage as representing the law in his own as well as Blackstone’s day: "Governments," Mr. Bishop says, "like individuals, cannot exist together without law to regulate their mutual relations; hence the law of nations. It is in truth common law (4 Bl. Com.); or, rather, the common law has appropriated the law of nations, making it a part of itself." (1 New Crim. Law, 5th ed. (1892), sec. 483.)
quering state is liable for the obligations of the conquered; secondly, that international law forms part of the law of England; and, thirdly, that rights and obligations, which were binding upon the conquered state, must be protected and can be enforced by the municipal courts of the conquering state.

Inasmuch as the court took jurisdiction of the case, it is evident, therefore, that both the nature and status of international law were necessarily involved, as well as its binding effect upon British courts of justice.

A portion of the opinion of Lord Chief Justice Alverstone, well known as Sir Richard Webster to international tribunals, follows: "The second proposition urged, that international law forms part of the law of England, requires a word of explanation and comment. It is quite true that whatever has received the common consent of civilized nations must have received the assent of our country, and that to which we have assented along with other nations in general may properly be called international law, and as such will be acknowledged and applied by our municipal tribunals when legitimate occasion arises for those tribunals to decide questions to which doctrines of international law may be relevant. But any doctrine so invoked must be one really accepted as binding between nations, and the international law sought to be applied must, like anything else, be proved by satisfactory evidence, which must show either that the particular proposition put forward has been recognized and acted upon by our own country, or that it is of such a nature, and has been so widely and generally accepted, that it can hardly be supposed that any civilized state would repudiate it. The mere opinions of jurists, however eminent or learned, that it ought to be so recognized, are not in themselves sufficient. They must have received the express sanction of international agreement, or gradually have grown to be part of international law by their frequent practical recognition in dealings between various nations. We adopt the language used by Lord Russell of Killoween in his address at Saratoga in 1896 on the subject of International Law and Arbitration: 'What, then, is international law? I know no better definition of it than that it is the sum of the rules or usages which civilized states have agreed shall be binding upon them in their dealings with one another.' In our judgment, the second proposition for which Lord Robert Cecil contended in his argument before us ought to be treated as correct only if the term 'International Law' is understood in the sense, and subject to the limitations of application, which we have explained. The authorities which he cited in support of the proposition are entirely in accord with, and, indeed, well illustrate, our judgment upon this branch of the arguments advanced on behalf of the suppliants; for instance,
Barbuit's Case, Cas. t. Tal. 281; Triquet v. Bath, 3 Burr. 1478, and Heathfield v. Chilton, 4 Burr. 2016, are cases in which the courts of law have recognized and have given effect to the privilege of ambassadors as established by international law. But the expressions used by Lord Mansfield when dealing with the particular and recognized rule of international law on this subject, that the law of nations forms part of the law of England, ought not to be construed so as to include as part of the law of England opinions of text-writers upon a question as to which there is no evidence that Great Britain has ever assented, and \textit{a fortiori} if they are contrary to the principles of her laws as declared by her courts. The cases of Wolff v. Oxholm, 6 M. & S. 92; 18 R. R. 313, and Rex v. Keyn, 2 Ex. D. 63, are only illustrations of the same rule, namely, that questions of international law may arise, and may have to be considered in connection with the administration of municipal law."

If we now consider the status of international law in the United States, we shall find the American in strict accord with the English doctrine. The first craft that carried an English settler to the New World was freighted with the common law, of which, as we have seen, the law of nations was and is an integral part. Revolution might and did repudiate British sovereignty, but the common law as the measure of individual rights and liabilities withstood the storm and stress of agitation. The nation was born into the family of nations and promptly professed obedience to the law of nations "according to the general usages of Europe." (\textit{Ordinance of 1781, Journals of Congress}, vii, 185; 1 Kent's Commentaries, p. 1.) Upon the permanent organization of the government, international law was recognized in the Constitution as in the Ordinance of the Revolutionary Congress. In Article I, Section 8, Congress is specifically empowered to "define and punish piracies and felonies committed on the high seas, and offenses against the law of nations; to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water."

Now technical words and expressions used in the Constitution, and borrowed from the English system of jurisprudence, such as the common law, equity, admiralty, the law of nations, are to be understood and interpreted as in the system from which they are borrowed, for which no authority need be cited. Were not this so, the time-honored system of trial by jury would not be our heritage as it is that of our ancestors across the water. For as Mr. Justice Harlan well says: "It must consequently be taken that the word 'jury' and the words 'trial by jury' were placed in the Constitution of the United States with reference to the meaning affixed to them in the law as it was in this country and in England
at the time of the adoption of that instrument.” Thompson v. Utah (1898), 170 U. S. 343.

The law of nations was not something newly created by this clause of the Constitution; it is recognized as existent, to determine whose nature and extent resort must be had to English jurisprudence.

The English cases previously cited and the paragraph quoted from Blackstone show, it is believed, that international law was a part of the common law. As, therefore, the lawyers who framed the provisions of the Constitution were trained in the common law, and were familiar with its principles from a careful study of the Commentaries, it is impossible to consider the law of nations other than as a part of the common law of England, and by the Constitution of the United States it is, therefore, a fundamental and integral part of our jurisprudence.

But there is another not less potent argument for this view. Congress is given power to punish offenses against the law of nations. The law of nations is thus contemplated as an existing system and part of our municipal law. Else why is Congress given power to punish the violation? For it is elementary that nations do not, as a rule, punish breaches of foreign law. Infractions of the municipal code are a sufficient tax for judge and legislature. It is likewise elementary that Congress may indeed vary the law of nations in so far as our citizens are concerned, and that the courts would be compelled to give effect to the statute; but it is equally clear that the Act of Congress in such cases would be construed with evident reluctance and great strictness.

Even before the formation of the present Constitution, the Federal Court of Appeals admitted, in a single and well-chosen phrase, the superiority of international over municipal law: “The municipal laws of a country cannot change the law of nations so as to bind the subjects of another nation.” (The Resolution, 1781, 2 Dallas, 1, 4.) But, if nations may not alter international law, they may, by their municipal law, according to Chief Justice M'Kean, in the case of Ross v. Rittenhouse (1792), 2 Dallas, 160, 162, “facilitate or improve the execution of its decisions, by any means they shall think best, provided the great universal law remains unaltered.”

If that be the measure of municipal power, it follows that any attempt to enlarge the boundaries of municipal at the expense of international law will be regarded with suspicion. Thus, in the case of The Charming Betsy (1804), 2 Cr. 64, 118, Mr. Chief Justice Marshall said: “It has also been observed that an Act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, and consequently can
never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations as understood in this country."

And in The Nereide (1815), 9 Cr. 388, 423, the same eminent authority said: "Till such an Act [of Congress] be passed, the court is bound by the law of nations, which is a part of the law of the land."

And as Mr. Bishop has gravely and impressively expressed it: "Doubtless if the legislature, by words admitting of no interpretation, commands a court to violate the law of nations, the judges have no alternative but to obey. Yet no statutes have ever been framed in form thus conclusive; and if a case is prima facie within the legislative words, still a court will not take the jurisdiction should the law of nations forbid." Again: "All statutes are to be construed in connection with one another, with the common law, with the Constitution, and with the law of nations." (Criminal Law, 7th ed., 60, 69. See also 8th ed., sec. 124.)

If the matter rested here, the true construction of this fundamental passage might well be in doubt, but the courts have passed upon it and its meaning in numerous cases. The binding effect of international law has been held in a variety of cases from the institution of our federal courts to the present day, and there is not a well-considered case to be found in the books that declares international law to be other than municipal law of the United States. An early and carefully considered case is United States v. Smith (1820), 5 Wheat. 153, in which the Supreme Court held, per Story, J., that an Act of Congress of 1819, referring to the law of nations for the crime of piracy, is a constitutional exercise of the power of Congress to define and punish that crime; and that the crime of piracy is defined by the law of nations with reasonable certainty. In the Act of Congress referred to, the act of piracy as defined by the law of nations was held sufficient without further definition because international law is part of our municipal law.

In the case of The Scotia (1871), 14 Wall. 170, Strong, J., held that our courts take judicial notice of international law. "Foreign municipal laws," he says, "must be proved as facts, but it is not so with the law of nations."

But a more recent and by much the most authoritative case on the subject is the Paquete Habana v. United States (1899), 175 U. S. 677, in which the late Mr. Justice Gray of the Supreme Court squarely held the doctrines advanced by Lords Talbot, Hardwicke, Mansfield, and Sir William Blackstone, and incorporated in numerous decisions of the august tribunal of which he was a member. The case arose out of a capture in the recent Spanish-American war of two Spanish boats, the Paquete Habana and the Lola. The question before the courts was, Are fishing smacks in the absence of municipal
law or treaty protected from capture by the law of nations, and is
such a law of nations part of the municipal law of the United States?
In deciding the first question in the affirmative, the learned Justice
said: "International law is part of our law, and must be ascertained
and administered by the courts of justice of appropriate jurisdiction,
as often as questions of right depending upon it are duly presented
for their determination. For this purpose, where there is no treaty,
and no controlling executive or legislative act or judicial decision,
resort must be had to the customs and usages of civilized nations;
and, as evidence of these, to the works of jurists and commentators,
who by years of labor, research, and experience have made them-
selves peculiarly well acquainted with the subjects of which they
treat. Such works are resorted to by judicial tribunals, not for
the speculations of their authors concerning what the law ought to
be, but for trustworthy evidence of what the law really is."

In this remarkable opinion, not only is international law held to be
law in the legal sense of the word, but the sources of that international
law binding upon our courts are sketched with a masterly hand.
It is submitted that this case settles the question for an American
lawyer as fully and clearly as a decision of a court of final resort
can ever settle a matter properly before it, namely, that interna-
tional law is law; that it is part of our municipal law; that our
courts take judicial notice of it as such.

The conclusion, therefore, is irresistible, whether the point of
approach be the reason and philosophy of the civilian, the theory of
the international specialist, or the practical standpoint of the bench
and bar, that international law is law and as such binding upon nation
and citizen alike.
THE PRESENT AND FUTURE STATE OF INTERNATIONAL LAW

BY HENRI LA Fontaine

(Translated by Maurice Léon, Esq., of the New York Bar)

[Henri La Fontaine, attorney of the Court of Appeals, Senator of the Kingdom of Belgium, Brussels. b. April 22, 1854. LL.D. Free University of Brussels. Professor of International Law at the New University of Brussels, 1894; Director of the International Bureau of Bibliography, 1895. Member of the International Bureau of Peace, 1893. Author and editor of The Rights and Duties of Builders of Public Works; Treatise on Counterfeiting; International Pasigraphy; Compendious and Chronologic History of International Arbitration; Bibliography of Peace and Arbitration.]

The legal needs of men are modified in the course of centuries, as are their material and intellectual needs. Laws have been multiplied like products and works, and out of primitive, shapeless, and chaotic custom have sprung successively all the legal categories, the law of private rights, the law of commerce, admiralty law, constitutional law, administrative law, penal law, industrial law.

The easy communications, the universal exchange of merchandise, the very recent organization of the world market, have almost suddenly given to the category which entered last the legal domain, to international law, a considerable and dominating importance. Internationalism is now ubiquitous; it is becoming difficult to undertake an enterprise or create an institution, the expansion of which will not perforce be international, and that word has henceforth conquered such favor that it is applied to the least international matters. Law is fated to follow the general evolution. It is the plastic armor of humanity, and that armor has modeled itself at all times upon humanity with extraordinary precision.

Therefore, international law is not, strictly speaking, a law distinct from all others. It is only the enlargement, according to the size of the whole world, of the divers legal categories. It is as vast of itself as all the national legislations, over which it is superposed and which it is destined to absorb and unify. Its domain is immense, and one understands easily how it is that the societies and publications, which are devoted solely to the study of questions relating to international law, have multiplied to a singular extent these last years.

The problems of international law relate essentially to two main and traditional subdivisions,—private international law, which regulates the legal relations between individuals of different nationalities or the private rights of the individuals who are regarded as
isolated from the point of view of the legislations of the countries in which they have their domicile or residence; public international law, which regulates the relations between states, whether in times of peace or during conflicts and wars, and the legal organization of the society of nations.

Private international law is, as we think, more than public international law, destined to be the law of the future. It would be the law of the twentieth century, were it possible to suppress with one stroke of the pen or one act of the will the sixty historical centuries, the atavistic and hereditary influences of which place an almost insuperable obstacle in the way of the early unification of private law. This is apparent in a really striking way in the midst of the vast American Republic. Although each of the states which form the united republic is composed of elements almost identical, derived, for the most part, from the distant lands of Europe, nevertheless, each of these states preserves, with jealous care, the right to enact its own law and to differentiate it from that of the neighboring states.

Though it may be easy to understand and explain the diversity of local and cantonal laws of countries like Germany or Switzerland by the diversity of their races, or the influence of the feudal system, it is more difficult to understand and to explain how such a differentiation is produced among men who have been freed from the nationalistic prejudices which have still so strong a hold in the old world. In fact, it may be seen that one of the most serious difficulties in the way of making private law international will arise from the diversity of the legislations adopted by the states of the American Union.

This situation calls for most serious thought, for the old countries of Europe have all successively followed the example given by France when that country, carried away by the great humanitarian wave of the Revolution of 1789, and led by the steel will of Napoleon, decided to unify its local legislations and to endow the world with a civil code. Since then the other countries of Europe, first Italy, and last Germany, have unified their private law. Switzerland will before long possess a single civil code, the draft of which has already passed through the various stages preliminary to its final adoption.

This very phenomenon of national unification of the private law leads us to look for its international unification. It must not be forgotten that it is the countries where conflicts between local laws have been most strenuous in the course of the last centuries, where the statutory literature has been richest and most ingenious, namely Italy, France, and Belgium, which were the first to feel the inconvenience of multiplied legislations, and put an end to the regrettable controversies of former days amounting to veritable dialectical games and inconsiderate waste of intellectual forces. It would be
worthy of the great American Republic, the economical instrumentality of which tends to render the use of natural and physical forces as sparing as possible, to apply the same principles to its legal instrumentality, and to make of American law what it has made of American industry.

Even now, besides, humanity is proceeding, too slowly, as we think, toward the unification of private law. This movement, begun by the Paris International Convention of March 20, 1883, on industrial property (patents and trademarks) has been continued by the international convention of September 9, 1886, entered into at Berne regarding authors' rights (copyright). It is strange to see that it is precisely in that part of the law which has been codified most recently by the various nations, that of intellectual rights, that the need of legislation by international convention made itself felt first, and with the greatest intensity. This legal phenomenon appears, in a way, as the symbol of the nearing evolution of law.

A movement which is not less powerful has taken shape on the other side, in the course of the last quarter of the last century, in that part of the law which relates to the economical relations between nations. It will suffice that I recall the congresses which took up the bill of exchange, and the organization in 1896 of the International Maritime Committee, and its successive resolutions regarding collisions at sea, the liability of ship-owners, salvage and life-saving, all being the work of the conferences of Brussels (1897), Antwerp (1898), London (1899), Paris (1900), and Hamburg (1902). Here again it may be said that this phenomenon is symbolic of the human legal state of mind.

But while the intellectual life of the world and its economic life tend toward the unification of law, it is certain that as regards rights in rem, on the one side, and rights in personam on the other, unification will be realized only with the greatest effort.

Rights in rem have their origin in the nature of cultivation and development (of the soil), and often belong also to the manner in which the family is constituted. It will be sufficient to allude to the common ownership of pastures and woods, so frequent still in Switzerland and Belgium, to the parceling of lands in France, to the right of primogeniture in England, to the freedom of the home from seizure or attachment, proclaimed by various legislations, in order to realize how difficult it would be to secure at this time any unification in this matter.

As for rights in personam, which relate to guardianship, to majority, to marriage, divorce, to the rights between husband and wife, and between them and their children, to the matrimonial status, it is certain that difficulties, which are not less great than the difficulties relating to the rights in rem, are opposed to a near unification.
But the need of reducing to a minimum the realm of conflicts in these particularly delicate matters caused the calling by the government of Holland of a conference, which met in divers sessions and brought about the convention signed June 12, 1902, relating to marriage, divorce, separation, and the guardianship of minors. This convention will soon be followed by other similar conventions, which will cover the whole field of rights in personam.

On the other side the conference had already adopted, during a previous session, a convention signed November 14, 1896, relating to ticklish questions of civil procedure, particularly in matters of proving of judiciary and extrajudiciary documents, of rogatory commissions, security for costs, legal aid, and civil arrest.

What may likewise be considered as a sign of the times and a first step toward conventions of a still more extended reach than those which we have just noted is the convention agreed upon July 8, 1899, between France and Belgium regarding judicial jurisdiction, and the authority and execution of judiciary decisions, arbitrations, and also notarial documents. It is really certain that forms of procedure when so varied and special are one of the means most effectually availed of by persons of bad faith to render more precarious the economic relations between the several nations. Under the pressure of necessity, in this matter so strongly formalized and routine-like, the spirit of reform and reciprocal confidence has taken hold, and this again is a circumstance which, more than those we have enumerated, permits us to believe in human unity, and the unification of the law of the world.

It is pertinent to recall and proclaim here that the states of South America, by the memorable convention of Montevideo, entered into in January and February, 1889, had the honor and glory of giving the world a good example in the realm of private international law. When we examine the manner in which the unification of law has been accomplished among the several nations, we find that it was not brought about, with all the fullness which it involves, until the day when each people became definitely constituted in national unity. The private law of a nation was codified when the administrative and political instrumentality of that nation had become an accomplished fact.

We think that the same thing will occur for the family of nations, and that the private international law code will become a reality only on the day when the international administration will be definitely organized, and when the public law of nations will have been wholly formulated. We have the profound conviction that that is the duty nearest at hand of jurists and legislators, and already many conventions lead us surely toward the organization of a universal federation of nations.
The stages to be gone through from that point of view may, as we think, be summarized as follows: The creation of international offices, the organization of an international court, the preparation of a public international law code, the organization of an international parliament, the formation of a permanent international cabinet, and the adoption of an international budget to be voted on, universal disarmament and the creation of a force of international police, the selection of a world capital.

At first blush such an enumeration will cause many a smile and will arouse many doubts; but it is important to remember that the first international convention, which may be considered as the very first step upon the road, the itinerary of which we have made bold to indicate, dates back only to 1864, and that since then the number of similar conventions has increased with extreme swiftness. The fact is that in Geneva, on August 22, 1864, the Red Cross Convention for the purpose of improving the conditions affecting wounded soldiers belonging to armies engaged in campaigns was signed, and it is in this domain of war, which is in principle a negation of all humanitarian and brotherly thoughts, that a regulation was first attempted and accomplished.

Is not such a fact of a nature to destroy all doubts and justify every hope? Humanity, which acclaimed the performance of such an act and assured its execution, could not refuse to regulate, on an international scale, its innumerable material and intellectual needs, nor did it refuse; we might almost dispense with the mention of what has been accomplished from this point of view, for the work accomplished is contemporaneous, and surely present in all memories. But we deem it useful to sketch, in general lines, a synthetic picture of what has been done.

This work is above all evidenced at this day by the creation of international offices, the usefulness and value of which are not now contested by any one.

It is in the realm of transportation that the most important treaties have been signed and successively examined and agreed upon: The question of marine signals in the conferences of London and Paris in 1864, and that of uniform navigation rules studied from 1879 to 1897, in meetings called likewise in these two capitals; that of telegraphy and submarine telegraphic cables settled by the Paris Conventions of May 17, 1865, and May 14, 1884; that of the mails settled by the Berne Convention of October 9, 1874; that of railway transportation of merchandise settled by the Berne Convention of October 14, 1890. Mails, telegraphy, and railroads since then have at Berne special international offices.

This matter of the conveyance of ideas, men, and things has, thanks to the mails and to telegraphy specially, made of the earth a single
city, and permits us to be the terrified spectators of eruptions in Java and Martinique, of cyclones in Louisiana, and battles in Manchuria; thanks to steamers and locomotives it has made of the world a single market, the fluctuations of which, being felt as far as the antipodes, prove more than any other phenomenon the fact of the world solidarity; to this matter the question of weights and measures, which also was the subject of an international convention, the metric convention signed in Paris May 20, 1875, and for which a permanent office was established in France, is made to relate directly. It is to be hoped that this last convention, which proved so important in facilitating relations between men will, at an early day, bind all the nations that have not yet adopted the unity of metric measure. We are tempted to express a similar wish, though one which, alas! is more Platonic and the realization of which is more problematical, in favor of a universal monetary unity, and of an international monetary convention similar to that from which have sprung the Latin and Scandinavian monetary union agreements which were signed respectively in Paris December 23, 1865, and in Copenhagen May 27, 1873. At least, the legitimate hope may be expressed that the moneys of the various nations will be struck so as to establish simple relations between them, and thus facilitate their circulation upon the whole surface of the globe.

Humanity has pondered likewise over the question of regulating the struggle against the gravest diseases, which come from the unhealthy regions of the far-away Orient. The conventions entered into regarding this matter are numerous already, and have been signed successively in Dresden, April 15, 1893, in Paris, April 3, 1894, and in Venice, April 19, 1897. It is probable that similar conventions will come into existence for the purpose of attenuating endemic diseases like tuberculosis and syphilis. We may also refer to the phylloxeric convention reached in Berne, September 17, 1878, and which belongs to the same category. It is known that the conventions relating to cholera and the plague have brought about the creation of international stations of inspection.

This matter of social defense against diseases is intimately bound with the acceptance of an international pharmacopoeia, the preparation of which has been intrusted to a special commission by a conference which met in Brussels in September, 1902.

Another convention, which also deserves having attention called to it, is that which was signed July 2, 1890, for the purpose of putting an end to the slave trade in Africa; the international office charged with the duty of having the provisions of this treaty carried out has its headquarters in Brussels.

In Brussels also is found the headquarters of the international
office for the publication of customs tariffs. This office was organized under a convention of July 5, 1890.

The international geodetic bureau, the headquarters of which is at Berlin, in accordance with the terms of a convention signed in that city October 27, 1886, may also be alluded to. To that convention, which is of a more particularly scientific character, may be said to be due the understanding reached between the main observatories of the world for photographing the skies in a uniform manner.

The intellectual ponderings which are at the basis of the geodetic and astronomic conventions, to which we have just referred, are likewise responsible for the signing of an international convention at Brussels, March 15, 1886, for facilitating the exchange of official documents and of scientific and literary publications. In each of the countries which became parties to said convention is found an office charged with assuring such exchange.

Finally, the conventions relating to industrial rights (patents and trademarks) and to copyright, to which reference has been made above in connection with the evolution of private international law, has likewise resulted in the creation of two permanent offices established at Berne.

Thus, it is seen, the international administrative instrumentality is in full formation. Although the international offices have been organized until now in a sporadic and scattered manner in many places, it is none the less certain that they already form an imposing whole, and everything presages that new offices will be added to those already established. It is sufficient to draw attention to the existence of the international offices created now without preliminary international conventions: The international colonial office and the international bibliographic office at Brussels, also the international labor office at Berne. To these may be added the permanent offices of a large number of international congresses which evidently are destined to become transmuted into official international bureaus recognized by the governments.

The establishment of an international court, which we consider as an essential element of the second stage, is also almost an accomplished fact. Henceforth that court possesses its headquarters and its palace. It virtually exists, though it may not be effective, for a court may be looked upon as existing only if it has judges and a procedure, and if it is permanent and can compel submission to its powers. As it is now organized, the international court is but a court of arbitration, the judges of which are selected by the parties in interest, and the intervention of which is essentially brought about by consent.

It is certain, however, that, although so organized, the court of
arbitration constitutes a considerable progress over what existed previous to its creation. Recourse to arbitration dates back to distant periods; traces of it have been found in the institutions of ancient Greece, and historians have proved its usage during the Middle Ages. But arbitration became an international custom in a somewhat regular way only after 1794, when the United States of America and Great Britain intrusted to arbitrators the solution of the first differences which arose after the War of Independence. Since that time these two nations have remained faithful, in a large measure, to that peaceful mode of settling international conflicts. Until the end of the last century, Great Britain and the United States were interested in and parties to seventy and fifty-six compromises, respectively, while all the European states together have had recourse to the jurisdiction of arbitration only eighty-nine times. This shows that the practical propaganda in favor of arbitration has been most followed by the nations of Anglo-Saxon origin.

It is interesting to note that recourse to arbitration has been singularly frequent in the course of the last century. There were but eleven arbitrations from 1801 to 1820, eight from 1821 to 1840; thenceforth their number increased as follows; twenty from 1841 to 1860, forty-four from 1861 to 1880, ninety from 1881 to 1900. Furthermore, recourse to arbitration was included, from 1823 to 1900, in numerous treaties by compromise clauses of either special or general character, numbering one hundred and thirty-eight. Finally, from 1880 to 1900 eleven permanent arbitration treaties were concluded.

It was natural that the idea of a permanent institution should arise in the minds of jurists, and it is known that the creation of an international court had been suggested and discussed long before the organization of the court of arbitration of The Hague. This discussion was mainly the work of volunteers, who, since 1815, have instituted an untiring propaganda in favor of peaceful ideas. The innumerable societies which they have created in all the countries of the world, and which have been grouped, since 1891, about the international bureau of peace in Berne, the congresses called by them since 1838, which have become regular and annual since 1889, have contributed largely, with the interparliamentary union,—the sessions of which, since its creation in 1889, have had from year to year greater importance and publicity,—to accustom the public and diplomacy to the idea of an international court.

It is known how the arbitration court was evolved from the deliberations of the Peace Conference. It will be recalled what profound world-wide emotion was aroused by the since famous rescript issued by the Emperor of Russia in 1898. While the enthusiasm of nations was great, the incredulity of diplomats was thorough. The failure of the conference was predicted and discounted, and those
who met on May 18, 1899, in the "Maison au Bois" certainly did not anticipate that a work endowed with life would spring from their deliberations.

Two months later, namely, July 9, 1899, thanks to the sincerity and energy of a few men, thanks to the atmosphere created by persistent peace-lovers, a convention for the peaceful settlement of international conflicts was entered into. It is divided into three chapters devoted respectively to good offices and mediation, to international commissions of inquiry, and to arbitration.

Arbitration was thus solemnly proclaimed as the normal and best mode of reaching a solution regarding differences between nations. Since then that procedure has become familiar to the public everywhere, and the expression, often misunderstood in the past, has taken its full value and acquired a rare force of penetration.

The official staff of diplomacy did not hesitate, nevertheless, to ignore the arbitration court. They were inspired by the hope of allowing the new institution to die through desuetude and to bury it beneath indifference and silence. But the United States of America, by their firm attitude, furnished to the arbitration court the opportunity of passing upon its first cause, and the difference relating to the California Pious Fund will remain, owing to that fact, a celebrated case under the law of nations, as famous as that of the Alabama controversy. Since then the conflict between Venezuela and a large number of powers, that between Japan and Germany, between France and Great Britain, have brought before the bar of the arbitration court most of the nations of the first rank in the order of their population and economic standing.

As has been said above, despite the fact of its existence and despite its activity, the arbitration court is not an international tribunal. Therefore the jurists and peace-lovers have taken up again their propaganda with new vigor: Recourse to this international jurisdiction must be compulsory, all nations must be able to appeal to its high intervention, and, finally, its competency must extend to all future conflicts, whatever their nature.

It is possible even now for the states which have not been admitted to take part in the deliberations of 1899, owing to a voluntary and unjustifiable forgetfulness, for which they may never be sufficiently blamed, to profit from the advantages of the convention relating to arbitration, as shown by Article xxvi thereof, which states that the court of arbitration is open to states not signatory which are in conflict with signatory states. It is under this provision that Venezuela was admitted to be heard before the arbitration court. Besides, Article xix authorizes states to conclude arbitration treaties of greater scope than the arbitration convention of 1899. Moreover, it is permissible for all states to conclude arbitration
treaties declaring that in case of a conflict the proper course will be to refer the matter to the judgment of the arbitration court of The Hague.

It is by reason of these provisions that Denmark and Holland, in their remarkable treaty of February 12, 1904, rendered arbitration as between them compulsory, and recourse to the arbitration court of The Hague possible, whatever the cause of conflicts bringing about disagreements. They took care, besides, to declare that all states may adhere to said convention by means of a simple notice.

Henceforth it is possible for all states, without a new meeting of the Peace Conference, to bring about a considerable progress in matters of arbitration jurisdiction. Henceforth the road is open to the formation of an arbitration union, and we shall be happy to see here again the United States in the rôle of giving anew in this case the example of a complete adherence to the principles adopted by Denmark and Holland.

But, as we think, such a progress is not entirely sufficient. It will be necessary that procedure before the international tribunal be modeled after the procedure before ordinary tribunals. It will be necessary that it be possible to summon, and also to give judgment by default, where a state is in default. No reason in principle is opposed to the introduction of that power in public international law, and no really effective jurisdiction can be conceived without it.

It will also be proper to have the judges who will form the international tribunal irremovable. At the present time the arbitrators are chosen by each of the parties among persons who are devoted in advance to the interests of the party which has appointed them; the odd arbitrator thus becomes the sole judge who decides with either one or the other set of judges. In order to assure their complete independence, it may become necessary to completely denationalize the international judges, and to place them in a state of absolute neutrality and incompatibility.

In order that the international court may be in a position to render decisions with full impartiality, not only must its formation be assured and its procedure regulated, but the law which it is to apply must be laid down for it. At the present time the international custom and the provisions of international conventions alone have served to guide the decisions of arbitrators. They, no doubt, will continue to have their guide, but there are general principles of international law which it would be well to formulate in precise texts. The body of these texts should form the international code.

Drafts of such a code have already been prepared by eminent jurists, so that this is not a matter of striving after a vain Utopia. The only important question to be faced is that of knowing if such a code will be the work of diplomacy or of a juridical international
committee. Or yet, whether it will be necessary to wait for its preparation until an international parliament shall become a reality.

If one is to refer to what has been done hitherto, it is evident that this care will be intrusted to diplomacy assisted, perhaps, by a special commission. It is a fact that diplomacy has definitely formulated in the Convention of July 9, 1899, the laws and customs of war on land, as it had previously formulated the rules relating to the care to be given to the wounded belonging to land military forces, and extended its scope by the special Convention of July 9, 1899, also to the wounded in naval war. The laws and customs of war had been drafted long before by the Institute of International Law, and had been adopted, in fact, by most of the governments of civilized countries.

The work to be performed by diplomacy in codifying the rules of the law of nations would not offer greater difficulties than the drafting of the laws of war, brought about by the deliberations of the Peace Conference. This will be mainly a work of coördination, for all the ticklish questions of the law of nations have been studied by notable jurists, and an almost complete understanding exists between them upon the essential points.

We had noted, shortly before, that the calling of an international parliament should, perhaps, precede the adoption of an international code which would essentially be the work of such a deliberating assembly. But the answer might be made that the gathering of such an assembly hardly seems probable. As for us, we deem that the calling of such a parliament has become a necessity, and that, therefore, it may become an early reality. Such an assembly exists even now, and though it has limited its work to the few questions of more immediate importance, it constitutes none the less an international deliberating body, created out of the various parliaments of the world. We are now alluding to the Interparliamentary Conference, constituted in 1899, and which held its twelfth session in St. Louis in 1904. This session has been particularly remarkable in that its object was precisely the adoption of a resolution to the effect that the states be requested to call an international parliament, a congress of nations. It is interesting to note that it is upon this American land, at the outset of the movement for peace, that a competition was opened on the question of what would be the best mode to employ for the purpose of assuring the organization of a congress of nations. It is from the land of America, one century after, that a call for identically the same purpose has just been issued with the approval of the representatives of fifteen divers parliaments. This shows that the idea is not Utopian, and that it appears as the logical consequence of all international evolution.
A question might be asked, nevertheless, namely, In what manner will the members of such an assembly be appointed? It seems to us that the various parties in the different parliaments might be called upon to appoint their delegates in proportion to their size, and the number of members to be appointed would be proportionate to the number of the inhabitants of each country, while assuring, however, a minimum number of representatives to countries with a small population.

It is hardly possible to conceive a parliament without a permanent delegation, charged with executing its decisions and bringing about the preliminary study of the problems to be resolved. Such a delegation will constitute in reality an international cabinet, and will be composed essentially by those at the head of the various organisms of international life. The importance of international offices at present established, and which are, as we think, the embryonic elements of the future department of the international cabinet, is now apparent. For it is difficult to conceive of such a cabinet otherwise than as a vast administration for international needs.

It is, of course, not easy to indicate at the present time how such a cabinet would be organized. But it may be anticipated as to some of its main departments. The department of land and marine transportation, first of all, will absorb the present post, telegraph, and railroad offices. That of hygiene will supervise the struggle against epidemics and epizootic diseases of all kinds, and of whatever origin, and will be charged with the carrying out of the international sanitary convention. That of the arts and sciences will absorb the offices relating to international exchanges, industrial inventions, intellectual works, the bibliographical international office, and the geodesic bureau. The special mission of supervising the formation of an international library and of a world university might also be given it. The department of justice would supervise the normal progress of the international tribunal, would prepare works of international codification, and insure the execution of the judgments reached over conflicts between states. It might be well to intrust to it the carrying out of the conventions relating to inferior races and African tribes.

Such a ministry or cabinet would, in fact, be only an enlargement and a coordination of the international administrations now existing, and the resources placed at present at the disposal of the various international offices might be considered as the elements for an international budget to be voted on by the international parliament. That budget, which would include only expenditures for peaceful purposes, would, by that very fact, be of modest size. At the present time the appropriations for the various international bureaus reach hardly the sum of a million francs. This small budget
for works having a world-wide bearing is in happy contrast with the enormous budgets of the various civilized nations.

We will now refer to a last point before ending this sketch of the work to be accomplished in the field of public international law. The present armies form, in times of peace as well as in times of war, an essential element of the life of nations. Will it always be thus? We make bold to affirm the contrary. All the arduous problems, half of which at least constitute the domain of public international law and which have for their object the rights of belligerents and neutrals, will be definitely eliminated. Even now the disarmament of nations appears as a work of paramount utility, despite numberless difficulties which seem to be in the way of its realization.

We need not recall that this disarmament was the main preoccupation of the Emperor of Russia in his rescript of 1898, and while its discussion has disappeared from the order of the day of the Peace Conference, it has, nevertheless, been solemnly declared by the diplomats gathered at The Hague that military burdens constitute for the nations an unbearable evil. Numerous publicists have not hesitated to face the problem, and the solutions suggested by them may be summarized as follows: Truce in armaments, partial and simultaneous disarmament, final disarmament. A truce in armaments would of itself bring about tremendous relief, for it would put an end to the competition in armaments which drags nations into making ever renewed expenditures, always becoming larger and weightier, leading toward irremediable bankruptcy.

Partial and simultaneous disarmament would, no doubt, be the nearest and most reasonable solution, and it does not appear henceforth as an impossibility, in view of the arrangements reached between Chile and the Argentine Republic, which had for their object the reduction of the naval forces of both countries.

There remains the question of final disarmament. Regarding this delicate matter the last Interparliamentary Conference did not hesitate to declare itself in favor of a thorough study. As has been said above, the question of disarmament has not been stricken off the programme drafted by the Czar; its discussion alone has been adjourned. The Interparliamentary Conference has but recently invited the governments to bring about the meeting in a new session of the members of the Peace Conference with a view to discussing the questions belonging to it, among which final disarmament figures in the first rank of international matters. This invitation was unanimously agreed upon, and it will have, as we hope, considerable weight with statesmen when they are considering taking action.

How may such a disarmament be conceived? It is known that the present armies have, in time of peace, only a limited size. The men who are freed from active service are thereafter incorporated
into civil life, and their final liberation could bring about no economic disorder. As for the troops under arms, it would be possible to maintain them in active service by transforming their mission of defense into one of police: Part of the troops of each of the states would form the nucleus of an international police, charged with assuring the carrying out of the decisions of the international court. Already at the time of the troubles in Crete, an international naval force was organized for the purpose of assuring in this conflict respect for the unanimous will of Europe.

This was only, of course, an ephemeral and passing event, and the gathering in one spot of armed soldiers of various nations, between which no unfortunate animosity exists at present, might not be free from a certain danger. But the example given recently by France and Great Britain shows that the most inveterate animosities may be effaced with a little good will. International interparliamentary visits, such as those of London and Paris, may be made more frequent and the friends of peace will spare no effort to bring them about. It is possible to create a peaceful opinion as an aggressive public opinion was created systematically in former days.

We firmly believe that it is in the interest of all, of governments and of nations, to guide definitely the course of world-politics in that direction, and it is not in vain, as we hope, that for the carrying out of these resolutions the last Interparliamentary Conference has appealed to the energetic and firm intervention of the head of the American Republic.

We have now come to the end of this swift enumeration, in the course of which we have striven to show what international law, private and public, now is and towards what goal it is proceeding. It is certain that its essential mission is to pacify the world. As the duel has degenerated from its primitive function of settling private conflicts until it has become an offense and a crime, war to day, though still the object of legal rules which ratify its legality, will be transmuted into a crime committed by the many, and will be brought to the level of individual assaults _vi et armis_ and become the object of provisions in an international penal code.

Only when really pacified will humanity formulate definite international law. It is for this reason that we have been brought to examine, in the course of this study, many questions of rather political than juridical character. But law is essentially an epiphenomenon. It is only the formula which is placed upon the fact. The jurist, being intimately convinced of this truth, is compelled to interest himself in events, to follow them and to influence them as far as possible, that he may assure by their realization the triumph of law in the world.
It is thus that we are led to ask ourselves a last question: In what place shall the administrative, legislative, and judiciary organs of humanity, having definitely entered into the juridical era, be situated? Where shall the world-parliament deliberate; in what city shall the international administrations be gathered; where shall the international court sit? We have already been invited to give our opinion regarding this problem, and we have not hesitated to give it a solution which would seem bold and audacious at first blush. In our opinion the most serious obstacle in the way of pacification of the world and of its submission to the sole force of law arises from the situation created by the war of 1870 between Germany and France. The colonial appetites, so acutely sharpened during these last years, did not succeed in creating serious misunderstandings between the civilized nations. The Berlin Convention of February 26, 1885, has shown that Europe was capable of viewing such difficulties with wisdom and moderation. But the conquest of Alsace and Lorraine has been the direct cause of the inconsiderate development of contemporaneous armaments. With a really exemplary courage, the study of this situation has been taken up anew during these last years, both to the east and the west of the Rhine, and various propositions have been suggested. The division or exchange of the conquered provinces has won over the most authoritative elements. It has seemed to us that the idea of neutralization was more fruitful if connected with the ideas here presented. The Reichsland of the German Empire would become the Weltland of the world-empire and Strassburg might become the modern Cosmopolis.

Where war has raged and triumphed, there should law be enacted and its respect assured by world-administration and an international court. About these political organisms would rapidly be grouped international scientific and intellectual institutions. There the main congresses might have their center of irradiation; there a universal library and a world-university might be organized most usefully; there the Association of Academies might have its main headquarters, and the dismantled fortress might become the vast human city open to all nations and all races.

There would be upon the earth only vast provinces of a vast empire, ruled by a single law, common to all men and all states.
SOME PROBLEMS OF INTERNATIONAL LAW

BY CHARLES NOBLE GREGORY

[Charles Noble Gregory, Dean of the College of Law since 1901, State University of Iowa. b. Unadilla, Otsego County, New York, August 27, 1851. A.B. University of Wisconsin, 1871; LL.B. ibid. 1872; A.M. ibid. 1874; LL.D. ibid. 1901. Associate Dean of the College of Law, State University of Wisconsin, 1894-1901. Member and a Vice-President of American Bar Association; International Law Association; and one of the Vice-Presidents of its Antwerp Conference, 1903; Political Science Association. Author of numerous legal articles in leading law publications of the United States and England.]

When Hugo Grotius published his great work on international law he entitled it Concerning the Law of Peace and War. That obvious division of this great subject continues after the lapse of nearly three centuries.

"The law of war," says Professor Holland, "as is well known, consists of two great chapters, dealing respectively with the relations of one belligerent to the other and with the relations of each belligerent to neutrals." He goes on to show that the former has been discussed for at least six centuries, not to mention classical antiquity. The latter is comparatively modern, dating as a separate subject only from the eighteenth century, "though it has already come far to surpass in complexity and importance the law of belligerency."

It is with some problems in this surpassing branch of the law of war, "the relations of each belligerent to neutrals," that we wish to deal.

The Treatment of Neutral Blockade Runners

In discussing in print during the last year the law of blockade, the writer said that while "the older writers approved of the corporal punishment of the blockade-runner," yet "this is now wholly obsolete, and a confiscation of the ship, and, by the rule of infection, of any cargo belonging to the ship-owner, and of any portion of the cargo belonging to an owner cognizant of the blockade or who makes the master his agent, is the sole punishment." A very eminent and gifted English judge, whose name has for two generations been especially and most honorably identified with public law,—Sir Walter Phillimore,—by letter, courteously discussing the proposition, suggested to the writer that the rule could hardly be considered as settled; that it must be held at least in doubt. Sir Walter cited the practice of the United States in the war with the Confederacy, and especially the imprisonment of the late Sir

2 Yale Law Journal, April, 1903.
William Allan, M. P., and his published reminiscences of the same. Sir William, by birth a Scotchman, lived for years in the United States, but returned to his native country and was later captured by a United States cruiser in Savannah Harbor while serving as chief engineer on a vessel engaged in running the blockade. He was held in prison for six weeks, until he bribed a sentry to take a letter to Lord Lyons, British Minister at Washington, and was then released on parole.  

Unfortunately, I have been unable to find Sir William’s published reminiscences. Neither is the State Department nor the Navy Department able to refer me to the facts in the case, nor has the incident been observed in a very extended examination of the printed volumes containing the history of the Federal and Confederate navies. However, Sir Walter quotes to me a letter from Sir William, written just before the latter’s death in December last: “The United States authorities did imprison men taken in blockade-running. Our vessel (Diamond) was taken to Washington. We were turned over from the naval to the military authorities there, . . . marched to the provost marshal’s quarters. Answered our names there, then our commitments to the old Capitol Prison were made out.” There they were “quartered with prisoners and had hard usage.” Eventually he was paroled out and given a written “parole” describing him as a prisoner of state, which parole he retained through life.

It must be freely admitted that owing to unfamiliarity with international law and to the suspension, as a war measure, of the writ of habeas corpus, so that our courts could not intervene, numbers of cases like the above seem to have occurred. That the situation was complicated by the fact that it was a matter of constant controversy, first, as to the neutrality of the ships, often claimed to be Confederate ships and only colorably sailing under a neutral flag; secondly, as to the nationality of the members of the crew, who were largely British, speaking the same language with the people of the United States, and who had often, like Sir William, lived for years in the United States. The rule excepting from imprisonment applies only to neutrals upon a neutral ship, and not to belligerents, or subjects, or to those operating a vessel of the belligerent government.

So the commandant of the Philadelphia Navy Yard wrote Acting Rear-Admiral Lee March 31, 1863: “I have disposed of the crews of the captured vessels — foreigners sent on shore, and citizens of the United States confined.”

March 21 in the same year, Captain Boggs of the Sacramento, one of the blockading ships off Wilmington, wrote to the rear-ad-

 Admiral in command, asking instructions as to the disposition of persons "taken out of vessels seized as a prize for violating the blockade. To send them north in the vessel would require a much larger prize crew than the exigency of the fleet will permit. They are generally a daring set of men, and the compensation to them would be the strongest inducement to attempt a recapture."¹ The rear-admiral instructed him in reply to send those known, or for good cause suspected, to be citizens of the United States, north to the commandant of the navy yard to which the vessel conveying them might be bound. "Those against whom no such proof or suspicion is entertained, if they are not needed as witnesses in the adjudication, will be released from the blockading vessel as soon as practicable."²

Certain of the crew of the captured British blockade-runner Adeline were released on signing an engagement not to be again employed in like proceedings. Secretary Welles instructed the flag officer of the blockading squadron that the Secretary of State held this not warranted by public law and that the crew could not be held as prisoners of war and that they were absolved from the obligation.³

On July 25, 1863, President Lincoln instructed the Secretary of the Navy as follows:

"You will not in any case detain the crew of a captured neutral vessel or any other subject of a neutral power on board such vessel, as prisoners of war or otherwise, except the small number necessary as witnesses in the prize court.

"Note.—The practice here forbidden is also charged to exist, which, if true, is disapproved and must cease. [The President adds:] What I propose is in strict accordance with international law, while if it do no other good, it will contribute to sustain a considerable portion of the present British Ministry in their places, who, if displaced, are sure to be replaced by others more unfavorable to us.

"Your obedient servant,

"Abraham Lincoln."

The right as a reasonable precaution to place the captured crew in irons lest they rise and overpower the prize crew was maintained in an elaborate letter of Secretary Seward to Lord Lyons in 1861.⁴

The crew of the Emily St. Pierre, taken off Charleston, did retake the ship, gagging and putting in irons the prize officers and crew.⁵

In January, 1864, the Department of State sent to the Secretary of the Navy intercepted correspondence showing that vessels oper-

² Ibid. vol. viii, p. 804.
³ Ibid. vol. xii, p. 462.
⁴ Ibid. vol. xii, p. 407 et seq.
⁵ Ibid. vol. xii, p. 814.
ated by the Confederacy in blockade-running were under orders to conceal their nationality, and suggesting that it would be proper to direct that henceforth British blockade-runners be detained in custody and not released as heretofore. Secretary Welles ordered accordingly and countermanded inconsistent orders, but this was in turn revoked by the Secretary of the Navy May 16, 1864, and full instructions issued in accord with the views of President Lincoln, before expressed, exempting bona fide neutrals on neutral ships from treatment as prisoners of war, and holding them "entitled to immediate release." 

The modern doctrine that neutral blockade-runners on a neutral ship are not subject to bodily punishment is not contravened, it is submitted, by the ultimate practice of the United States in its blockade of the Confederate coast, by all odds the greatest blockade known to history. It is believed that it is sustained by the text-writers generally.

In the second great blockade of the past eighty or ninety years, that of the Cuban coast, the Instructions of Blockading Vessels and Cruisers, issued by the Secretary of the Navy of the United States in 1898, and prepared by the State Department, expressly declare: "9. The crews of blockade-runners are not enemies and should be treated not as prisoners of war, but with every consideration."

The whole subject is most admirably reviewed by Calvo. The older practice is shown and that of the United States in the war with the Confederacy, and at the close he justly observes: "The usage concerning the non-infliction of bodily punishment on persons guilty of violation of blockade has become uniform enough so that we can consider confiscation of the property captured as now the sole punishment."

The consul-general of the United States at Yokohama, by letter of July 27, 1904, kindly advises me that in the present Russo-Japanese war the Japanese have treated neutrals captured in attempting to run the blockade at Port Arthur in the same way, holding them as witnesses, it might be, but not as prisoners of war. That is, however, not strictly a blockade. The legation of Japan at Washington, under date of August 13, 1904, advises me of like practice by Japan as to officers and crews of neutral ships recently captured while carrying contraband, which is comparable to breach

2 Ibid. vol. ix, p. 405.
3 Ibid. vol. x, pp. 60, 61.
5 Calvo, Le Droit International, tome v, sec. 2899.
The rule as quoted from Calvo, that great and authoritative writer on public law, seems, it is submitted, to meet with continued and universal acquiescence.

Contraband of War

On the 14th of February, 1904, Russia, by proclamation, announced that in the war with Japan she would treat as contraband combustibles of all kind, such as coal, naphtha, alcohol, and other like materials. Also all materials for the installation of telegraphs, of telephones, or railroads. This proclamation, together with an explanatory instruction of March 6, also declares contraband anything capable of serving as food or forage for the Japanese army, and especially rice and fish and its different products, beans and their oil. By ordinance of April 26, cotton was added to the list. Under these declarations and ordinances, Russian war-ships have seized neutral vessels bound for Japanese ports and claimed as prize of war articles of the character listed. For instance, they have seized and caused to be condemned a cargo of American flour on a neutral ship not consigned to the Japanese Government or in any way ear-marked for belligerent use except by its destination to a port of Japan.

The doctrine that articles which may serve alike the uses of peace or war are not contraband unless intended for the military uses of a belligerent rests on two broad principles:

First. That neutrals under modern usage cannot be hindered in their general right to trade in innocent articles of commerce with belligerents except by an actual blockade, never by a proclamation.

Secondly. International law forbids a belligerent to make war upon the civil or noncombatant population of its opponent, and, as Hall says: "Hence seizure of articles of commerce becomes illegitimate so soon as it ceases to aim at enfeebling the naval and military resources of the country and puts immediate pressure upon the civil population." 2

The claim of Russia has been at once controverted. The Department of State of the United States, in a communication to the ambassadors of the United States of June 10, took the ground that articles of double use (ancipitis usus) are contraband if they are destined for the military uses of a belligerent. It points out that the principle of the Russian declaration "might ultimately lead to

1 Revue Générale de Droit International Public, Mai et Juin, Documents, p. 12 et seq.
2 Hall's International Law, (5th ed. 1904), p. 656.
a total inhibition of the sale by neutrals to the people of belligerent states of all articles which could be finally converted to military use," and adds that such principles "would not appear to be in accord with the reasonable and lawful rights of a neutral commerce." Queen Elizabeth would not allow the Poles and Danes to furnish Spain with provisions, alleging that by the rules of war "it is lawful to reduce an army by famine." 1 But the present government of England has expressed its accord with the views of Secretary Hay by an official note of protest, dated August 1, against the claim that food is absolutely contraband. 2 Lord Lansdowne, in the Lords, August 11, said that the Russian declaration "greatly amplified the definition of contraband, including much England regarded as innocent. England would not consider herself bound to recognize as valid the position of any prize court which violated the recognized international law." And Mr. Balfour in the Commons, on the same day, said as to the doctrine that a belligerent could draw up a list of articles it would regard as contraband and that prize courts must decide accordingly: "If that doctrine were accepted without reservation, neutrals would be at a serious disadvantage." August 25, in reply to the shipping deputation, Mr. Balfour said there was no possibility of Great Britain receding, inasmuch as she knew she stood "on the basis of all recognized international law to be found in all the text-books and in accordance with the general practice of civilized nations."

The English view, and it is believed it is the view of the world, is well put by the Law Times of London. 3 It declares "the position of Russia as to contraband cannot be accepted for a moment by Great Britain," and says the point is well summed up by the London Times in a leading article: "To entitle a belligerent to treat goods as contraband, there must be a fair presumption that they are intended for warlike use, and such presumption does not arise from the mere fact that they are consigned to a belligerent port. In other words, non-blockaded ports should be open to the legitimate trade of neutrals, and belligerents who ... have not the power to establish an effective blockade cannot be suffered to attain the object of such blockade by an ... extension of the definition of contraband."

At least, since the Declaration of Paris of 1856, a paper blockade is of no legal force, and a blockade to be recognized by the law of nations must be "maintained by a force sufficient really to prevent access to the coast of the enemy." 4 This immensely increased the

1 Taylor's International Law, p. 736; Grotius, Droit des Gens, iii, secs. 112, 117, and note to sec. 112.
2 Boston Evening Transcript, August 9, 1904.
4 Wheaton's Intcr. L., 4th Eng. ed., 1904, p. 691. See this also declared in
security of neutral commerce and ought not, by the device of declaring an extension of the list of contraband articles, to be done away at any time by any belligerent. The Russian declaration, which seeks to treat as contraband substantially all fuel and food and the staple from which clothing is made, would certainly have this effect if enforced, and the most objectionable harrying of neutral commerce and deprivation of noncombatant belligerents would be liable to follow. That this is no small matter to neutral trade is shown by a very simple consideration of the facts. If we regard the excessive number of two or even three millions of persons as engaged in or by location or otherwise infected by the warlike operations of Japan, then neutral ships cannot carry supplies of food or fuel or clothing to those three millions without liability to seizure, but they may still carry such supplies with entire immunity to some forty-two millions of Japanese, constituting the civil population. The extension by the terms of the Russian proclamation is of a limitation, lawful as to one fifteenth of the people, to the whole people, and it seems an unwarranted invasion of the plain rights of neutrals to trade in these great staples with forty-two millions of people.

It is certainly customary for belligerents to announce what articles they will treat as contraband, and the Institute of International Law resolved in 1877 that belligerent governments should determine this in advance on the occasion of each war, and Prince Bismarck so stated in reply to a complaint of Hamburg merchants; but no substantial alteration of the rules of international law can be so made.

If a belligerent, commanding the sea, can thus paralyze the neutral transport of food, fuel, and the staples of clothing, the suffering and death inflicted on the millions of noncombatants in such island nations as Great Britain or Japan are appalling and quite unwarranted by public law, and the blow to neutral commerce is utterly destructive.

Considering the greatly improved facilities for inland transit, the test of noxious or not according to the character of the port of consignment may require modification, but such articles are, by the great weight of authority and practice, not, as Russia would make them, absolutely contraband, but conditionally so, if intended for warlike use.

So late as December, 1884, Russia, at the Congo Conference, declared that she would not regard coal as contraband, and foodstuffs were not in her list of contraband in 1900.

Russian Declaration of February 14, 1904, "Le blocus, pour être obligatoire doit être effectif."  
1 The entire number of persons in the army and navy of Japan, including reserve and landwehr, as appears by the Statesman's Year-Book of 1904, p. 864, was 667, 302.
2 Hall's International Law, 5th ed. 1894, p. 653; Annuaire for 1878, p. 112.
3 Lawrence's War and Neutrality in the Far East, p. 158.  
4 Ibid. p. 166.
His Excellency, Count Cassini, the ambassador of the Czar at Washington, on the 15th of September, kindly called my attention to the fact that: "As to the question of one of the belligerents declaring absolute contraband goods, not generally recognized as such, it cannot be regarded as something quite unusual. During the Franco-Chinese war, for instance, the French Government declared rice absolutely contraband without consideration to its use, which declaration was left unprotested by any neutral power."

With deference it is submitted that the action of France was in that case promptly protested by England and that Lord Granville gave notice that Great Britain would not consider herself bound by a decision of any prize court in support of the claim of France, and no seizure of rice was in fact made.\(^1\)

Supplies of American canned meats bound for Port Arthur and Vladivostock were, at the opening of the war, seized by the Japanese, but they were plainly contraband as destined for the use of the enemy's armed force.\(^2\)

As Dr. Lawrence shows, England imports about four fifths of the wheat and flour she consumes, and, as he says, "The value of our food trade to other nations secures that we shall receive powerful assistance in our efforts to keep it open. It is a matter of life and death for us to prevent any change in international law which shall make the food of the civilian population undoubtedly contraband, and if arguments and protests will not do it, force must." \(^2\)

The United States is a great exporter of cotton (she produces about two thirds of the world's supply) and of food products. About one half of her population is directly engaged in agriculture, or constitutes the households of those who are so engaged. As a result, no government can maintain itself in that republic which does not use all possible efforts to keep open this foreign trade in field products.

Against earnest and concurrent action on the part of these two powers it would seem strange if Russia should successfully carry out her plan for extending the definition of contraband, and so turn back the happy progress of neutral right. In so far as condemnations have already taken place, they will undoubtedly be the source of claims for damages which will not be easily satisfied.

The fact that cotton was declared contraband by the United States in its war with the Confederacy seems hardly in point, as cotton was then substantially a government monopoly in the Confederacy and almost its only source of revenue.\(^3\) Cotton and its seed are the most considerable item in the imports of Japan, being

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\(^2\) Lawrence's *War and Neutrality in the Far East*, p. 167.

almost twice as great again in value as sugar, the second article in value in the list.

The whole record as to claims and rulings as to contraband is singularly confused and conflicting, but the claim advanced by Secretary Hay seems so clearly within the practice and the weight of authority of the past half-century that it is hoped it may prevail. Neutral rights are the rights of the vast majority, and they should not be lightly prejudiced for those of the belligerents, who are always a small minority. The disturbance to trade, moreover, caused by a state of belligerency between any two maritime nations is now world-wide. Steam and electricity have made us all near neighbors, and exactly as the peace and order of a closely-settled urban community must be kept by far more stringent regulations than that of a community of scattered shepherds and farmers, just so the peace and security of the vastly increased and greatly more connected and interwoven commerce of the modern seas must be preserved by correspondingly adequate rules.

The St. Petersburg dispatches of September 12 seem to intimate that Russia, upon the advice of the commission of eminent persons appointed by her to consider this matter, is inclined to modify her declaration as to absolute and conditional contraband in substantial accord with the American and British notes, except as to cotton, and this is confirmed by those of the 19th. The action is received with very wide satisfaction, and, it is believed, is in accord with the peaceful and beneficent sentiment of the world. Russia is to be congratulated upon the wisdom and humanity of this action, and Secretary Hay upon his successful protest against what he well characterized as "a declaration of war against commerce of every description between the people of a neutral and those of a belligerent state."

_Belligerent Act in a Neutral Harbor_ \(^1\)

The seizure of a Russian vessel of war by the Japanese in the Chinese harbor of Chefoo on August 12 involves most grave questions of international law. The Russian vessel was pursued by Japanese destroyers, but escaped from them in the night. They later found her in the neutral harbor. The Japanese vessels waited outside the port. The Russian failed to come out. The Japanese commander, anticipating his escape by night and a possible attack on merchantmen, entered the port with two destroyers. It is claimed the Russian had been in port twenty-seven hours, and was not yet

\(^1\) A reply to this discussion was printed by Mr. K. K. Kawakami, attached to the Imperial Japanese Commission at St. Louis, in the _Japanese-American Commercial Weekly_, of September 24, 1904.
completely disarmed. A Japanese officer with an armed force was sent on board in the night — the hour was 3 A.M. — with a mes-
sage that the Japanese expected her to leave by dawn or to surrender. The Russian commander refused and was overheard directing that the ship be blown up. At the same time he seized the Japanese officer and threw him overboard, falling with him, and the Japanese interpreter was thrown overboard. The forward magazine exploded, killing and injuring several. The Japanese being armed, and the Russians disarmed, the former prevailed in the mêlée and took possession of the vessel and removed her from the harbor. The Japanese loss, due to the explosion, was one killed, four mortally wounded, and nine others injured. Admiral Alexieff informed the Czar that the vessel was disarmed the day before, according to arrangements with the Chinese officials. The captain and most of her officers and crew swam ashore and reported that the Japanese fired on them as they fled. The Russian captain reports that he had disarmed the ship, and having no arms to resist what he calls a piratical attack in a neutral harbor, ordered the ship blown up.

Admiral Alexieff says the Russians were conferring with the Chinese officials as to a temporary stay to repair the ship's engines, and had given up to the Chinese officials the breech-blocks of the guns and rifles and had lowered the ensign and pennant.¹ 

Russia earnestly protested at Pekin against this violation of a Chinese port. Japan retained the vessel and justified the seizure on several grounds, claiming that the Russian ship was not effectively disarmed; that her continuance in the harbor after the lapse of twenty-four hours was itself a violation of the neutrality of China and so absolved Japan; that the visit was to ascertain whether or not the ship was in fact disarmed adequately and whether she had just claim to remain for repairs, and to demand her departure otherwise, and that the Russians began hostilities and thus justified the Japanese in the capture; that the weakness of China in enforcing her neutrality and the nearness of the port to the seat of war all excused the transaction.

It is respectfully submitted that none of these can be accepted as justifying the capture without suffering serious impairment of the sanctity, the peace, and order of neutral harbors and encouraging a painful retrogression in the public law applicable.

As Wheaton says, Bynkershoek alone, of writers of authority, allows the seizure of a vessel pursued into neutral waters, and even he admits he has never seen this doctrine in any but the Dutch writers.² Mr. John Bassett Moore shows that Bynkershoek's doctrine as to right of pursuit is almost unanimously condemned col-

¹ See London Times (weekly ed.), August 19, 1904, p. 532.
² Wheaton's International Law, sec. 429 (4th ed. Eng.).
lecting the authorities upon the subject,¹ and he also shows that in 1806 President Madison so held in protesting against the destruction of a French ship *L'Impétueux,* disabled by a gale and destroyed by the *Melampus* and two other British ships on the coast of North Carolina. The present was, moreover, hardly a case of fresh pursuit, the Russian vessel having eluded her pursuers and having been later found in the Chinese port.

The practice of powerful belligerents, and especially England, was formerly to pay little, if any, attention to the sanctity of a neutral port, yet the practice seems never to have been deemed lawful.

Here are some of the old precedents involving hostile meetings of war-vessels in neutral waters. During the second Punic war, Scipio, with two Roman galleys, entered the port of Syphax, king of Numidia, to seek his alliance. There he found Hasdrubal upon a like errand with seven Carthaginian galleys, but they "durst not attack him in the king's haven."² The Venetians and Genoese being at war, their fleets met in the harbor of Tyre, "and would have engaged in the very haven, but were interdicted by the governor," and therefore went to sea and fought in the open.³

In 1604 James the First of England forbade acts of belligerency in certain waters near the English coast; but in 1605 the Dutch and Spanish fleets fought in Dover Harbor. The English castle was silent until the victorious Dutch bound their prisoners two by two and threw them into the sea; then at last the castle battery fired upon the inhuman victors⁴. England here tardily resisted a breach of the neutrality of a British port. However, a year later, the Dutch East India fleet was attacked by the British in Bergen Harbor. The governor of the town fired upon the attacking fleet.⁵

Four French ships of war which fled to Lagos after conflict with the English off Cadiz, in 1759, were destroyed in that harbor by the English. Portugal made complaint to England. Pitt was civil and an apology was duly made by the Earl of Kinoul as special ambassador extraordinary, who promised that the British would be more careful in the future, but there was no restitution or compensation.⁶

Phillimore declares this "a clear and unquestionable violation of the neutral rights of Portugal, and it was one of the causes of war by France against Portugal.⁷

In 1781 an English squadron in Porto Praya, in the Cape Verde

¹ Moore's *International Arbitration,* p. 1120.
² Moore's *International Arbitration,* p. 1116, quoting the incident from Livy.
⁵ Vattel, bk. iii, chap. vii, sec. 132.
⁶ Dana's *Notes to Wheaton,* sec. 430; Moore's *International Arbitration,* p. 1127.
⁷ Phillimore's *International Law,* sec. 373.
Islands, was attacked by a French fleet. The Portuguese fort resisted the attack and no prizes were taken. The French Government approved the attack, as Ortolan says, perhaps in retaliation for the action at Lagos.\textsuperscript{1}

The French frigate \textit{Modeste} was captured by the English in the harbor of Genoa in 1793. There was neither apology nor restitution.\textsuperscript{2}

In the war of 1812 the United States frigate \textit{Essex}, at anchor and dismasted in Valparaiso Harbor, was attacked and captured by two British ships. The \textit{Levant}, a prize of the United States frigate \textit{Constitution}, was chased into Porto Praya and there captured while at anchor by vessels from the British fleet.\textsuperscript{3}

The American privateer \textit{General Armstrong}, a brig of seven guns, was attacked and destroyed by a British squadron of one hundred and thirty guns in the harbor of Fayal in 1814.\textsuperscript{4} The resistance was most gallant and assaults were repeatedly repulsed with great loss of life. The Portuguese governor interposed with the English commander to obtain a cessation of hostilities, but the latter claimed that the \textit{Armstrong} had fired upon the English boats without cause and that he would take possession of the privateer in consequence, saying that if the Portuguese interfered he would treat the castle and island as enemies. It appeared that at evening the long-boats of the British squadron, with a large force, apparently armed, outnumbering the crew of the privateer, approached so as to touch her stern with a boat-hook. They were warned off, and not desisting, were fired on with fatal results, and returned the fire. The English commander claimed that he intended to reconnoiter the privateer merely, and to observe the neutrality of the port. The circumstances were such that the Americans thought themselves justified in taking the approach as an attack and attempted boarding, and in resisting accordingly. The vessel lay during most of the affray within a half-pistol-shot of the castle. Some buildings were burned and persons were killed upon the land by the British cannonade, well illustrating the results of such a practice.

This was the foundation of a claim against Portugal by the United States for failing to keep the peace of the port. On a reference to Louis Napoleon, President of the French Republic, as arbiter, he finally held, in 1852, a few days before he assumed the imperial dignity, against the claim, on the ground that the Americans did not apply for protection to the Portuguese authorities in time, and that they fired first upon the British boats as they approached in the night. This case has been cited as the principal case supporting the conduct of the Japanese at Chefoo.

\textsuperscript{1} Moore's \textit{History of International Arbitration}, p. 1127; \textit{Diplomatie de la Mer}, ii, 320.\textsuperscript{2} Hall's \textit{International Law} (ed. of 1904), p. 602.\textsuperscript{3} Dana's \textit{Notes to Wheaton}, sec. 430.\textsuperscript{4} Wharton's \textit{Digest}, 604; Snow's \textit{Cases in International Law}, p. 396.
Dana says that the "decision was not satisfactory to the United States Government, as they did not consider the fact on which it rested as established in proof." He thinks the rule should be confined to cases where the vessel "makes a fair choice to take the chances of a combat rather than to appeal to neutral protection." ¹

Lawrence thinks the doctrine of the decision has been fully accepted by British publicists, while American jurists have been disposed to deny or qualify it, but he reaches the conclusion that the side which in a neutral harbor fights purely in self-defense can hardly on that account forfeit the right to redress.²

The rule that the belligerent captured in a neutral port cannot recover compensation from the neutral power unless he demanded protection and there was failure to afford it, is by no means an indication that the neutral may not demand satisfaction for the invasion of its sovereignty without any such circumstances. The basis of recovery is the negligence of the neutral in one case, but the basis of recovery in the other is the trespass of the offending belligerent.

Mr. Justice Story, a person quite as extensively versed in public law as Napoleon the Third, considered that a belligerent attacked in neutral territory is justified in using force in self-defense.³

It is impossible that international law should be so divorced from the law of nature and all municipal law as to hold otherwise, and in the private law of self-defense one may always justify upon the appearance of necessity.

It is believed that later practice and decisions in no way warrant the invasion of a neutral port even to seize or attack a hostile cruiser harboring there. Ortolan long since, while strongly supporting the exterritoriality of ships of war, yet declared that if the vessel of war in territorial waters undertakes to commit any acts of aggression or hostility or violence, it is the right of all nations immediately to take all the measures and employ all the means necessary for a legitimate defense.⁴ It is literally defense against a hostile invasion.

The more recent precedents are as follows: Near the opening of the Franco-Prussian war, a French ship, after an unsuccessful combat with a German ship off the harbor of Havana, escaped into the harbor. The German vessel respected the neutrality of the Spanish port and did not further molest the French ship, which remained at Havana until the close of the war.⁵

The United States warship Wachusett in 1864 attacked and captured the Confederate cruiser Florida in the harbor of Bahia and

¹ Dana's Notes to Wheaton, sec. 430.
² T. J. Lawrence's International Law, p. 540.
³ Hall's International Law (ed. of 1904), p. 625, and note citing The Anne, 3 Wheaton, 477. See also T. J. Lawrence, International Law, p. 540.
⁴ Diplomatie de la Mer, ix. 218.
towed her to sea. In that case, also, there was resistance and shots were exchanged and three men were injured on the attacking vessel.\footnote{Maclay's \textit{History of the Navy}, vol. ii, p. 557.} She was pursued by a Brazilian man-of-war, but escaped by superior speed. Although feeling against vessels of the class of the \textit{Florida} and against countries harboring them was most intense, yet the act was repudiated wholly by the United States, the commander of the Federal vessel was court-martialed, the consul who had advised him dismissed, and the Supreme Court held that Brazil was justified by the law of nations in demanding the return of the captured vessel and proper redress otherwise, and that the captors acquired no rights.\footnote{The \textit{Florida}, 101 U. S. 37; Hall's \textit{International Law} (ed. 1904), p. 620.}

In like manner, in the case of the American steamer \textit{Chesapeake}, which was, it was claimed, piratically seized on a voyage between New York and Portland in 1863 by certain alleged Confederate partisans, who took passage on her in New York, she having been pursued by a warship of the United States into Nova Scotian waters and there seized, and two men on board and one of the leaders of the partisans on a neighboring vessel taken into custody; the vessel and the men were surrendered by the United States and an apology made for violating British territory.\footnote{Hall's \textit{International Law} (ed. 1904), p. 620; Wheaton's \textit{International Law} (4th ed. Eng.), p. 580.}

Dispatches from Buenos Ayres of August 28, 1904, show that relations between Argentina and Uruguay have become strained through an attack by Uruguay on an insurrectionary force directed against her, but in Argentine waters.

The cases holding the seizures of merchant vessels in neutral waters void are too numerous to collate and are therefore omitted.

The fact that the Russian ship had remained more than twenty-four hours in the Chinese harbor shows a possible violation of the twenty-four-hour limit adopted by China in her declaration of neutrality, if the Russian ship was not, as claimed, detained for necessary repairs and already disarmed.

The limit of twenty-four hours was one which China could adopt or not in her discretion and therefore could enforce or not.\footnote{Dana's \textit{Notes to Wheaton}, sec. 429.} No other power had the right to enter her ports to enforce it. It is usual, but not a legal obligation, for neutral nations to fix such a limit for the stay of belligerent ships of war in their ports. Though such a rule seems in process of formation as a requirement, yet during the present operations, though many have, numerous nations appear not to have announced such a limit.

In the case of a Russian gunboat in the harbor of Shanghai which failed to withdraw on the demand of China, Dr. Lawrence says that Japan \textit{might} have given notice to China that she would no longer
respect the territorial waters of a state which seemed powerless to
defend its neutrality, or she might have claimed reparation for the
indulgence shown to her opponent.” ¹ She did neither, but after
long parley the Russian vessel was dismantled. The statement
of the rights of Japan seems extreme, and the constant assumption
that the twenty-four-hour limit is a provision of international law
which a belligerent may enforce against any neutral seems wholly
unwarranted.

A practice of declaring such limit is widespread and growing, but
the rule on this subject, as stated in the edition of Wheaton published
within the year with notes by J. Beresford Atley, is as follows: “The
reception or exclusion of belligerent cruisers and their prizes in neu-
tral ports is a matter entirely at the discretion of the neutral govern-
ment.” ² He shows that the limit of twenty-four hours for the stay
of a belligerent ship of war in a neutral harbor is not half a century
old and depends on the action of the neutral power in declaring it,
and that it is not a settled obligation of international law.

Lawrence thinks the twenty-four-hour regulation admirable, and
points out that neutrals are bound to treat both belligerents alike,
but says the law of nations allows the stay of belligerent vessels in
neutral ports, and that we have no right to complain where this
regulation is not adopted. He says expressly that the common
“assumption that international law forbids belligerent vessels to
enjoy the shelter of neutral ports for more than twenty-four hours
at a time . . . is an error, but one so general that those who give
expression to it have much excuse.” ³

A neutral state may at will close all its ports to belligerents, and
the New York Nation says: “Norway and Sweden, we believe, have
done so in the present war.” ⁴ It is believed that Norway and Sweden
and Denmark have excluded warships of the two belligerents from
a large number of their principal fortified ports, but not from all.
Their proclamations of neutrality seem so to provide, and this has
been their policy for half a century. ⁵ They impose the twenty-four-
hour limit in such ports as are left open.

The fact that Japan on September 11 made protest against the
Russian auxiliary cruiser Lena remaining in San Francisco Harbor
longer than twenty-four hours brings home the question to the
United States Government. The vessel claimed that she was
detained for necessary repairs and the United States took steps to
ascertain whether or not this was well founded, and enforced very

¹ War and Neutrality in the Far East, p. 138.
³ War and Neutrality in the Far East, p. 120.
⁵ Revue Générale de Droit, Mai et Juin, 1904, pp. 14 and 15 of Documents.
fully its neutral regulations by directing the disarmament of the ship. It is inconceivable that any foreign power could undertake to investigate by force such a question and to determine for itself the facts and thereupon precipitate a naval engagement in San Francisco Harbor. It is not conceivable that such a practice could be tolerated by the neutral maritime powers. The claim of the Japanese consul of a right personally to inspect the Lena was not admitted by the collector of the port, who held, very justly, that such inspection was the business of the United States authorities alone. A belligerent cannot have the right to police all neutral harbors for the purpose of enforcing regulations imposed by those powers. Any such invasion of territorial jurisdiction upon a disputed question of fact would be lamentable in its results, and any rule naturally leading to such consequences should be resisted absolutely on its first appearance.

The Nation asks in this connection why all neutral ports should not be closed except to ships in distress. It may be observed that a neutral state does habitually close its landed territory to the forces of a belligerent, and that a like rule applied habitually to neutral ports would greatly limit naval warfare and tend to check the loss and disturbance which it inflicts on neutral commerce. It would strongly tend to localize war and avoid far-reaching complications. The main objection to it, as has been said, is the overwhelming advantage it would give to great colonial powers like Great Britain, having ports in all parts of the world.

Peace being the normal order of things, as Sir John Macdonell has lately said, the disposition of the past forty years has been that the "interest of neutrals should prevail in conflict with those of belligerents," and the recrudescence of belligerent sentiment which Sir John reports must be abated. Commerce, after all, is the great interest and service of the seas, and war is a minor and temporary affair. The greater interest ought not to yield to the less, except under the most direct necessity.

_Sinking Neutral Vessels_

The sinking of a neutral ship by a Russian squadron on the ground that she was carrying contraband of war and that it was impossible on account of the weather, lack of coal, and the neighborhood of a Japanese fleet, to bring her in for adjudication, has led to wide and unfavorable criticism.

The ship, the Knight Commander, was alleged to be loaded with a cargo of railroad supplies intended for belligerent use by Japan.

1 New York Nation, September 15, 1904.
2 Nineteenth Century, July, 1904.
Her papers were preserved, her officers and crew placed in safety and allowed to attend the condemnation proceedings at Vladivostock. The court there subsequently held such proceedings a basis for condemnation.

The criticism seems to rest on the doctrine often asserted that although a belligerent vessel taken as a prize may be destroyed if it cannot be brought in, yet a neutral vessel so taken must not be destroyed, but if she cannot be brought in, must be allowed to go free, even though carrying contraband.

The contraband articles cannot be taken from the neutral ship for at least two reasons: First, commonly, as in the case of the Knight Commander’s cargo of railroad supplies, it is physically impossible for the warships to accommodate them. Secondly, the claim always is that the ship and her papers and necessary witnesses must be brought into port as a condition for condemning the cargo. Thus, in the Trent affair, where it was claimed that the carrying of Messrs. Mason and Slidell was in the nature of carrying contraband, and that therefore their seizure and removal was warranted, it was successfully answered that until condemned by a proper prize court, a captor has no right to do anything except bring the ship before the court.¹

This doctrine, that a neutral vessel can never be destroyed before adjudication, seems to rest mainly on the case of the Felicity,² where Sir W. Scott passed on the subject of an American merchant ship and cargo destroyed by the English cruiser Endymion during the war of 1812. The vessel was sailing under British license but mistook her captor for an American warship. She therefore concealed this license. The weather was so boisterous and the vessel so injured that she could not be brought to port, nor could the captor spare a prize crew. She was therefore burned. The court holds, as her license was concealed, she must be treated simply as a belligerent, and that the destruction was legal. It is said, arguendo merely, that if she had shown her license she would have been entitled to be treated as a neutral, and Sir William says:

“Where it is neutral, the act of destruction cannot be justified to the neutral owner by the gravest importance of such an act to the public service of the captor’s own state; to the neutral it can only be justified, under any such circumstances, by a full restitution in value. These are rules so clear in principle and established in practice that they require neither reason nor precedent to illustrate or support them.”

This remark of an eminent judge seems largely the parent of the rule. It is submitted, with deference, that the rule apparently

¹ Wheaton’s International Law (ed. 1904), sec. 109 b.
² Dodson’s Admiralty, 381.
sought to be enforced by the Russian authorities and recognized by the Vladivostock court, is more just and reasonable, namely, that if, for good and sufficient cause, such neutral prize cannot be brought in, there is no obligation to allow her to go free, to reinforce the enemy with her cargo, but as a rule of necessity, to prevent the delivery of the cargo, she may be destroyed exactly as a belligerent, the crew and papers being preserved, and the question of prize or no prize being adjudicated as if she had been brought in. It seems too much to expect the other rule to be observed where the cargo is plainly contraband and important to the enemy. The objection by England to the destruction of this ship, M. de la Peyre declared recently, does not rest on a solid foundation, and that of the United States, he says, is even less permissible, since during the War of Secession the two parties systematically sank all the prizes.

M. de la Peyre is under a mistake. The Federal cruisers habitually brought in and submitted to the prize courts their captures. No such course was open to the Confederate cruisers, since all the ports of the Confederacy were blockaded and the ports of no other country were open to them for such use.

Captain Semmes, of the Confederate cruiser Alabama, habitually burned his captures,¹ but he seized only vessels belonging to American citizens and carefully avoided neutral ships or cargoes. His practice is therefore no precedent as to the right to destroy a neutral vessel without condemnation.

His situation was, however, such that if he had the full rights of a belligerent it would seem that he had as a matter of necessity the right to destroy contraband of war even without the intervention of a prize court. Suppose an armed British ship, fitted for belligerent use, had been met on her way to a Federal port, evidently designed for sale and likely to be bought by the Federal Government. Would Captain Semmes have been bound by international law to leave her unmolested since he could not bring her into port for condemnation? The suggestion that such is the law, because of Sir William Scott's dictum and the echo of it by the writers, cannot be concurred in.

It must be admitted that a neutral, carrying contraband, is not exposed by that act alone to condemnation of the ship, but Sir William Scott himself recognized that "the ancient practice was otherwise," and said: "It cannot be denied that it was perfectly defensible on every principle of justice."² He shows that modern policy has introduced a relaxation on this point, but that circum-

¹ Records United States and Confederate Navies, vol. 1, where conduct of both navies is set out at length and in detail, with records and correspondence.
² The Neutralité, 3 C. Robinson, 295.
stances of aggravation or misconduct may revive against the ship the ancient penalty.

Justice Story shows that the penalty is applied to the vessel on account of coöperation "in a meditated fraud upon the belligerents by covering up the voyage under false papers and with a false destination." The whole right of seizure and condemnation of neutral contraband is based, as Kent shows from Vattel, on "the law of necessity" and "the principle of self-defense."

Sir W. Scott held that the penalty for carrying dispatches of a belligerent (certainly a more noxious act), must be the condemnation of the neutral ship, and argues that the confiscation of the dispatches would be ridiculous and says: "It becomes absolutely necessary, as well as just, to resort to some other measure of confiscation, which can be no other than that of the vehicle." If the courts of Russia, reasoning as boldly as Sir William, Mr. Justice Story, and Chancellor Kent, are allowed to maintain their conclusion from the rules of justice and necessity, their position is by no means untenable.

His Excellency, Count Cassini, the Russian imperial ambassador to the United States, on the 15th of September, 1904, by letter, kindly called the writer's attention to the Russian imperial order of March 27, 1895, which reads as follows:

"In extreme cases, where the retention of ships is impossible, owing to their bad condition, when they are of small value, in danger of capture by the enemy, when at a great distance from a home port, or when there is danger for the ship which has taken the prize, the commander, upon his responsibility, may burn or sink the captured vessel after previously having taken her crew and as far as possible her cargo. Her documents must be preserved and witnesses can be held for the purpose of testimony before the prize court."

His Excellency adds:

"As this last declaration has never been protested by any power, it appears, consequently, that the commander of the Russian man-of-war committed a perfectly lawful act in sinking the British steamer Knight Commander, which was undoubtedly carrying contraband of war, as was proven immediately after her being stopped. This was confirmed later on at the trial, when the deposition of the captain was refuted and contradicted by the presented board documents which he supposed to be lost with the ship."

The instructions issued by the Secretary of the Navy of the United States in 1898 to blockading vessels and cruisers, and prepared by the Department of State, strongly resemble those of Russia.

1 Carrington v. Merchants Ins. Co., 8 Peters, 495.
2 Seton v. Low, 1 Johns. Cases, 1.
3 The Atlanta, 6 C. Robinson, 440.
They are as follows:

"28. If there are controlling reasons why vessels may not be sent in for adjudication, as unseaworthiness, the existence of infectious disease, or the lack of a prize crew, they may be appraised and sold, and if this cannot be done, they may be destroyed. The imminent danger of recapture would justify destruction, if there was no doubt that the vessel was good prize. But, in all such cases, all the papers and other testimony should be sent to the prize court, in order that a decree may be duly entered."

It is to be observed that the language is general, applicable to neutral as well as belligerent vessels, and it is believed it in a measure supports the Russian contention.

It is submitted that this rule and the Russian practice are entirely reasonable and in accordance with the necessities of maritime war and that they are, therefore, able to impair the authority of a dictum even from so eminent an admiralty judge as Sir W. Scott.

The result of this inadequate discussion of these several problems in international law (a few of the many lately mooted) is a humiliating sense of the uncertainty, confusion, and conflict which still attend the maritime rights of neutrals in the time of war. One is forced almost to acquiesce in M. de la Peyre's recent statement that maritime international law does not exist.¹

It certainly shows the great necessity of an authoritative international conference to discuss, define, and establish the rights and duties of neutral commerce in time of war. Now that the vast and complicated machinery of war is of such desolating destruction, it is more true even than a generation ago, when the late Mr. Lecky so convincingly proclaimed it, that the rich nations are the potent ones in war, as in a ruder age they were not. It is true, too, that the very riches which enable them to support, powerfully persuade them to avoid, war. These great commercial powers possess the seas with their beneficent adventures, and they must strive to keep the peace on those great highways of all the nations, and the ships that bear the means of life must be considered as of interest and human claim equal and paramount to those designed to inflict death.

¹ Questions diplomatiques et coloniales, August 1, 1904, p. 185.
THE JURIDICAL NATURE OF THE RELATIONS BETWEEN AUSTRIA AND HUNGARY

BY COUNT ALBERT APPONYI

[Count Albert Apponyi, Member of Hungarian House of Commons. b. Hungary, 1816. Doctor of political and social science. Member of several literary and scientific associations, and of The Hague Tribunal for International Arbitration. Privy Councilor to His Majesty the King of Hungary. Author of articles on public law and social science in Hungarian, German, French, and English magazines.]

I intend to put before you a brief account of the juridical nature of our connection with Austria. In doing so I must apologize for such defects in my address as will arise from the absence of those scientific sources which I should have been glad to have consulted even on a subject so familiar to me as this one is. When I left Europe I had no idea of being honored by a call to address an audience of American jurists. I am, therefore, totally unprovided with scientific materials and must merely rely on my memory which, however, will hardly fail me on this subject in anything essential. For more than thirty years of parliamentary life it has been constantly in my mind; on no other topic have I bestowed so much time and attention. It is not my intention, however, to trouble you with my personal opinion on any controversial matter; I mean to state nothing but fact, law, and what is the common creed of all my countrymen without distinction of party.

The relations between Austria and Hungary seem to be such a network of intricacies to foreign observers that very few of them care to get to the bottom of the matter. In fact, the great difficulty which is experienced in mastering this problem arises not so much from its own nature as from the prevalence of certain false general notions and misleading comparisons. The most widespread fundamental error, he Πρατειν ψευδός as I should like to call it, consists in considering an Austrian Empire, which is understood to contain Hungary, as the primordial fact, and whatever is known of Hungarian independence as a sort of provincial autonomy conceded to that "turbulent province" by the central power of the Empire. Austrian court politicians and some German writers have done their best—or rather their worst—to propagate this theory, which, however, is radically false, and being almost daily contradicted by facts, engenders hopeless confusion in the minds of all who choose to be guided by it. The truth is the exact counterpart of the above-quoted proposition; in truth, historical, legal, and material, the primordial fact is an independent Kingdom of Hungary, which has
allied itself for certain purposes and under certain conditions to the equally independent and distinct Empire of Austria, by an act of sovereign free will, without having ever abdicated the smallest particle of its sovereignty as an independent nation, though it has consented to exercise a small part of its governmental functions through executive organs common with Austria. If the term of "concession" is to be used at all, it is Hungary who has granted some concessions, by concurring in the creation of such common organs of government; she had none to ask for, as there is no earthly power placed above her entitled to control her, and as she is possessor of all the attributes of a sovereign nation. That Austrian Europe which is supposed to include Hungary has no existence except in false theory and in former oppressive practice; in public law it always was and now in fact is a nonentity. Even the term "Austro-Hungarian Empire"—what the German calls Das Reich—is a false one; and the officially used term "Austro-Hungarian Monarchy" (not a very happy because a misleading one) can be accepted, as we shall see, only in the sense of their personal union under a monarch, physically one, but representing two distinct personalities of public law, the Emperor and the King, and of their joint action in questions of peace and war; but an objectively unified body containing both Hungary and Austria does not exist.

From the moment you have well grasped these fundamental truths, on which no Hungarian even admits discussion, it is like a falling of scales from your eyes, and everything at once becomes clear and all facts are easily accounted for. To bring them into full evidence I must trouble my hearers with some briefly sketched peculiarities of our constitutional development and with a short outline of the events which brought about and shaped our connection with Austria.

I

The Hungarian constitution is as old as the Hungarian nation herself, at least as old as anything history knows of her. No written document exists which could be called the Hungarian constitution; no illustrious lawgiver or set of lawgivers is entitled to the praise of having framed her. She is the product of organic evolution, worked out through centuries by the genius of the nation, in uninterrupted continuity; her principles and rules must be collected from numbers of laws, customs, and precedents, reaching as far back as the eleventh century. In this respect there is an analogy between the growth of the English and of the Hungarian constitution, which is the more striking because the two racial individualities are as dissimilar as they well could be, and because there is no trace of mutual influence in their development. Even some dates happen
to coincide. In 1222, seven years after the Magna Charta, appeared the Golden Bull of our King Andrew II, which, like the older British document, laid no claim to being considered as a new enactment, but was meant to be a confirmation of old liberties. The legal distinction between constitution and law, that chief feature of American institutions, is unknown to Hungarian public law. It is within the power of our legislature to effect constitutional changes through simple legislative acts, just as she can alter a tariff or legislate on railway matters. In fact, the strongest conservatism prevails in dealing with constitutional questions, and that compound of time-hallowed prescriptions which bears the collective name of constitution is cherished with a respect nowhere to be surpassed. Some aspects of our constitutional growth will be placed now before this distinguished audience preparatory to the subject proper of my present address.

From the day when our forefathers were converted to Christianity (at the end of the tenth century) we find at the head of the nation a king with a vast prerogative, which it was necessary to invest him with, because the constant dangers threatening our country from the west as well as from the east could be faced only by a strenuous concentration of power. But that prerogative was subjected from the beginning to several checks. There was the national assembly — the gathering of all freemen — soon to evolve into national representation, the assent of which was needed to give permanent force to royal enactments, and which became an openly recognized and organized factor of legislative power in the second part of the thirteenth century. There was the semi-elective character of the Crown which, though vested in a reigning dynasty, could be transferred by election to any member of that dynasty, making it advisable for the King to conciliate public opinion if he wished to insure succession to his son. There was, moreover, that remarkable clause of the Golden Bull, which remained in effect till 1686, conferring in so many words on the Estates of the realm a right of resistance to the King should he infringe their liberties. There are two laws more remarkable still, considering their date, which are 1235 and 1298, enacting, the first of them, that the Palatine (head of the King's Government) should be dismissed on a vote of the National Assembly adverse to his administration, while the second one states that no royal ordinance should take legal effect if not signed by certain dignitaries designated by the National Assembly. In what other country do we find at so early a date such full-grown elements of parliamentary government?

Medieval Hungary could reach such a high state of constitutional development for the same reason as made the power of Hungarian Kings the most efficient one of that epoch, and that reason was the
absence of feudalism. No doubt, infiltrations of feudalism, as prevalent throughout Europe, are to be found in our old institutions, but as an accidental intermixture only, not as their essence and chief feature. That blending of public prerogative with rights belonging to the sphere of private law, which is the essence of feudalism, never prevailed in the organization of our public powers, never broke their action on the nation as a whole. To this early prevalence of public law in the government of the country do we owe not only a superior efficiency, not detrimental to liberty, of our public powers, but in connection with it an early growth of conscious national unity, of patriotism on broad lines, at a time when tribal feeling and feudal allegiance subdivided all European nations into small units which paralyzed each other, and into a corresponding fractional mentality adverse to the very idea of state and to national feeling. But for this happy peculiarity of her old institutions Hungary could never have been able to hold her own against scheming neighbors of tenfold her material power.

In 1686 the Hungarian Crown became hereditary; henceforth, she missed the guarantee contained in free election; but in the mean time some substitute for it had grown up in the institution of coronation and the legislative acts by which that august ceremony is attended. Old laws require the heir to the throne to get himself crowned within six months of his accession and they suspend some important part of his prerogative (we name only his participation in legislative power) till he has done so. But crowned he can be only with the assent, or, to state it more correctly still, through the agency of the national representation, which puts thereon such conditions as it thinks necessary. Every coronation, then, is founded on a new agreement between king and nation, embodied in a document called "inaugural diploma" and accompanied by a solemn oath of the King to observe the terms of that document and the general enactments of the constitution. By these proceedings the fundamental principle of our institutions, the principle that every power, the prerogative of our Kings included, has its source in the nation, and comes to those in whom it is vested through delegation from the nation, is constantly reasserted and held in evidence; it is the nation which crowns the King, under the sanction of God's most holy Majesty; the prerogative of the King, his very title to reign, is blended into one with popular rights and their guarantees; both together, prerogative and people's right, are designated in their joint force and sacredness by the name of "the holy Hungarian Crown," of which every Hungarian citizen is a member, this membership not being a mere metaphor, but implying the great principle that there is no difference as to inviolability and sacredness between the King's exalted prerogative and the poorest subject's
individual and public rights, and that there is no prerogative apart from or in opposition to the nation.

I have insisted at some length on the peculiar character of the Hungarian monarchy because it contains the most distinctive feature of our constitution and may be considered as the masterpiece of that political genius in which few nations, if any, have surpassed our people. Placed in a situation where a strong executive was essential to national safety, our forefathers had to solve the problem to make prerogative as efficient as could be for its national mission, and at the same time innocuous to liberty. And either I am totally misled by patriotic self-conceit, or that difficult problem found a better solution in Hungary than in any other country placed in similar circumstances.

Time fails me to expatiate on the development of the other constitutional powers, to show how national assemblies (originally mass meetings of all freemen) evolved into representative bodies; how these bodies grew gradually stronger and extended the sphere of their rights; how a powerful organism of county, town, and city self-government was developed on quite original principles, and became in hard times an unconquerable stronghold of national liberty. But a few words must be said as to the question: Whom do we refer to by the name of the Hungarian people? In other words, In whom were all those rights vested which formed the popular branch of the constitution?

To an American — now, even to a modern European — audience, such a question may seem preposterous. In whom, indeed, should popular rights be vested but in the whole people, including every citizen of the country? But we are considering now a medieval constitution, and a political establishment founded on conquest; which means that we speak of an epoch which knew liberty only in the form of privilege and of circumstances peculiarly adverse to universal equality.

Now, and this is one of the most important facts in our history, privilege in a racial sense never existed in Hungary. When our forefathers conquered their new home, they found different races on its soil, and as late as the eighteenth century, immigration brought new racial intermixture into our country. How, then, did we deal with that mass of heterogeneous elements? National unity — just like concentration of power — was, and still is, essential to the permanence of any political establishment in that part of Europe, which has to face the first onset of all eastern dangers; that there should exist a strong national unity on that particular spot was, and is even, a condition of safety to all occidental Europe. But how was it to be effected among a chaotic mass of racial individuality? History of conquest shows two typical ways of solving that problem.
In almost all states founded in Western Europe by invaders of Teutonic origin, a new race grew out of the fusion between conqueror and conquered, the racial individuality of the latter generally prevailing. So the Franks, the Visigoths, the Longobards became Latin in France, Spain, and Italy; the Normans, Latinized in France, became Saxon after the conquest of England. Turkish conquest on the other hand, being founded on theocratic principles, does not tend to racial assimilation; it simply lays a new racial stratum on the old ones, granting the latter a sort of contemptuous toleration, but domineering over them with all the might of religious and political exclusiveness. Our forefathers adopted neither of these two courses. They kept their own race unaltered, and respected the racial individuality of the conquered as well as of later immigrants; but they absorbed them into political unity by conferring upon the deserving among them all the privileges of a Hungarian freeman, privileges which, on the other hand, were forfeited by many members of the conquering race. By these proceedings—which remind us of ancient Rome, conferring her citizen right on provincials—racial difference soon disappeared from public law, every man on our territory being subjected to the same laws, enjoying the same capacities of public life, being equally able to become an active agent in national evolution, but disabled from evolving any sort of particular racial history; being in a word tied to the whole community by every material and moral tie which, in the course of time, engenders feelings of solidarity and union. National unity, the unity of the great political Hungarian nation, was effected on the most liberal base, and towers up to our days in unconquerable height and strength above those abortive attempts to foment discord on the ground of misguided racial instinct, of which you may have heard some rumors even here, among part of our immigrants. From the beginning, then, of the Christian Era in our country, that is, for nine hundred years, the rights of the people have been vested in the whole undividable Hungarian political nation, irrespective of racial distinctions.

But class divisions and class privileges, Hungary, like all medieval Europe, has certainly known. Still, I can claim a certain kinship to democracy on behalf of our old constitution.

When medieval Hungarian public law had reached maturity, there was a class of nobiles—which term would be very inaccurately translated into the English word "nomencl"—I should rather call them "freemen," or "franchise-men," in whom all public rights were vested. To these the clergy, the members of some other liberal professions, and the burgesses of a great number of towns became assimilated. Access to that privileged class was easy; it numbered many thousand members, whose social status did not
differ from that of the peasantry; sometimes the peasantry of whole counties became enfranchised by one single act of prerogative or of legislation. Gradually it became so numerous that the number of our franchise-men in the eighteenth century — and probably at an earlier date, too, but of this we have no statistics — was comparatively larger than the French electorate under Louis Philippe and perhaps even the English one before the great parliamentary reform of 1830. Within that large body of privileged citizens, so large as to bear a distinctly popular stamp, there was no further class distinction. And this is the most characteristic fact in our old constitution; it is the fact which chiefly warrants me in calling that constitution quasi-democratic. There existed, of course, vast differences of wealth and of social influence (I suppose even modern America knows something of the kind), but legally recognized and fixed subdivisions of privilege there were none. It was only in much later time, under the Hapsburg kings, that German titles were bestowed on Hungarian nobles, and that an hereditary aristocracy sprang up and began to sit in an Upper House, which was legally recognized in 1608; originally, the national representatives consisted of one House only, which might not unfittingly be compared to the English Commons. And so, while in England the Lords were foremost in seizing upon some part of public power and the Commons slowly and gradually followed to the front, in Hungary, what we may call the Commons were powerful from the beginning, and no such thing as Lords existed till, at a much later date, that institution was to some extent imported from without. Where England beats us, as it beats the greatest part of our Continent, is the early growth of a free peasantry; but then she has almost wholly lost that most valuable class, while we have kept it in full vigor and look to it as an inexhaustible source of national strength.

The reign of privilege certainly took its mildest form in Hungary; true, it lasted longer than most in other countries. It was ultimately abolished by the glorious legislation of 1848, which has been effected through no uprising or agitation among the disfranchised people, who persisted in perfect political apathy, but through a spontaneous resolve of the privileged class itself. Class magnanimity is a feature unknown to general history; that we can show a sample of it in our annals is perhaps the proudest, certainly the purest, glory of our nation.

1 Since he delivered this address, the author has been enabled to add a few figures which make good the above statements. At the epoch of the French Revolution we find in Hungary 75,000 families (corresponding to 325,000 individuals) belonging to the privileged class, out of a total population of 6,000,000, while at the same time France numbered only 28,000 such families against a population of 26,000,000. In 1805 we find 310,000 "nobles" (or as we call them freemen) against a total population of 7,500,000; in 1848 they numbered 675,000 out of nearly 12,000,000. But to these numbers must be added the clergy (numbering by itself 16,000 voters in 1805), the members of other enfranchised liberal professions, and the burgesses of privileged cities.
And here my digression to the field of general constitutional history must be stopped; 1 enough has been said to bring into evidence the peculiar nature, the originality of our institutions, and to enable my hearers to draw inferences as to the vigorous individuality of the people whose national genius has created those institutions. That such a national individuality can hardly be absorbed into an artificial political settlement; that independence is the very law of her nature, seems to be the clear result of even so much insight into the workshop of her historical evolution. Thus prepared, we can now consider the problem which is to be the subject of my present address with a clearer perception of its constitutive elements.

II

The Austrian dynasty, the dynasty of Hapsburg, was called to the Hungarian throne in 1526, after the disastrous battle of Mohacs, in which the Turks annihilated the military force of Hungary. It was the epoch of Charles V, that Emperor of Germany and King of Spain who boasted that in his domains the sun never set. His brother Ferdinand was elected King of Hungary in the hope that the power of this mighty dynasty would assist us against the Turks. But not only was there no intention of melting the old Kingdom of Hungary into the Austrian domains, but the election and coronation of Ferdinand took place on the express condition that the independence of the Hungarian Crown and the constitution of the realm should remain unimpaired. That condition was accepted and sworn to by the new king; it has been confirmed by the coronation oaths of all his successors belonging to the same dynasty; whatever practical encroachments may have occurred, this legal state of things never became altered.

During the first period of the Hapsburg rule in Hungary, which period extends to the year 1723, no sort of juridical tie was formed between her and the other domains of the dynasty, which, to simplify matters, we shall henceforth call by their later collective name, Austria. It was even impossible that such a tie should exist, because Hungary remained the semi-elective kingdom she had been, while those other domains were hereditary possessions. The connection was at this time a merely casual one, like that which existed for some time between England and Hanover.

Matters took a different aspect when hereditary right to the Hungarian Crown was conferred on the Hapsburg dynasty, first on

1 To those readers who wish for ampler information on this matter, the author recommends Professor Akos v. Timon's most valuable history of Hungarian law, published this year in a very good German translation. The German title of the book is Ungarische Verfassungs und Rechtsgeschichte, von Akos v. Timon. (Berlin, 1904: Puttkammer und Mühlbrecht.)
its male lineage (1686), and afterwards on the feminine descendants, too, in 1723. This was effected through the celebrated transaction known to history as the Pragmatic Sanction of Emperor Charles VI (Charles III as King of Hungary), which, being the basis on which our present relation to Austria rests, has to be considered here with some accuracy.

The Pragmatic Sanction consists of several instruments, diplomatic and legislative, of which the Hungarian Law I, II, and III of 1723 alone has legal value and practical importance for Hungary. In that law the legislature of the realm settled the question of succession to the Hungarian throne in accordance with King Charles III’s wishes by the following enactments:

1. Hereditary right to reign as kings in Hungary is confirmed to the male and female descendants of the Kings Leopold I, Joseph I, and Charles III in conformity with the law of primogeniture already in vogue in the Austrian domains, to the effect that as long as the above-mentioned lineage lasts, the same physical person must infallibly reign in both countries, Hungary and Austria, with no legal possibility of division (*inseparabili\*ter ac indivisibili\*ter possidenda* are the words of the law). The other collateral branches of the Austrian house have no right to succession in Hungary, though they may be possessed of it in Austria.

2. Notwithstanding that personal union, the independence of the Hungarian Crown and the old liberties of the kingdom are solemnly recognized and reasserted.

3. When the above-described lineage becomes extinct, Hungary will use again her ancient right of free election to the throne, irrespective of what Austria, or any part of Austria, may choose to do in that emergency.

4. As long as this lineage lasts and the same physical person reigns in both countries, Hungary and Austria are bound to assist each other against foreign aggression.

On analyzing this fundamental transaction we must take notice of its contents and of its form.

In the contents there is nothing to take away any particle of Hungary’s independence and national sovereignty. A personal tie is formed, it is true, with another country. I call it personal because it lasts only as long as a certain set of persons, a certain lineage, exists and becomes *ipso facto* severed whenever those persons disappear. But that personal tie, the identity of the ruler, does not affect the juridical independence of the country, because that identity exists only with respect to the physical person, while the personality of the King of Hungary remains quite as distinct in public law from the personality of the Austrian ruler as it had been before; as King of Hungary that monarch, physically one, is possessed of the preroga-
tive, checked and controlled by the nation, which we have already
considered in its chief outlines; as ruler in Austria he wields —
or wielded at that time—a power almost absolute, grown of a
combination of feudal and Roman law, both unknown in Hungary.
There is no possibility of melting into one these two prerogatives so
widely different in origin and character. To that personal tie,
which only means that two different and distinct prerogatives are
vested in the same physical person, a solemn league and covenant
was added, a mutual obligation to assist each other against foreign
aggression.¹ Is there anything in the nature of such a covenant
which should of necessity impair the independence of the nations
who are parties to it? That, now, depends wholly on the form of
the transaction, on the sources from which it derives its binding
character, on the forces which insure its execution. Should that
obligation to mutual defense have been laid upon Hungary by a power
outside of her own public powers and superior to them, or should
there be any sort of such superior legal organization able to enforce
its execution against Hungary’s free will or to interpret its meaning
in a way binding upon her, then, indeed, Hungary would be no more
a sovereign nation. But of all this there is not even a trace. Hun-
gary entered that compact of mutual defense by an act of her sov-
eign will, and its execution as well as its interpretation — let me
emphasize this point, because it absolutely settles the question —
depends entirely on her good faith and on her discretion. Neither
before, nor in, nor after the solemn transaction called “Pragmatic
Sanction” will anybody be able to discover even the trace of some
power superior to the public powers of Hungary, entitled to control
her, able to force on her what she does not choose to accept or to do.
Now this way of entering and of keeping compacts exactly answers
to the idea of national sovereignty. We shall see later on that these
characteristic features of our legal status suffered no alteration
whatever through more recent transactions.

To give more weight to the present comments on the Pragmatic
Sanction I shall quote its authentic interpretation given in a law
enacted by the Hungarian legislature in 1791, after an attempt of
Joseph II to subvert the constitution. In Hungary, as in England,
laws of this kind, reasserting and putting into evidence national or
popular rights, generally follow practical encroachments on those
rights; their purpose is not to create but to declare law; to this
family of declaratory laws, the most celebrated scions of which are

¹ It is generally admitted that the Pragmatic Sanction, with all its enactments,
has the character of a bilateral compact between the Hungarian nation and the
reigning dynasty. Most authorities of public law hold it to be at the same time
a compact between Hungary and Austria, the latter having been represented on
its conclusion by her (then) absolute ruler. But as this is controversial matter,
the author, though holding the first-mentioned opinion, did not think fit to insist
upon it in the text; his argument holds good on either supposition.
the Magna Charta, the Bill of Rights, the Petition of Rights, — to that same family belongs the law which I am about to quote:

“Law I of the year 1790–1791, Emperor and King Leopold II, Article 10.

“On the humble proposal of the estates and orders of the realm, his most holy Majesty has been pleased to recognize:

“That, though the succession of the feminine branch of the Austrian house, decreed in Hungary and her annexed parts by the Laws I and II of 1723, belongs, according to the fixed order of succession and in indivisible and inseparable possession, to the same prince whose it is in the other kingdoms and hereditary domains, situated in or out of Germany; Hungary with her annexed parts is none the less a free and independent kingdom concerning her whole form of rule (including therein every branch of administration), which means submitted to no other kingdom or people, but possessed of her own consistence and constitution; therefore, she must be ruled by her hereditary and crowned kings; consequently by his most holy Majesty too, and by his successors, according to her own laws and customs, and not after the example of other provinces, as is already enacted by the Laws III, 1715; VIII and XI, 1741.”

The clear and forcible language of this fundamental law requires no additional explanation. We must now only inquire into the nature of later transactions, and see how they bear on our problem.

And here we are first brought face to face with a fact which, though irrelevant in itself, has wrought much confusion, and is still a rich source of misunderstandings. I mean the assumption, in the year 1804, of the title of “Emperor of Austria” by Francis I, when the “Holy Roman Empire of German Nationality” had collapsed. Many people think that this imperial title extends over all his Majesty’s domains, Hungary included, and that it represents a collective sovereignty superior to that of the Hungarian Crown. The corresponding territorial idea is that of an Austrian Empire, including Hungary. Now, these conceptions are absolutely false. The new imperial title has nothing whatever to do with Hungary, it has legal existence only with respect to those other domains which, from that date, can be properly called Austria, to the exclusion of the Kingdom of Hungary. As ruler of those other domains his Majesty may call himself whatever he pleases, but in Hungary the King alone reigns, and never will the time-hallowed majesty of our old Crown be melted into the splendors of a brand-new imperial diadem, never will it be controlled by any fancied superior power. Hungary never suffered mediatization, no act of her legislative body points that way, and no act of prerogative can achieve it. The title of “Emperor” is simply a collective designation for the portion of sovereignty enjoyed by his Majesty in his other domains; in Hun-
gary he is merely King; the two titles, imperial and royal, are distinct and equal in dignity; they designate (as my hearers will remember) two widely different prerogatives, the mixture of which is hardly conceivable even in juridical fiction. It is quite as absurd to think of the Emperor of Austria as ruler of Hungary as it would be absurd to fancy the King of Hungary as reigning in Austria or any part of her. To our public law the Emperor of Austria is a foreign sovereign.

The next striking fact is the above-mentioned legislation of 1848, which, by giving precise shape to parliamentary government in Hungary, and by making every act of royal prerogative dependent in its legal value on the signature of Hungarian constitutional advisers, made the distinctness and diversity of the two juridical personalities meeting in one physical person, the Emperor’s and the King’s, and of the two prerogatives vested in that same person, evident to all eyes. From an abstract truth, often obscured by the practice of a system of personal government not very anxious to uphold it, this distinction became a living reality, no more to be ignored. The winning of such a practical guarantee to our national independence is, besides the democratic reform which it has effected, the immortal glory of that legislation.

War, victorious at first, disastrous after the crushing intervention of Russia, came next, followed by a period of absolute oppression which lasted from 1849 till 1867. But all this belongs to the domain of mere fact; it did in no way alter the legal continuity of the principles on which our connection with Austria rests; it did not weaken in right the independence of the Hungarian Kingdom, though suspending it in fact for a time. There had been times of oppression, almost as hard as this one, before; at such times Hungary, while powerless to prevail against superior material forces, had always stuck to legal continuity, waiting patiently until a turning of the tide should enable her to bring practical reality in concordance with juridical truth; but of that juridical truth she never gave up one single atom, and she always lived to see it prevail against wholesale oppression as well as against partial encroachments. 1867 was the year of one of these resurrections; at the same time, it created new rules concerning the practice of our connection with Austria, rules which, however, left the principle of that connection — the independence of Hungary as a sovereign nation — unaltered, as a rapid survey of them will show.

III

The celebrated transaction called the Compromise of 1867 is embodied in the Law XII of that year. In its first (declaratory)
part this law fixes again the sense of the Pragmatic Sanction, as stated above, emphasizing its two principles: our sovereign national independence and the mutual obligation to mutual defense with Austria. Then it proceeds to state that the fact of Austria's having been endowed with a constitution which gives to her people a right of controlling their government (as we control ours) makes some new provision necessary in those branches of administration which bear direct relation to mutual defense, and in which it is, therefore, to say the least, highly desirable that the joint action of both countries should be unfailingly secured. To that end, the two great agencies of national defense — foreign affairs and war-administration — are to a certain extent declared common affairs, but in the executive sphere only, where action originates. Legislation on them (such as assenting to international treaties, framing of laws on the conditions of military service, on recruiting, etc.) is expressly reserved to the juridically independent action of both legislatures, which are, however, desired to do their best to agree on these matters. To provide for these common affairs a common ministry of foreign affairs and of war¹ are called into existence; the expenses of these two departments are jointly to be borne by both countries in proportion to their comparative financial power — measured until now by the results of taxation of each. Both countries have equal control over these common departments, a control which they can exert through ways direct and indirect, as we shall see later on.

The common ministry of foreign affairs implies a common diplomatic service. It is not so clear up to what point unity of the armed force is implied in common war administration. Our law mentions a Hungarian army as part of the whole army, which is to be unitedly commanded and regulated as to its inner organization by the King, in the exercise of his constitutional prerogative. The somewhat oracular terms of this proviso have given birth to much controversy and to some trouble lately. But one fact towers above all controversy, namely, the fact that in public law the individuality of the Hungarian army has been expressly maintained; and this is all that need be said about the matter here, where we are considering the juridical aspect of things only.

Particular provision has been made for the annual vote on common, foreign and war, expenses and for a direct parliamentary control over the respective common ministries. Anything like a common

¹ I did not mention in the text the third common ministry, that of finance, because that high-sounding title is only apt to generate confusion. In fact, the common minister of finance has nothing to do at all with finance in the sense of a financial policy; he is merely a cashier who receives the contributions of Austria and of Hungary to common expenses and hands them over to the respective common departments. It is merely accidental that the common minister of finance is now generally intrusted with the government of Bosnia and Herze-govina.
parliamentary body being out of question, the most natural proceeding would consist in submitting these questions to both parliaments; but practical difficulties might arise if their votes should differ; how could two great parliamentary bodies residing in two different countries come to an agreement as quickly as the necessities of immediate action may sometimes require? To meet this practical difficulty select committees are annually chosen by both parliaments to the number of sixty members each, called delegations, and holding their annual meeting at the call of the Emperor and of the King, alternately at Vienna and at Budapest. The delegations don't sit together; they are two separate bodies, like the mother assemblies, only more handy ones to adjust difficulties. In case of disagreement they communicate through written messages, and only when it seems impossible to settle differences through correspondence (a very rare occurrence) do they meet for a simultaneous vote, at which meeting no discussion can take place. What is then the juridical meaning of that simultaneous vote? Is it to get a joint majority out of both bodies? That would contradict the fundamental principle of the institution, which is no sort of common parliament but only a channel of easier communication between the two parliaments; the real meaning of that somewhat anomalous expedient is simply to bring face to face the two dissentient national wills and to make the more fixed one of them prevail when joint action must be secured one way or other.

The only functions of the delegations are to fix the figures of the budget of both common departments and to bring the controlling power of both parliaments over these departments into direct action. The figures as fixed by them are incorporated into the Austrian and into the Hungarian budgets. The ratifying vote of the Hungarian parliament is an essential condition of legal value to their resolutions, and, though the parliaments cannot alter them, the Hungarian parliament at least has power altogether to reject any decision of the delegations when it thinks that the latter have gone beyond their constitutional competence. It must ever be borne in mind that the delegations are after all but select committees of parliament, committees endowed with some privileges, but still committees controlled and kept within their limits by the superior power of the mother assemblies.

Parliaments, the Hungarian parliament, at least, for the Austrian law gives greater power to the Austrian delegation than our law bestows on the Hungarian one, have, as I already hinted, indirect means, besides the direct one, of controlling the common departments. Law and custom desire the administration of common affairs, though intrusted to common ministers, to remain, as to its leading principles, in constant agreement with the Hungarian
ministry; the latter is, therefore, co-responsible for the general conduct of foreign and war affairs to the Hungarian parliament, which may give an adverse vote on any question touching those departments. Such a vote, though affecting directly the Hungarian ministry only, would most certainly have an indirect bearing on the position of the respective common minister, or on his policy. This indirect influence of our parliament puts it into still clearer evidence how the common affairs and the common executive agents are anything rather than representatives of a power higher than the public powers of Hungary; they are, on the contrary, constantly controlled by these powers and, as we shall see more clearly still, entirely dependent on them.

Several other enactments of the Law XII, 1867, which express the advisability for Austria and Hungary to agree on some matters not exactly belonging to the sphere of mutual defense, I pass by here, because, being entirely facultative in their execution, they can have no possible bearing on the juridical aspects of national independence. But it is now my task to analyze the institutions created in 1867, and to inquire whether they have impaired Hungary's independence as a sovereign nation, the maintenance of which we have followed out up to that memorable date.

That there is mutual dependence, in the political sense of the word, between two nations which are bound to act together in certain affairs and have created institutions to secure such identity of action, seems perfectly clear. Mutual dependence of this kind certainly exists between Hungary and Austria; we have a strong party in Hungary which objects even to this, and calls itself, on that account, the party of independence. But with this political aspect of the question I have here nothing to do. Mutual dependence between two equals depending on the free will of both does not affect their independent juridical individuality, in the case of a nation this nation's sovereignty. That would be impaired only should the nation be incorporated as a part into some larger body, or controlled by some legal power superior to her own public powers. Now, is this the case of Hungary since 1867?

The question put in these terms is negatived by the very nature of the transaction which we are examining. We call it a compromise and such it is politically speaking. Hungary, before creating the Law XII, 1867, ascertained in a proper way that it would settle the difficulties pending with the dynasty and with Austria,

1 The most important of these enactments is one which provides for customary union to be periodically established. It is far from improbable that in a few years that union will be dissolved and a commercial barrier rise between Hungary and Austria. Nor will this modification of their economic relation juridically affect the connection as established by the Pragmatic Sanction and shaped out by the law of 1867.
as common good sense required her to do. But as to its binding force this celebrated law is no treaty, like the Pragmatic Sanction, but simply a law like any other law, liable to be abolished or changed at Hungary’s uncontrolled pleasure. It is immaterial for the purposes of our present investigation that we should certainly think the matter twice over before tampering with that particular law: that is the political aspect of the question; legally the whole machinery of common affairs and common ministries can be destroyed by an independent act of the Hungarian legislature, with which nobody has a right to interfere. Now, I ask, how can institutions which depend in their very existence on the sovereign will of Hungary represent a power superior to her, or controlling her? They are not even a new tie between Austria and Hungary, for the simple reason that Hungary is not tied by them. Matters are left, then, exactly as they stood after the Pragmatic Sanction; an independent and sovereign Hungarian nation has entered into personal union with Austria, and both countries are bound by solemn compact to assist each other against foreign aggression.¹

Though this settles the question, let us consider the common institutions in their activity, and let us inquire whether they represent while existing some fragment, at least, of an imperial establishment, of that Reichsgedanke which certain Austrian and German authors are striving hard to discover in them; an establishment including both Hungary and Austria, superior to their public powers, and, let us say, provisionally controlling them to a certain extent. What constitutive elements of such an establishment can be found in the machinery set up by the legislation of 1867? in what does that fancied empire really consist?

It has no territory; there is a Hungarian territory and an Austrian terrritory; Austro-Hungarian territory there is none, as has been declared by a resolution of parliament, when dealing with an inaccurately worded international treaty.

It has no citizens; there are Hungarian citizens and there are Austrian citizens, the rights of the two citizens being not only distinct, but widely different in the legal conditions of acquiring and losing them.

It has no legislative power; we have seen that even in common affairs legislative acts are expressly reserved to both legislatures;

¹ The author lays no particular stress on the much-debated question whether the union between Austria and Hungary is to be called a personal or a real union, because he considers this as a question of terminology rather than as one of real consequence. In concordance with Fr. Döckl he calls it a personal union with an additional covenant of mutual defense, because the principle of the union is merely personal; it is, as we have seen, ipso jure dissolved, when a certain set of persons (the lineage entitled to succession in both countries) becomes extinct. The really important aspect of the question lies in the fundamental juridical fact that the independence and sovereignty of the Kingdom of Hungary remains unimpaired in that union.
we have further seen that the delegations have no legislative power; and are, even in the sphere of their competence, nothing like Reichsvertretungen, "imperial representative assemblies," as the said authors sometimes like to call them, but simply select committees of both parliaments, called into existence for purposes of easier communication between them, and working under their constant control.

It has no judiciary; questions arising between the two countries must be settled, if agreement is impossible, by international arbitration, as was done in a boundary question two years ago.

But it seems to have, and there our opponents exult, at least an executive. What are the common ministers if not some embodiment of a common, of an imperial, executive power? I own to standing aghast at such a profundity of knowledge. Common ministers, then, should represent a common, an imperial, executive power; now, let us overlook the queer aspect of an empire-like settlement, possessed of no other attribution, no other public power but of an executive; let us overlook the little hand-trick which must be performed imperceptibly to glide from "common," which supposes two parties at least, into "imperial," which means one; and let us simply state that even a common executive power does not exist, cannot exist, between Hungary and Austria. There are common ministers indeed, but in what constitution of the world is executive power vested in ministries? We find it everywhere among the constitutional attributes of the first magistrate, subject to more or less restrictions, but vested in him, having its real existence personified by him, ministers being merely his agents, though they may be necessary agents, agents designated by the constitution. In Hungary, executive power is vested in the King; in Austria, in the Emperor; now, as we have seen, the King of Hungary and the Emperor of Austria, though meeting in one physical person, are two distinct personalities in public law, every part of their prerogative being distinct and generally different. The King of Hungary can only be invested with the executive power of Hungary, the Emperor of Austria with the executive power of Austria; no third personality of public law, no sort of imperial first magistrateship has ever been conferred on his Majesty, nor does such a personality, I presume, evolve out of nothing by a sort of generatio equiroca, spontaneous growth. So there exists no person in whom such common, or imperial, executive power could possibly be vested, just as there is no source from which it could be derived, even to float in the air. What are, then, our common ministers? They are simply common agents, agents of both executive powers, Hungarian and Austrian; for those branches of government in which both executives should act together, they are ministers of the Emperor and of the King, to
assist his Majesty in those acts through which he simultaneously exercises both his executive prerogatives, imperial and royal.

And let me emphasize again that the whole machinery of common affairs and common ministries must act in constant agreement with the Hungarian ministry, under the constant control (direct and indirect) of the Hungarian parliament (and Austrian, of course, too), that it can be blown up every moment by a short law enacted by the Hungarian legislature; and let me ask again, where can you find in those institutions, dependent on the public powers of Hungary in every moment of their action, in every second of their existence, even the shadow of an imperial establishment superior to Hungary, controlling her to any extent? Truly, that phantom of an "Austrian Empire," taken in the sense in which it should include Hungary, reminds me of the old German proverb about a knife without a blade, the handle of which was missing.

IV

Should I have succeeded in making all this as clear to you, gentlemen, as it seems evident to me, you will quite naturally ask me how truths so evident came to be obscured and contrary impressions to be almost generally prevalent throughout the world, and you may further inquire about the bearing of such a connection between Hungary and Austria, as between two sovereign nations, on the international situation of either of them separately or of both taken jointly. Of these two questions I shall try to answer the second one first.

That Hungary taken separately has a legal personality in international law stands above doubt; it simply follows from her being an independent kingdom, "not subject to any other kingdom or nation," as the above-quoted law of 1791 puts it. But since she is bound to Austria by a covenant of mutual defense, and since the law of 1867 has declared common affairs "those foreign affairs which affect the interests of both countries," meaning those which bear direct relation to national defense, Hungary (as well as Austria) has for the time being disabled herself by her own law from acting separately in international matters of that kind; she has, with respect to these matters, for the time being, renounced the separate use of her personality in international law, and must, in all cases of such nature, act jointly with Austria.¹ The permanent potentiality of that joint

¹ This is how the matter stands in the terms of the Law XII, 1867. But even should that law be abolished or altered and the whole machinery of common affairs and common ministries be superseded, the obligation to mutual defense founded on the Pragmatic Sanction, which is a bilateral compact, would none the less subsist so long as the present dynasty lasts, and the foreign affairs of both countries would have to be conducted with constant regard to that obligation. How this could be insured under such altered circumstances is a question
action, the union of the two nations for that purpose, is called Austria-Hungary, or, since their ruler is physically one monarch, the Austro-Hungarian monarchy, though that term, as being apt to misinterpretation, is not very felicitously chosen and will probably fall into desuetude. Austria-Hungary, then, as is shown by the double term itself, does not mean one empire, but the permanent union of two nations for certain international purposes. In all international affairs not belonging to the sphere of national defense (such as railway conventions, extradition treaties, copyright conventions, etc.), the international personality of Hungary not only can, but must act separately, because with respect to them there is no union with Austria, and, therefore, their joint action cannot even be juridically constructed, except on the grounds of some (ad hoc) convention between them. In fact, some treaties belonging to this category have been concluded jointly by "Austria-Hungary," but this was done by an inadvertence which is not likely to occur again.

It may be difficult practically to draw a precise boundary-line between the matters in which the international personality of Hungary acts separately, and those in which, as long as the present law remains effective, she can act only in connection with Austria; but juridically the distinction exists, and Hungary has availed herself of it in several international treaties which she has independently concluded, and even where joint action is necessary it is not the action of one empire (which, having no substance, is hardly capable of action of any sort), but the joint action of two. Being bound to such joint action in certain matters, the union of these two constitutes one great power; because what is power but potentiality of action — in our case of joint action? But it is not necessary to invest that great power with a juridical personality of its own; the fact that it represents a permanent obligation of two personalities to act jointly in matters of peace and war answers to all requirements, theoretical and practical.

We can easily see now the chief source of the erroneous views generally prevailing about the legal status of Hungary. Our country usually appears in joint international action with Austria, she has a common representation with her; these facts are apt, by themselves, to spread a false impression, which could be prevented only if the forms of such joint action and common representation would clearly indicate, as they ought to do, the two sovereignties which, though acting in conjunction, are possessed each of its own personality.

of practical expediency which we need not discuss here. Some new scheme might be devised, or the guarantee contained in the physical identity of the monarch, whom both constitutions invest with an efficient prerogative in foreign affairs, might be thought sufficient for the purpose. At all events, contrary to a widespread and artificially fostered opinion, the European system of powers would remain undisturbed.
Unhappily this is not the case. In former times the unification of its domains (Hungary included) into one empire has been the constant aim of the dynasty. That aim could never be obtained, owing to the firmness with which our forefathers insisted on their independence; but wherever they failed to keep a close watch, wherever prerogative could escape their control and find an opening, some fragmentary appearance of such a unified empire was called into existence. This could be achieved with the greatest ease in foreign affairs, the administration of which was almost entirely left to the King’s discretion, and to some extent in army questions, where much debatable ground existed, and still exists, between prerogative and the rights of parliament. Of these opportunities the dynasty availed itself to the largest extent; while forced to reckon with the idea of Hungarian independence at home, it gave an entirely pan-Austrian character to diplomacy and to all foreign action. That lasted for two centuries at least, and fixed the impressions of foreign opinion in a direction which can be modified only through impressions of an opposite kind working on her for a considerable time. Unhappily, not even now can we point to a complete concord between what falls in the eyes of foreigners and what the relations between Hungary and Austria legally are. A wholesale reform of those misleading forms in foreign (and to some extent military) matters has not yet been effected, though it has begun and will no doubt be completed in a time the length of which depends on the degree of forbearance with which the nation thinks fit to tolerate these last comparatively trifling but obstinate remnants of bad times. Why there should be such remnants at all, which can do no possible good to any one or to any cause, but only serve to irritate and to prevent the growth of perfect confidence and harmony, it is not my business to inquire here, where public law and not politics is my object.

But anxious as I am to keep to that distinction, I must still conclude with an allusion at least to the political side of my question. I should not like to be misunderstood. My strong insistence, my whole country’s strong insistence, on her national independence, does not in the least imply a will or a wish to break away from Austria. We mean to keep faith to the reigning dynasty; no nation in its dominions is more absolutely reliable in that respect; we mean loyally to fulfill our compact of mutual defense with Austria; in a word, what our forefathers agreed to as being obligations freely accepted by Hungary, we mean to adhere to, as honest men should. All we want is that equal faith should be kept with us, that those equally binding enactments of the Pragmatic Sanction, which make Hungary secure of her independence as a sovereign nation, as a kingdom, *nulli alió regno vel populo subditum*, as the law of 1791 puts it, should be fulfilled with equal loyalty.
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To such complete national existence we have as good a right as any nation on earth, not on grounds of formal legality only, but because we are conscious of having creditably fulfilled our mission as a bulwark of Western civilization and of liberty. We don't see that this mission is ended, nor do we see how it could be fulfilled, should that organic force of our peculiar national mentality and constitution be missing, should that force which stands unshaken after trials before which stronger empires have fallen into dust, give way to artificial combinations and mechanical contrivances.

We are then only faithful to the supreme law of our destinies when upholding the banner of national independence with unflinching firmness of resolve.

SHORT PAPER

DR. BENJAMIN F. TRUEBLOOD, of Boston, contributed a paper to this Section on "An International Advisory Congress."
SECTION B—CONSTITUTIONAL LAW
SECTION B — CONSTITUTIONAL LAW

(Hall 14, September 24, 10 a.m.)

CHAIRMAN: PROFESSOR HENRY ST. GEORGE TUCKER, George Washington University, Washington.

SPEAKERS: SIGNOR ATTILIO BRUNIALTI, Councilor of State, Rome.

PROFESSOR JOHN W. BURGESS, Columbia University.

PROFESSOR F. LARNAUDE, University of Paris.

In opening the Section of Constitutional Law the Chairman, Professor Henry St. George Tucker, of George Washington University, spoke as follows: "I deem it one of the greatest honors of my life to be called upon to preside over this Section of this great Congress. As I look into the faces of those gathered here from every country of the world, distinguished for their learning in the greatest of subjects enlisting the interest of the people of the world, I recognize the fact that this Congress, in its full and free discussion of constitutional questions, may be of far-reaching importance to all the world. As an American I may be pardoned for saying that we take a just pride in the development of constitutional law in the Republic of the United States. With the progress of the whole world in this subject before us, we have sought to incorporate into our system the principles developed in each country which commended themselves to our conditions, and have added to them a security of civil liberty to the citizen unequaled in any of the constitutions of the world. We have with us representatives to-day from the kingdoms of Belgium and Italy, who will, I doubt not, instruct as well as delight us in the additions which they will make to our knowledge on this subject."
CONSTITUTIONAL LAW

BY ATTILO BRUNIALTI

[Attilio Brunialti, Councilor of State and Deputy of Parliament, Rome, Italy. b. Vicenza, Italy, April 2, 1849; Graduate, University of Padua. Editor of Il Diritto, Rome, 1871-82; Vice-Librarian to Parliament, and Secretary to the Geographical Society, 1872-76; Private Secretary to the first Liberal Minister, Depretis, 1876-80; Professor of Constitutional Law, University of Pavia, 1880-81; Professor of Constitutional Law, University of Torino, 1881-90. Member of Parliament, 1881-92; member of Parliament and Councilor of State since 1892; member of Central Commission for Taxes, Rates, and Duties in Rome; member of the Lombard Academy; *ibid.* of Philadelphia, and of the geographical societies of Rome, Paris, Lyons, and Marseilles; Vice-President of Italian Alpine Club; General Counsel of Touring Club. Author of several books and articles on political science and on other scientific subjects.]

In this solemn universal Congress of Science and Arts, the constitutional law must be satisfied with one of the most modest places. Normative and historical sciences, like the physical, mental, and utilitarian sciences, can show marvelous progresses, whilst among all sciences providing for social regulation, constitutional law is one of the less fortunate, because, if its actual problems are among the most important and interesting,—liberty, justice, and welfare of the human race,—the scientific apparatus with which it is preparing itself to resolve them is one of the most insufficient. Of course we can also glory in discoveries and progress filling us with a just ambition and pride—the representative system, the federal state, the bit of presidential government, the values of cabinet government, the participation of the people in the legislation. But if we further our researches we have reason to blush and to feel ashamed of our insufficiency, like the Alboino's physician, thinking how little the science of constitutional law has advanced compared with other sciences. We are even distinguishing the forms of government with the doctrines of Aristotle; we are praising the republic with the words of Cicero; we are preaching socialism with the arguments of Uang Ngan Shi and of Plato. There was a greater originality of political thought in a road of Athens in the time of Pericles or in a palace of Florence in Dante's time than in Rome or in New York in the contemporary period. The reason is that other sciences advanced with precise laws in the increasing surety of their elements, whilst observation and experiment will give to them an ever surer basis, and the science of constitutional law, unable to have recourse to experiment and to find an absolute surety by observation, advanced amidst infinite doubts, admitting the most uncertain and varying solutions for problems implicating the welfare, the progress, and the life of all men in the world.
Not only to be able to advance, but almost to become consolidated and to live, political sciences were obliged to accept essentially conventional laws, which appearing rather as fictions and leading to real conventional lies, like the so-called right of might, and the law of the greater number, as the judicial axioms for which the ignorance of the law is never an excuse, or the judged things are held as absolute truth. The contrast appears even greater because politics is one of the most noble and diffused passions of men, and in the mean time the science of constitutional law leaves us almost indifferent, is not entered in the universal culture, and has the poorest literature. Modern writers are often wanting in a solid, sure method, a method knowing itself, a direction attained from higher principles, a great and very scientific inspiration. And that happened also because the cultivators of other sciences proceed unanimously and compactly, like the Macedonian phalanx, and we are consuming ourselves with isolated efforts, elevating Egyptian monoliths, which few persons are able to appreciate. The reason of that crisis of political science cannot be neglected; it is not possible to fix the manner in which attention should be paid to the solution of modern problems which are imposed on it without knowing the condition of the soul constituting the whole of the feelings and moral tendencies of the present generations. For too long a time are we repeating with Cornwall Lewis,

"The forms of government let fools contest,
What is best administered is best." ¹

The enthusiasms determined by the revolutions and the modern reactions for the Republic and for the monarchy are avoided; every civilized state rests in the form most convenient for it, and even those that have experimented many forms of government, like France and Spain, seem convinced of the truth declared in the vulgar problem, "Plus ça change et plus c'est la même chose." The best studied constitutional arrangements are not modifying human nature; every form of government has merits and demerits, leaving us little or not at all wanting in radical changes. Consequently, the study of constitutional law is neglected, as we neglect a plant from which we were hoping for wonderful fruits, whilst it grows up not different from the others in the garden of science.²

¹ Trememheere, H., A Manual of the Principles of Government as set by the Authorities of Ancient and Modern Times, London, 1882; Bruniali; A., Le forme di governo, Torino, 1886; and see the works of Cornwall Lewis, T. de Farien, Ippolite Passy, Émile de Laveleye, on forms of government; Hosmer, People and Politics.

² "On ne s'enthousiasme plus guère ni pour la République, ni pour la Monarchie," E. de Laveleye, Le gouvernement dans la démocratie, Préface, p. vii.

Apart from this skepticism, the development of the science of constitutional law was prejudiced by the smaller part left to the human will in the political determination of the states and the lessons with which the greatest masters of modern thought have imbued minds agitated by doubt. The French Revolution had spread the conviction that the constitution of the state may be essentially the production of individual free will, and the peaceful and marvelous development of the United States has proved with what restrictions that doctrine must be accepted.

Against those bold pretensions of our science, believing to be able to regulate the destinies of society, the standard was everywhere raised; the theocratic school showed the influence of the divine in the constitutions;\(^1\) positivism limited the action of science to the recognition and to the application of natural laws which are governing the destinies of society;\(^2\) determinism and evolutionism, pretending to give the same form of social development, have ruined even more the conscience of liberty, teaching that the best result of constitutional science is to embrace the aggregate, heterogeneous vote of the human race so that it may be seen that every social party and every period of its existence is determined on the one hand by its contenders, on the other hand by past and present actions that other parties are exercising over it.\(^3\)

Even without being skeptic or fatalist, we are obliged to recognize the danger coming to science from this kind of universal conviction, not to be able to find anything better than representative government in its twofold form of presidential or cabinet government, with a more or less direct intervention of people in the legislation. After having little by little or with the violence of the revolutions broken the chains of all tyrannies, advanced humanity found in the representative democracy the delivering political form in which it will be able to develop freely its forces and its activity. Ippolite Passy and Stuart Mill, Thomas Cooley and Bigelow, Webster and Hosmer have kept alive too much this political optimism, so that the cries of alarm of David Syme and of Seaman, showing the vices of the republic, are not able to trouble it as much as those of Charles Benoist, alarmed by the crisis of the modern state and those of our numerous critics of parliamentary government.

Constitutional law is also neglected because the political fever agitating Europe during almost a century has left the place to the economical excitement, so that the dominant preoccupation is not liberty and justice, but welfare and the research of fortune. To reach the supreme degree of production and of consummation,

\(^1\) De Maistre, X., *Essai sur le principe génératrice des constitutions.*
\(^2\) A. Comte, Littré, and other positivists.
to approach to the social classes, to fight the privilege of riches, to improve the condition of the miserable are questions which require most our attention and preoccupy it almost entirely. Electoral programs are almost all occupied by economical questions, and to those questions are even adapted the names of the political parties.

Political institutions are mediums to reach the greatest good, and also, as means, they are not kept in great account because they did not succeed in hindering the creation of a frightful urban proletariat, a large inequality of fortunes, an enormous plutoera, whilst proclaiming the sovereign number they give to the working-classes the need to serve themselves with that sovereign number they are enjoying, to be able to reach their ideals without modifying political institutions, and whilst materialism, positivism, the declining religious feelings are directing ever further their minds towards the material satisfaction of comfort and riches.

Notwithstanding the constitutional law must solve in our days the most important problems of history, the states were never so much exposed to the action of two forces fighting together, of two opposite principles contending one against the other the empire of institutions. If the forces pressing on the state from without and those governing it within would come into conflict one against the other, they would determine a supreme crisis, in which it is permitted to the prophets of misfortune to foretell all the horrors of anarchy and all the reactions of despotism, not without the most audacious transformations on the political map of Europe. The modern state sees ever more in danger the basis on which it seemed ready to defy the centuries, the representative government and parliamentary system, and is directing itself towards the popular government, and meanwhile the external forces operating on it become ever more threatening, and show us in a remote light the needed peace of the united states of Europe, through inexorable fatalities of fratricidal struggles, of sacrifice, and blood.

You may remark that if the science of constitutional law is important for all, it is necessary to pay attention to the different nature and different problems it is offering in America and in Europe. Well wrote A. V. Dicey: "If I speak of the constitutional law of the United States I know precisely what is the subject of my teaching and what is the proper mode of dealing with it. It is a definite assignable part of the law of the country; it was recorded in a given document to which all the world had access; the articles of this constitution fall, indeed, far short of perfect logical arrangement, and contain, in a clear and intelligible form, the fundamental law of the Union. This law is made and can only be altered or repealed in a way different from the method by which other enactments are
made or altered. Story and Kent, therefore, knew with precision that the nature and limits of the department of law which they intended to comment, must be guided by the same rules as in any other branch of American jurisprudence, and their work, difficult as it might prove, was a work of the kind to which lawyers are accustomed and was to be achieved by the use of ordinary legal methods."

Otherwise it happened with English constitutions and with all others inspiring themselves in it, and which, although the letter is different, were modeling themselves on it in the whole development of parliamentary system. To comment on English constitution, Blackstone may search the statute-book from beginning to end and will find no enactment which purports to contain the articles of the constitution, no test by which to discriminate laws which are constitutional or fundamental from ordinary enactments; the same term of constitutional law is of comparatively modern origin.

Notwithstanding, the English constitution is, in the quaint language of George the Third, "the most perfect of human formations," which had not been made, but had grown; which was not the fruit of abstract theory, but of the instinct of the people. The celebrated quotations of Burke and Hallam and many others recall with singular fidelity the spirit with which those institutions were regarded.

The Romans spoke of constitutio principis, and in some statutes of the Middle Ages the same word is repeated, although it is more frequently spoken of as the charta or the statuto. Constitutional laws called for the first time in the science are those promuligated in 1643 from Sweden; the word acquires a real importance in the United States, becomes popular in France, and thus becomes the denomination of all fundamental laws of free peoples. The constitution in the Union remains a precise text, completed from the constitutions of the states and of the decisions of a judiciary authority, which is the only one in the world, a real, high, respected political power; the constitutions of England and, in smaller part, that of Hungary, are instead the result more or less definite of a succession of legislative acts or ordinances, of judiciary decisions, of precedents, of traditions. The other states have written constitutions: of popular origin, as America, France, and Switzerland; granted by the sovereigns, as Germany, Austria, and Scandinavia; of a mixed character, as many others and as the Italian constitution, which was formerly accorded by the King Charles Albert, and afterwards became a sacred pact between prince and people, sanctioned with

2 Stanhope, Life of Pitt, 1, App. p. 10.
the popular universal suffrage. It follows the different degree of importance and of precision of the constitutional law among the various peoples, the different way in which to conceive its essence, its nature, the possible reforms, the problems, the extreme difficulties of a scientific synthesis, to which the American constitution is yielding itself as those of Europe are rebelling. Because not only English constitutional law is formed from texts and customs, from laws and conventions, partly written, partly unwritten, but also in the European states that we can truly call constitutional states, besides the written law there is the tradition, having sometimes even abrogative force. So in Italy, according to constitutional laws, the King calls and recalls the Ministers, but according to the convention he is obliged to call as Premier that one who is designated by the parliamentary majority, and who will select the Ministers as your President selects and recalls them; and our Premier is obliged to give notice to the King, as your President to the Senate, although King and Senate are retained authors of the revocation. Thus the King is able to put the veto on a law, but in merit of the action of parliamentary machinery need not do it, and if he should do it, we could say that he has violated the convention of the constitution, although remaining faithful to the constitutional law.

The fundamental problem of our science of constitutional law regards its own existence. Thomas Paine said that a constitution cannot exist until every citizen can have it in his pocket. But just the principal defect of written constitutions is the facility with which so many have been put in their pocket by European princes because they were not initiated into the ideas, into the lives, into the habits of the people. X. de Maistre used to judge a constitution as frail as the number of its written articles, and Mackintosh said that the constitutional laws must not be constructed with a slow result of secular evolutions, but let them increase of themselves. On the other hand, a written constitution is not the simple codification of the customs and of the forms of a government, but is also a guarantee that customs and forms will never be such without the approbation of those who have solemnly confirmed them. Besides written constitutions there exist always customs, habits, traditions, capable of having the greatest importance, and meanwhile it is not possible to say that the shortest and most concise are the best. The United States, for instance, is ever more feeling the necessity of protecting itself against the abuses of legislatures and the intrigues of politicians, and therefore your modern constitutions are all longer than the ancient constitutions and have differences altogether more complex. Beside precepts very statutory, I can read rules limiting

1 De Maistre, Essai sur le principe générateur des constitutions écrites, Œuvres, Lyon, 1884, 1, 243.
the tax of interest or the hours of labor, the use of alcoholic drinks, and the provision of note-paper and firewood for the assemblies. The constitution of Missouri of 1865 has 26,000 words, whilst that of New Hampshire of 1776 was all included in 600 words; the following constitutions of Virginia filled 4 pages, afterwards 7 and 18, and the last occupies now 22 pages and has 17,000 words, whilst the first had but 3200 words. Notwithstanding, it seems to me necessary to remark that these constitutional laws have a greater political importance, a juridical character not different from other laws. A state is not able to change its form of government, especially if it is established on a very fundamental pact, as in different ways it happened in the United States as well as in Italy, as it changes the dispositions of electoral laws, and cannot modify this one with the frequency with which it changes the legislation on sugars. But the two elements of constitutional, formal, and substantial law are to be distinguished, but not separated; confusing them, we would have an inexact knowledge of the laws themselves, because leaving aside the material element, constitutional laws are understood as the mediums with which the sovereignty, with free choice, with a complete faculty to change them, becomes self-ruling in order to be able to reach its aims. Constitutional laws distinguished from the others because of their juridical nature, instead of being determined experimentally, are in such a case the effect of a scientific abstraction or an experiment founded on presumptions, and we are knowing the results of this method to understand them. On the other hand, the reactions against this doctrine led to confusing constitutional laws with ordinary laws, giving to the charters an apparent solidity and even a pretension of durability, whilst it was taking from the constitutional law its true, secure, juridical basis.

In the modern state it is necessary, indeed, that the fundamental written constitution have a juridical stability superior to other laws, but meanwhile it may be modified without excessive difficulties, because fundamental principles of the constitution have a greater importance, and may be modified without the larger course of public conscience, with caution and with a consideration which, with other laws, is neither possible nor desirable. But it must be always possible to maintain harmony between the words of the text and the spirit of the institutions.1 "If a written constitution is not frequently amended," wrote your A. Jameson, "it ceases to answer to the necessity of the political development of a people; and, on the other hand, if it is too easy to introduce new

amendments, they are the cause of the continued agitation of political parties. The written constitution less changeable is less elastic, less apt to assure the political progress of a people, especially if its education is elevated and its public spirit developed and energetic." ¹ On the other hand a written constitution is almost a bridge leading to better time, an easier and quicker means of giving civil dignity and political conscience to a people. It increases its juridical sense; it is a watch-tower showing when its liberty is in danger; it offers him a text which can always be recalled and returned after the agitations of revolution and the violence of reaction.² I perceive, also, only two moods suitable to reform constitutional law: that embodied in the American Federal Constitution and that one followed in England and in Italy. Among you, consent of the majority sanctions the difficult machinery of the amendments; among us the constitution is surrounded with the highest respect, considered as something not to be touched in its fundamental principles, subjected to the constant action of social and political progress, and is transforming itself in a manner that will enable it to provide for all needs and all exigencies, joining to the most venerated traditions the novelties which are better providing for the wishes, the needs, and the interests of the greatest number, to the very assiduous, fruitful expression of the national conscience.

The English constitution, as we have seen, consists of two different parts; one part is made up of rules, which are enforced by the courts, and which, whether embodied in statutes or not, are laws in the strictest sense of the term and make the true law of the constitution; the other part is made up of understandings, customs, or conventions, which, not being enforced by the courts, are not laws in the true sense of the word. The law of the constitution is the result of two guiding principles: "the sovereignty of parliament and the rule of law." The first principle means, in effect, the gradual transfer of power from the crown to a body which has come more and more to represent the nation, with two effects: namely, the end of the arbitrary power of the monarch and the preservation of the supreme authority of the state. The second principle, the supremacy throughout all institutions of the ordinary law of the land, determines the substance of English constitution which is, more truly than any other polity in the world, except the constitution of the United States, based on the law of the land. The rule of law is a conception within the United States which indeed has received a development beyond that which it has reached in England, but it is an idea not so much unknown to as deliberately rejected by the constitution-makers of France, Italy, and other Continental countries. The supremacy

¹ Brunialti, op. cit. pp. 79, 80.
² A. Jameson, op. cit. pp. 77, 78.
of the law of the land, the authority of the courts of law can, therefore, hardly coexist with the séparation des pouvoirs and with the system of droit administratif as it prevails in France and in countries which have followed the French guidances.

Not even Anson, in saying this, asserts that foreign forms of government are necessarily inferior to the English and American constitutions or unsuited for a civilized and free people. But the question of method acquires a singular importance, and the constitutional law in Continental Europe has problems more unknown among you than in England, such that we are obliged to give our attention also to the question of method, as to one of the cardinal points of the science.

Struggle is always strong in the sciences and even in the practice of political institutions, between idealists and sociologists, between the followers of juridical method and those upholding the comparative. The ideal method advances with the rapidity of classic spirit, following every research, with an unlimited confidence, the principles of the mathematic. It extracts, limits, isolates some simple and general notions, it compares and combines them, and from the artificial result thus obtained deduces with reason the consequences it perceives to be contained therein. It is the metaphysical manner of proceeding, or the dogmatic manner, because it derives from principles elevated to dogmas with an unlimited faith in a truth dominating political science, and determines all its solutions. From the Heaven's Star of the Persian Vishnu Das and from the Republica of Plato, with their numerous imitators, to the Utopia of Thomas More, the New Atlantis of Bacon, the Oceana of Harrington, and the Cities of the Sun of Campanella, to the Looking Backward of Edward Bellamy, to the Freeland of Theodor Hertzka, and to the other social modern romances, we perceive a wealth of literature which has deluded, seduced, deceived, and corrupted humanity.

The mathematical constitution given by J. Locke to South Carolina or that imposed by the Jesuits in Paraguay, and in Europe the aberrations of the social contract of Jean Jacques Rousseau, have shown of what corruption this literature is capable. When we assert with presumption that the constitutions are the work of our reason which is conceiving the fundament and deducing the system, and of our will, which actuated the conceits of reason; when we admit that the human mind enjoys principles, absolute truths, imposed

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3 Liard, La Science Politique et la Métaphysique, p. 47.
4 Deslandres, op. cit. vol. xy, p. 395; and more diffusively, Vacherot, E., La Démocratie, preface, pp. viii, ix.
by an enlightened internal evidence to our mind, with solutions valuable for all the world we are not able to establish anything firmly. Who will deny that the surest and most durable political creations are just those which were more distant from dogmatism, like your constitution, the result of transitions and compromises between different tendencies, imposed by the necessity of facts, with absolute abstraction from all idealism whatsoever?\(^1\) Nevertheless we do not wish to deny, therefore, the existence of the moral law;\(^2\) we may also admit a certain ideal even in the constitution, until it remains lively and concrete and the ideal may be rooted in the reality, may be as the synthesis of the noblest aspirations of the people, and may correspond to its history, its temperament, and its needs.\(^3\)

The juridical method has had in Italy illustrious precursors who had but a vague idea of it, as G. Romagnosi, but it was specially proclaimed, affirmed, and pushed to its utmost exaggerations in Germany. The state in relation to the law, the Rechtsstaat, is a German result tending to exclude politics or to limit them to the totality of öffentlichenrechtlicher Verhältnissen, never losing the rechtliche Natur, going ever upwards towards allgemein Rechtsbegriffe. For this method the constitutional law, the political régime, is a vast juridical system, a totality of relations, rights, obligations, dominated by essentially juridical principles. Promised the analysis der öffentlichenrechtlichen Verhältnisse, this method is looking for die Feststellung der juristischen Natur derselben and goes afterwards surely zur Auffindung der allgemeineren Rechtsbegriffe denen sie untergeordnet sind to return from this ascending generalization, to deduce from the principles regulating the natural consequences die aus den gefundenen Principien sich erzählenden Folgerungen. Thus Paul Laband, Georg Meyer, Philips Lorn, A. Gerber, and other German writers are proceeding,\(^4\) guided from pure reason and moreover from logic with a firm faith in the existence of general juridical conceits, believing it impossible to create in any other way, eines neues Rechtsinstitut, wie die Erfindung einer neuer logischer Kategorie oder die Entstehung einer neuen Naturgraft.

Such a method is leading to consequences which are possible only in Germany, and by chance in vain are invoked in France and in Italy. Germany has not the science of constitutional law, or rather

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\(^1\) Rousseau, J. J., Contrat Social; Condorcet, Esquisse d’un Tableau Historique des Progrès de l’esprit humain, Œuvres, vi, p. 180; Vacherot, E., La Démocratie; Bouald, de, Théorie du pouvoir politique et religieuse; Bruniatii, Il Diritto Costituzionale e la Politica nella Scienza e nelle Istituzioni, vol. i, chap. iii; Kleinwachtler, Die Staatsromane, Wien, 1891; B. von Mohl, Geschichte und Literatur der Staatswissenschaften in Monographien dargestellt, Erlangen, 1855–58.

\(^2\) Sécéton, C., Les Droits de l’Humanité; Cournot, Considérations sur la Morale des Idées, ii, pp. 86, et seq.

\(^3\) Fouillé, A., L’Idée du Droit, Paris, 1883; Sécéton, op. cit., in Deslandres, op. cit. xv, pp. 425, et seq.

\(^4\) Laband, P., Die Staatsrecht des deutschen Reichs, and others.
confuses it with the science of the administration, in which the Emperor and the administration of the Post-Office Department, the Reichstag and the Kreisordnung, are treated in the same manner, to the absolute expulsion of every political judgment. The method exercises a remarkable witchery in Italy 1 and in France 2 as a reaction of the juridical rigorism against the intervention of parliamentarism in the justice and in the administration and also for the importance and the worth of German works of public right, for the ever magnificent and classic construction of the theories, but it cannot be received. It has succeeded in Germany in order to the federal constitution of the Empire, juridical fundament like all the powers and the organ of the state, and to the juridical means informing all the German science. But the Emperor did not consent to the development of parliamentary government, conserved even a kind of half-abolutism, which we can approve of with a clever and active monarch, but would become dangerous with any other. And before adopting this method it is well to consider how badly founded is the belief in the reign of logic in political institutions leading us towards all the errors of the dogmatic constitutions and how vain the effort to give to politics an exclusively juridical basis, the science of constitutional law is not able to obey in its development the only juridical criterion and would suffice to test it, the deformations to which in fact are subjected the most particular and severe constitutions. 3

The juridical method would give a false direction to whatever constituent works; meanwhile it leaves political science disarmed in face of the conditions and of the needs of the nation in the encompassing of which severe juridical formalism cannot follow all transformations. Nevertheless, we cannot contradict wholly the tendencies of parliamentary states, to give ever more to their institutions a juridical foundation so that politics may be able to breathe in it, like a vivifying air, but unable, however, to rust the machinery or to beget injustices, violence, or any other kind of abuses. 4 Some others are considering all political sciences as a branch of social science, or with a greater exaggeration, perceiving in the state the most complex and the most delicate organism, is acquiring for itself a place in the natural history, speaking of its evolution, like that of other beings, and asserting audaciously that politics will become a science only with the

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1 Orlando, V. E., Trattato di Diritto Amministrativo, Milano, in 10 vols; Majorana, A., Lo Stato Giuridico; Stato Costruzionato.
3 Also for the American Federal Constitution see J. Bryce, American Commonwealth, vol. 1, p. 101: "So hard is it to keep even a written and rigid constitution from bending and working under the actual forces of politics."
aid of sociology. It is true that even sociologists are agreed in determining the characters of the method they are applying to social facts; they are only asserting that social phenomena are identical with the natural or even less bound to their form. An inflexible relation of causality, gathered from a severe determinism, in relation to which science respecting it is essentially positive, and determines with observation and investigation the laws of phenomena. "Science studied," said Spencer, "the increasing, the development, the structure, and the functions of the social aggregate, for the reason that it is a result of the mutual action of the men." Some writers are making a natural history of human societies, determining and classifying genders and kinds, describing the anatomy of their organs, analyzing the physiology of their functions, tracing the curves of their evolution. Others again are studying social facts and looking for the laws which are mechanically governing them, with a greater objectivity, following more scrupulously the traces of this experimental method, going back to Aristotle, perfected by Galileo, and which led to the most important discoveries of modern science. Metaphysical sociologists like A. Comte, anthropologists like Letourneau, psychologists like Espinas, historians like Spencer, have already demonstrated what is the worth of the method, until it is limiting itself to observation. Not one of them is offering us a sure conclusion; they are agreeing neither on the substratum of science, nor on its end, nor on the essence of social facts, nor on any political application. Conservation or progress, liberty or authority, individualism or socialism,—such a method has for every one a solution, but there is no sure and positive conclusion. Until it is handling of past and of present, the collection of facts is important, observation complete, but when we are looking for the secret of the future, when we will remove the criterions of the constitutional law and of its development we perceive the absolute impotency of it, which is giving us middle types existing everywhere, providing solutions which are not finding applications.

To correct this impotency of the sociological method, the comparative method is lending its aid. After the detailed observation of social facts, their comparison is necessary, which Montesquieu was already opposing to the dogmatism of Rousseau, investigating

1 Balecki, Staatsobligatorische organisation der Politischen Gesellschaft; Letourneau, L'Evolution positive dans les races humaines; Espinas, Les sociétés animales; Spencer, H., Social Science and Sociology; De Roberty, La sociologie; Fouillée, La science sociale contemporaine.
2 Social Science, pp. 5, et seq.
3 Espinas, Les sociétés animales; Schäffle, Bau und Leben des Socialen Körpers; De Lilienfeld, La société humaine considérée comme un organisme vivant; E. Perrier, Les colonies animales; Bourdier, Vie des sociétés.
4 Fouillée, Balecki, op. cit.; De Grev, Les lois sociologiques; Duguet, Le droit constitutionnel et la sociologie.
the esprit des lois, and proposing the imitation of England, as later did A. de Tocqueville and Edouard Laboulaye that of the United States of America.¹ But in that manner we are falling again into idealism; meanwhile the real comparative doctrine inaugurated from Le Play observes all special facts to be able to ask, with serene impartiality, fruitful examples from the various free peoples, as Aristotle gathered and studied the seventy constitutions of the Grecian world to reform that of Athens.² So some modern writers are succeeding in a kind of common constitutional law, of relative ideal, which make them penetrate into the edifice of national right, the data admitted on the territory of comparative law, almost a quintessence of the various institutions.³ A general political science, obliged to study all political forms for determining and classifying all the various types in which may be combined the institutions governing the states; to examine the correspondence between these institutions and the conditions of the ambient, the races, the periods in which the different peoples can meet to examine the worth of the different organism, the measure in which they are satisfying the needs of society, and to study the general laws of their development. A so conceived general political science requires, of course, the comparative study of the greatest number of political arrangements. We cannot deny that the method is on its part alone insufficient and unable to give us complete solution. The imitation inspired from the best comparisons can resolve itself into a pure dogmatism, and we must not forget what Montesquieu himself wrote, that political laws must be so much adapted to the people for whom they are made that it is a very strange case if those of one nation can be convenient for another.

It is useless to stop at other scientific methods that some might find in the application of common good sense and others might find in the application of the laws of history. What we have said is sufficient to show that to be able to resolve the present scientific problems of constitutional law, in their variety, and in their importance, we are obliged to move by observation and with the guidance of history and will gather the greatest number of facts. It is necessary to study these facts in themselves, in the cause determining them, in their consequences, aiding ourselves in this second study with scientific research. On this investigation must follow the experiment, guided by common good sense, with almost no dogmatic

¹ De Tocqueville, De la Démocratie en Amérique, 3 vols.; E. Laboulaye, Paris en Amérique, Questions constitutionnelles; Conferences sur les États Unis d'Amérique.
² Le Play, La réforme sociale.
³ See the Reports of the International Congress of Comparative Legislation in 1900, and generally the reports made by Lambert, Larnaude, Soleilles, and others; Conception et objet de la science du droit comparée, in Bulletin de la Société de Législation comparée, 1900, pp. 389-405.
spirit, without pride and obstination, in a manner to be able to conserve and to perfect the convenient political institutions, to abandon and reform the others.

Therefore political science considers as particularly adapted for its purpose the federal states, which is a very laboratory of political experiment. Thus and not otherwise perfect and spread itself the homestead, the holidays, the legislative referendum, the municipalization of some public services, whilst other reforms, which seemed destined for a great future did not succeed to prevail in a like measure. I will only recall the woman suffrage, the proportion of representation. A state of the union, a canton of Switzerland, adopts the reform, another one studies and perfects it, and experiments are following various parallels contemporaneously; they may study and compare with the aid of investigation and results correct themselves or advise the abandonment of an idea which appeared surrounded with all possible seductions. Old England in merit of its internal composition and of its numerous colonies became, like the federal states, a political laboratory, but now, even the nations most devoted to uniformity are putting themselves in this way. In Italy we have at last understood that unity can exist only in variety, that the agrarian laws of Lombardy cannot be suitable for the Roman Campagna; the industrial provisions sufficient in Turin are not so in Naples; the laws for the fishing of sardines on the Adriatic cannot serve for the fishing of tunny or of sponges; and overcoming an instinctive repulsion, we made many special laws for the Roman Campagna, for the basilicata, for the acid-fruits of Sicily, for the industries of Naples, and for building water aqueducts for Apulia.

So the modern problems imposing themselves on the constitutional law are keeping us farther from dogmatic abstractions, from classical types, from prejudices, and from unilateral conclusions, whilst the common fund of the science is ever increasing. It would be sufficient to show, therefore, the modern transformation of the public law of England. Whilst the European Continent was admiring self-government, the constant active participation of the leading classes in the general and local government, and all those singularities, agreeing in a secular, historical evolution, more than in the theoretical conceptions of the studious, England was reforming its arrangements, shaking the most ancient basis of the constitution and of the administration, destroying their aristocratic character, yielding to the prevailing democracy, and approaching to the institutions of the Continent by new concentrations of power, by the simplification of old institutes, by the continued substitution of paid functionaries to the honoraries, by the increasing of public expenses. It is true that as R. Gneist observed, "the transformation happened easier in England because the state had obtained during the centu-
ries, a complete supremacy in matters of war, justice, police, finance, and its relations with the Church.\footnote{\textit{Englische Verwaltungsrechte der Gegenwart}, Berlin, 1882, 1st ed.; \textit{Englische Communalursprung}, Berlin, 1883, 1st ed.; \textit{Geschichte der Englische Parlament}, Berlin, 1890.} The House of Lords is transforming itself, and the House of Commons has become the expression of the conscience of the nation, as in a most complete democracy; the control of finance is perfected, the action of parliament is ever farther extending itself to the Church, to the school, to economical reforms, increasing the state's protection in the interest of the weak; giving to all social legislation a development which overcomes the most audacious aspirations of the \textit{leges agrariae}, and anticipates sometimes the same requests of socialism, never neglecting to appeal to all individual energies. The conferring of offices as well as all that which concerns the civil service is transformed, keeping in account the examples of the Continent; the self-government followed the increasing interventions in sanitary police, in the beneficence, in the administration itself with numerous boards, disposing of enormous powers. The ancient squire finds himself at the mercy of the rural majority, and the allotments, the surveyance, and the inspections of the unhealthy dwellings, the direction of charities, the roads, are offering ground for new struggles, raising new problems, determining consequences hardly foreseen in the distribution of feudatory ownships, in the power of the ancient leading classes, and in all social arrangements.

Therefore, who will understand the English constitution with Montesquieu, or also with Macaulay and Hallam, and even with Bagehot, would prove the same deceits, like your students if they would continue to follow the lessons which Francis Lieber dictated in the year 1853 on \textit{civil liberty and self-government} for South Carolina and perfected in 1859 from the chair of Columbia College. When we think of the modifications to which even this ideal of liberty was subjected, we are obliged to recognize that you have acted wisely without giving any definition of liberty in the federal constitution and causing it to enlighten the world like a supreme watch-tower in the port of New York. Of course no one will deny that what is beautiful, great, and useful in the world is due to liberty; it is the reign of the right, but there is no right without liberty. It is the conquest of centuries, during which the weak was subjected to the strong, the debtor to the creditor, the laborer of the land to his feudal lord, the infidel to the torture of the Inquisition, a whole human herd to a few audacious and lawless men. Liberty has changed the slave treated like things, the prisoner sacred to the inhuman hecatombs, the vast populations voted to the sacred springs, the slaves bent on the feudal soil, the subjects watched by a suspicious police into citizen legislators of modern democracies.
I beg you yet to consider how that conception of liberty, appearing so simple and undoubted to our fathers, was modified in face of the new necessity of the modern state, and with its modifications exercises the most decisive influence on the development of constitutional law. Many of your constitutions, like those of Alabama, perhaps the most explicit, are still openly declaring that the sole object and only legitimate end of government is to protect citizens in the enjoyment of life, liberty, and property, and adds that when the government assumes other functions it is usurpation and oppression. In analogy to such principles all your political machinery asks essentially from the government to assure the general well-being and considers as an enemy whoever is contrasting in this way the opinion of the majority, although that majority has in our days, as in the time of A. de Tocqueville, its tyrannies. But meanwhile in America, also, this classic conception of the state is modifying itself, and new constitutional laws, always more detailed and complicated, are joined to those already existing.

You know it, but to a European it helps remembering it synthetically. Here no one thinks of restraining the political suffrage that we can now call universal, and it would be an enterprise more difficult than to change the course of the Mississippi, but under the old forms of the restrained and partisan caucus rouses the conceit of public preparatory elections; in almost all states the registration of the electors becomes obligatory, and the lists are every year examined with an ever serious guaranty, the electoral chairs are presided over by citizens named by the judges and assisted by the representatives of the candidates; the ballot is always more guaranteed. Thus becomes prevalent the system of assigning different days for the different elections, whilst the number of elective offices is notably restricted. Developing the fruitful germs embodied in your first constitutions, you are increasing ever more the prohibition to make laws on determinate subjects, to preserve untouched the uniform action of the regulating laws of persons and properties condition, preventing the guaranties in the manner of proceeding from being altered, whilst the same constitutions are limiting or regulating the assessment of the tax and the faculty to contract debts.

To the annual sections are substituted the biennial sections, renouncing to that which seemed to the colonies such a supreme guaranty to induce them to rebel against the third Stuart; the duration of these sections is always brief, so that only the necessary laws be passed; even the ancient Roman wisdom considered too many laws as a corruption of republic: Corruptissima republica plurimae leges. Finally, the bills in extremis and the political riders

1 Démocratie en Amérique, part ii, chap. vii, sec. 3.
are not allowed, as England had forbidden the taking bills. On the other hand, the people are called upon to take a more active part in the work of the legislature, with the referendum, of which we have always more numerous applications even in Europe, and with local option.

More remarkable than all is the progressive increasing of the powers of the executive, that is the government. That which in the time of Jackson seemed a constitutional usurpation, is now considered as a necessity. And in the states as in the smaller local organisms, the executive, much more than in the federal government, was able to develop and reinforce in the houses its two functions of cooperation and of antagonism. The exercise of the veto is an ever serious and efficacious bridle and a far greater influence is deriving to the executive from the right of appointing to the public offices, which, in spite of many and lively oppositions, is always more subjected to guaranties and to controls of undoubted efficacy. A more strict chain of proceedings is accenting itself ever more strongly, even in the federal government, between the executive and the legislative power. Burgess 1 prophesied that these United States will be induced to temper the presidential government with some rules of the cabinet government, as this one has already the greatest independence from the parliament. In conclusion, if Williams could write 2 that an American citizen can pass his whole life without invoking the federal laws, and putting into action the Union’s powers, to-day it is more exact to repeat with Wilson 3 that the federal government is knocking at the door of every citizen with the same authority of the state’s government.

Some find such a development of the authority of the American government not existing without serious dangers. But you smile at the new prophets of misfortune as at the old ones when, preoccupied with any anarchical phenomena, they elevated to the gospel the letter in which T. Babington Macaulay described with dark colors your future, like those who, seeing elected and re-elected to the presidency a general hailed with the glory of recent victories, had already seen the democracy almost wrapped around as Laocoön in the mortal coils of imperialism. To-day, for example, some one preaches in the action of the trusts the sure victory of socialism.

It is true that Charles Marx foretold a seeming capitalist concentration as a sure preparation for the actuation of his doctrines. But the trusts are reducing apparently the production to unity; in reality they are multiplying it indefinitely with all the power of the machinery of the joint-stock companies, because to three, ten, twenty

1 Vol. ii, pp. 38, et seq.
2 Cited in Boutmy, chap. 2, p. 166.
3 Congressional Government, p. 25.
producers, they substitute five, twenty, a hundred thousand stockholders, and where we may seem to perceive the struggle, there is interested a great quantity of citizens, especially the humble and incapacitated, women, minors, shopkeepers, even beneficent institutions, even universities and great scientific societies, a larger system of participation in benefices, than we might even have imagined. To think a concentration of all capitalist forces, which may necessarily correspond a general league for the most violent struggle of classes to the bloody social revolution, is an exaggeration. Here, more than elsewhere, helps a proverb of the ancient Greeks who were comparing the liberty governed by the law to the lance of Achilles, which had the twofold virtue of wounding and of healing. In fact President Roosevelt gives to his state the New York Business Company Act of 1900; afterwards creates the federal ministry of commerce and finds in Philander Knox his Merlin. Putting aside the trial of an always extremely difficult reform of the federal constitution, the battle will continue in the courts of justice which, armed with the anti-trust law of Sherman, are striking inexorably; and therefore, beginning from the Beef Trust and the Railroad Trust, provoked the summary justice of the Stock Exchange. Such frightful institutions, appearing at the beginning of social revolution, are falling down like paper castles built by children. Nicolo Macchiavelli, who left us precious political instructions, says: "That the things beyond their natural foundation are not lying, neither resist."

The American plutocracy will not be mightier than Cesar and Charlemagne, than Gregory VII or Napoleon, if it will pretend to check the laws of nature or to change the course of history. What did not succeed among despots who could glory that they were descended from Jupiter, who could dispose of an unlimited power and proclaim themselves to be the state in face of an ignorant and subjected mob, without energy and even political conscience, cannot succeed in a free land to an only potency, even the greatest, as it did not succeed with John Locke to transfer to South Carolina the English feudalism, or to the Jesuits of Paraguay the celebrated constitution regulating even the hours of conjugal debt, as criminal sociology will never succeed to suppress the born delinquents, or electoral legislations to prevent the bribery.

The solutions are perhaps easier in Europe, where there is accorded to the state a more complete action, in merit of which it appears more organic and stronger and is able to strike severely, as yesterday in Germany, socialism; to-day the religious congregations in France; to-morrow, perhaps, in England or elsewhere, the trusts or other social manifestations. And yet there continues among us, especially on the Continent, the doctrine of patriarchal government of society; therefore the greatest interests, of which here voluntary associations,
incorporated and authorized by the law, are taking care, are among those directed by governmental authority. Such an intervention appears more necessary because it is wanting among us and it would not be possible to organize in the same manner as a real political power the judiciary authority, so as to be able to have this sure protection it is offering to your institutions, and, on the other hand, this individual energy became weakened governing the whole American political life, infusing into it force, making it admirable throughout the most terrible crisis.

The increasing necessity of protecting the most feeble in face of industrial organizations, of the power of capital, of the same struggle for welfare is determining the new developments of the action of the state and of municipal corporations. Therefore we are disputing in Italy if we must confide to the government even the control of the railroads, although the experiences of some European states and the peculiar difficulties of administration and control granted to the exigencies of parliamentary system should not let us advance in this direction. So we have recent laws which allow the municipality to exercise the monopoly of the most different enterprises, light and water, trolleys and telephones, hygiene and moving force, bread and meat, ice and funeral poms.

There follows a number of new problems, imposing themselves on the governing constitutional law: organizations of the referendum, administrative and financial controls of the new managements, bits to the new rules on political and municipal elections. There arises the twofold necessity of a more detailed development of the legislation, so that to the administrative arbiter, who has a great action in the silence of the law, may happen a precise disposition, able to be a rule for authority, a defense for the citizens, and of a judiciary authority unknown to the Anglo-Saxon law, almost new to our institution, the administrative justice with which the state that cannot and will not be subjected to the ordinary judges in administrative matters concerning not the right, but the interest, became judge and party, yet granting to the citizens, with these administrative tribunals, such guaranties not to be neglected.

Gentlemen: History and reason are teaching us that the science of constitutional law must not preoccupy itself more than once with possible reactions or revolutions. We are convinced that our forms of government, although not approaching the ideal in a general interest, to give to every citizen force proportionate to his effective worth, whatever may be his social condition. The struggle of the classes is nonsense where the majority rules, where it depends on this majority, made up of working-men, to modify the laws, which in some states favor concentration, protect usury, and are exposing the working-classes to the unlimited struggles of competition. The law
is the expression of the public conscience, the formula of that which the nation recognizes as necessary and useful, and to which it submits itself freely. We must not ask from politics what it cannot give. Persuaded that the ideal state does not exist, perceiving that in this modern age liberty is greater, justice surer, morals higher, the general well-being more widely spread, that the defects of our political institutions seem to us greater because we can censure them freely, we are obliged to look for the future, from what we are now in comparison to past times, from the progress reached in so many centuries and amid so many difficulties. So well as from the ancient city, across the aberrations of the great Asiatic and Roman monarchies, the invasions of the barbarians, the brilliant feudal anarchy, the struggle for the supremacy of the Empire and of the Church, the patrimonial state and the police state, we have arrived at the national state, the progress of constitutional law will lead us to the universal state, which before being the aspiration of modern society has been the promise of the Gospel, the tentative of the Empire, the belief of the Church, and it remains ever the regret of the intellect which struggles with the reforms of the law, the most beautiful dream of the men of heart, longing for the infinite progress of humanity.
THE PRESENT PROBLEMS OF CONSTITUTIONAL LAW

BY JOHN WILLIAM BURGESS

[John William Burgess, Professor of Political Science and Constitutional Law since 1876, and Dean of the Faculty of Political Science since 1890, Columbia University. b. Conersville, Giles County, Tenn., August 26, 1844; A.B. Amherst, 1867; Ph.D., LL.D.; Post-graduate of Universities of Göttingen, Leipzig, and Berlin. Professor of History and Political Economy, Knox College, Illinois, 1869-70; Professor of History and Political Science, Amherst College, 1873-76. Member of American Historical Association; American Economic Association, Author of Political Science and Constitutional Law; The Middle Period of American History; The Civil War and the Constitution; Reconstruction and the Constitution. Co-editor of Political Science Quarterly.]

Ten years ago one was accustomed to hear the proposition confidently advanced and stoutly maintained that the period of development of constitutional law had closed, and that the civilized world was in the period of administrative development. I knew then that this proposition, if not an error, was at least an exaggeration, and everybody knows it now. If the devotees of administrative law and theory had been content to say that constitutional law had reached a much fuller development than administrative law, and that its unsolved problems, though highly important, were fewer in number than those of administrative law, no fault could have been found, or could now be found, with the contention. But the events of the last six years especially have shown most conclusively that the work of the constitution-makers is far from completion, and that we have entered, or are about to enter, upon a new period of constitutional development. Facing this situation, let us, in the short hour allowed to this paper, discuss a few of the more important problems which await solution or a new solution.

All questions of constitutional law, as of political science, may be classified under three grand divisions, viz., sovereignty, government, and liberty.

I will not enter upon a philosophical treatment of the term and concept "sovereignty." I will only say that in every constitution there should be a workable provision for its own amendment, and that in every perfect, or anything like perfect constitution, this provision should constitute organs for accomplishing this purpose which shall be separate and distinct from, and supreme over, the organs of the government, which shall truly represent the reason and the will of the political society and the political power upon which the constitution rests, and which shall operate according to methods and majorities which will always register the well-considered purpose of that society and that power. I hold the first problem of
the constitutional law of the present to be the fashioning of the clause of amendment so as to correspond with these principles.

If we examine the constitutions of the great states of the world, and contemplate their history during the last twenty-five years, we shall see at once how pressing this necessity is.

Leaving out of account the British constitution as being, in the ordinary conception, an unwritten instrument, and the Austro-Hungarian Ausgleich as partaking more of the character of a treaty than of a constitution, we shall find that the constitutions of three of these states, viz., Spain, Italy, and Hungary, contain no provisions at all for their own amendment; that all the rest, including Great Britain and excepting France and Switzerland, use exclusively the organs of their governments for making constitutional changes; that France uses the personnel of her legislature, but under different organization, for this purpose; that Switzerland accords her legislature a power of initiating such changes, which in practice frequently creates embarrassments to the prompt and certain action of the popular will; and finally that all except Great Britain, France, Switzerland, and perhaps Norway, require such majorities for action as to make these provisions generally practically unworkable, except in times of great excitement, the very moments, if any, when they should not work.

Let us take, for example, the provision of amendment in the constitution of the United States as being the one in which the majority of this audience is probably most interested, and as being the provision made by that great state which more than any other professes to develop through the methods of gradual and peaceable reform rather than through the European and South American methods of revolution and reaction. This constitution was framed originally, without any warrant of existing law, by a general convention of delegates selected by the legislatures of the different states of the Confederation, except the legislature of Rhode Island, and it was adopted originally, also without warrant of any existing law, by conventions of delegates chosen by the people within these several states. The general convention proposed, or more correctly ordered, and that, too, without any warrant of existing law, that the proposed constitution should go into operation when ratified by conventions of the people in nine of the thirteen states of the Confederation, and it actually went into operation when conventions of the people in only eleven of these states had ratified it.

I shall not enter upon any criticism or any scientific explanation of these procedures. I will only say that to my mind they were entirely extra-legal, and, therefore, revolutionary, but were necessary, necessary because of the absence of any workable method of amendment in the Articles of Confederation.
Warned by this experience, the framers of the new constitution wrote a method of amendment into this instrument which they expected could be and would be effectively exercised.

It was exercised, first, to limit the powers of the central government in behalf of the individual, to perfect the realm of individual immunity against the powers of the central government, which was in the line of true progress. It was applied, in the second place, in behalf of the exemption of the states from the jurisdiction of the United States courts, which was the first result in constitutional law of the reaction of 1793 against the national movement of 1787. And it was employed in the third place to cure some of the defects in the election of the president and vice-president. Then for more than sixty years, while the mightiest changes were being realized in the social, political, industrial, commercial, and educational conditions of the country, not one trace of any of them found its way into the constitutional law of the nation.

We may say that the main direction of the movement in the social, political, and economic elements down beneath the constitution was, whether consciously recognized or not, towards limiting the powers of the states of the Union in behalf of the powers of the central government and the liberty of the individual. The pressure of the movement was so strongly felt by so great a portion of the people of the country, and so strongly resisted by another great portion, that it led to the appeal to arms of 1861. The method of amendment, intended for every exigency, had proved itself unequal to the emergency, and when employed again in the last three constitutional changes, it simply registered the results of battle. In the main, what was then and thus accomplished was correct in substance, but the method which was necessitated showed again that nothing like the perfect principle and form of constitutional amendment had been reached.

And now, again, for thirty-five years mighty changes have been wrought in the structure of our political and civil society, and in our commercial and industrial relations, and yet not one of them has been registered, by the process of amendment, in our constitutional law.

From this brief review it seems entirely manifest that the method of amendment provided in the constitution of the United States is ordinarily unworkable, and that the first problem of the constitutional law of the present in this country, as well as in almost all other countries, is the revision of the provision for constitutional amendment. Let us now scrutinize a little more closely the details of the provision in order to make its defects clear and definite. At the very first glance we discover that really four methods of amendment are legalized by the provision. The first method authorizes
the initiation of an amendment by a constitutional convention of
the United States, called by Congress on demand of the legislatures
of two thirds of the states of the Union, and ratification by con-
ventions of the people in three fourths of the states. The second
method authorizes the initiation of an amendment in the same
manner and by the same body as the first, and ratification by the
legislatures of three fourths of the states. The third method au-
thorizes initiation of the amendment by a two-thirds vote in both
houses of Congress and ratification by conventions of the people in
three fourths of the states. And the fourth method authorizes
initiation of the amendment in the same manner and by the same
body as the third, and ratification by the legislatures of three fourths
of the states. Only one of these methods, however, has been em-
ployed, viz., the last. Convenience has dictated this, and conven-
ience is ordinarily stronger than principle in a country which moves
so fast as ours does.

Now it is evident that what makes these methods of amendment
almost practically unworkable is the extraordinary majorities re-
quired both in the initiating and in the ratifying bodies. The idea
was, of course, to make constitutional change conservative, a laud-
able purpose indeed, but a dangerous thing when that conservatism
is mechanical and artificial, and it always becomes such when it
permanently prevents the will of the undoubted permanent majority
of the whole people in a democratic republic from realizing its well-
considered and well-determined purposes in its organic law. There
is a natural way to secure and preserve true conservatism, a way
which does not contradict the fundamental principle of majority
right, and that way should always be followed.

This matter of the majority is not, however, the sole element in
the problem of a proper provision for constitutional amendment.
There are several other points of great importance. One I have
already adverted to, viz., the error in sound political science of using
the governmental organs for the making of constitutional law. To
illustrate this let us consider the process of constitutional amend-
ment in the German imperial constitution. According to the pro-
vision of amendment in that instrument, constitutional law can be
made by a simple majority vote in the Reichstag sustained by forty-
five of the fifty-eight voices in the Bundesrath, while the two bodies
by simple majority vote in each make ordinary law. Now it is
the impulse of the Reichstag to call every measure which it desires to
see passed ordinary law, and it is the impulse of the minority in
the Bundesrath to call every measure which it desires to defeat
constitutional law, and the constitution provides no organ for deter-
mining a hermeneutical contest over this point, unless the Emperor’s
power of promulgating the laws covers the question. Some of the
commentators upon that instrument contend that it does. Some say that in the exercise of his power of promulgating the laws, the Emperor may look into the content of any measure, and that, if in his opinion the measure is one of constitutional law and has not received the proper majority in the Bundesrath for making constitutional change, he may refuse promulgation. But the Reichstag does not accept this doctrine. Moreover, it is the practice in the Imperial legislature to allow the passage of a law by that body which is not authorized by any power at the time vested in that body by the constitution, provided it has received the necessary majority in the Bundesrath to make a constitutional change. Such a law is not inserted in the text of the constitution as an amendment to that instrument, but it is incorporated in the ordinary statutes, and the question arises at once as to how it may be repealed, whether by the method for making or repealing ordinary law or by that necessary for making constitutional changes.

Under such a practice, the whole question as to what is constitutional law and what is ordinary law becomes confused. From the point of view of written constitutions, constitutional law is the law provided in the constitution. From the point of view of unwritten constitutions, on the other hand, constitutional law is that part of the law which ought to be regarded as fundamental and organic. There is sufficient opportunity for difference of opinion in regard to the first kind of constitutional law, but in regard to the second there is no complete agreement on the part of any two minds. Of course, the two kinds of constitutional law ought to agree exactly. What, from a true philosophical point of view, is fundamental and organic ought to be in the constitution, and, vice versa, what is in the constitution ought to be fundamental and organic, nothing more and nothing less. But in practice there is a wide difference as to result between the interpretation of a written instrument and individual opinion, or popular opinion, or legislative opinion, or executive opinion, as to what part of the law ought to be regarded as fundamental and organic and what as ordinary. In the first there is some measure of certainty and continuity; in the second, on the other hand, there is very little. And when the two processes of determination are authorized in the same political system, they are bound to introduce inextricable confusion. The root of the difficulty is to be found in making the governmental organs the organs for constitutional amendment. The personnel of the government, especially of the legislature, may be used for making constitutional law. It would be inconvenient, and perhaps injurious, if it could not be. But it is not necessary that this should be effected through the governmental organizations. That personnel may be specially organized for this purpose, as the French constitution provides, by uniting all
the members of both legislative chambers in one national constitutional convention with constituent power. The body authorized to make constitutional law and constitutional law only being entirely distinct from the body authorized to make ordinary law and ordinary law only, even though composed of the same individual persons, there can be no possibility of confounding the two kinds of law in any system.

Finally, there is a grave problem of constitutional law involved in the exception, to be found in some of the constitutions, of certain subjects from the general power of amendment. This occurs usually in the constitutions of those states which have the federal form of government, as in the constitutions of the United States and of the German Empire, where the existing relations of representation of the States of these Unions in the upper chamber of the legislature is excepted from the ordinary course of amendment and made subject to a still more impossible process, and strangely, and in an even more exaggerated form, this defect is to be found in the French constitution, where two subjects are excepted from any method of amendment whatsoever, viz., the form of the government and the disqualification of the descendants of former reigning houses for the presidency of the republic. These exceptions to the power of the legal sovereign in amendment are rotten spots in any constitution, and if not rooted out will spread and spread until their moldering influence will be felt throughout the entire system.

The practical and all-important question, however, is as to the way in which they can be eradicated, regularly and lawfully, and without recourse to revolutionary means. Take for example again the constitution of the United States, which declares, in the article of amendment, that "no state, without its consent, shall be deprived of its equal suffrage in the Senate." This means, of course, that if the attempt should be made to reduce the representation of any state in the Senate in relation to that of the other states, by the process of constitutional amendment,—and that is the only way, of course, in which it can be lawfully done,—this can be effected only with the consent of the legislature of, or of the convention in, the state whose relative representation it is proposed to reduce, together with the consent of one or the other of these bodies in enough of the other states to make out a three-quarters majority of the whole number; and that if the attempt should be made to increase the relative representation of any state, this can be effected only with the consent of every other state of the Union, given through its legislature or convention.

There is thus, theoretically, a way provided for expunging from the constitution this exception to the ordinary operation of the legal sovereign, the amending power, but practically it is utterly
unworkable. If we are ever to rid ourselves of this obstacle we must find some other way than that which I have just outlined as the apparently legal way. But is there any other legal way? Can the amending clause itself be revised by the ordinary course of amendment so as to omit the exception in behalf of the equal representation of the states in the Senate? It certainly can be so revised as to anything and everything else. But I am quite persuaded that the framers of the constitution never intended to provide any means whereby this exception could be set aside. I am quite sure that they intentionally placed this obstacle in the way of the legal sovereign, as they organized it for ordinary action. I do not feel sure that they realized the fact that they were sowing the seeds of revolution upon this subject by erecting an insurmountable barrier to regular constitutional progress concerning it. The great natural, universal, and irresistible principle of development was not then understood as now. Men really believed, at that stage in the growth of philosophic thought, that they could construct institutions for all time, which would need no change or improvement.

There is, indeed, good ground in political philosophy for holding that the amending clause in a constitution may itself be revised by the general process provided therein. These grounds are that there cannot be logically two legal sovereigns within a constitution any more than there can be two original sovereigns behind the constitution, and that there cannot be logically any exceptions from the power of the legal sovereign any more than there can be from the power of the original sovereign. Different methods of governmental action in regard to the same subject, and exceptions from the powers of the government, are all scientifically legitimate, but the exercise of sovereignty is an entirely different matter. One body and only one can possess it at any given time within a given state, and from its operation nothing whatsoever can be logically excepted. But when we shift from the legal to the political in respect to this subject, are we not committing a revolutionary act? I think this must be acknowledged. It must be conceded that we are committing the same kind of a revolutionary act as that committed by the national constitutional convention of 1787 and the ratifying conventions within the states of the Confederation. If that was justifiable, this would be, and upon exactly the same grounds, viz., that existing legality upon this subject does not comport with the social, political, and economic conditions of a national democratic state, but contradicts them in an unendurable way and to an unendurable extent. Sound political theory demands that the amending power within the constitution, the legal sovereign, should be an organization faithfully representing the original sovereign behind the constitution, separate from, independent of, and supreme over, the powers of
the government and the liberty of the individual, subject to no limitations or exceptions sufficiently facile in its action to meet all important exigencies, and when using the governmental organs at all in the making of constitutional law, using them in a ministerial but not in a discretionary capacity. And sound constitutional law demands the same things. Without them the system of constitutional government and constitutional liberty will not be able to stand in permanence. The invincible principle of development will force changes upon any and every constitutional system, as upon everything else in the universe, and if these changes cannot be made by amendment, by the legal sovereign, they will inevitably be made by the government or some part of the government, in Europe by the legislature as a rule, and in the United States by judicial approval of legislative or executive acts. But, by whichever of these two methods, it comes to the same thing, viz., gradual governmental usurpation against the limitations of the constitution, the ultimate destruction of the constitutional system.

These are the considerations which lead me to hold that the first great problem, logically, of the constitutional law of the present is the construction of a proper provision for amendment which shall have the qualities which I have just outlined. Not a single great state in the world had such a provision in its constitution, and not a single one has anything approaching it, except, as I have said, France and Switzerland. Of these two, Switzerland has come nearest to it in the provision which allows an amendment to be proposed by fifty thousand Swiss voters and to be ratified and adopted by a majority of the Swiss voters, provided this national majority includes a majority of the voters in a majority of the cantons, and using the governmental organs at one or two points only and then only in a ministerial way. The great defect here is that throughout the whole process there is no place nor opportunity for any sufficient discussion of the project, and that is fatal to any sound development in human affairs.

The second great problem of the constitutional law of the present is, in my judgment, the proper construction of the upper legislative chamber.

With the exception of the princely power itself this is the oldest among national political institutions. The lower legislative chamber in the states of the present is a modern institution, based upon manhood suffrage, or very nearly that, and upon representation according to numbers; but the Senates are, in most cases, relics of medievalism, based upon a variety of sources as to tenure, and with little pretense of a distribution of the representation according to modern principles. These defects are to be found even in the Senates of some states which have been founded since the close of
the Middle Ages. I think it may be broadly affirmed that of the seventeen states of the civilized world worthy of mention as having a constitutional law, only four of them have solved the problem of the upper legislative chamber with anything like a fulfillment of the demands of modern theory or modern conditions, and these four are not states of the first rank in power. They are Sweden, Norway, the Netherlands, and Belgium. Moreover these four are all states with centralized governments, that is, states which are better situated than those having federal governments for the solving of this problem. Of these four, Sweden has come nearest, in my judgment, to the ideal modern solution, providing, in its constitution, for the election of the senators by the provincial assemblies and the municipal assemblies of such cities as are not under provincial government, all of which bodies are elected by the voters, and distributing the representation in the Senate according to population. This is both conservative and democratic, conservative in the method of the election, and democratic in the method of the distribution of the representation. In the Swedish legislature there is also absolute parity of powers between the two houses, both in the initiation and passage of legislation. Both houses come ultimately from the people, both represent the whole people, both rest upon the same principle of distribution of seats, viz., population, and both exercise the same power in legislation, fulfilling thus the four chief requirements for the Senate of a modern state.

Apparently the Norwegian Senate approaches as near the solution of the modern problem as the Swedish. But a little consideration of the details will show that this is not quite true. The Norwegians elect all of their legislators as one body; and when they all assemble as one body, the separation into two bodies is effected by drawing lots, one fourth of the whole number constituting in this manner the Senate, and three fourths the other chamber. The main defect in this method of organizing a Senate consists in the fact that the Senate will be composed entirely of members coming from parliamentary districts not represented at all in the other chamber, and vice versa; that is, three fourths of the parliamentary districts are entirely represented in one chamber and one fourth in the other. This tends to the sectionalizing of views and to the weakening of the national consciousness and spirit, or, at least, to the hindering of the development of the national consciousness and spirit. Then there is another defect. The one fourth selected in this way and representing directly only one fourth of the parliamentary districts cannot maintain a parity of power with the other chamber composed of members directly representing three fourths of these districts. This is manifest in the provision of the constitution itself respecting the mode of legislation. If the two chambers cannot agree upon
a project of law, the constitution orders that they shall, at last, unite in the one original assembly from which they proceeded and determine the matter there. This means, of course, that after a certain time the Senate must practically always succumb to the will of the other chamber. These are serious defects, so serious as almost to take Norway out of the category of states that have made most progress in the solution of the problem.

The members of the Netherlands Senate are chosen in the same manner and by the same kind of bodies as those of the Swedish chamber, but in the distribution of the seats some consideration is paid to the provincial lines, the distribution not being in exact accord with the principle of population, though not far away from it.

Finally, in the Belgian system, there is a complexity both in the method of choosing the senators and in the distribution of the seats, which amounts to a defect, in each respect. Most of the senators are chosen directly by the voters, and in the election of these, two deputy-parliamentary districts constitute one senatorial district. This is simple and democratic, although somewhat radical. The others are chosen by the provincial assemblies, and in the distribution of these among the several provinces much consideration is had to the provincial lines, the less populous provinces being favored. The purpose of this device is to offset the radicalness of the other part. This is certainly a makeshift. It would have been far more in accord with sound theory to have provided for the choice of all the senators by the provincial assemblies, while distributing the seats among the provinces according to population. There is nothing necessarily undemocratic in the practice of indirect election, but it is quite undemocratic to distribute the seats in any legislative body except in accordance with the principle of population, or at least something approaching that.

When now we turn to the construction of the Senate in the other thirteen constitutions, we find ourselves in the midst of a chaos in the practice with no consistent principle to guide us. Seats by virtue of hereditary right, as, most largely in the British, Austrian, and Hungarian constitutions, and partly in the Spanish, which is certainly medieval both in origin and spirit; seats by virtue of office, as in the same constitutions, which besides being, for the most part, also, medieval, conflict with the modern principle of the incompatibility of office with legislative mandate; seats by royal appointment, as partly in the four systems just mentioned, with that of Denmark; as almost the exclusive principle in the construction of the German Bundesrath, and as the exclusive principle in the construction of the Italian and Portuguese Senates, excepting the seats of the princes of the royal house, as a rule, the weakest sort of a Senate, being generally a sort of royal appendage, affording the crown no
support, but bound to go down with it under popular assault; and finally seats by election, practically always in the indirect form, as partly in the systems of Spain, Hungary, Denmark, and Great Britain, and the exclusive principle in the systems of France, Switzerland, and the American states. The elective element in the British House of Lords and in the Hungarian Magnaten-Tafel is slight. In the Spanish system one half of the senators are elected, and elected for a term of ten years; and in the Danish system fifty-four of the sixty-six members are elected, and elected for a term of eight years. These two are headed in the right direction in so far as the senatorial tenure is concerned.

But in neither of these cases, and in none of the cases where election is the sole source of the tenure, except, of course, the first four already treated of, and, of course, in none of the other cases, is there any approach to the modern democratic principle of distribution in legislative chambers.

It is about as certain as anything human can be that all the species of senatorial tenure, except that by election, will pass away. It may be expected that the tenure by hereditary right in Great Britain and that by royal appointment in Germany will be the last to yield. But they must all go sooner or later, and it is one of the great problems of constitutional law in all of these states to find the proper and natural substitutes for these antiquated forms or these modern makeshifts. It is also a great problem in those states which have already established the senatorial tenure, in part, by election, so to reform the senatorial electoral bodies as to make them more representative of modern conditions. As I have said there is no sound objection in modern political theory to the indirect election of senators, but the electoral bodies must be truly representative bodies of the original voters, and they must exercise power in the election proportionate to the population which they represent. This is not the case in any of these. In all of them the original electorate for the senators is much narrower than for the members of the other chamber, and the weight exercised by the different electoral colleges is far from being proportionate to the population of the districts for which they act.

In the five states with republican governments, the ultimate source of the senatorial tenure is, naturally, the same as that of the membership of the other chamber, and in so far as that point is concerned they may be said to have solved this part of the senatorial problem. But when we come to the provisions of these constitutions which relate to the distribution of the senatorial representation, we find ourselves confronted with one of the gravest questions of their constitution law.

Let us consider briefly the facts in each case, beginning with France, as being a centralized government, and not having,
therefore, the same reason for making concessions to the line of local government or administration as states with systems of federal government. The extremes in the senatorial representation are the Département of the Hautes Alps and the Département of the Seine. From the point of view of population, the mountaineers of the former district are about six times more strongly represented in the Senate than the inhabitants of the highly civilized city of Paris. The average discrepancy, however, is not at all so great. Nevertheless it is true that a minority of the population of France is represented by a majority of the seats in the Senate. It is a minority not far removed from the middle line, but still always a minority. It may also be said that the advantage lies, on the whole, rather with the Départements which are moderately populous, although the greatest advantage lies with the least populous, and the greatest disadvantage with the most populous. While there is here a problem for the French statesmen, it is not of a very serious nature. More serious is the problem for them of regulating the weight of the communes in the senatorial electoral college for each Département. Here the smaller communes are, as a rule, much over-represented.

When now we turn from France to the states with federal governments, we become immediately aware that, in the distribution of the senatorial seats, other considerations than the modern doctrine of distribution according to population have been in all cases determinant.

In the first place, in democratic Switzerland, we find the Canton Uri about thirty times more strongly represented in the Standerath, or Senate, than the Canton Bern, and that the population in the twelve least populous cantons, not amounting to quite one third of the population of the whole of Switzerland, is represented in the Senate by a majority of the voices.

Secondly, in the leading state of South America, Brazil, and in the leading state of Central America, Mexico, we find about the same conditions. The Brazilian commonwealth of Matto Grosso is, from the point of view of population, about thirty-four times more strongly represented in the national Senate than the rich and populous commonwealth of Minas Geraes, and the population of the eleven least populous commonwealths of the Brazilian Republic, numbering about 3,000,000 of souls, are represented by a majority of the voices in the national Senate, while the other ten commonwealths with a population of almost 12,000,000 of souls are represented by a minority of the senatorial seats. Likewise in the Mexican Republic, the commonwealth of Colima is, from the point of view of population, about eighteen times more strongly represented in the national Senate than the commonwealth of Jalisco, and the population of the fifteen least populous commonwealths, numbering less than 3,500,000 of souls, are represented in the Senate by a majority of
the voices, while the population of the thirteen more populous
commonwealths, amounting to more than 10,000,000 of souls, are
represented by a minority of the senatorial voices.

But it is the democratic republic of North America which ex-
hibits the most thoroughgoing rotten borough Senate of any state
in the civilized world. In this Union the smallest commonwealth,
from the point of view of population, is Nevada, with 42,335 inhabi-
tants, according to the last census, and the largest is New York, with
7,268,894. On the basis of representation according to numbers,
the inhabitants of Nevada are about one hundred and seventy-five
times more strongly represented than the inhabitants of New York.
Again, there are now forty-five commonwealths in this Union, with
a population of over 76,000,000 of souls. Of them about 14,000,000
reside in the twenty-three least populous commonwealths, and over
62,000,000 in the twenty-two more populous commonwealths.
That is, 14,000,000 of people are represented in the United States
Senate by forty-six senators, while more than 62,000,000 are repre-
sented by only forty-four senators. Of course, it may be said, and
it is said, that in states with systems of federal government the mem-
bers of the national Senate do not represent the people but the com-
monwealths of the Union, and that, therefore, the principle of repre-
sentation according to population does not apply to the Senates of
such states. Well, what is a commonwealth or state in a democratic
republish with a federal government? Is it anything more than the
organization of the people within a given district for their autono-
mous local government? And is there any sound reason why a few
people so organized in one district should be equally represented in
either house of the national congress with a great many more people
organized in another district for the same purpose? If it were always
true that the smaller population possessed all the elements of intel-
lectual and moral culture to a higher degree than the larger, it might
be held, perhaps, as a principle of political ethics, that the representa-
tion of the smaller number should be relatively stronger than that
of the larger. But who will say, for example, that the peasants and
mountaineers of Uri are superior in knowledge and virtue to the
citizens of Bern, or the miners of Nevada to the inhabitants of New
York? I understand only too well that there are still those who will
say that the reason for the equal representation of the common-
wealths in the national Senate is that they are sovereign states, and
that sovereignties are equal in representative right no matter what
may be their relative strength in population or any of the other
elements of power. My answer to this is that this is a principle of
international law, not of constitutional law; that the common-
wealths in these four systems which we are considering are not
sovereign states; that in two of them they never were sovereign
states nor anything like sovereign states; that in one of them, Switzerland, the most of them were once something like petty sovereignties under the Eidgenossenschaft and the Confederation of 1815–1848, but were deprived of that quality by the Swiss nation in 1848; and that in the other one, the United States, thirteen of them possessed something which they called sovereignty under the Articles of Confederation of 1781–1789, but were deprived of that quality by the national popular movement of 1787, culminating in the establishment of the national constitution instead of the quasi-international confederation, and that by the trial of arms of 1861–1865 the claim to sovereignty by any commonwealth of this Union was put forever to rest.

According to modern views, principles, and conditions, no rule of distribution of legislative seats in either chamber except that of population can rightfully prevail in a national democratic republic, no matter whether the governmental system be centralized or federal. Some concessions can, of course, be made to administrative convenience, but they must never amount to the permanent investment of a minority of the people with a majority of the voices in either branch of the law-making body, especially where this minority, and also the majority, are sectional in their composition and not general. Even if we accept the doctrine of minority representation, it would not justify the practice of sectional overweight, which we are considering.

As I have indicated in another connection, it will not be easy to deal with this problem in the United States and the German Empire. In the other states with federal governments this defect may be cured by the ordinary course of amendment, but in the United States and the German Empire this subject is excepted from the ordinary course of amendment and placed under the protection of a procedure which can, in all probability, never be applied so as to effect any change. Nevertheless, the question will have to be met, and the problem will have to be solved here as well as elsewhere. It may not be done, it probably cannot be done with exact legality, but we have the precedent in American constitutional history for a convention of the United States acting with conventions of the people in nine thirteenths of the commonwealths to disregard the prescripts of the existing law in the amendment or revision of the organic law. We can bring such bodies together by means and through forms already provided in the constitution, and we can go back to the principle, as in 1787, that they are the sovereign behind the constitution and are not, therefore, bound by the exceptions from the legal power of amendment provided in the constitution. You may call this revolutionary. I think we shall have to concede the point, but it would be a revolution standing on the border-line between original sovereign action and
legal procedure, and would, probably, be as bloodless as that of 1787.

The third great problem of the constitutional law of the present is, as I conceive it, the fixing of the fundamental relation between the legislative and executive branches of the government. The experience of the world has developed three fundamental systems of practice in regard to this subject. We may term them the presidential system, the parliamentary system, and the directorial system.

The principle of the first is substantial independence between the executive and the legislature, both in tenure and procedure. The tenure of the executive does not, according to this principle, originate in the legislature, and cannot for merely political reasons be determined by the legislature; that is, the legislature cannot impeach, or require the resignation of, the executive or his ministers merely on account of political disagreement with them. Nor, on the other hand does the tenure of the legislative members originate in the executive nor can the executive terminate their term by dissolution. Neither the executive nor any of his ministers have seat or voice or vote in the legislative chambers, but, on the other hand, the executive is furnished with a veto power upon all legislative acts practically strong enough to secure his prerogatives against legislative encroachment.

The principle of the second, the parliamentary system, is substantial harmony between the executive and the majority party in the legislature. This is established and maintained by the constitutional requirements upon the executive to take his ministers from the leadership of the majority party in the legislature or the more popular chamber thereof, to follow the advice of his ministers, and to dismiss them from office, generally through the form of voluntary resignation, when they fail to receive the support of that majority upon fundamental questions, or else to dissolve the legislature or the lower chamber thereof, and appeal to the voters to restore the lost harmony, whose decision must be acquiesced in by all. Under this system the real executive is the ministry. It bears the responsibility for the executive acts. Its members have seat, voice, and vote in the legislative chambers, but no veto upon legislative acts.

The principle of the third, the directorial system, is the complete subordination of the executive to the legislature, that is, complete control of the executive tenure by the legislature, entire responsibility of the executive to the legislature, no power of dissolving the legislature or either branch thereof in the executive, no seat, voice, or vote in either of the legislative chambers except by order or permission of the chambers, and no veto upon legislative acts. On the other hand, while the executive is, as a rule, permitted to introduce
measures into the legislature, their defeat or rejection does not call for the resignation of the directory or of that member of it particularly responsible for the project. He or they must simply submit to the will of the existing legislature in every case and go on under its instructions.

The presidential system goes naturally with the elected executive, the parliamentary with the hereditary executive, while the directorial system belongs scientifically nowhere. The directory is scientifically and historically discredited as an executive system. It exists in only one of the seventeen states which I have brought under this study, viz., Switzerland, and seems to be on the way of establishment in one other, viz., Norway, where the successful insistence of the Norwegians that the King's Ministers shall sit in the legislature and shall resign when out of harmony with the legislative majority, without according the King the power of dissolving the legislature and appealing to the voters to settle the question in the new parliamentary election, is certainly tending to make the ministry a directorial board, completely subject to the legislature. Switzerland, being an internationally neutralized state, may make experiments with a weak executive. For Norway such a situation is more dangerous. In both cases it seems to me an unsatisfactory solution of the executive problem and to call for revision.

Of the other fifteen states, all that have hereditary executives, except the German Empire, Austria, and Hungary, have developed into or are developing into the parliamentary system substantially. They are, at least, all moving in the direction of the English model, and are destined to arrive, sooner or later, at something like the English result. All along the road, however, from their present stage of development of the system to its ultimate form, their problems are strewn, and their best course is to look to English experience and follow as nearly as somewhat different conditions will permit in English footsteps. It is most important to kings and emperors themselves that they should recognize the fact that the parliamentary system of relations between the executive and the legislature is a necessary contrivance for reconciling modern political thought and modern political conditions with the hereditary tenure of the executive. If they resist too far its establishment and development, they will simply provoke a republican revolution which will sweep them entirely away. The royal imperial houses of Hapsburg and Hohenzollern, old and powerful and popular as they are, cannot in the long run resist this movement. It is the greatest constitutional problem, from the point of view of their own interests, with which they have to deal, and it behooves them to devote themselves to its thorough comprehension and its rational and natural solution.
With the exception of France, the states having elected executives follow the presidential system, Switzerland not being further considered. This is natural and rational, and I consider that in these the executive problem has been fairly solved to meet modern conditions and requirements. It is quite true that in the United States and Mexico the method of indirect election of the executive is criticised, and that in the practice of the United States the law for counting the electoral vote has, until recently, been quite faulty and is not yet entirely perfect, and that some advantage might conceivably be gained by allowing the presence of the cabinet officers in the houses of Congress to explain proposed executive measures or even to propose administrative measures, but these things are, from the point of view of this paper, matters of detail, and cannot be discussed within the limits of this essay.

It is the French Republic which is confronted with the serious problem in regard to the executive and its relations to the legislature. The French Republic is attempting to work the system of parliamentary government with an elected executive. From the points of view of historical experience and sound theory this appears as an unnatural, and, in the long run, unworkable combination. The real parliamentary system requires, as I have already remarked, not the complete subordination of the executive to the legislature, but harmony of action between the two, and a power in the executive either to dismiss his ministers or dissolve the legislature in order to restore harmony upon important issues when it has been lost. No democratic people will intrust the executive with such power over the legislature, and if they would, the executive would not dare to use it. It requires all the historic power, prestige, and mystical influences of the hereditary executive, the so-called sovereign, to exercise such a power. The French have attempted to help themselves over this difficulty by vesting the power to dissolve the Chamber of Deputies in the President with the consent of the Senate, the Senate itself not being made subject to executive dissolution. This may give the President a certain backing which may enable him to act occasionally. It did so in one or two early cases. But this is no fulfillment of the requirements of the system. The executive alone must have the power of dissolution over the entire legislature, at least over the entire elected part of the legislature, and it is not sufficient that the executive shall have it over only one chamber of the legislature, and then only when sustained by the other chamber. Conflicts between the two chambers might be settled in this way, but not conflicts between the executive and the entire legislature, and the settlement of such conflicts is the prime purpose of the parliamentary system. When the relation prescribed by the French constitution was established, that instrument provided that the seventy-five
senators, one fourth of the whole number of senators originally chosen by the national convention which framed and adopted the constitution, should hold for life, and that their successors should be chosen by the Senate itself and also hold for life. Here was a certain nucleus of strong conservatism and executive support in the Senate. All that has been changed by the constitutional amendment of 1884, and the members of the Senate all proceed now ultimately from the same source as the Deputies. The French Senate has now arrived at the consciousness of a solidarity of interest with the deputy chamber upon the subject of legislative prerogatives versus executive prerogatives, and the power of dissolving the Chamber of Deputies, intrusted to the French President under the more favorable conditions for its exercise just mentioned, has now become practically obsolete. The French system is, therefore, veering towards the directory. This will not serve for France, however it may work in Switzerland or even in Norway. France must have a strong executive. If France will have a parliamentary system, then France must have a king. If, on the other hand, France will have an elected executive, then France must have the presidential system. This is her great governmental problem. All others should stand aside until this is substantially solved.

The fourth great problem of the constitutional law of the present, as I view these problems, concerns chiefly, if not wholly, the United States. It is the question of extending the legislation of the central government further into the domain of private law, especially in the regulation of commerce and marital relations. The other states having federal governments, except Mexico, and, of course, all the states having centralized governments, have assigned these subjects to the legislation of the general government, and Mexico has gone much further than the United States in this direction.

Whatever may have been natural a century ago, when the settled parts of the commonwealths of this Union were separated from each other by comparatively impassable districts of primeval forest and there was comparatively little intercourse between them, now when these obstacles have entirely disappeared and intercourse is so active that no man knows when he passes from one commonwealth to another, it has become entirely unnatural and scarcely longer endurable that the code of commerce should not be exclusively national. The existence of the common law as the basis of the law of the commonwealths upon this subject has minimized the difficulty of a great nation getting on with systems of local commercial law; but the differences in detail, at first hardly noticeable, have now, on account of the vast development in the complexity of these relations, become almost unendurable. This problem should be dealt with by constitutional amendment if possible. If not, then the
United States judiciary must put a much more liberal interpretation upon the existing commerce clauses of the constitution. The distinctions between commerce "among the commonwealths" and commerce within the commonwealths have now become too attenuated to bear the strain much longer. They must go, or the federal system of government may break down entirely.

It certainly is not necessary for me to enter into any argument at all to show that the scandals of polygamy and divorce, which bring the blush of shame to the cheek of every true American, have their root in the system of local regulation of the subjects of marriage and divorce. These relations are fundamental in the civilization of a nation. Their proper regulation must rest upon the national consciousness of right and wrong. States' rights must give way upon this point, too, if they would stand in regard to those subjects which are not so completely national in their character. In fact, the whole system of federal government, that is, dual government under a common sovereign, is now under great strain, in consequence of the rapidly developing nations and national states. It is a question whether it can stand against the centralizing forces in modern political and civil society. It certainly cannot unless it yields the transfer of some subjects, such as those just mentioned, from local to central regulation. This has been done in Switzerland, the German Empire, and Brazil, and in large degree in Mexico, and these United States must follow the same course of development or witness soon the same sort of a movement in universal reform as occurred in 1787.

The fifth and last great problem, or rather series of problems of the constitutional law of to-day which I shall consider in this paper, relates to civil liberty.

From the point of view of public law civil liberty, as distinguished from political liberty and moral freedom, is the immunity of the individual person within a given sphere against both the powers of the government and the encroachments of another individual or combination of individuals. Constitutional law should construct this sphere, define its contents in principle, fix its boundaries, and provide its fundamental guarantees and defenses. Usually this part of a constitution is called the Bill of Rights, although in its nature it is rather a Bill of Immunities.

Every written constitution in the civilized world, except that of France, contains such a division. Perhaps the constitution of the German Empire ought to be excepted, although the constitutions of the states of the Empire contain such provisions, and the Imperial Constitution itself, in slight measure, contains them. The reason why it does not contain them in larger measure is quite apparent. It is simply because the Imperial Government is one of enumerated powers. This is not a sufficient reason, as we know from American
experience, and the imperial constitution should be amended in this respect, and the Imperial Government made subject to limitations on the one side, and charged with powers against the states of the Empire on the other, both in behalf of individual immunity against governmental power.

The first great problem, however, under this topic, is the French question of amending the French constitution so as to introduce into it a series of provisions concerning the immunities of the individual person. It is quite surprising that the French instrument should be defective in regard to this matter. About every French constitution down to the present one has contained such provisions in much detail. In fact the French taught the European Continental world the doctrine of individual immunity against governmental power as a branch of constitutional law. It was at first thought that the omission of such a Bill of Immunities from the present French constitution was owing to the fragmentary nature of this constitution, but the French have now had nearly thirty years for the perfection of their instrument of organic law, and within this period they have had a constitutional constituent convention and have framed and adopted amendments to their constitution, but nothing of this nature was, I think, even proposed. We are, therefore, driven to the conclusion that the French statesmen and people do not consider such immunities for the individual to be necessary under their present political system, but feel, on the other hand, that, with an elective government in all parts and an executive dominated by the legislature, the individual is in no danger of governmental oppression. I do not know by what lessons of history or of more immediate experience the French have proved this doctrine to themselves. No government is more likely to ignore the natural limits between its powers and the immunities of the individual than an elective democratic government. The French have had this experience, more than once, themselves. I am, therefore, unable to regard this omission as anything less than a grave defect, presenting to the French a most serious problem of constitutional amendment.

As I have said, every other written constitution in the world contains a Bill of Immunities, and it is nearly the same thing as to content in them all, but not a single European constitution provides any means for its lawful realization against the possible attempt of the legislature, and in some cases also of the executive, to encroach upon it, except perhaps petition to the government itself. That is to say, none of these European constitutions creates any judicial bodies vested with the power of interpreting constitutional limitations upon the powers of the whole government, and of restraining the government from breaking through them. Many of them leave
even the *creation* of the judiciary and its investment with powers to legislative statute, which, of course, places the judiciary in a position of inferiority and subordination to the legislature. Others, while creating the courts by constitutional provision, fail to vest them with any such protective power. Even the constitution of Switzerland declares outright that the judicial tribunals shall have no power to pass upon the constitutionality of legislative acts.

The principle of European jurisprudence upon this point seems to be that the legislature is the proper protector of individual immunities against governmental power. In Europe, the title "government" is applied only to the executive, and the statement of the proposition as it presents itself to the European mind would be, that the immunities of the individual are protected against governmental encroachment by the representatives of the people. In America, on the other hand, we consider the legislature to be a branch of the government, and, therefore, it appears to us as a sort of Celtic hoax to speak of the government defending the immunities of the individual against itself. In fact some of our greatest statesmen have contended that the judiciary is also a branch of the government and that we are subjecting ourselves to the same kind of a hoax when we imagine that the judiciary will, in the long run, protect the realm of individual immunity against governmental encroachment. It really appears, at times, as if they were right, and as if the judiciary were really casting its lot with the political branches of the government for the purpose of expanding governmental power at the expense of individual liberty. Still, on the whole, this has not been true. On the whole, a judiciary established directly by the constitution, composed of judges with life terms, sustained by a sound popular knowledge of what the immunity or liberty of the individual purports, and a general popular determination to uphold it, is the best possible organ to be vested with the protection of that immunity against governmental encroachment, as well as against encroachment from any other conceivable sources.

It is the only real antidote for the socialistic doctrine in regard to civil liberty. That doctrine, stated in a sentence, is that the individual is subject, *at all points*, to the control of the majority. This doctrine is an absolute negation of the true principle of civil liberty. As we have seen, civil liberty is individual immunity within a sphere marked out by the constitution against governmental encroachment or encroachment from any other source. It is the constitutional realm of individuality. And if in any country all government and every organization and every individual, except only one, should stand upon one side, and the single individual upon the other, it would be the *constitutional* duty of the body charged with the function of maintaining civil liberty to protect that single one within
this sphere against encroachment from any and every source, and to summon the whole power of the nation to its aid, if necessary. And it would be the constitutional duty of those summoned to obey the call and render the aid required, although it might be directed against their own conceived views and interests. The doctrine of the greatest good to the greatest number and the principle of majority rule have no application whatsoever within this domain. When a constitution is being framed or amended, then the question of the nature and extent of civil liberty or individual immunity is, indeed, a matter of highest policy for the sovereign to determine in accordance with its own forms of procedure, but once established, it becomes subject only to the provisions and principles of the constitution, interpreted by the organs of justice, and is removed entirely from the realm of legislative or executive policy and majority control. Now the only way to maintain this true idea and principle in regard to civil liberty is to put its protection under a non-political body,—the organs of justice, not the organs for the fixing of policies,—and to vest the organs of justice with the constitutional power to nullify any acts of the political branches of the government which may, in their judgment, undertake to encroach thereon. The legislature, in these modern times, is the branch of the government which is most prone to undertake these encroachments. The legislature is the branch which, by its very nature, regards everything as a matter of policy to be determined, at each moment, by majority action, and that action based upon majority will, not upon majority interpretation of higher law. It is the branch of the government which is almost sure to lose sight of the distinction between civil liberty, individual immunity, and what it conceives to be general welfare between justice and policy. It is absolutely certain to do so when a socialistic majority holds sway in the legislature. It was natural that the European peoples, accustomed to the despotism of the executive, with the courts as a branch of the royal power, should have come upon the idea, in the period of the revolutions,—that is, in the period of their transitions from absolute to constitutional government,—that the representatives of the people in the legislature would be the only reliable support for civil liberty. Perhaps this was correct for that period and for those conditions. But I am sure that that period and those conditions have now passed, and that the realm of individual immunity is now in more danger from legislative, than from executive, encroachment. It is under the force of this conviction that I contend that the problem of creating an independent judiciary by constitutional amendment and vesting it with the protection of individual immunity against governmental encroachment, whether executive or legislative, or proceeding from any other source whatever, is one of the chief constitutional
problems now confronting the European states. It will cost some effort to educate the European peoples up to an appreciation of this idea. How far they are away from it may be indicated from the fact that when they immigrate into these United States, because this is a "free country," as they say, they almost always do what they can, when they do anything, to obliterate that great distinction between individual immunity and general welfare, justice, and policy, upon which, more than upon anything else, American liberty rests. The doctrine of the labor unions, which are predominantly European, both in their composition and tendencies, that an individual shall not be allowed to work upon such terms as he may be able and willing to make, because, in the conception of the majority of some labor union, or as for that, of all labor unions, it may be detrimental to their general welfare, is a good example of the profound ignorance on their part of this great American distinction and principle. Difficult, however, as it may be to instill the idea of this distinction into the European mind, still I am fully persuaded that the attainment by the European peoples of real constitutional government depends upon it. The alternative to it is, in the long run, legislative absolutism.

While I hold up the constitution of the United States as the model in this respect, yet I do not pretend that this model is entirely perfect. Two great problems have confronted the American practice during the last fifty years, neither of which has been satisfactorily solved, and I am afraid will not be so solved without further constitutional amendment.

The first has been produced by the contention concerning the meaning of the 13th and 14th amendments, which, with the 15th, make up the constitutional product of the Civil War. There is not much doubt that the intention of the framers of these amendments was to place the entire domain of civil liberty, individual immunity, under the protection of the United States authorities, and to vest the national judiciary with power to prevent encroachments thereon, not only when proceeding from the government of the United States and the governments of the states, but also when proceeding from combinations of individuals within the states. The Supreme Court of the United States has, however, held that these amendments did not extend the protecting power of the national authorities over this sphere to any such degree, but left the original control of the states over this domain unimpaired, except upon the specific points withdrawn by these amendments from that control, and that the national judiciary can protect the individual immunity provided in the 14th amendment only against encroachments attempted by the states, but not against those attempted by individuals or combinations of individuals within the states.
I contend that this is no satisfactory solution of the problem, because, in the first place, in a national state, although it may have a system of federal or dual government, sound political science requires that the entire individual immunity shall be defined, in principle, in the national constitution, and shall have the fundamental means and guaranties of its defense provided in the national constitution. The most fundamental and important thing in any free government is the system of individual immunity. Free government exists chiefly for its maintenance and natural enlargement. The contents of this immunity and the methods and means of its defense should, therefore, be determined by the national consciousness of right and justice. Any other principle than this belongs, not to the modern system of national states, but to the bygone system of confederated states. It was a resurrection of the doctrine of states' rights, in the extreme, when the Supreme Court of the United States put the interpretation which it did upon the new amendments, a doctrine which should have been considered as entirely cast out of this system by the results of the Civil War. This solution is unsatisfactory, in the second place, because it perpetuates the contention between the nation and the states concerning the control of this sphere, while if there is anything in a political system that ought to be made clear and fixed and simple it is this domain of civil liberty. The welfare and prosperity of the whole people depend upon it in a much higher degree than upon any other part of that system. Uncertainty about it and contention over it cannot result, in the long run, advantageously to the average citizen, however it may allow a larger license to the powerful.

The second problem under this head to which I would refer has been produced by the experience of the last six years of the Republic, in what is called its "imperial policy." This problem had to come sooner or later. No country with so high a civilization as the United States can keep that civilization all to itself in the present condition of barbarism or quasi-barbarism throughout the larger part of the world. It must share its civilization with other peoples, sometimes even as a forced gift. This is nature's principle, and no civilized state can permanently resist its demand. It came rather suddenly upon our country, and some of us thought that we were not quite prepared for it, that we had not yet placed our own house in order. But every student and observer of the world's history and the world's methods knows that civilized nations are not, in the great world-plan, allowed to delay the discharge of the duty of spreading civilization until, in their own opinion, they are ready to proceed. Something always happens to drive them forward before they are perfectly prepared and equipped for the great work. And so before the United States had fashioned its constitutional law to meet the
exigencies of a colonial or imperial policy, the possession of insular territory was thrust upon the great Republic. We had to take first, and then, by force of necessity, adjust our political situation to the requirements of the situation. It has not been an easy problem, and no one pretends that we have solved it perfectly or completely. Both the Congress, the executive, and the courts have shared in the work and in the responsibility, but candor compels us to say that if we are to continue in this sort of work, it would be desirable, to say the least, so to amend the constitution as to relieve the different branches of the government from the necessity of making usurpations of power, or something very like it, to meet urgent conditions.

It is only since the 21st of June of the present year that we have been able to state with any certainty what the colonial policy, or imperial policy, of the Republic is. I think it can be now briefly expressed. It is that all of the territory of the North American continent over which the sovereignty of the United States shall become extended will be made ultimately states of the Union, and that all extra-continental territory over which it shall become extended will be made, ultimately, either states of the Union, as possibly the Hawaiian Islands and Porto Rico, or be erected into still more completely self-governing communities than states of the Union, under the protectorate of the United States, that protectorate to be exercised chiefly for the purposes of preventing them from lapsing into barbarism internally or from becoming a prey to the greed of other powers, as Cuba already, and later on the Philippines. This is a policy worthy of the great Republic. It is the true imperial policy for a great civilized state engaged in the work of spreading civilization throughout the world. In comparison with it, the colonial policies of other countries appear mean and sordid and altogether lacking in the element of altruism necessary to real success in executing the mission of civilization.

Following such a noble policy as this, it is not difficult to forecast something of the future of this country. I would venture to say that the child is now born who will see the states of this Union stretching from the Isthmus of Panama to the North as far as civilized man can inhabit, peopled by two hundred and fifty millions of freemen, exercising a free protectorate over South America, most of the islands of the Pacific, and a large part of Asia. We possess already the extremes of this vast continental territory as well as the great heart of it, and the most important Pacific islands, and we have already a footing of influence in Japan and China hardly enjoyed by any other power. The exalted policy which I have declared to be the imperial policy of this nation cannot fail to extend that influence, prestige, and power almost beyond measure.
Do not understand me as claiming the development of such a policy for the party at present in power in Congress and the present administration without the aid of their party opponents. I am not at all sure that, in the immediate enthusiasm of victory, and under the necessity of exercising temporary absolutism in government in the newly acquired territories, the party in power would not have lost sight of the real purpose of their work in the world's civilization except for the earnest expostulations of their opponents calling them back to the contemplation of the historic principles of the Republic. I rather fear they would. This noble policy is, therefore, the resultant of two forces rather than the direct product of one. It is the policy of the nation rather than of any party within the nation or of any part of the nation. As such it is sound and true and unchangeable, and is destined to be pursued no matter what party shall hold the reins of the government.

But we have some constitutional difficulties in the way of the realization of this policy. These difficulties relate to the constitutional powers of the United States Government and the limitations imposed thereon in behalf of individual immunity within newly acquired territory. It is settled that the United States Government may acquire territory for the United States by treaty or conquest; that it may set up a temporary military régime therein against which there is no constitutional immunity for the individual; that it may relinquish possession of the same to its own inhabitants or another power, either absolutely or under such conditions in the form of a treaty as may be agreed upon by the parties, and may enforce the stipulations of the agreement in such ways as may have been agreed on, or in such ways as are recognized by the customs and practices of nations; or that it may perfect its acquisition and transform the temporary military despotism therein into such civil government as Congress may establish, under the limitations of the constitution in behalf of civil liberty. I say that these points are all well settled. But there is some question about the power of the United States Government to exercise a protectorate over peoples occupying territory which is not a part of the United States, especially when that protectorate shall not have been established by treaty and shall not be exercised under the forms of international agreement or custom. There is not a word in the constitution expressly authorizing it, and it is a grave question as to whether there is a word from which such power can be implied.

Moreover, it has appeared desirable, perhaps I should say absolutely necessary, to the United States Government to make the transition from military despotism in the government of some of these new acquisitions to a first and temporary form of civil government without constitutional limitations in behalf of individual liberty,
that is, to a temporary civil despotism or something of that nature, and for this it is extremely questionable whether there is any warrant in the constitution. In order to meet the wishes of the government, or perhaps the necessities of the government, in this respect, the Supreme Court of the United States has so strained its powers of constitutional interpretation as virtually to enact, in the opinion of a large number of the best citizens of the country, constitutional legislation,—constitutional legislation, too, which, upon one point at least, contradicts the prime purpose of the only legitimate imperial policy which a free republic can have. It is quite possible that the state of society and of the population in a newly acquired district may necessitate more summary judicial processes than those of the juries, and that public security and even individual liberty will be better protected under the more summary forms, and that, therefore, a judicial interpretation of the constitution relieving the government from these limitations as to process in such districts would have a moral ground at least to stand on, but when the court allows the Congress to overstep the constitutional limitations on the government in behalf of the freedom of trade and intercourse between the people of such districts and the people in other parts of the United States, and to erect a special tariff against such trade and intercourse and thus to destroy, or at least greatly weaken, the prime means of extending civilization to the inhabitants of such districts, viz., a free commerce in mind and things, then neither the court nor the Congress nor the administration has any ground of any sort on which to stand, and we need an amendment to the constitution to express the reason and the will of the sovereign upon that subject.

We have in this whole question of territorial expansion one of the greatest problems of the constitutional law of this Republic, one which affects the whole world. It affects first of all the Republic itself, because upon its rightful solution depends the moral right of the Republic to have any imperial policy at all. It affects the peoples of the dark places of the world, who, though apparently unable to secure the blessings of civilization for themselves, certainly have the right to be left in their barbarism unless the intruding nation comes with a chiefly altruistic purpose. And it affects the other civilized powers in the example which it shall furnish them for their own work in the spread of civilization, for if the great Republic pursues an egoistic policy, they will certainly do likewise, and it is to be hoped that if it takes the other and the true course, they will not go in the opposite direction. No grander mission can be imagined than that which is now open to this American nation, and the time is now ripe for the sovereign people to discuss it in all its bearings, independently of ordinary party politics, and to write in the consti-
tution the methods and means which the government may employ, the purposes which its activities must subserve, and, above all, the limitations upon the government in behalf of the civil liberty of every individual who may be brought under its jurisdiction or protection in realizing this transcendent mission, the civilization of the world.
THE SEPARATION OF POWERS AND THE JUDICIARY IN FRANCE AND THE UNITED STATES

BY FERDINAND LARNAUDE

(Translated by Maurice Léon, Esq., of the New York Bar)

[Ferdinand Larnaude, Professor of Public and General Law in the University of Paris, b. at Condon (Gers), May 21, 1853. Doctor of Law from the Faculty of Law of Paris, 1876; in charge of the course on Roman Law in the Faculty of Law at Aix, 1877; Fellow in charge of the course on International Law in the Faculty of Law at Bordeaux, 1878; Fellow in charge of the course on General History of Law in the Faculty of Law at the University of Paris, 1882; Assistant Professor in charge of the course on Public Law in the Faculty of Law at the University of Paris, 1890; Professor of Public and General Law in the University of Paris, 1892. Member of the Consulting Committee on Public Education in the Ministry of Public Instruction; member of the Commission for the Revision of the Civil Code; member of the General Society of the Prisons; of the Society of Comparative Legislation; Secretary-General of the Society of Higher Education; founder of the Revue du Droit Public et de la Science Politique en France et à l'Etranger. Author of Étude sur la Publicité; des Donations; Les Codes Français au Japon; Droit Comparé et Droit Public; La Réforme des Lois sur les Aliénés; Le Code Civil et la Nécessité de sa Révision; Le Droit Public et la Science Politique; La Loi sur les Accidents du Travail; and many essays and articles on various legal topics.]

I APOLOGIZE for having to address you in French, but I speak so little of your language that I fear, if I should express myself in English, it might result in a mishap similar to the one which befell President Montesquieu, the illustrious author of L'Esprit des Lois. He attempted to engage a nobleman, whom he was visiting during his sojourn in England, in a conversation, and addressed him in English; his host solemnly answered, “Did I not tell you, sir, that I cannot understand French?”

I also apologize for bringing before you too hasty and improvised a communication. Invited to your Congress too late, and compelled, in order to reach here in time, to start without having a chance to think over my subject, or even selecting it, I have had to prepare my address on board the steamer which brought me to these shores, with the pitching and rolling of the liner to assist me. Under these circumstances my address will necessarily bear the marks of its origin; it will be like those children who have had an infancy of ailment and who remain weak and puny all through their lives.

It is now somewhat over a hundred years since the principle of the separation of powers was introduced in constitutional and common legislation, both in the United States and in France. What has come out of this principle? How did it fare on coming in contact with facts? What is its present standing? Would Montesquieu recognize it under the various forms, I might say disguises, which it has assumed? Or would he complain that his great invention had
become deformed? Lastly and particularly, have the United States and France obtained out of the principle identical or different results?

The answer to these questions would be too long if all the phases of the problem were to be examined, be it only as to their most salient characteristics. The separation of powers is connected with everything or almost everything, and a whole treatise of constitutional law could be written under that title.

I propose to cover but a very limited portion of this extensive field of study. Laying aside all that relates to government, administration, and legislation properly so called, I will confine myself to the judiciary, specifically considered from the point of view of the separation of powers. I wish to determine to what extent at the present time its organization and operation are in harmony with the deductions which seem to be logically implied in the famous rule laid down by Montesquieu, and I will especially endeavor to explain the characteristic differences which, both in the letter of their respective constitutions and laws and in actual practice, distinguish the American separation of powers from the French separation.

Summary

I. Nature of the Judicial Power.
II. Organization of the Judicial Power.
III. Working of the Judicial Power.
IV. Summing-up and Conclusion.

I

Nature of the Judicial Power

From the outset we are confronted in France with a first question of a purely theoretical order, with which you are not acquainted, and this constitutes the first contrast between legal conceptions in the two countries. Our authorities wonder whether the judicial power is actually a power or whether it should rather be in itself looked upon as a branch of the executive, the latter making up with the legislative the only two powers which legal analysis can find in the state, namely, the power which makes the law and that which enforces it either judicially or administratively. And this is not only a doctrinal conception, more or less scientific, but the idea has been expounded in certain legislative discussions during the Revolution, in those memorable debates of the Constituent Assembly in which the principles of public law found such eloquent interpreters. Moreover, certain of our constitutions seem implicitly to sanction this solution. It is not my purpose to take sides in a controversy of a merely theoretical character. I shall only point
out that it does not exist with you. No discussion on this point has ever been raised in your country, so far as I know. Neither in the text of your federal constitution nor of your state constitutions, nor in Hamilton's letters in the Federalist on the analysis of the judicial power, nor in the opinions of American judges, which form such remarkable disquisitions on constitutional law, is the least doubt expressed as to the existence of an actual judicial power.

The reason for this difference between the United States and France we shall find in the fact that there have always been close relations between the courts and the government in France. Some of our monarchical constitutions expressly state that justice was administered "in the name of the King," or "in the name of the Emperor." Judges were appointed by the executive, the Minister of Justice, and the prosecuting magistrate who, in so many respects, is under the control of the government, exerted a constant influence over the courts. As a consequence of these facts, which seem to be inconsistent with the existence of a distinct, autonomous, and separate judicial power, very naturally there set in a tendency to consider the judicial power as a mere branch of the executive. This was a way of reinstating logic in the relations of the executive with the courts, and of doing away with the necessity of explaining certain peculiarities of the judicial organization. It is indeed something of a defect, I would even say a monomania, with jurists to endeavor to introduce logic everywhere and to bring everything down to simple ideas, whereas facts, which in this case are represented by texts, laws, and regulations, often do not lend themselves to these abstract and sometimes very unreal generalizations. On the contrary, the organization and power of the judicial department in your country have always been such as to keep free from any of these contradictions, which after all are only apparent. Nobody, therefore, has ever thought of setting forth a claim that this power, the oldest function of the state, is not a real power.

II

Organization of the Judicial Power

The subject of the organization of the judicial power leads us into a less doctrinal and more practical realm.

Here again we shall find several contrasts between the two countries. They have not understood the separation of powers in the same way. To begin with, this separation seems to have a bearing upon the very question of the selection of judges. In countries which, like the United States and France, hold the principle of the sovereignty of the people as the foundation of their institutions, should not the elective system be considered as the only mode of
selection admissible under the combination of these two controlling principles?

Such was the rule laid down by early French constitutions; the monarchical constitution of 1791 as well as the republican constitution of the year III, and most of your state constitutions followed the same rule quite promptly in the course of the nineteenth century. Your Supreme Court and federal court justices have, on the contrary, preserved the system of appointment by the executive, and it is this system which France also adopted after having made an experiment which was not attended by success.

It is indeed beyond doubt that the system which logically seems to be most in keeping with the principle of separation of powers conjointly with that of national sovereignty is the system of election. This logic is lacking in the French law, but American legislation has conformed to it only partially. Neither you nor we, therefore, are logical in the end. We unquestionably violate both the principle of separation of powers and that of the people's sovereignty.

What is, however, to account for the fact that no judge is elected in our country, while practically all of your state judges are designated by election?

No legal explanation can be offered, but history and politics supply us with the explanations not to be found in the law.

If the elective method has not been kept up in France, this is not only due to the unsatisfactory way in which it had worked, but mainly to the fact that the executive power became strongly organized under the Consulate and the Empire and that it looked upon the appointment of judges as one of its essential prerogatives. Subsequent governments, even republican governments, saw to it that such a powerful means of influence was not impaired in their hands.

Things went differently with you, and the cause for this divergence is to be found in the steady, uninterrupted development of the elective system in your country, which logically extended to nearly all public offices; there was no reason why judicial functions should have been excepted.

This may, perhaps, be a democratic error, but it is a genuinely democratic conception.

The logic of election has led you still further. Since elections were resorted to for the choosing of judges, by virtue of its principle it could only make temporary judges. We, on the contrary, have borrowed from the system of venality of offices, as existing in the old régime, the rules of life tenure and irremovability. This was a restraint put upon the executive power in the exercise of its usual prerogative over the officials appointed by it, I mean of its right of removal. But the limitation has served the interests of justice if it has not always been in accord with political interests.
There, doubtless, lies a most difficult problem in this matter of the appointment and promotion of judges. Elective methods have not given good results in France nor do they present such in your country. But neither is appointment by the executive, on the other hand, so very satisfactory; especially if it is considered that no magistrate can in fact be appointed without numerous recommendations from members of parliament, as is at present the case in France; that no appointment can be made without the approval of the deputy of the electoral district; and lastly, that the magistrates depend for their promotion on the ability to conciliate these many and sometimes hostile influences.

The formula of the separation of powers alone cannot remove all these difficulties. It can, however, be of great assistance towards the solution of the problem, inasmuch as it shows us that its application is conditioned upon the organization of a body of judges who shall have nothing to fear from the electorate, the executive, or the representatives of the people, a body of upright, learned, and independent men.

III

Working of the Judicial Power

Here it is that the contrasts between the United States and France are most conspicuously revealed.

The principle of separation of powers has begotten very different results in each country, in the way that a tree transplanted in a different climate yields fruits more or less savory than in the country where it originally grew and slowly developed with its special features.

Let us look successively for the demonstration of this idea into the relations of the judiciary with both the executive and the legislative.

(1) Relations between the Judicial Power and the Executive Power. The Americans and the French have conceived the relations between the judiciary and the executive from entirely opposite points of view.

The executive is vested with powers which enable it to interfere with the functions of justice; it exercises them through the prosecuting officers and occasionally through the Minister of Justice and even through the prefects, notwithstanding the fact that the latter are functionaries of an essentially administrative character. This is the first encroachment upon the principle of separation.

This principle is, on the contrary, most strictly applied on the judicial side. The courts which undertake to enforce the law against a member of the administration are divested even of their normal attributes.
The French system, we must say at the outset, is, above all, an historical product. The separation of powers with us did not so much proceed from Montesquieu as from the old French public law, in which it slowly and laboriously assumed its specific characteristics during the struggle between the monarchy and the parliaments. This system in its essential features may be described as follows:

The courts which we call judicial, that is, the courts proper, which alone constitute the judicial power, may not take cognizance, except in a few cases, of the differences arising between the administration and citizens. Now we must point out that these differences occur very frequently on account of the considerable importance of the administration in our country and of the many ways in which it comes in contact with citizens. The courts may not interpret any administrative act, nor look into its execution, nor declare it void. And if the court attempts to do this, deeming itself within its jurisdiction (which may well be the case since this jurisdiction does exist in some exceptional circumstances), it is disqualified by the authority of the administration itself which aroused the conflict.

Now who is to solve this question, that is, decide whether the matter should be submitted to the courts or to an administrative jurisdiction? This decision for a long time rested with the executive, a fact which affords further evidence of the special character of the French separation of powers entirely directed against the judicial power. Since 1872 this duty has belonged to a special court, called the Court of Conflicts, in which both the ordinary courts and the administrative jurisdictions are represented, but which may be presided over by the Minister of Justice. The executive power is, therefore, still endowed with a preponderating position in the Court of Conflicts.

Let us suppose now that a question in regard to jurisdiction has been decided against the court. The matter is withdrawn from the latter's hands forever. But who shall try it? For tried it must be! This mission will devolve upon the administration itself, which then takes the name of administration of litigation, signifying an administration clothed with a judicial capacity. It will exercise these functions through the prefectural councils and the state council, organs half judicial, half administrative, whose members are not protected by the privilege of irremovability, the real touchstone for judicial courts. The separation is thus carried to its extreme limit. The case is similar when it becomes necessary to prosecute an administrative agent for a dereliction committed in the exercise of his functions. The court cannot take cognizance of this matter of liability unless the dereliction is so gross as in some way to deprive the administrative agent of the capacity which protects him and to transform him into a plain citizen amenable to
ordinary law. Otherwise the case is taken away from the court, as, indeed, in order to pronounce a judgment on a question of liability, the court would have to construct an administrative act, which it may not do. Such is the system in force at the present time. Up to 1870 the prosecution of officials who had rendered themselves liable was provided for in a different way. It was permitted, if authorized by the state council (Art. 75 of the Constitution of the year VIII). The leaders of the revolution of the 4th of September hastened to suppress this rule which had shielded the worst excesses of the administration under the Second Empire. But French public law soon became disorganized through this abrogation, and the administrative jurisprudence revived the old rule of administrative guaranty under another form; it claimed that the principle of separation of powers would be violated if the courts had to pass judgment on cases of liability incurred by a functionary, as they would necessarily be taking cognizance of an administrative act.

This distrust of the courts which is shown by the administration and the jealous independence which characterizes the latter is, we cannot repeat too often, only to be explained in the light of history. What has been introduced in France is not the separation as described by Montesquieu in his immortal chapter vi. But the new public law has retained the principle of separation as contained in the old public law by giving a legal character to what was only an administrative practice, and by making of it an institution with peculiar and well-marked traits. The embryo, shapeless at first, and slowly developed in the last centuries of the French monarchy, resulted into the sharp formula set forth by the Constituent Assembly.

The men of the Revolution who had received their legal education from the old régime and who had been present at the struggle of the parliaments against monarchy, simply held on to the administrative practices introduced by the King's Council and the intendants. These practices constituted the law at the time when the Revolution broke out, and were sternly enforced in a manner which could not be opposed and which had totally suppressed every resistance.

Your conception of the relations between the judiciary and the executive is not of the same nature. Your courts may take cognizance of any litigation raised by the enforcement of the laws, even when the administration is a party to it. You are not acquainted with administrative jurisdictions; your courts may even serve injunctions upon the administration, ordering it to take such action as is required by law for the benefit of the public, or to discontinue any unlawful action. As to the liability of officials, it rests on quite different foundations, which it is unnecessary for me to point out; you know them better than I.
What I am here to investigate is the reason for this difference from the French conception of the separation. The reasons are invariably the same. Your historical traditions are on this point totally at variance with ours. The English judicial régime did not know the struggle between monarchy and the courts of law. Political struggle never took place in the judicial domain, while the latter unfortunately was the only ground which remained for it in France. In England political struggle existed only where it belonged exclusively, that is, in political bodies. It is due to this fact that the principle of the "rule of law," with absolutely general application, could, without difficulty, be maintained both in England and in your country, even when it had to be exercised against the administration.

If, however, the two systems were to be subjected to a critical test, the French system, such as it has grown out of many and happy improvements, could perhaps bear a favorable comparison with the Anglo-American system.

Administrative judicial bodies, on the one hand, have come to be real courts, subject to fixed rules and to a regular procedure, and sitting with as much independence as judicial courts have. On the other hand, these judicial bodies, which include past or future administrative officials, are, on this account, composed of specialists quite familiar with administrative matters; this is not an undesirable condition, since it can only redound to the benefit of the accused. Lastly, owing to their intimate connection with the administration, such judicial bodies are able to go further than any court could into the details of administrative action. I cannot unfortunately submit any evidence of the above assertions, for it would demand from me more time than I have at my disposal to lay before you the famous theory of "appeal on the ground of excessive use of power," an admirable creation of our highest administrative judicial body, the state council, which presents a more effectual protection for individual rights than can be afforded by any other system.

It will suffice that I have pointed out the existing contrast between your separation and ours in regard to the relations of the administration with the judiciary, and that I have indicated the causes for such a contrast.

(2) Relations between the Judiciary and the Legislative. Here again the same causes have produced the same effects. The French separation of powers is as different from the American separation in regard to the relations of the judiciary with the legislative as in regard to those of the judiciary with the executive.

Proof of this I shall seek in the consideration of the well-known question of unconstitutionality of laws, which, from a legal standpoint, is brought under the same conditions in France as in the United States, the two countries living under written constitutions.
All the courts in your country, from the lowest to the highest, have the right to hold as void and unenforceable any law adjudged by them to be unconstitutional. It has never been possible to introduce this rule in France. Attempts have vainly been made to have it adopted by the courts, in view of the lack of definiteness of texts at hand. But the courts have never dared to go such a length. Bills have been introduced aiming at embodying it expressly in legislation; they never have, and probably never will, come up for discussion. A few authorities only, very few indeed, contend that our laws imply a sanction of the rule of unconstitutionality; this, however, seems to me really a paradox.

How does this new contrast between American and French institutions arise? Can we find any rational explanation for it? No. History and politics alone can furnish a key to the problem. Here again the soils on which the seed of separation was sown have produced plants quite different in character.

Doubtless the French rule, if looked upon from the standpoint of law and abstract logic, is incomprehensible and unaccountable. Your great Chief Justice Marshall has shown in a definite way, in the famous case of Marbury v. Madison, that the American rule is based upon all unshakable legal foundation. Whenever in a country there exists a written constitution, there also exists, by virtue of the same fact, a legislature with limited powers. The written constitution assigns to the different powers their respective spheres of action. It shuts them up in a circle which neither the legislative nor the executive are allowed to overstep under penalty of forfeiting their powers, and when a parliament violates a constitution by passing a law which contradicts one of its provisions, it takes the position of an agent who would exceed the terms of his agency; the agent would perform an act which is null and void, for he is no agent and has no representative character beyond the scope of his agency. So with a parliament. If it ignores the constitution, it is no longer a parliament and ceases to be a representative body.

This is perfectly true on grounds of law. But history and politics furnish a most satisfactory explanation of this difference between the French and the American constitutional law. It consists in this: that the former has put the separation of powers to a use which was not recognized by the latter. As a matter of fact, it is upon the principle of separation as much as, or even more than, upon texts, which we must confess are rather ambiguous, that the right of the courts to withhold the enforcement of an unconstitutional law is denied in France.

I shall not presume to teach you the historical origin of the American system. I myself studied it from American authors, and especially from Professor Thayer of Harvard, whose death is a loss to
science, and to whom you will allow me to render the tribute of my homage. I learned from him that the American rule proceeded from the English origin of your judicial institutions, from that wide range of competence of the English courts which permitted them to pass decisions on all public and private matters, and also from the colonial judicial régime which prevailed before the proclamation of your independence.

The French rule, on the contrary, was derived from the same source that restricted the jurisdiction of the courts in regard to the acts of the administration.

The men of the Revolution had been the spectators of the struggle between the parliaments and the King towards the end of the monarchy. They had noticed that, in the last years of the eighteenth century, the parliaments had attempted to prevent the King from carrying out reforms demanded by public opinion and indeed had sometimes succeeded in doing so. Such reforms could not be executed through enactments of the council, which for a long time past had been free from the interference of the judicial bodies; the King was compelled to carry them into practice through edicts, ordinances, and declarations for which the sanction of the sovereign courts was indispensable. Indeed, the aim pursued by the men of the Revolution was to prevent the judicial bodies which succeeded the parliaments from resuming the warfare against the political powers, the legislative as well as the executive.

Thus, it appears, Montesquieu's theory was not applied, but the rules in process of elaboration in our old public law were taken up, sanctioned definitely, and formulated in terms of greater precision; doubtless they were not laid down with as much precision as the rules applying to the executive, but we shall find them sufficiently precise, especially if we look upon the matter from the point of view of the spirit of the institution itself.

Nor should it be overlooked that the Revolution achieved both socially and politically the most wonderful reforms ever recorded in history, and that in the midst of unheard-of difficulties it introduced new principles forcibly, although they clashed with numerous and considerable interests. How could these men who wished to transform society, and who succeeded in so doing, put up with a rule so apt to prove a hindrance to their progress?

The objection might be made that the special circumstances under which the political powers were striving in the advent of new ideas are now over. Why, then, shrink from adopting the American system, the only one which can logically be derived from the theory of written constitutions?

All attempts made in that direction have so far failed, as I have already stated. They have failed everywhere, in France and in all
such European countries as are provided with a written constitution and in which the question arises under the same conditions as in France. There are only two exceptions in Europe that I know of. In Norway and Greece the courts may withhold the enforcement of any unconstitutional law. But while this rule has numerous and far-reaching applications in the United States, even in the domain of political and social reform, the rule of unconstitutionality has but little importance in the two above-mentioned countries. I asked some Norwegian and Greek jurists to let me know of decisions on this point, and they were hardly able to discover more than a few judgments, relating to cases of strictly private nature and involving no issues of widespread interest.

There must, therefore, be a special and very powerful reason for the maintenance of so illogical a rule everywhere except in the United States and the South American republics, which have merely copied your constitution.

The real reason for it is entirely political in character. Your "exception of unconstitutionality" is a main piece in your system of government, in your constitutional machinery. It is rather a political than a judicial rule. I do not, of course, deny that it is a protection for the rights of the individual and a very efficient guarantee of the liberties of the citizen. But its political character overshadows its judicial side. The matter is political, while the form is judicial.

This feature was already noticed by our great De Tocqueville, the illustrious Frenchman who was the first European to attempt a description of your institutions, which shows such lofty views and such a remarkable acuteness of analysis. "The American judge," said De Tocqueville in his Démocratie en Amérique, "is just like all judges in other countries except that he is clothed with immense political power."

Now, neither in France nor in any other country of old Europe governed by a written constitution, is there any disposition to give the courts "immense political power." In such countries, which either possess or slowly drift toward a parliamentary organization, there exists no desire and no possibility to limit in such a manner the province of the legislature, which is the political power par excellence, and which your state constitutions tend, on the contrary, to confine in an ever narrower circle.

The parliamentary régime has its own rules, its inward logic; it represents a special type of government in the broad sense of the word. The system for which your constitution stands is of a very different type, with its elected president, its secretaries placed beyond the control of the legislative power, its standing Senate and House committees, its conventions, and lastly, its rule of unconsti-
tutionality. To repeat a comparison used by Mr. Boutmy, who has an excellent acquaintance with the spirit of your institutions, we must picture to ourselves these two types of government as "two animal species quite removed one from the other." It has been scientifically proved that any attempt to cross animal species removed from one another yields but poor results. No better results could probably be secured by attempting to mingle these two types of government.

It is in vain that we have a written constitution and that we proclaim very loudly the distinction between the constituent powers and the constituted powers; in practice we act as though we had a parliament invested with a paramount authority. The reason as stated above is that parliamentary government labors under its own logic and leads inevitably in fact to an almost all-controlling authority of parliament, even if there exists a written constitution. Legally our parliament is not sovereign; politically and practically it is.

I do not think, therefore, notwithstanding the contrary opinion held by a number of my fellow citizens, that it may be possible or even desirable to adopt your "exception of unconstitutionality."

You export bicycles, and especially agricultural implements, into France, and your Chicago manufacturers flood our country with these products, with which we are very well satisfied. But the exception of unconstitutionality would not be a good article of importation into France.

Another equally potent reason which causes us to exclaim "Timeo Danaos et dona ferentes" is the fact that the judiciary would be the power which would suffer most thereby. It would soon become disorganized, thrown out of balance and upset by the unwelcome present thus made to it. The gain for politics would be but trifling, while the judiciary would most assuredly be the loser in the transaction.

IV

Summing-up and Conclusion

To sum up and conclude:

(1) The separation of powers is merely a formula, and formulas are not working principles of government. Montesquieu had chiefly aimed to indicate by his formula the aspirations of his times and country. He could not and did not wish to propose a definite and permanent solution of all the questions brought up by the government of men and their long-felt longings for fairness and justice.

(2) The separation of powers since this conception was first
launched into the world has been what M. A. Fouillée, one of our most eminent philosophers, calls an idéefore, an auto-dynamic idea. It has sought its fulfillment in facts, by embodying itself in positive constitutions and legislations, but it has not altogether succeeded, its progress being checked by obstacles thrown in its path by historical events and practical necessities.

(3) The separation of powers has produced very different effects according to the countries where it was introduced. The seed has produced plants materially diversified in character according to the soil where it was sown. There is nothing in such a fact to be wondered at. A people is dominated by its history, its traditions, its own mentality slowly developed, its economic, religious, and social conditions. Hence no absolute similarity can exist between two institutions established in different countries, unless it be in the letter of their constitutions and laws, although they may be controlled by the same idea.

(4) The separation of powers in its strict and absolute sense is neither desirable nor even practicable.

The powers of the state in their operation must necessarily come frequently into mutual contact. Certain authors, mostly jurists, are wont to indulge in a very mistaken method of handling this question. They grasp the abstract conception of separation, isolate it, and put it on a pedestal; then they draw from it all the strictly logical inferences implied in the pure idea. On such grounds they condemn all rules of positive law which from a logical and abstract standpoint contradict their deductions.

This method is extremely dangerous in public law, nor is it a perfect one as affecting matters of civil law. Legal formulae should not be esteemed above life itself. On the contrary, they should keep pace with the latter and fashion themselves in accordance with it, for law is only a form which creates nothing, but has the object of imparting strength to institutions called into being by certain needs which exist and expand outside of it.

(5) Separation and independence seem to be a more marked tendency and a stronger need for the judiciary than for any power of the state. The reasons for this may be stated as follows:

First, the law of specialization. There are no functions which demand a greater degree of technical, special, and professional knowledge than those of a judge. Nobody would ever think of calling upon a dock-hand or a man who slaughters cattle at Armour's in Chicago to draw up plans for a house, a bridge, a locomotive, or an automobile, as these men have qualified themselves neither by study nor practice for such a special work. It would be just as unreasonable to withhold the recognition of this necessary law of specialization in the working and organization of judicial agencies.
And I will remark in passing that it constitutes the true safeguard against the greed and the destructive and disorganizing genius of politicians.

On the other hand, it is of paramount importance, through an adequate organization and operation of the judicial power, to insure the protection of private interests, matters of family, property, individual freedom, honor, in short everything which is closest to one's heart in this world. It is, therefore, impossible that the principles applying to the organization and working of either the executive or the legislative, which are only connected with questions raised by public interests, should also apply to the organization and working of the judicial power.

With these words I shall end my too lengthy and yet quite insufficient address. The ideals of justice and politics are essentially different. As a consequence, it is indispensible, in organizing and carrying out the powers of the state vested with the attributes corresponding to these various functions, not to disregard the inward necessities arising from the peculiar character, the organic nature, as it were, of each power. Particularly in regard to the administration of justice we must never forget this beautiful definition of justice: \textit{Justitia est constans ac perpetua voluntas ius suum cuique tribuendi}. This is the motto of the judge, the only one to which he should look for his inspiration and guidance, and we should condemn any organization which would disregard that motto, either by making too stringent an application of the separation of powers, or by getting too far away from it. \textit{In medio veritas}. 
SECTION C—PRIVATE LAW
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(Hall 14, September 23, 3 p. m.)

CHAIRMAN: Professor James B. Ames, Dean, Harvard Law School.

SPEAKERS: Professor Ernst Freund, University of Chicago.

SECRETARY: Dean William Draper Lewis, University of Pennsylvania.

JURISPRUDENCE AND LEGISLATION

BY ERNST FREUND

[Ernst Freund, Professor of Law, University of Chicago. b. New York City, 1864; J.U.D. University of Heidelberg; Ph.D. Columbian University; Lecturer on Administrative Law and Municipal Corporations, ibid. 1892–93; Instructor, Assistant Professor, Associate Professor, Department of Political Science, University of Chicago, since 1894. Author of The Legal Nature of Corporations; The Police Power, etc.]

The arrangement of jurisprudence, in the classification adopted for this Congress, under the head of Social Regulation, recognizes the practical purpose by which this department of learning is dominated. Since it is the professed object of the private law to harmonize the rules of justice in individual rights and liabilities with the changing needs of society, it is proper, in a paper dealing in a general way with the relations of this branch of the law, to consider the methods of its system mainly with reference to their adaptability and success in serving that end. The private law has developed partly through the administration of justice, and partly through legislation, and it is, therefore, natural to distinguish between these two agencies of development in tracing the relation of scientific method and system to the problems of policy and justice.

I

We speak of a legal system when rules are consciously founded in principle and when principles acquire cohesion by impressing the mind with their interrelation and common purpose. This unity is strengthened by the recognition of authorities which furnish standards and analogies of legal reasoning. This intellectual bond, far more than distinctness of political jurisdiction, serves to differentiate one legal system from another. The writings of the jurists in Rome, and later on the corpus juris both of the civil and of the canon law, the great body of English case law, the treatises of Littleton and of Blackstone, of Pothier, of Savigny, and of Wind-
scheid, may be mentioned as either constituting legal systems, or as having contributed powerfully to their formation. On the other hand, a system may or may not be coextensive with political jurisdiction. In England for a long time common and civil law had each its province of application; to-day the two systems ignore international boundaries; the Mahommedan law spreads over numerous countries, and the French Code of Commerce furnishes a system of commercial law to most Latin nations. The law as a system is a body of reasoned principles, and not of sovereign commands.

In any system of private law it is possible to differentiate, with tolerable clearness, principles and institutions according as they are strongly marked by considerations of public policy, or are mainly abstract and technical in their character.

It is not a derogation to the dignity of legal science to assert that the bulk of its work has always been given to the production of rules of the latter category. Jurisprudence — and in this it differs from political economy and sociology — is the direct outgrowth of a practical demand. It is its business to minister to the dispensation of justice, and the justice of the courts, in the vast majority of the cases in which it calls for constructive legal work, has to deal with close controversies turning on the precise demarkation and boundary lines of institutions and principles, and taking their essential nature and larger aspects for granted. Not unnaturally the character of the private law is dominated by the habitual trend of professional thought, and this again is controlled by the exigencies of professional practice. The result is the dry and colorless complexion of the private law with which we are sufficiently familiar.

This aspect of the law is accentuated where it is developed chiefly, perhaps almost exclusively, through its administration, as was the case in Rome and in England. The main characteristic of such a system is apt to lie in the wealth and refinement of its technical distinctions, and in its consequent availability as an arsenal of weapons for the forensic contest. It is true that the eulogists of the common law dwelled mainly upon its fundamental policy in protecting the liberties of the subject; but this was simply an identification of the common law with the English constitution for the purpose of making a contrast with the countries of the civil law which were formerly living under more or less despotic governments.

The general attitude of the professional mind toward technical problems, and, therefore, the essential character of legal science, is the same in different systems, although the controlling agencies of development may differ considerably. Juristie authority in Rome was lodged with professional advisers, in England with the courts,
but the result in both systems was practically case law. We are apt to regard as the distinguishing characteristic of the common law the authority of precedents. What Coke said of the civil law three hundred years ago, that "there be so many glosses and interpretations, and again upon those so many commentaries, and all these written by doctors of equal degree and authority, and therein so many diversities of opinions, as they do rather increase than resolve doubts," 1 is in a measure true to-day; but the resulting difference is one of certainty and not of kind. The German jurists of the nineteenth century, it is true, introduced new methods of legal science by seeking to reduce legal principles and concepts to their simplest elements in logic and metaphysics with a view to laying the broadest possible foundation for legal reasoning; but their dialectical efforts have, on the whole, proved barren of practical value. In the main, the type of mental activity characteristic of legal science is thus fairly uniform and constant.

Within the close range of unsettled law there is little room for large and striking questions of policy, and in the few cases in which they do arise, the courts, in deference to the theory that they do not make law, rather argue that the policy which they support is settled by authority than that it is the right one. We can thus rarely trace the mental processes that underlie the adoption by the courts of some social or economic principle. The origin of many of the most important phases of legal policy, by which legal systems are distinguished, is obscure; so in Rome the establishment of the free marriage, the recognition of the right to legal portions, and the pretorian system of inheritance; in England the system of primogeniture, the extreme measure of marital right, and the disappearance of wills of land. We do not know to what extent legal reasoning and argument were instrumental in securing the adoption of any of these policies, but it is safe to conjecture that where there was an innovation upon old-established institutions and principles, and the change took place through the administration of justice, it was brought about gradually and covertly, without an acknowledged overturning of the previously established law. Fiction and equity are the most familiar but not the only agencies that have accomplished silent revolutions in the law, and there is, perhaps, no period of legal history which presents more striking instances of the operation of these subtle and elusive forces of transformation than that of the English law in the two centuries following the Norman Conquest, as described to us in the classical treatise of Pollock and Maitland. Most of the important advances that have been made in the English law without the intervention of legislation in more recent times are associated with the rise and development of equitable jurisdiction,

1 Proem to Second Part of Institutes.
just as in the middle period of the Roman law they are associated with the office of the pretor.

Admirers of the unwritten law point to its power to adapt itself to change of circumstances in time and place. It is quite true that both the Roman and the English law have shown themselves capable, on the whole, of keeping pace with the advance of civilization for centuries with remarkably slight aid from legislation. The study of these two systems reveals, however, also the shortcomings of this form of law and legal development.

In the first place, flexibility seems to decline with the advance of jurisprudence. Where the evidences of law are carefully collected, and decisions closely watched and scrutinized, the settled law is not easily unsettled; constant analysis is not congenial to the subtle processes of change to which reference has been made. So the Roman law, after having stripped the father of most of his substantial control over the son, was unable to shake off its theory of the paternal power; it retained the distinction between quiritarian and bonitarian ownership, between Roman and provincial soil, between civil and pretorian inheritance, between legacies and trusts, between wills and codicils, long after they had ceased to serve any practical use. The English law grew increasingly rigorous after the restoration of the monarchy. The protection of authors' and inventors' rights, the most important extension of the idea of property in modern times, had to come first from the sovereign prerogative, and then from the legislature; the common law courts were unable to extend the general principles of the law of torts into a right of action for death caused by a wrongful act, although the same difficulty was not felt on the continent of Europe; the right of privacy is still looking for general recognition; and the unqualified application of the English law of water-rights in many American jurisdictions did not evince great power of adaptation to changed circumstances.1

In the second place, a process of transformation which leaves the previously established law formally intact must result in complex and technical legal arrangements. This was very obvious in the Roman law, and is equally so at present in our own. The distinction between the civil and the pretorian law, as that between law and equity, bears witness to the loss of simplicity by which the substantial gain in justice had to be bought. It was one of the great achieve-

ments of Justinian that as an incidental and preliminary part of his codification he removed nearly all of this cumbersome and needless complexity; and it is safe to conjecture that the Roman law, with all the technicalities of its classical form, would not have been a fit subject for reception by the nations of Continental Europe. The common law has not yet undergone this process of simplification, and if it has likewise spread over a large portion of the civilized world, this has not been due to a peaceful conquest of foreign nations, but to the expansion of the English people, who carried with them the learning and the traditions of their legal profession.

The legal profession is not seriously inconvenienced by the technicalities of a legal system, and rather cherishes them as an intellectual possession in proportion to the labor and effort which it has cost to master their difficulties. It is also right in preferring technicality to a simplicity which would in reality mean vagueness and uncertainty. The tenacious adherence to established though cumbrous forms is to some extent justified by the great difficulty of piecemeal amendment of an intricate system and the risk of harm from bungling legislation.

Both in Rome and in England the appreciation of these difficulties led to almost absolute legislative inaction in the domain of private law for centuries. The history of the two systems shows that for long periods the sense of abstract justice in civil relations may lack sufficient force to induce any action on the part of the sovereign power of the state in the direction of improving the general law. The impulse to legislation effecting a decided progress in jurisprudence has almost invariably come from the pressure of special interests and has often been confined to their satisfaction.

There are, however, exceptions to this rule. There have been periods of legal history when improvement of the law was felt to be among the chief functions of sovereignty, and when legislators were as much impressed with their wisdom and their power of promoting justice as with the inadequacies of the unwritten law and its lack of capacity for unaided development. Such was the period of the later Roman Empire, especially that of Emperor Justinian; the latter part of the thirteenth century both in Spain and England; the sixteenth century in Germany; the period of the close of the eighteenth and the beginning of the nineteenth century in Germany and in France; again the latter half of the nineteenth century in Germany, and perhaps, although in a less pronounced manner, in England the period beginning with the reign of William IV. The causes that bring about such legislative activity — if any definite causes can be assigned — probably vary greatly in each case, and if the demand of a famous jurist had been heeded that before yielding to the impulse a state should establish its "vocation" by adequate
scientific work in jurisprudence,¹ nothing would probably have been
accomplished in any age.

Each system has, on the whole, derived very substantial gain
from these periods of active legislation. It is the orthodox view to
see in the latest history of the Roman law a period of decline; but
it is also true that some of the most enduring doctrines and prin-
ciples of the civil law,—the benefit of inventory, the regulation of
intestate distribution and of legal portions, the paternal usufruct,
the principles of limitation and adverse possession,—have been the
fruits of the latest imperial legislation. In England, the reign of
Edward I came in the formative period of the law, but of the second
great legislative reign, that of Queen Victoria, it is safe to say even
at this time that the improvements it has brought about in the
common law are greater than those of any other era of English legal
history.

II

While in removing technicalities and rules that have outlived
their usefulness the legislative power merely remedies the defects
and omissions of the unwritten law, the conscious and deliberate
adoption of new policies is a function distinctly its own.

The question whether a proposed new policy is wise or unwise in
its immediate or remote bearing upon social or economic interests is
usually not regarded as a question of law, but of politics or states-
manship. Even the equity and fairness of the proposed policy is not
generally understood as presenting a legal problem as long as
the legislature deals with interests which are conceded to be subject
to its power. But as soon as the interest becomes so vital as to
assume the nature of a fundamental right, questions of justice
become questions of law, and the principles of legislation fall within
the province of jurisprudence.

We touch here one of the distinctive features of American legal
science. In countries in which the legislative power is not subject to
judicial control, the principles of justice which bind legislation are
not argued before the courts as other questions of law, but are con-
clusively determined by the legislative organs of the government.
Under the American system of judicially enforced constitutional
limitations these principles have become the subject of professional
argument, and are determined by the courts on the basis of reason
and logic. It becomes, under these circumstances, a question of great
interest whether this new departure of American jurisprudence has
resulted in the discovery of new principles of private right, or has
given greater practical security to those previously recognized.

¹Savigny, on the Vocation of our Age for Legislation and Jurisprudence, 1814.
If the words of the Fourteenth Amendment are taken as the most concise expression of fundamental constitutional limitations, there are three main rights which all legislation must respect: liberty, property, and the equal protection of the laws.

Of these, the respect of vested rights is, and has always been, a principle recognized by all civilized governments, not merely as a rule of policy, but as a rule of law, in such manner that occasional violations, if not due to mere inadvertence, have been felt to be either sovereign acts of necessity, or despotic acts of wrong which the absence of a legal remedy did not convert into legal acts in any other than a purely formal sense.

What gain has then resulted from the judicial enforcement of this right against the expression of the legislative will?

We notice, in the first place, that constitutional clauses have not rendered impossible great extra-legal acts of revolutionary reform sweeping away vested rights of property; the abolition of slavery without compensation is conspicuous evidence of this, in marked contrast to the provision for indemnity by an omnipotent Parliament.\(^1\) Where vested interests run counter to the moral sense of the community, they have found very inadequate protection in the constitutions. Upon the theory that the police power cannot be bargained away, the courts have sanctioned the legislative annulment of liquor licenses and lottery charters that had been paid for; they have refused to recognize an established business as a vested right where it affects the public health, and have allowed retroactive legislation to stand even where the public health was not affected, as in the oleomargarine legislation. In these cases the unvarying practice of European legislation is either to pay compensation or to avoid retrospective operation, and in this country as well as in Europe vested interests must rely upon the legislative sense of equity and good faith, in which, as a general rule, they are not disappointed.\(^2\)

When we turn to the cases in which statutes have been declared unconstitutional as impairing vested rights, two categories are conspicuous. The one is where, through inadvertence, the legislature in instituting a reform failed to confine the operation of the new law to cases arising in the future. It is best illustrated by laws changing marital, dower, and homestead rights without exempting rights already vested from their operation. In these cases judicial control conferred an undoubted benefit; but the benefit is one which ordinary care in legislation renders superfluous. Moreover, expectant

\(^{1}\) The repudiation of state debts may be left out of account, since claims against states were, by the Eleventh Amendment, deliberately withdrawn from judicial control.

\(^{2}\) The writer begs leave to refer for fuller exposition and for citation of authorities upon the subject of vested rights as well as of the doctrines of liberty and equality, to his treatise on the *Police Power*, 1904, especially chapters 13, 19, 20, 23, 25, 31.
interests have been allowed to be cut off by such legislation because
the courts considered that they did not amount to vested rights,
and equities have thus been sacrificed which under more careful
methods operating without constitutional limitations are always
safeguarded.¹

The second category consists of cases in which a strict conception
of the inviolability of private property rendered impossible the
carrying out of a policy intrinsically just and desirable. This may
be illustrated by laws attempting to authorize the condemnation
of land for private rights of way, or the creation of drainage districts
for the improvement of land of several owners by the vote of a
majority. In one jurisdiction the supposed sanctity of private
property was held to make it impossible to provide for the com-
motion of perpetual ground-rents at the option of the landowner,
a legislative policy common to other countries.² An American court
quotes with approval the words of an eminent jurist: "The owner of
one rood of land may stand in the way of any private enterprise,
however much the general utility may be thereby hindered, and
no human power in a free country where the principles of Magna
Charita prevail in their full force can compel him to budge one step."³

Under such exaggerated judicial views of private right it has, in
a number of instances, been necessary to obtain a change in the con-
stitution in order to carry out a legitimate legislative policy, and in
the matter of corporate privileges and exemptions the Supreme
Court of the United States has found it advisable to modify more and
more the view of the contractual obligation of the charter which
in the beginning it proclaimed in too unqualified terms.

Judging from past experience, then, the net gain resulting to
American jurisprudence from the judicial enforcement of vested
rights is slight; and if it should be urged that we must take into
account the vicious legislation that the expectation of judicial control
has forestalled, the answer must be that if this effect could be proved,
it would not constitute a net gain, but simply the prevention of a loss
due to defects from which other systems appear to be free.

The two other rights named in the Fourteenth Amendment are the
right of individual liberty and the right to the equal protection of
the laws. In a constantly growing number of cases the right of
individual liberty is being interpreted to mean a right to contract
free from legislative restraint, while the equal protection of the laws
is held to prohibit legislation singling out a class though not other-
wise violating its fundamental rights. Upon one or the other of

¹ Compare Westervelt v. Gregg, 12 N. Y. 202, with McNeer v. McNeer, 142 Ill.
388.
² Palairet’s Appeal, 67 Pa. St. 479.
³ New England Trout, etc., Club v. Mather, 68 Vt. 338. The words are Judge
Redfield’s.
these two principles, or upon both, a considerable mass of economic and social legislation has been declared unconstitutional.

While, as has been before observed, the respect of vested rights is an universal principle of law controlling every system of jurisprudence, this is not true of the two principles last named. Both the civil and the common law rest upon freedom of contract, and the systems of legislation based upon them recognize this freedom as a fundamental rule of policy. As a policy, however, it is subject to legislative control and not, like a rule of law, binding upon the legislature. In modern systems of law equality holds exactly the same place.

Has American jurisprudence changed these rules of policy into binding rules of law? and if so are they proclaimed as fundamental rules of justice or merely as principles demanded by, because conformable to, the American type of government and of society?

Decisions have undoubtedly been rendered in considerable number, declaring unconstitutional, as violating the rights of liberty or of equality, or both, certain statutes of a social or an economic character; some, perhaps the majority of them, dealing with the employment of labor, others with a great variety of other forms of business, and the courts have been emphatic in asserting that the constitutions guarantee a certain sphere of freedom of contract and of business and prohibit unwarranted discrimination.

But does such assertion amount to the laying down of a positive principle? What does it mean, to say that the fundamental law secures a certain amount of liberty, if it is not said how much, or that it forbids unjust discrimination, if the injustice is not defined? It is the merest commonplace that some restraint of liberty of contract and business, some discrimination, is not merely valid, but essential to the interests of society. Can the fundamental law be satisfied with the proclamation of rights of absolutely indeterminate content, directly contrary to other recognized principles, or is not limitation and definition of some sort absolutely essential to an intelligible rule of law? The courts have given us criticism, denunciation, and condemnation, but no positive guidance. The course of adjudication is marked by divided jurisdictions and divided courts, resulting in a lamentable uncertainty as to the limits of legislative power.

III

Yet the position taken by the courts is not merely acquiesced in, but regarded as indispensable, and, on the whole, beneficent. For this judicial censorship is not only justified, but made necessary, by prevailing legislative conditions. It would be untrue to say that
all of the legislation that has been declared unconstitutional has been
vicious or oppressive, and none of it has been absolutely arbitrary or unreasonable; but most of it has been of doubtful wisdom or expediency, and probably all of it had inflicted or threatened to inflict serious injury on legitimate interests. And it is probably true that, in the great majority of cases, those interests received their first hearing under forms giving some assurance of impartial and adequate consideration in the courts of justice. The explanation, although not the juristic theory, of this phase of judicial control, is that a corrective is needed against methods of legislation affording no guaranty of justice.

These methods — if we should not rather speak of lack of methods — are perhaps the natural result of leaving the entire work of legislation to a large body constituted primarily for purposes of policy and not of justice. Parliamentary legislation in England until recent times was marked by the faults which we have inherited: spasmodic and unrelated measures not uncommonly induced by some striking case revealing the injustice or defect of the existing law, or by the pressure of special interests; no definite responsibility for the introduction of bills; no thorough preliminary investigation of the conditions to be remedied; no adequate public discussion of the terms of a proposed measure; and involved if not faulty phraseology of statutes. In England these conditions have been practically superseded, because none but government measures have any chance of passing and because the government is at present aided by the honest labors of parliamentary commissions of inquiry and by the skill and experience of expert draftsmen. ¹ In most of the American states the defects that have been pointed out continue practically unchanged; in others the improvement has been only slight.

The natural consequence of the faults described has been a marked inferiority of statutory legislation, and, owing to this, a peculiar attitude of impatience and disrespect toward it on the part of the courts and of the profession, so that it is almost regarded as a disturbing factor in the otherwise well-coördinated structure of the common law. If in this country we are slow in remedying this condition of things, it is partly because of the intrinsic difficulty of reform and of the technical nature of the evils to be cured; partly because in former times other and more pressing problems concerning legislation engrossed the public attention. The use of the legislative machinery for partisan political purposes, and the necessity of legislative action for the grant of franchises, added fraud and cor-

¹ On the history and present methods of drafting statutes in England, see Frederick Cliford, History of Private Bill Legislation, 2 vols., London, 1885–87; and Sir Courtenay Ilbert, Legislative Methods and Forms, Oxford, 1901.
ruption to inefficiency and carelessness, and led to the manifold restraints on legislative powers and methods which are characteristic of the constitutions and constitutional amendments of the second half of the nineteenth century. The various improvements in methods of legislation had for their object to advise legislators of the purpose and content of measures, and to make more difficult the adoption of bills without any consideration in the closing days of the sessions; none sought to secure responsibility for initiation, notice, and hearing to the interests affected (except, in some states, in case of local legislation) or the requisite legal skill in the drafting of acts; for the defects concerning these points did not sufficiently impress the public mind, and the legal profession did not seem to feel that its interests required their removal.

Nearly every one of our constitutional provisions owes its existence to concrete and definite experiences of either the American or the English people in the matter of government. It is well known that the Fourteenth Amendment was enacted to deal with the specific problem of the protection of the Negro. When the due process clauses in the earlier constitutions were formulated, the interference of the police power with economic interests had not aroused any noticeable discussion or protest. Historically it is indisputable that these fundamental clauses were not designed to impose upon the American system of government hard and fast doctrines of economic liberty as principles of constitutional law.

But when with the increasing complexity of the social and industrial structure of the state the functions of government began to expand, when a demand arose for the satisfaction of novel conceptions of public welfare, and the interests of the economically weaker classes came to be identified with the public interest, it was inevitable that those who were prejudicially affected by this extension of state power should refuse to regard the frequently crude enactments of a discredited legislative department as final and conclusive. The traditional judicial attitude toward legislation, coupled with the firmly established power of controlling the validity of statutes, made it equally inevitable that the courts should entertain appeals to this power, and that they should seize upon the fundamental guaranties of the constitution as forbidding legislation which injured valuable interests without any assurance of careful consideration, where such legislation seemed to them needless or oppressive or contrary to earlier American conceptions of the sphere of government. Hence, the long array of decisions which within the last generation has thrown the law of the police power into confusion and uncertainty.

There are a number of undeniable objections to this method of correcting evils of legislation by judicial action: In the first place,
the judicial methods of reëxamining the justice of legislation are in their turn far from satisfactory. It is true that the two adverse interests are represented by counsel, and the courts are supposed to decide according to the preponderance of evidence and of reasoning; but the facts are not like those in an ordinary lawsuit, since they cover a wide range of social and economic phenomena and experiences, for the ascertainment and estimate of which the machinery of the courts is quite unsuited; the arguments employed by the courts for condemning a policy are in many cases hardly less crude than those that may have moved the legislature in adopting it.

In the second place, judicial relief places the courts in an attitude of antagonism to the legislature which under any system of government, but especially in a democracy, is unfortunate. The courts in enforcing theories of economic liberty and equality after all pass upon questions of policy and not upon questions of law. This function finds no precedent in other countries and it is novel even in this; it remains to be seen whether the courts can long continue to exercise it without suffering in reputation for impartiality, and thereby in popular confidence.

Finally, the exercise of judicial control is not prompt or certain. It is left entirely to private initiative to attack unconstitutional legislation. While ordinarily the interests of the parties adversely affected by the legislation will lead to timely action, instances are not wanting where years and even decades passed before a statute was declared unconstitutional. It is obvious that, for example, in the matter of the validity of acts authorizing municipal bond issues, every consideration of justice and good faith requires that the constitutionality of an enabling act should be settled before and not after the bonds are issued.

Notwithstanding these objections, the principle of judicial control of legislation is so firmly intrenched in our whole constitutional system that it is not apt to be dislodged, nor does it show any signs of weakening. There are even some tendencies apparently running counter to it that will ultimately work in its favor. It has repeatedly happened that a decision denying the exercise of some judicial power was followed by a constitutional amendment granting the power denied.\(^1\) In extreme cases these enabling clauses will themselves be invalid under the Fourteenth Amendment, but even as valid grants of power they are as to scope and content subject to the interpretation of the courts. A number of large and positive policies defined in the constitutions will be preferable to the wholly

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\(^1\) Eight-hour law for miners; Re Morgan, 26 Colo. 415; constitutional amendment, 1902. Indeterminate sentence law; People v. Cummings, 88 Mich. 249; constitutional amendment, 1902. Conditions of employment by public contractors, People v. Coler, 160 N. Y. 1; constitutional amendment, 1905.
vague restrictive and negative principle of liberty and equality. Under a considerable number of such enabling clauses our system would somewhat resemble those parts of the European public law in which the legislature contents itself with indicating in large outline the principle of state control, leaving the administration to adopt measures within that principle. This allows a strong judicial control of governmental action, combining permanency of principle with flexibility of detail. The parallel becomes closer when we consider that it is easier to procure a constitutional amendment in some of our states than an important change of legislative policy in the great European countries.

The continued exercise of judicial control will, to a certain extent, carry its own remedy. True, one of its effects has been, and will continue to be, to weaken the sense of constitutional restraint on the part of the legislature, which will give itself the benefit of the doubt where the question of validity is controverted, and hold itself relieved from moral responsibility if a measure is sanctioned by the courts. But, on the other hand, where the legislature is sincerely anxious to carry into effect some policy, the expectation of judicial control will induce it to be scrupulous about observing constitutional limitations.

Exhaustive inquiry into the conditions to be regulated, impartial consideration of all interests concerned, and skilled and careful draftsmanship are equally indispensable requirements to produce legislation that is to avoid both inefficiency and injustice. In England, France, and Germany the observance of these conditions is made possible by the fact that the respective governments introduce all important bills, that they have the greatest facilities for ascertaining the facts underlying the proposed measure, and that they command the services of highly qualified officials acting as draftsmen. These conditions cannot be easily reproduced in a country in which the government has no initiative in legislation, and in which it is often very difficult to place the responsibility for the framing and the introduction of a measure. In recent years a few states have made provision for officials who are to aid in the drafting of bills, and for the systematic collection of information regarding legislation and legislative problems, and a great deal of valuable statistical work is done by official bureaus in the states and in Washington. It is to be hoped that these efforts in the direction of improving

and harmonizing methods of legislation will, in the near future, be further extended and especially that they will receive the active support of legislative bodies.

IV

For the purposes of the relation between jurisprudence and legislation statutes may be divided into two great groups, those which deal with ordinary civil relations (rights of property, transfer, contract, debt, agency, suretyship, wills and estates of decedents, etc.) or with questions of procedure and practice, and those which fall mainly under the general heads of administration, police, and revenue.

In the framing of statutes of the first group, purely legal considerations have generally been controlling, and, on the whole, that legislation has been in substance as well as in form the work of professional jurists.

In the framing of measures of the second group, on the other hand, the attention of law-makers is centered on political, social, and economic interests, and desired improvements call above all for a careful, intelligent, and impartial consideration of facts not primarily legal. The wisdom and justice of this legislation is a question of economics or politics, or of the technicalities of trade and industry, and not of jurisprudence, and if our courts could be assured that the statutes brought before them embodied the matured conclusions of those departments of learning and thought, they would probably be less inclined to make the economic and social justification of a measure a question of constitutional law. Neither the determination of the sphere of economic liberty nor the propriety of classification for legislative purposes belongs, properly speaking, to the province of jurisprudence.

The following are, on the other hand, questions of law which enter into nearly every piece of social and economic legislation: the respect for vested rights; the avoidance of retroactive operation, together with the legitimate and valid exceptions from this principle; the extent of permissible delegation of the details of measures to administrative authorities, and the power to relieve from the operation of a measure in particular cases; to what extent powers of obtaining information and powers of enforcement should be granted and which of these powers should be withheld, with a view on the one hand to securing compliance and preventing evasion, on the other to avoiding injury to legitimate interests and obviating a misuse of official powers; the question whether the process of enforcement shall go through the courts, and whether it is safe and permissible to provide for summary administrative powers; the question what civil
rights of action should be granted both on behalf of the government and on behalf of the individual.

Under our system of constitutional limitations nearly all these questions have become judicially cognizable as bearing on the validity of statutes, and a considerable amount of legal literature has grown up in which the principles in question are discussed. In England legal treatises discuss only questions of statutory construction, because only these can come before the courts, and although Parliament acknowledges limitations of a constitutional character, these are not considered in law-books because they are not judicially enforceable. This is characteristic as showing that legal literature and therefore legal science, appealing as it does exclusively to the legal profession, confines itself to producing material which is available primarily for the administration of justice and only incidentally for legislation. The instructive material which law-books contain for legislative purposes is rarely formulated in such a way that the lesson which it points is plainly put as a rule of statutory draftsmanship; and errors are, therefore, of constant occurrence which the most elementary law-book for the drafting of statutes ought to guard against.

Legal science ought, however, to do a great deal more for legislation than present material already digested in a more convenient form.

Our legal literature is deficient in two branches of information which the courts use only occasionally, but which are of infinite importance to the legislator: the history of statutory legislation, and the history of the operation of statutes, showing what success or failure a given piece of legislation has met with in its practical application.

The history of legislation should show two things: In the first place, the changes through which a statute has gone, both in its original course through the legislature and in its subsequent amendments, the statutory or common law which it supersedes, and earlier statutes dealing with the same problem; in the second place the motives or reasons which brought about each particular provision, both in the legislature and out of it.

The formal history of statutes is matter of record, and for a few branches of legislation the material has been brought together; there are many other branches in which very little, if anything, has been done. If we compare the degree of perfection with which judicial decisions have been digested, the contrast is striking. The need for a similar digesting of statutory legislation is public rather than professional, and it is not to be expected that the work will be systematically undertaken through the regular channels of professional publication.
The other part of the history of legislation will, to a great extent, be always unknown. For the vast majority of the acts on the statute-books of our states, the reasons or considerations inducing their adoption have not been formulated. There has often been no discussion in the legislature whatever, or if there has been, only incomplete accounts of the debates have been preserved in the daily press. It is otherwise with regard to the more important legislation of Congress and, in a number of states, with regard to the enactment of constitutions. In some branches of administrative legislation there are comments and recommendations of official authorities, and revisers' notes furnish for a few states valuable material. The whole amount of this source material is poor as compared with what the official publications of England, France, and Germany afford. A great amount of information for legislative history is scattered through the law reports, in cases construing statutes and pointing out defects, which led to appropriate amendments. But the current digests pay no particular attention to this feature of the law reports, and the information is therefore not in a readily available form and has not to any considerable extent been utilized.

As for the history of operation of statutes, there has never been any systematic observation of the working of the laws of persons, property, or contracts. Excepting the subjects of bankruptcy, divorce, and to some extent of personal injuries, there are no civil judicial statistics, still less, of course, any information regarding the legal relations that do not reach the courts. In codifying the German civil code, use was made of data collected by the government regarding the prevalence of certain forms of marital contracts and testamentary dispositions; nothing of this kind would be available in the United States. The Census Bureau in Washington would be the only organization in this country to gather information of this kind, and there is no present prospect of its undertaking so far-reaching and difficult a work. Nor is there any near prospect that our states will undertake the collection of judicial statistics. General impressions instead of exact and systematic observations will, for a long time to come, be the basis upon which the policy of our civil legislation will be built, and there is no promise of any radical advance of jurisprudence in this respect.

With regard to revenue and police legislation, however, the outlook is much more hopeful. A considerable amount of information is even now available in the official reports of the authorities charged with the administration of the various acts, which naturally deal to a considerable extent with the administrative and judicial aspects of legislation. With the multiplication of controlling and regulating boards, more and more light will be thrown upon the operation of principles of constitutional and administrative law.
All this material ought to be collated and digested in the same manner as is now done with judicial decisions, and the result should be the construction of a body of principles of legislation to supplement the existing body of principles of law. Both in its material and in its method this branch of legal science must differ considerably from the judicial jurisprudence with which we are most familiar; but it is a department of our science equally legitimate and valuable, and destined to grow in importance with the increasing legislative activity of the modern state.
THE DOCTRINE OF STARE DECISIS

BY EDWARD B. WHITNEY

[Edward B. Whitney, Lawyer, New York. b. New Haven, Connecticut, August 16, 1857. A.B. Yale University, 1878. Assistant Attorney-General of the United States, 1893 97. Author of many contributions to reviews; and has addressed associations on legal and particularly constitutional questions.]

I am requested to present a paper whose theme is suggested by the Present Problems of Private Law, as distinguished from law that has a constitutional or international aspect. I doubt whether there is any other section of the Congress whose themes are so difficult to select. We cover, indeed, those branches that mainly concern the ordinary, plain, steady-going, stay-at-home, law-abiding citizen, — that multitude of questions among which most legal practitioners everywhere are wearing out their lives, working every day and all day upon Present Problems of Private Law. Each of those problems interests the parties to the particular litigation or negotiation or dispute or difficulty which brings it up. Some interest even the lawyers to whom they are presented. Few interest anybody else; and even among these few but a small minority possess such world-wide interest that they are worthy of the consideration of a Congress representing all the civilized nations of the globe.

Furthermore, this is not an International Congress of Lawyers. There is such a Congress; but it is a different one, and does not meet until next week. This is a Congress of Arts and Science; and of all the Present Problems of Private Law none is so difficult as to give to any portion of private law, as known at least to the American practitioner, the semblance either of a science or of an art.

Science, as I understand it, is a search after absolute truth, — after something which when once ascertained is of equal interest to all thinkers of all nations. No matter how wise and learned and famous a person may have said that a thing is so in the realm of science, it remains open to anybody to prove that it is not so; and if it is proved to be not so, the authority of the wise and learned and famous person disappears like a morning mist. In science, what we are really seeking is not the opinion or the command of any human being. We are subject to no command, and are not bound to follow any previously expressed opinion. But when a lawyer is trying to find out what is the law upon any particular point, in order to advise his client, he first inquires whether a collection of men exercising legislative functions and having jurisdiction in the premises have commanded anything upon the subject; and if they have, he has nothing to do but to interpret, if he can, the usually vague and unscientific
language in which their command has been couched. If he cannot
find any such command among the books of statutes and ordin-
ances — in other words, if the subject has not been legislated upon —
then usually under present conditions the American lawyer's task is
not to ascertain by what rules human beings should be governed
in the absence of legislation, but by what rules certain persons of
authority have in the past said that they should be governed; the
authority of these persons not arising from any transcendent wis-
don or learning of their own, but mainly from the fact that they
had been theretofore elected or appointed to a certain public office.

Nor is it easy to consider any theme suggested by Present Pro-
blems of Private Law in the light of an art. The presentation of any
given case to a judicial tribunal involves the knowledge and appli-
cation of art as well as of science. If literature and rhetoric are
arts, and psychology is a science, there is high art in presenting the
facts of the case and the true application of the law thereto, in such
a blaze of light that they will remain indelible in memory. There
is still higher art in so presenting them that something other than
the truth may thus reach the judicial mind; for in the practice of
the law the highest degree of artistic skill is to conceal the truth,
not to exhibit it. But in the body of the law itself, as known in
America at least, as it is developed out of the work of legislative
committees or litigating counsel and is verified by the signature of
governors or presidents, or enunciated by judges, the artistic ele-
ment is rarely to be found.

Among the problems common to the whole world which have
been bequeathed to us by forces peculiar to the century just closed,
probably those will first come to mind which are the result of eco-
nomic progress; changes desirable in the law of corporations, in the
law regulating the relations of capital and labor, and in the law of
transportation. These, however, belong more to the realm of soci-
ology and political economy than to that of law. We can advise the
experts of those sections as to what the old law is, what changes
can be made in any given state or country without violating its
particular constitution, how its constitution can be changed if a
change be desirable, and in what verbiage the desired changes should
be couched, so that they may be effective; but as to what the
substance of the changes should be, this section of the Congress is
not the one most appropriate for a discussion.

Other problems arise from the close communion into which the
various peoples of the earth have been brought by the quickening
and cheapening of transportation, mixing them together by inter-
migration, by intermarriage, by foreign stockholdership, bondholder-
ship, and other property ownership, and in so many other ways,
But these problems, as practical problems of the present generation.
belong rather to the section of Private International Law than to ours.

I believe, however, that there is one problem brought daily to the attention of the practising American lawyer, which, while of ancient origin, is now fast coming to the acute stage, and to the verge of radical treatment, which belongs peculiarly to the law itself, without any adverse claim on behalf of the professors of ethics or sociology or political science. I refer to the problem as to how the law itself should be authoritatively declared and evidenced.

It is a familiar fact that in every English-speaking community the body of the law is divided into two portions: first, the so-called judge-made law, which is to be found in records and reports of the decisions and sayings of judicial officers; and second, the statute law, which consists of enactments by parliaments, congresses, or legislatures, together with executive regulations and municipal ordinances adopted under powers lawfully delegated by legislative authority. According to the theory of English jurisprudence, the so-called judge-made law was not made by the judges at all, but existed, although not written, as the ancient and general custom of the English-speaking people, and in the shape of ethical rules which they had tacitly recognized and adopted; but the authoritative evidence of such a custom was the decision of a court, and by the doctrine of *stare decisis* such a decision when once made became conclusive evidence, — conclusive within the territorial jurisdiction of the court until overruled by some higher tribunal, — conclusively establishing the existence of some rule which thereafter could not be changed except by legislative enactment.

This judge-made law has been called by its admirers the perfection of human reason; and theoretically there is no other method equally efficacious of finding out what is the true rule of law applicable to any given state of things. It may be well to analyze the theory of judge-made law and recall to mind the reason why it is theoretically superior to the work of the wisest legal philosopher, in order that we may realize more clearly why the theory is becoming less and less justified by the practical results, and why, as a result to some extent of the rapid growth of the English-speaking world in the nineteenth century and of the rapidly increasing complexity of our civilization, and to some extent of mere lapse of time, it is weakening and showing signs of an early breakdown unless at least some radical remedy is adopted.

The theory of judge-made law, the theory underlying the system by which the decision of a court in a litigated case becomes the highest evidence and conclusive evidence of the existence of a previously unwritten rule of law, involves in the first place the assumption that the case is a genuine controversy, involving two or more
parties litigant, each determined to use every effort to win. It involves the assumption that each of these parties litigant is represented by counsel learned in the law, skilled in its exposition, and having, through compensation, or the hope of it, or charity, or that love of a fight which is inherent in the human race, sufficient interest in the outcome of the litigation to call forth their best efforts. It involves the assumption that these counsel have familiarized themselves with the statutes, the judicial precedents, and the general principles of law, public policy, and ethics which are applicable to the controversy, and that each has reduced his view of the case to clear and logical form. It involves the assumption that they come before an able, experienced, and impartial judge or bench of judges. It involves the assumption that each judge listens to each side until the case has received all of the oral argument which it properly requires, elucidating by questions any matter that may have been left obscure or in ellipsis by counsel. It involves the assumption that each judge is already familiar with the previous statutes and judicial precedents that are applicable to the case, or else that during the course of the argument, or by subsequent examination of the books, he familiarizes himself therewith. When these assumptions are all warranted by the actual facts, it is evident that after counsel have exhausted all possible effort to present the various points of view, and the judge has supplemented their work by means of his own experience and independent research, and especially if he be sitting in the highest appellate tribunal, with the benefit of the repeated reexamination and sifting of argument in the courts below, and of the light inevitably thrown upon a litigation which has been pending during a long series of years by reasonings and analogies such as are sure to come from time to time to the attention of counsel whose minds have become impregnated with the case, or to be contributed as fresh minds take it up upon the substitution of one counsel for another, then the judge is better equipped to declare the correct application of established principles to the particular case before him, and better equipped to apply general reasonings and analogies to a case of new impression, than can be any closet student. The different method and the different point of view of the legal text-writer or philosopher are indeed invaluable in contributing to the elucidation of unsettled problems; but, from the necessary limitations of the human mind, no legal reasoning can be regarded as having passed the final test until it has been subjected to the practical analysis of an actual litigation.

The judge having thus made his decision, he very commonly states orally or in the form of a written opinion his reasons therefor. It is assumed that if this decision is preserved at all, and is brought up for future use as a precedent, the facts before the court and the
process of reasoning by which the result was reached are accurately known. It is assumed either that they are accurately reported in some book or periodical, or that they have been completely incorporated in the record of the case. The precise point decided by the judge is thereafter in theory recognized as a part of the general body of the law of the state, colony, or nation whose judicial officer he is. Theoretically it remains conclusive evidence until overruled or repealed, or unless it is found to be in conflict with another decision of equal authority, in which case, with the benefit of all the work done in the two litigations represented by the conflicting decisions, the question is submitted to a further and final test whenever it may again arise. The reasoning in the opinion of the court is not conclusive evidence of the law except so far as it is necessary to the precise point decided, because so far as it is not thus necessary the judge is not presumed to have had the full benefit of the research and arguments of counsel, or to have given to his own reasoning and use of language the same degree of attention. His unnecessary reasoning, therefore, receives in the English law and American courts the same weight only which is awarded to all judicial decisions in other systems of law if I correctly understand them; namely, that which belongs to the opinion of an able and learned professor or textwriter, which is to be considered with care and respect, but not necessarily to be followed. Hence, the so-called syllabus or abstract prefixed to every modern printed report of a judicial decision when properly drawn up is very often composed of two parts: first, a statement of the precise point decided, with so much of the facts and reasoning, and so much only, as is necessary to make clear that decision; and second, propositions laid down, as we say, obiter, which might have been omitted without creating an ellipsis in the train of argument by which the actual result of the case was reached.

This is the theory which causes the English or American lawyer to give greater weight to an appellate decision delivered by Lord Mansfield after argument by such counsel as Dunning and Law, to one delivered by John Marshall after argument by Webster and Wheaton or Pinkney, than to the work of any philosopher; why he would give comparatively little weight to any reasoning of Mansfield or Marshall himself in a case that went by default, or where the reasoning was unnecessary to the decision; and why he has grown up and lives with the belief that his Continental brother is deprived of the most valuable instrument for the attainment of perfection.

It is evident that there was always some danger of defective application of the theory of judge-made law to the circumstances of the particular case; a little danger of the submission of a collusive
controversy, and a serious danger that the counsel might be incompetent or careless, the judge mediocre or wanting experience, the argument or submission of the case insufficient, the court's opinion obscurely or defectively expressed, the decision inaccurately reported. There was also the danger arising from the proverbial fact that hard cases make bad law, so that a doctrine occasionally becomes established because it did equity between the parties whose dispute first suggested its consideration, although in nine cases out of ten thereafter its application may be practically oppressive as well as theoretically indefensible. During some generations of lawyers and judges, however, the practical results approached the theoretical standard to a degree which could hardly perhaps have been expected, so nearly that the theoretical perfection of "case law" was almost a fetich with the legal profession, and that an overwhelming majority of the profession is still determinedly opposed to any change.

Yet I believe not only that the doctrine of stare decisis, unless some entirely novel and radical legislation can be devised to save it, must disappear through the inevitable course of human progress — and progress does not always lead from a worse to a better system — but that its hold, in the more crowded federal and state courts at least, has already to a considerable extent been weakened. It is increasingly common to hear active and successful practitioners in those tribunals say that they find less attention given now to precedent than formerly; that when a litigation comes before a court of last resort which perceives or thinks that it perceives the right to be on one side, they find an increasing tendency to disregard, or to distinguish upon some trivial ground, any precedent to the contrary; that they find less and less discrimination between general statements of law contained in a former judicial opinion and the actual point that was decided; in other words, between what may have been obiter in the opinion and what was really settled thereby; that they find increasing weight attributed to general statements of the law in text-books and encyclopedias, even in works fresh from the press, photographs of whose authors, were they exhibited to the court, might suggest the very recent law school graduate. These things are generally spoken of among lawyers by way of complaint, as if we were living in a temporary era of carelessness, due to an overcrowding of the court calendars, or to an imperfect manner of selecting the judges, or to a slovenly habit of presenting cases to the court, which should and will be corrected in the future. I think, however, that the change is not temporary but permanent; that it is the effect of forces which are permanent and beyond human control; that while these forces may not be very appreciably operative as yet in certain states, they are beginning to modify conditions everywhere, and in the larger states are modify-
ing them with a rapidity that will soon receive universal recognition.

A change very commonly noticed is that caused by the enormous multiplication of printed reports. At the beginning of the nineteenth century but an armful of judicial reports had been printed in the English language outside of England itself. For a long time subsequent, the cases of authority upon any given point were still so few that court and counsel could thoroughly familiarize themselves with every one of them, while a really considerable proportion of the law likely to come up in court was embodied in cases whose names were commonly known to all members of the profession with any pretensions to learning. About a hundred years ago each of the states of the Union then admitted had begun to produce a series of reports of at least the decisions of its highest court. During the nineteenth century the number of states of the American Union increased from sixteen to forty-five. Reports were also being issued in the territories and in a large number of the British colonies. Some of the individual states of the Union, moreover, as well as England and the United States, were producing reports of their inferior tribunals.

It is, indeed, not necessary for the practitioner, in order to ascertain all the law which is theoretically binding upon his client, to examine any reports outside of those of his own jurisdiction; but it is unsafe for him to stop there unless the statutes or reports in his own jurisdiction are absolutely in point and controlling. Even in England American precedents are continually cited and discussed; and in most of the United States, decisions of England and of other states, as well as those of the federal courts, are given great weight, while those of the British North American provinces are not entirely neglected. In the larger states like New York, as in England, the use of reports outside the jurisdiction is less common; but that is only on account of the enormous multiplication of reported decisions within the jurisdiction, so that to master the home decisions alone upon any given point is a harder task than it was to master all decisions at the time when the glory of judge-made law was at its zenith. Twenty-five years ago it was not unusual for the New York lawyer to keep in his library not only a substantially complete set of the reports of his own state and of the federal courts, but also a large selection from those of England as well as of some of the other American states. The private law library since then has been rapidly contracting in scope, while not diminishing in size. Even the largest offices are driven more and more to depend upon the great public or association libraries for the complete preparation of their work, which means a decrease of efficiency where the libraries are within the lawyer's reach, and
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a greater decrease of efficiency where they are not. Even the keeping up of a set of reports of the various courts of a large state and of the United States is becoming an expense to be seriously considered in a city, not only in the original cost of the books but in the matter of office rent. Convenient for comparison is the year 1880, when the Federal Reporter, the present compilation of current decisions of the inferior federal courts, began. At that time, less than twenty-five years ago, the decisions of the United States Supreme Court could all be purchased in 64 volumes, and the decisions of the lower federal courts up to the same date, both reported and unreported, have since been collected in a series of 30 volumes. But the decisions of the United States Supreme Court since that date fill 94 volumes, while volume 131 of the Federal Reporter is already well under way. The regular series of reports of the appellate tribunals of New York State and of the old chancery courts prior to the same date were contained in 368 volumes, while since then 272 additional volumes have been already issued. In 1880 the regular series of the federal and New York state decisions required only seventy-three feet of shelf-room. Now they already fill ninety-five feet additional; and this is exclusive of the various series of unofficial reports of decisions, which partly duplicate and partly supplement the series above referred to, and of the various collections made up mainly of the decisions of the courts of first instance, of the cases elsewhere unreported or reported in abbreviated form, and of annotated cases, such as Howard's series in 69 volumes, Abbott's series in 66 volumes, the New York State Reporter in 123 volumes and still continuing, and the so-called Miscellaneous Reports in 43 volumes, a series commencing within the past twelve years and still continuing, this last series being of an official character and inflicted upon us by the state itself. All of these, and others which I have not named, must be continually consulted, and the lawyer is also being confronted continually with decisions cited from daily, weekly, or monthly periodicals, and occasionally with certified copies of opinions altogether unreported. The president of the American Bar Association in 1902, in his annual address to the association, stated that the law reports of the then past year contained 262,000 pages, and estimated that a man by reading 100 pages a day might go through them in eight years; by which time there would be new reports on hand sufficient to occupy him for fifty-six years more. A single tribunal recently established in the state of New York, and sitting in four different sections, the so-called Appellate Division of the Supreme Court, which held its first session in the month of January, 1896, has already published 95 volumes of officially reported decisions, besides writing a large number of opinions which are to be found in un-
official reports; and, as it is the highest tribunal in the state after
the Court of Appeals, no lawyer pretending to any degree of effi-
ciency in his office organization can afford to be without them. At
the rate of progress which was kept up during the past year, volume
500 of these reports will be reached in the year 1941. By that year
at latest the lawyer will see volume 329 of the present series of
reports of the highest court of New York, volume 381 of those of
the Supreme Court of the United States, and volume 431 of the
reports of the lower federal courts; and other states will go the
same way, in varying degree. When that day shall come, will
human wealth and human patience be able to bear the burden
longer?
Up to the present since the natural effects of this tropical torrent
have been mitigated by the increased efficiency of the digester, but
his work also is now voluminous. An annual digest of English
and American decisions is now published. Those of the last year
occupy, though in the briefest abstract, nearly 5000 double column
pages.
The first obvious consequence of this intermittent flow of
reported opinions is that to handle a case properly, according to
the ideas of the people who established the fame of judge-made
law, requires each year a greater amount of time than it required
before. Every additional opinion that bears or may possibly bear
upon the case at bar must be read; and to read it involves the
expenditure of an appreciable amount of time. The argument and
decision of any still unsettled question, or question claimed to be
unsettled, thus involves an enormously greater expenditure of time
at four different points — in the preliminary preparation by counsel,
in the oral argument, in the court's subsequent examination of the
previous authorities preliminary to the decision, and in their discus-
sion (when, as often, they are discussed) in the opinion which is
subsequently formulated, so as to serve as future evidence of the
law.
Now, on the contrary, instead of expending more time, all parties
expend less. The preliminary examination of the authorities, when
the case is in the hands of leading and distinguished counsel, cannot
be done by them personally. If they had to do it, they could no
longer accept enough business to support their families. As a
general rule, even in cases of great pecuniary importance, they can
carefully examine only a small proportion of the authorities, and
must rely upon information derived from their law clerks or junior
counsel in selecting what to read. In other cases they may not be
able to read any authorities at all, nor to do any independent think-
ing, but take reason and precedent alike at second hand from
others.
At the stage of oral argument, the old custom of allowing all the time necessary for the proper elucidation of the particular case in hand has become obsolete. It has been supplanted by rules putting an arbitrary time-limit upon argument, irrespective of the case; and while it is in the discretion of the court to extend the time, this is ordinarily done only in cases of the greatest immediate importance, although the others may turn out to be the cases of the greatest ultimate importance in determining the future course of development of the law. The highest courts indeed, like the Supreme Court of the United States and the Court of Appeals of the State of New York, allow sufficient time to cover ordinarily a sufficient statement of the facts of the case and, if it be a comparatively simple one, a fairly satisfactory outline of the arguments; but it is so impossible any longer within any practicable time-limit to discuss the authorities as they used to be discussed within the professional experience of men still living, that except under exceptional circumstances experienced lawyers do not discuss authorities at all, but submit them to the court in printed briefs. Moreover, even in the court last mentioned, the present liberal time-limit applies only to one class of appeals. Other appeals, including probably the majority of those which will be important in the future, are given a hearing so short as to be commonly inadequate to all purposes. In the lower appellate courts the nominal time-limit is apt to be still shorter, while in actual practice some courts feel forced to discourage all oral argument whatever and practically deprive themselves of the benefit of the opportunity, so important to the true understanding and solution of a difficult enigma, of extending cross-questioning of counsel by the court.

Nor does time permit that standard of care in the subsequent examination of the case which used to be considered a prerequisite. Nothing approaching the same care can now be given. During the last year of the chief justiceship of John Marshall, the United States Supreme Court, consisting then of seven justices, filed 39 written opinions. During the year 1903–1904 the same court, with nine justices, filed 212 written opinions, besides disposing of 208 cases without opinion. During the same year the New York Court of Appeals filed 221 opinions and disposed of 419 cases without opinion. It appears from the report of a commission appointed by the Governor of New York in 1903 that in one of the appellate courts sitting in the city of New York the average number of opinions written by each judge per year was considerably more than one hundred, in addition to which he had to examine and record his concurrence with or dissent from about four hundred other opinions in cases in which he sat, and participate in the discussion of about two hundred additional cases in which no opinion was rendered. Of course allowance
should be made for the fact that in Marshall's time the Supreme Court justices did much work besides, sitting in the courts of first instance; but after all possible allowance on this account, the disparity is still enormous.

I believe it to be a fact that few if any of the federal appellate courts, or similar courts in any of the larger states, can at the present time secure that assistance from counsel, allow that time for oral argument, go through that subsequent examination of the authorities, discuss and analyze the general principles of law, public policy, and ethics with that thoroughness, or observe that care in formulating the arguments approved and the decision reached, which are theoretically incidental to the development of judge-made law. Certainly all these things cannot be done in more than a small proportion, if any, of the cases presenting complicated facts or novel features. The time allowed being insufficient, the character of the work upon each case, taken by itself, must and does progressively deteriorate. Very likely each appellate judge performs now more labor, and doubtless he disposes of much more litigation, than his predecessor of half a century ago. Considering the amount that he disposes of, he generally approximates surprisingly well to the right decision in the particular case; thus probably doing more good on the whole than his predecessor, who could do better work on each case taken by itself, but whose benefits reached a comparatively trifling number of his fellow citizens. But a man who may not be a John Marshall to begin with,¹ and who cannot give to a single case the time which John Marshall would have given to it had it arisen in his time, although an examination of the precedents at the present day would take many times as long as was necessary in the lifetime of John Marshall, cannot be expected to bestow on it the care which was then or for a generation thereafter considered absolutely requisite. It is too much to ask of him an opinion which, in addition to being a reasonable approximation to justice in the case before him, shall also satisfactorily serve as evidence of the law on the subject for the future. No wonder that he himself, to judge from the internal evidence of his opinions, rates the language of any young textwriter as high as he does the dicta of his own court; and that the latter, if terse and pithy, he quotes without much investigation as to whether they had been obiter or not.

Nevertheless the judges and the bar and community at large have all continued nominally to treat the doctrine of stare decisis as still in full force; and with all the modern difficulties in their way, so many judges stand bravely by it that the citizen must always be prepared to have it enforced against him in a given case with a rigidity

¹ I do not go into the question of the ability and learning of the judge elected under present political conditions, as compared with his predecessors.
and technicality that would have been quite improbable in the days when time permitted the precise state of facts and the precise line of reasoning underlying each previous authority to be more carefully analyzed, and tacit limitations to the breadth of its statements recognized. On the other hand, as the wilderness of authorities presented upon the briefs of counsel tends every year to become more hopeless, the courts in general tend more and more to decide each case according to their own ideas of fairness as between the parties to that case, and to pass the previous authorities by in silence, or dispose of them with the general remark — one of those remarks that the recording angel is supposed to overlook — that they are not in conflict. Different men, however, are of different minds. As the time spent upon oral argument and subsequent consideration of each case tends to lessen, the chances of difference in decision of two substantially similar cases coming before different sets of judges, or even before the same judge in different years, tends to increase. Apparent conflicts of authority thus arise. Subtle distinctions are taken in order to reconcile the conflict if possible. The law is thrown into doubt, and a lawyer thereafter cannot advise his client how to act in order to enjoy his rights and keep out of harassing litigation. The point in conflict reaches the court perhaps again and again, and distinctions grow subtler and subtler, until once in a while a happy solution is found by holding that some then comparatively recent case, although avowedly but distinguishing the early ones in some incomprehensible manner, really overruled them. Thus for a moment the doctrine of stare decisis fails to operate, and by its failure the law is clarified, reason triumphs, useless litigation ends, and the citizen learns how in one contingency to protect his rights.

Various plans for cutting down the bulk of the current reports have been under discussion for the past twenty years, but up to this time none has been found to which the objections raised have not been sufficient to prevent any effective propaganda.

It has been suggested that the reporting of dissenting opinions be forbidden. But these are often of great value in showing the exact scope of a decision, and when the court is nearly equally balanced they may be almost as weighty as the prevailing opinions in the courts of other jurisdictions.

It has been suggested that the judges designate which opinions shall be officially published, and that they restrict the publication within narrow limits. But opinions are public records. The bar insists upon their right to cite cases, whether reported or unreported in the official series. Often the cases thus unreported turn out to be among the most important precedents. It has always been and still is common for the judges to exercise this power, but the usual result is that the profession have to subscribe to an unofficial series of
printed reports, and occasionally pay for certified copies of unprinted cases. A committee of the American Bar Association in 1898 reported that the power to determine which of their own decisions could be thereafter cited, and which should apply only to the case of the parties litigant then before them, was too dangerous a one to be confided to any court.

It has been suggested that the judges write fewer opinions, but this would be a partial abandonment of the very advantage which we have been taught to believe that we possess over the lawyers and litigants under other systems of jurisprudence. One of the functions of the judicial opinion is to help preserve the confidence of the bar and the public in the ability, learning, fairness, and open-mindedness of the judiciary as a whole, as well as the careful attention due to the particular case, by indicating the grounds upon which the decision is based whenever the case is one not entirely clear. Our bar generally prize the custom and would object to its abandonment. Its abandonment would tend to diminish that confidence in the courts which is one of the corner-stones of our governmental system. Moreover I think that every step toward the abandonment of opinion-writing would be a step away from the doing of justice in the individual cases before the courts. It is a fact whose knowledge is not confined to the bar, that the result of investigation of a difficult problem must be subjected to the test of setting the facts and reasoning down in ink, before the investigator himself can rest with confidence upon his own work. Formulation in writing of the reasoning in support of a decision that has been made leads not seldom to the discovery by the writer that the decision is wrong. A court which, as a general rule, writes a careful opinion upon every appeal, like the Supreme Court of the United States, shows a greater proportion of reversals; and this, I think, is because the natural tendency of an appellate court at first presentation of a case is usually to affirm, both from the presumption in favor of the decision below, and because, when that decision is erroneous, it is generally so because the superficial first impression of the case was followed without getting down to the bottom of it. Just as there is a conflict between the dispatch of business and the administration of justice, so there is often a conflict between the interests of the parties actually present before the court, which call for an explanation, and the interests of the clients and lawyers of the future, which are better subserved by silence.

It has been suggested that the individual judges make their opinions terser and less ambiguous, drop out all padding, reduce to a minimum the discussion of and quotation from previous authorities,¹ ¹It is important that the custom of citing precedents by title should be preserved, because the most convenient means of ascertaining what has been decided upon any point is very commonly through the "Table of Cases Cited."
and cease altogether from expressing views upon subjects not absolutely necessary to the decision of the case in hand. That is a reform that undoubtedly ought to be made; but to expect it is hopeless. Few men seem to have the faculty of expressing themselves tersely and confining themselves to the point; and of these few men the majority have not the other qualities necessary to the attainment of public office. Nor can the public be expected to discipline even the worst judicial offenders. These are quite as likely as any to receive promotion or unanimous re-election. There are too many other elements to be considered in estimating the judicial personality. Nor can discipline in this matter be expected from the chief justice or other members of the tribunal. A man’s style is too personal a matter. It is all that an appellate court can do to approximate to unanimity in its decisions. The small amount of time that it has to devote to the form in which its work is given to the public is shown by the occasional long tenure of office under the highest courts of grossly incompetent reporters.

I have not found any practicable suggestion toward materially reducing the mass of current judicial literature, although legislation might conceivably reduce to a comparatively small compass the judicial literature of the past without depriving us altogether of the benefits of our judicial law. A statute is very often enacted for the sole purpose of repealing the rule of law established by some particular judicial decision. Such a statute is never accompanied by a repealing clause, expressly declaring the case to be not the law; but conceivably it might be. Conceivably a statute might officially declare that the rule of stare decisis should not apply to a given reported case because it is disapproved or has been overruled; or that the case should not be cited because it is obsolete or of insufficient importance. England has published an official edition of her statutes so far as they are now recognized as remaining in force. Those not in force are officially omitted, and nobody need ever again waste time and effort over the question whether or not they are still alive. New York has this year appointed commissioners for a like purpose. A similar process might conceivably be applied to our judicial literature, and an official list prepared of cases to which the doctrine of stare decisis should, in future, be restricted. If the plan be practicable, we can well afford to employ our highest talent for the purpose. The official list would not need to declare that every case upon it were necessarily the law in all respects. But it would be accompanied by a provision forbidding the future citation of any that had been omitted, on the ground that they have been officially found to be abrogated by statute, or overruled, or obsolete, or dependent upon questions of fact alone, or mere useless repetitions of rules otherwise fully settled. It may be possible that some
such plan will be somewhere tried in the future in connection with a codification of the unwritten law.

Codification is the one and only remedy that has ever been suggested which amounts to more than the mildest palliative, and which has received substantial support from any influential section of the profession and the public. Fifty years ago it seemed in fair way of accomplishment, and as late as 1886 the American Bar Association, after a long debate, adopted by a small majority a resolution that the law itself should be reduced, so far as its substantive principles are settled, to the form of a statute. The committee reporting in support of this resolution said that whatever has heretofore been settled by the decisions of the courts should be evidenced by codification, leaving to the courts to continue the natural development of the law. A majority of the influential American lawyers, however, have continued to oppose a codification of the law, and have succeeded in preventing even its serious consideration. At about the time of the favorable action of the American Bar Association, the New York City Bar Association defeated by a large majority even so conservative a proposition as that the present English system of codifying the unwritten law upon special subjects, one at a time, be taken up.

The main real obstacle to codification in America is undoubtedly the experience which we have had of codification in particular, and of statutory law in general, in the past. The inartisticality, clumsiness, obscurity, and verbiage of the ancient English statute is proverbial. The old-fashioned lawyer held all statutes in contempt. The ancient form was inherited by America; and while from early days noted examples of clear and skillful drafting were incorporated in our statute-books, nevertheless the art was one little cultivated, and there remained much ground for the common saying that, however obscure the unwritten law might be, the written law would always be worse still; that the flexibility — a somewhat doubtful matter — of the judge-made law would be lost, and nothing of value would come by way of compensation.

Owing to the clumsiness of the old English statute, and the consequent necessity of arbitrary judicial intervention in order to secure for it anything like a reasonable operation, the courts adopted certain rules of construction which make it very difficult to draft a statute in simple terms which shall, nevertheless, fulfill in all respects the wishes of the statute-maker. If the courts had always construed every statute according to its plain language, probably legislators would soon have taken more care, adopted the custom of employing able counsel, and attained a degree of literary skill which would have justified a continuance of that system of construction. The experiment, however, was never tried. When a statute comes before the court its plain letter is subject to be violated by such pre-
sumptions as that the legislators did not mean to change the prior law, and that they did not intend to violate public policy (that is, the political views of the court acting quasi-legislatively), and that the letter is to be subordinate to the spirit (as the spirit may appear to the judges). When by the aid of these presumptions the courts have—as they often have—thwarted the purpose and contradicted the real intent of the legislators, the latter have sometimes submitted, and sometimes adopted additional legislation to make their purpose and intent unmistakably clear and unavoidably enforceable. Here, however, they are hampered by the custom of remediing all judicial errors by affirmative legislation, instead of by a declaratory statute annulling the obnoxious decision. If the courts introduce a series of unintended exceptions, each of these exceptions is thus made the subject of a special statute; for the custom of our statute-makers, except in periods of codification, is to deal only with the particular evils that have already been experienced, making each specific case the subject of a specific statutory remedy. Thus a code originally drawn with science and art, in the form of a series of general propositions, loses its symmetry and becomes a wilderness of special instances. Then comes a recodification, intrusted to the hands of some incompetent recipient of legislative or executive favor. The codification in such hands introduces new ambiguities, the process of judicial construction and legislative amendment goes on with increasing velocity, and the condition of things becomes worse in general public opinion than it was in the now forgotten days before the process of codification first commenced.

These, however, are avoidable evils. Whatever is known is capable of being expressed in clear and unambiguous language. It is perfectly possible, and to some persons it is quite easy, to draw a statute clear enough to settle every question arising within its purview except questions so unusual, or so near the border-line, or so unforeseen, that under any system of law they would naturally result in litigation. Of course so many exceptions and errors and anomalies have crept into our law at present that a codification which amended nothing would read a little like the chapter on irregular verbs in a grammar. But it could be done so that the present law would be far more easily discoverable than it is now, and, when discovered, just as clear; and the errors and anomalies, together with the great mass of the exceptions, ought to be corrected in a proper codification.

The main difficulty in codification is to secure the right man to do the work. "The codification must be done by the right man (which involves the proposition that until the right man is found the codification had better be let alone). . . . He must have had a long and varied practice at the bar. He must be a theorist. He must have
a very broad and practical mind. He must have an eye for the minutest point of grammar or construction. He must have a very simple English style." ¹ When an absolute monarchy is ruled by a man who is anxious to secure a codification of the laws, and is a good judge of human nature, and understands the subject well enough to know what kind of a man can best take it up, then we may expect work of the class of the Code Napoléon. In a republic, particularly a republic based upon the Montesquieu system of checks and balances, where the legislature provides the job but the executive dispenses the patronage, the chances of getting the right man are remote. The ease of finding the wrong man, and the natural results thereof, are illustrated by instances so familiar that they need not be mentioned. Not only is it harder for a republic to find the right man, but it is harder for a republic, when he is once found, to persuade him to take up the work. A Napoleon can assure him that, if his work is on the whole well done, it will have the necessary support and will achieve practical results. In a republic, nobody can assure him support. However conspicuously it may deserve enactment, it is very likely to be laid quietly upon the legislative shelf, or, if it is enacted in any form, to have its symmetry and its science utterly marred by ill-considered amendments. Not only is it difficult to procure the adoption of any one of the reforms necessary to make the law consistent and reasonable and just upon any subject, but if, as true codification demands, a considerable number of substantial changes in the existing law are introduced, that very fact is likely to result in the failure of the entire work. Almost every effective action of a legislative body changes the existing law, and yet, when a codification is introduced, the cry that "it changes the existing law" is generally enough to kill it.

I believe that codification will be accomplished within the lifetime of men who are already admitted to the practice of the legal profession; and I believe that either it will be accompanied by the avowed abolition of the doctrine of stare decisis and substitution of the Continental method of treatment of judicial decisions, or else it will be accompanied by some such legislative sifting of the reports as I have outlined by way of suggestion; but I do not believe that it will be done until the present system has become so overloaded that the American bar, with substantial unanimity, will decide that almost any kind of codification would be an improvement. Meanwhile the work of the future codifier is being made daily more easy: on the one hand by the multiplication of text-books in which the present law is stated with a considerable degree of terseness and approach to accuracy; and on the other hand by a continual multiplication of conflicts in authority and a continual weakening of pro-

¹ New York State Bar Association Reports, vol. xxvi, p. 94.
fessional respect for precedent, just because it is precedent, so that the future codifier will be less embarrassed by the difficulty which constituted one of the weaknesses of David Dudley Field's famous Civil Code—the fear of overruling decisions which stand in the books as the law at the time when a code is drafted, although subsequently their erroneousness may be conceded and they one by one be overruled by the courts or repealed by the legislature. I have not sufficient confidence in the official distributors of public patronage to believe that any successful codification will emanate from persons nominated by a president or governor and confirmed by a senate, unless the nominations are practically dictated by the unanimous voice of the bar. I believe that the first successful American Code of Private Law will emanate from some one of our American State Bar Associations, amendment of the law at whose behest is already no infrequent occurrence. The association will either do the work itself and afterwards force it through the legislature of the state which shall first try the experiment, or else put through a bill for codification, dictate the appointment of the codifier, assure him support and protection, and compel some subsequent legislature to make good the assurance.

SHORT PAPER

Hon. William H. Thomas, of Montgomery, Alabama, presented a paper to the Section on the subject of "Individualism vs. Law."
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(Prepared by the courtesy of Dean George W. Kirchwey, Columbia University)

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INTERNATIONAL LAW

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(Prepared by courtesy of Professor Ferdinand Larnaude, University of Paris)

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DEPARTMENT XXII — SOCIAL SCIENCE
In opening the work of the Department of Social Science the Chairman, Mr. Walter L. Sheldon, of St. Louis, spoke as follows:

"It is now almost three quarters of a century since Auguste Comte began issuing his Cours de Philosophie Positive, for which he coined the now much-worn term 'Sociologie.' So it is that we connect the birth and development of this science chiefly with the nineteenth century, although its beginnings are to be traced long before. Whatever may have been the crudities or defects of the Système by Comte, surely the suggestion on his part was a luminous one and of far-reaching significance, that we should study and analyze the phenomena of human society for the purpose of discovering laws or regularities there, just as we study the phenomena of chemistry or of astronomy. It was inevitable, however, that these hints should have remained in the background and have had comparatively little influence until the doctrine of evolution had been launched in full force later in the century. In spite of ourselves we cannot help connecting the advance of sociology with the great new step taken in biology through Charles Darwin. The abstractions of Comte had to be laid aside or go on the shelf, while the new science he had inaugurated was to be brought into harmony with the doctrine of evolution as a whole.

"To-day we are discussing the problems of sociology as if they had been under consideration for hundreds of years. We can scarcely realize that it is only about a quarter of a century since Albert Schaeffle attached his name to the preface of the first volume of his Bau und Leben des Socialen Körpers, and Herbert Spencer put forth his Principles of Sociology as a part of his great Synthetic Philosophy. It may be that these men linked the new science too closely to that of biology, because of the sudden and startling developments in the latter department of research. But of one thing we are certain: These men have settled the fact beyond dispute that there is such a thing as a science of sociology. One university after another has been establishing chairs in this special department, and one man after another has been consecrating his life to researches in this direction, until now we have a whole literature pertaining to
this subject, and a large corps of scholars, all following out the original suggestion of the father of the *Positive Philosophy*.

"On the other hand, there was another step equally inevitable. Just because this new science dealt strictly with human things, the conviction arose that it should be harnessed into service; that the discoveries which these men made should also be put into practice or applied for the future regulation of human society. On this very afternoon, as we know, there will be two separate departments of sociology holding sessions, one of them dealing with the science as such and the other with it on the 'regulative' side.

"As the twentieth century opens, we see, therefore, that sociology is already breaking up into a number of subordinate sciences. In all probability there will be no further extensive treatises published dealing with this science as a whole. The field is too great and each of the special departments too important. Men will now begin to devote their whole lives to the separate study of one domain within the larger field, as we can observe in glancing down over the 'sections' which are to meet on the ensuing days.

"But still further. The conviction is growing, after three quarters of a century of research, that we are dealing here with spiritual problems far more than with problems of biology. While we accept the fact once for all that the human race in its associated life furnishes the material for an actual science, we are also coming to believe that the laws and the phenomena here have a peculiar character which should perhaps put them upon a separate plane. It is men on the spiritual side who are to be studied, and whose associations are to be regulated through the discoveries and the laws of sociology. In the 'regulative' aspect we are on the border-line between this science and that of ethics. In discussing 'social regulation' we are dealing with the problems of good and evil, how the evil may be repressed and how the good may be fostered in society as a whole. We are to consider how we may put to practical use all that is being found out or is yet to be disclosed in the sphere of the larger science of sociology. In a word, we are concerned to discover not only how social institutions have been regulated in the past, but also how we may guide them in a given direction for the future. Our problems here are of a special kind, and it is the great department of applied ethics to which they belong. From this aspect our chief interest lies in the reconstruction of human society. At this point the man of science must also become the reformer."
THE RELATION OF ETHICS TO SOCIAL SCIENCE

BY FELIX ADLER

[Felix Adler, leader of the Society for Ethical Culture, New York, Professor of Political and Social Ethics, Columbia University. b. Germany, August 13, 1857. A.B. Columbia University; Ph.D. Heidelberg University. Member of the Editorial Board of the International Journal of Ethics. Author of Creed and Deed; Moral Instruction of Children; Life and Destiny, Religion of Duty; Essentials of Spirituality.]

The subject which I shall treat in this paper is the relation of ethics to social science, or, more precisely, I shall endeavor to answer the question, Is social science capable of furnishing ethical imperatives? As the field to be traversed is extensive, and the time short, I shall have to state my thought as succinctly as possible, and forego the advantage of detailed elaboration and illustration.

And let me begin by asking why it is that many persons at the present day are turning with a view of obtaining ethical guidance into a new direction; why a new science, like social science, is expected by them to furnish us with laws of conduct. The moral philosopher, the legislator, the religious teacher have heretofore been called upon to perform this task. Why is it that the social scientist should be expected to relieve these of their function? The reason is that we are in a state of ethical distress, and this in two particulars. The moral code which we have received from the past no longer adequately fits the needs of modern society. On many urgent problems of the present day, such as the problem of readjustment between the social classes, the problem of the extension or limitation of the functions of the state, the problems of the family, — problems all of which are felt to be ethical in their nature, that is, dependent for their solution on a just conception of the ends for which society exists, — the moral codes of the past shed but an insufficient and uncertain illumination. An enrichment of the moral code is needed, and in the hope of obtaining this enrichment of the content of morality the faces of men are set in the new direction.

Again, we find ourselves in a state of ethical distress because the authority of the prescribed morality in many quarters is being questioned. A widely prevalent skepticism, whether well founded or ill founded, exists. How shall we act in difficult and complex cases? What rules of conduct shall we employ? is the one question men put to themselves. And why should we act thus and not otherwise? Why should we submit to these onerous rules? What is the nature and ground of the authority which they claim over our wills? is the
other question. The authority of revealed religion is challenged by many. The authority of the builders of metaphysical systems is still more exposed to skeptical doubt. Is there not some way of putting terra firma under our feet, of securing a foundation for individual and collective conduct on which all men can agree? A foundation in fact, we are told, rather than in theory is needed, especially in view of the conflict of ethical standards, of the almost hopeless divergence of the points of view from which men regard those problems, which yet must be solved by concerted action. Should we not attempt to bring about harmony in men's thinking about social questions as the indispensable condition of securing harmonious conduct? And is there, apart from religion and metaphysics, which tend to divide rather than to unite men, a hope of securing such harmony in the sphere of thought? At this juncture, finding ourselves at such a pass, or rather at such an apparent impasse, there rises before the mind the great and commanding figure of Science. Science has actually achieved the difficult task of bringing about agreement in the field of physical research, and, basing on this agreement, it has brought about in a short time an almost incredible increase in man's physical welfare. Cannot Science be trusted to achieve similar results in the social field, to supply the authority which we lack by determining the ends of pursuit to which all conduct should converge, and, at the same time, to enrich the code by closer study of the means which, human nature and human conditions being what they are, will conduct to these ends?

It is for these reasons that many persons are turning to social science for help, both because it is a science and its methods are the same as those which have been accredited in other fields, and because the wealth of the data at its command promises to furnish sufficient material for enlarging and enriching our ethical knowledge. We may add that, as in the case of every new science in its initial stages, the expectations as to what it can accomplish are naturally exaggerated; and thus we can understand how the hope has arisen that the science of society will become a sort of social savior and will relieve us from our ethical distress.

But can social science fulfill these expectations? Misdirection of effort because of false anticipation of result are sure to be paid for in the end by waste and disappointment. Are we to push headlong into the new path thus opened to us, without previous consideration of the goal to which it can lead? What is it in the nature of social science to accomplish, and what in the nature of the case is beyond its reach? These surely are questions which at a time like the present it is the part of sanity to put to ourselves. My answer in this paper will be that it can enrich the code but cannot supply the authority for the code; that it is incompetent to determine the ends of socia
and individual conduct. In the endeavor to make good this position, I shall first apply a practical test to some of the particular social sciences and inquire whether, for instance, the study of the past development of the human family affords us a clue to the type of the family which we should endeavor to realize in the future, or whether the study of the past development of industrial society affords a clue to the desirable constitution of industrial society. I shall next apply the same test to the general science of society, or sociology, and inquire whether it has discovered general laws which we can utilize in every department of social improvement. Thirdly, I shall subject to a brief criticism the fundamental notion of scientific law itself, with a view to ascertaining whether it can be applied, without radical qualification, to the domain of human conduct, so as to include the uniformities which we discover in the social life of men.

To begin with the subject of the family. We have been accustomed to regard the family as the sanctuary of civilization, through which all those interests that make life worth living are perpetuated from generation to generation. And yet the family is actually changing under our very eyes, and is bound to some extent to alter its character. In what direction shall we permit it or help it to do so? What principles or point of view shall we adopt in regard to it? Shall we, for instance, prohibit divorce altogether? Shall we adopt the ideas of those who hold that when love ceases, that is, the thing they call by that name, marriage should cease? Or shall we take the ground that the monogamic institution has never yet disclosed its highest potentialities? Shall we endeavor to develop it further, but in such ways as to secure the more perfect manifestation of the idea underlying it, admitting the necessity of change, but insisting that change must be in the direction of greater stringency rather than in that of greater looseness? Or shall we take the side of the extremists, and advocate the dissolution of the family and the substitution of some such arrangement as is contemplated in Plato's Republic? Now can the branch of social science which is occupied with the study of the family help us in deciding the course which we ought to take? The researches of Bachofen, of McClennan, of Tylor, or Morgan, and of the others are of absorbing interest. They have widely extended our comprehension of the facts of social development. They have taught us that the monogamic family, which we had regarded as fixed and unalterable from the time of the first man and woman, has been the product of growth like every other social institution. They have acquainted us with types of domesticity and systems of consanguinity, of which, a generation or two ago, we had not even an inkling. But how does all this knowledge, interesting indeed, despite the many links that are still missing, the many customs and social arrangements that are still obscure, bear
upon our present situation? Does the study of what has been, in this instance, furnish a sure guidance to what ought to be? Does the explanation, or at least partial explanation of the past, disclose any sufficient principles upon which we can rely in our attempts to shape the future? Does the science of the family, if by that name it deserves to be called, supply us with criteria by which to measure the worth of the monogamic type of family as against other types, and the higher type of monogamy as against the lower types of it? There are two such criteria which we frequently find commended in sociological text-books. The one is social survival; the other, increased complexity. Now setting aside the initial scruple as to whether survival is a test of worth, dismissing for the time being the thought that a type of social organization which lasts only for a single generation, like the democracy of Pericles, may yet hold in the scale of worth a place more exalted than that of other types which have lasted for a thousand years; setting aside these considerations, I ask, does the monogamic family, measured by the test of survival, outrank for instance the polygamous family? In making this comparison, we are bound to relinquish momentarily our ethical bias, our strong repugnance to forms of union between the sexes which seem to us to degrade what is best; and to ask simply in the scientific spirit whether we are to promote monogamy because communities founded on the monogamic relation tend to survive, while other communities tend to perish? I do not see that on this ground, and apart, I repeat, from other ideal points of view, the monogamic family deserves the preference. I do not see that polygamous nations like the Turks have less chance of survival, are less tenacious, less virile fighters for example, than the Western nations with whom they come into collision. I do not think it can be made out that the polygamous Mormons are lacking in the qualities that promote survival, and that the resistance which they have offered to the pressure of the surrounding majority has been less vigorous and effective than would have been offered by a monogamous community holding in other respects the same tenets.

If next, instead of comparing the monogamous family with the polygamous, we examine the former on its own ground, from the point of view of survival, we shall find it still more difficult to arrive at a clear and definite decision, supported by the facts. We may compare, as Professor Giddings has done, the children born in wedlock with the offspring of irregular unions, or the children of parents whose union is permanent with those of parents whose unions are interrupted by frequent divorce; and it will then be easy to show that the chance of survival is greater in the case of permanent unions than in either of the two others. That is to say, it is easy to show that where permanent unions, because of ideals or standards pre-
valent in a given society, are alone regarded as honorable and valid, the children born in defiance of such ideals and social standards are likely to be physically and morally neglected, and in the struggle for existence are likely to succumb. But this is largely due to the disgrace which their existence entails upon those responsible for it. It is precisely because such temporary unions are irregular that they carry down the unfortunates who are their fruit. In a community like the Spartan, where what we should call illicit intercourse was freely permitted and where the children, provided they were physically healthy, received the same care and attention as the offspring of legal marriages, the same results would not follow. Nor can it be maintained that the Spartan community, regarded from the point of view of survival, ranks lower than other communities which have adopted a standard more nearly like our own.

The points thus far covered are these: (1) The test of survival does not decide between what we should call the higher form of marriage, monogamy, and what we should call the lower, polygamy. (2) Where monogamy prevails, the advantage possessed by the offspring of legitimate unions as against the offspring of illegitimate unions is due to the circumstance that in the former case the unions are regular, and in the latter case they are irregular. The facts do not prove that a system, like the one contemplated in Plato's Republic, if it could be made regular, would be less efficacious in securing social survival. And in this connection let me point out how important a factor in what is called social environment are the ruling ideas dominant among a people, and how largely the survival of individuals within a group or community is dependent on agreement with the dominant ideas. Falling away from the ideal of one's group, whether it be the ideal of Sparta, or the ideal of a primitive horde, or the ideal of monogamy in an Anglo-Saxon community, leads to self-disparagement, to relaxation of effort, to a diminution of all the integrating forces of character, and, in consequence, to destruction. To prove, therefore, that in a community whose ideal is monogamic, persons who lead irregular lives, and the children of such persons, tend to go to the wall, is not to prove that monogamy itself is socially more preservative than other forms of marriage, but is merely another illustration of the general rule that a house psychologically divided against itself cannot stand; that members of a community who are in extreme divergence from the ideals of the community to which they belong cannot maintain themselves. But if the standard were different, the result might be different.

Again, it is said that the monogamic family is best fitted to survive because it is best fitted to transmit to posterity a "sound physical heredity and the results of the mental and moral civilization of the past." Our deep ethical bias in favor of the monogamic family
leads us to desire that this may be so, to seek in the facts a support for our convictions. And yet it is ever a perilous procedure to enter into transactions with empirical reality to such an extent as to make the validity of an ideal depend on the countenance given to it by the facts. The ethical rule is true, though no experience as yet should bear it out, though the experience of the human race thus far in some respects should rise up to testify against it. As regards the above statement, however, two abatements at least need to be considered. Pure monogamy, in Western civilization, does not exist. What we actually find is a nucleus of sheltered homes surrounded by an extensive fringe of baser types of the sex relation. Premarital self-control especially is rare, in the great cities conspicuously so, but also in the rural districts. Whoever has had the opportunity to look beneath the fair-seeming surface of things, and to familiarize himself with the conditions that actually prevail, is aware how deeply the poison which comes from the surrounding fringe or margin penetrates into and infiltrates the monogamic nucleus, to how alarming an extent the physically sound heredity claimed in the above proposition is lacking. The question, therefore, which we are bound to consider, always speaking from the standpoint of social survival, is not whether monogamy and the premarital self-control which is an indispensable adjunct to it, would conduce to sound heredity if they were general, but in view of the fact that they are not general, and that the strain which they put on the instincts of men seems in many cases in excess of the moral force adequate to sustain it, whether, in view of this fact, from the point of view of survival, it were better to maintain the present condition or to adopt Plato's plan, or some other like it, and to abandon the mixed type, partly monogamic, partly extra-monogamic, which is now prevalent, as tending under the circumstances toward social degeneration? Or, to put the matter in another form, the question is whether the proportion of perfectly sound men and women who enter into marriage and remain sound is sufficient to guarantee that the offspring of existing marriages as a whole shall possess the physical qualities necessary for survival; whether, in other words, the remnant of the righteous is sufficiently numerous to leaven the lump? I am not aware that the science of the family has any illumination to give us on this question, or that our knowledge of the punaluan family, and the rest, can be of use in enlightening us upon this problem.

(As a matter of fact I take it that those who are ethically minded consider only a single point, namely, whether the monogamic constitution of the family comports with what is morally exacted. They do not doubt that if a society existed in which perfect monogamy were realized, such a society, among other excellent advantages, would
surpass competing societies in point of endurance. But whether a society with monogamy imperfectly constituted can outlast societies with lower family systems more perfectly organized, is a question upon which they do not stop to reflect. If existing society, on the way toward perfection, must perish, be it so. If the very fact that it is intermediate between a lower form more perfectly organized and a higher form not yet perfectly organized be the cause of its destruction, let this cause operate to produce its effects. Ideas and institutions do not exist for the sake of a given society, but societies exist for the sake of working out the ideas, and the institutions in which these ideas express themselves.)

Again, it is said that the monogamic family is the most suitable organ for the transmission of the results of mental and moral civilization to future generations. It is held to be so because it is the most adequate instrumentality for the cultural development of the married pair themselves through their mutual influence on one another, and also for the development of individuality in the children, and for putting them in possession of a varied and unified culture. But if we hold against this account of what the monogamic family is ideally, or what it might be, a picture of what it is, to how great an extent shall we find that the latter is in contradiction with the former! In how many cases does the close contact of two persons of opposite sexes in marriage actually mean the narrowing of horizons, the lowering of standards, mutual accommodation on the part of each to the defects and blindnesses of the other, the abandonment rather than the pursuit of cultural ideals. And so far as the children are concerned, how often are the parents the chief obstacles to the better education of their children; how little fitted, by nature and acquirement, are a very large proportion of parents to undertake the difficult task of child nurture and training. How often have pedagogues expressed the conviction that the parents must be educated before the children can be; and out of this vicious circle how shall we escape? The outcome of my remarks is, that the worth of ideas or ideals cannot be determined by their immediate results either in point of survival or in point of cultural results achieved; that ideals must be approximated to because they ought to be; and that as for the results, in the last analysis we must leave the squaring of them, with the ideal demands, to the Power in things whence those disquieting and urgent ideals have come to us.

I have enlarged on the subject of survival because it is apt to be the final appeal of those who seek to explain the development of human society in terms of natural law, and who for this reason attribute to social science the prerogative of erecting standards and prescribing laws of conduct. Alongside of survival as a test, however, is often mentioned the so-called law of increasing differentiation
coupled with more perfect integration as a distinguishing mark of the higher types of social living, of those types which, because they are higher, we ought to favor. Let me briefly remark, at this point, that simplification rather than differentiation—even though the differentiation be accompanied by integration—seems to be in many ways the sign of progress. The monogamic family itself (I need not say that I regard it as the higher type) is very much simpler than the form of family described by Morgan. The modern type of monogamic family is much less complex compared with the family of a few generations ago, when collateral relatives formed an integral part of the family group. The modern family, consisting of father, mother, and children, having very slight and unstable connection with aunts, uncles, and cousins, has developed along the lines not of differentiation but of simplification. It would, however, be a more precise expression of what I believe to be the facts, to say that progress is marked by a tendency to simplification in some directions, to differentiation in other directions. But what the relation of these two tendencies should be, in how far we ought to simplify life, in how far make it more complex—to this problem, what is called the general law of evolution, as formulated by Spencer and adopted by others, gives us, so far as I can see, not the slightest clue. In passing, I may observe that to formulate an equation between conduct moral and conduct highly differentiated seems to me most misleading. The conduct of a modern bank burglar is highly differentiated, and so far as he organizes the totality of his nefarious designs with a view to the achievement of a single purpose, it is also highly integrated. The conduct of an humble washerwoman in a tenement-house, who wears out her life in order to keep her children at school and to give them a better chance than she had herself, is undifferentiated and simple. But who will question the moral worth of conduct in the latter case, or fail in the former case to find it wanting altogether? The law of complexity is no guide.

A similar train of reflections, to refer briefly to other principal social problems of the day, will show, for instance, how little the study of religion can supply us with rules by which to shape the religious development of the future, how little the study of industrial development can aid us in determining the ends toward which the industrial development of society should be guided.

Take the science of religion. We have mastered the facts of animism, fetichism, ancestor-worship; we have psychologically reconstructed the steps that led to polytheism. We have penetrated, let us assume, the inner meaning of the religions of the Chinese, of Persia, of the Hindus, of the Greeks. We have traced the development of Hebraism up to the time of its junction with Hellenism; we have followed the wavering fortunes of Roman Catholicism and
of Protestantism; and, at the end of this long journey, what have we gained? We have gained, indeed, in breadth and in psychological insight, and our knowledge of the causes that contribute to the rise and fall of religious systems has been augmented; but as to the main point, as to the problem now before us, what shall be the next step in religion, how far are we helped? Does the test of social survival avail? The religious type which is largely regarded as the highest, the Protestant, is, if anything, a disintegrating rather than an integrating force. The Protestant religion in the United States, with its one hundred and forty-eight sects, divides the population in feeling and ideas. Indeed, it is the belief of many that if it were not for the emergence of other ideal centres of unity, such as the political ideal, an advanced nation like the American could hardly cohere, so manifold are the religious camps into which it has been divided and subdivided. The Protestant religion, as a socially preservative influence, can hardly compare with the influence of the Greek Catholic Church in Russia, or the influence of Roman Catholicism in the Middle Ages, or with that of Islam among its votaries to-day. Nor does the test of complexity avail, for Protestantism, with its emphasis on the individual, its simple ritual, surely cannot vie in complexity with its own predecessors in the West, or with a religion like Brahmanism in the East. The truth is, that the different religions do not constitute a progressive series. Each of the different stages of religious development, each of the great religious systems, has its own peculiar excellences and defects; each is governed by some ruling aspect or ideal; and if we condemn a religious system it is because the aspect of the problem of man's relation to the universe, of which it is the expression, because the idea which underlies it, fails to appeal to us. But as to the question which is the preferable aspect and which the higher idea, on what ground that religious science offers us can we possibly decide? It is true that religion is not an isolated phenomenon, but an element in the complexus of a whole type of civilization; and herein we find an additional ground of preference. We rate Protestantism higher than Buddhism because the idea of liberty appeals to us more strongly than the idea of Nirvana, or the quenching of the individual. In addition, we take into account the effect on human life produced by quietism on the one hand, and active self-affirmation on the other; and we find that in the one case there is absence of material progress and of progress in scientific knowledge, and in the other case a plethora of increasing comforts and extension of scientific knowledge. But what justifies us in rating comfort so high, or knowledge so high; and how are we to meet the contemptuous smile of the disciple of Buddha, who scorns the materialism by which we are choked, and the scientific knowledge that cuts off our spiritual outlook, and the self-assertion that keeps us forever restless, and tells us that the taste or the
merest foretaste of Nirvana is better than all these? It is then, at bottom, once more, the appeal of what is proposed as the end and aim of life that decides our preference. Survival, I repeat, does not decide. Buddhism is older than Christianity, its followers said to be more numerous; Buddhist society in its environment persists; so does Chinese society, based on Confucianism. Complexity does not decide. If then we still, many of us, believe that the next step in religion should be along the path opened up for us by Isaiah and Jesus, it is because in interrogating our inmost experience we find that the ideas expressed by these great teachers satisfy us and appeal to us to-day, not because of any wisdom we have gained from the study of fetishism or ancestor-worship or the rest.

The same informational wealth, coupled with regulative impotency, we meet with in the science which deals with the industrial development of society. The various forms of industrial organization are the expression, not merely of physical necessities, nor of methods of satisfying these necessities, but of such methods controlled by and subordinate to ideas. Slavery is based on the idea of the vicarious realization of the ends of the ungifted in the gifted, an idea which in a modified form has even been revived in modern times by Nietzsche and his school. Feudal serfdom is based on the idea of God-derived power in the master over the servant, and of responsibility connected with such power. The modern wage-system is based on the idea of individual liberty and on the assumed possibility, a possibility which may be doubted, of a just quantitative measurement of mutual services. It is not possible to arrange these systems in a simple progressive series. Each of them has its glaring defects, each also has merits which are absent in the others. Even slavery and serfdom have certain advantages wanting in the system that is expressed in the cash-nexus. At present the defects of the modern wage-system have become conspicuous, and divers changes are proposed. Some persons favor compulsory collectivism, others advocate a kind of industrial feudalism, others hold fast to the orthodox principle of laissez faire and unadulterated competition. Others, again, believe in a voluntary collectivism, with industrial competition preserved alongside. Analogies to these types may be found in the past; but a law of development which, on being recognized, would turn for us into an ethical imperative, has not been discovered. As before, we look in vain to the test of social survival, or of complexity, to put an end to our uncertainty. Each of the great types has operated toward social survival under appropriate conditions, and the question what type will survive under modern conditions is the very one upon which we are divided, and one which cannot be settled by an appeal to the facts of survival under conditions different from ours. The test of complexity likewise will not assist us, because the more advanced forms
of industrial development are characterized in some aspects by greater simplicity, while as to the differentiating movement which likewise is taking place, the fear whether it may not prove to be of such a nature as to disrupt society, and by breaking up social unity to destroy civilization, is the very question that most disturbs our peace.

We have thus completed the first of our tasks. We have examined some of the particular social sciences with a view of ascertaining whether in their special field they are capable of furnishing ethical imperatives, and we have been led to a negative conclusion. We have also, incidentally, fulfilled the second task we had set ourselves, viz., of inquiring whether the general science of society, or sociology, is capable of furnishing such imperatives. Fitness to promote social survival and increasing complexity are, so far as my knowledge of sociological literature goes, the only two definite standards which that science puts at our disposal for the regulation of conduct; we are to work for that kind of religion which will help the survival of the community and which is marked by greater complexity; for that type of the family which corresponds to the same requisites, etc., and it has been my attempt to show that these standards, when applied practically, are found to be unhelpful. In addition to these two tests or standards, however, sociological literature swarms with a multitude of other prescriptions which have no demonstrable connection with survival and complexity, and which are drawn from conceptions of the social end not derived by the sociologists themselves from the study of social science at all, but from convictions and prepossessions, which clearly they bring ab initio to the study of social science, and seem to interpret into it rather than to derive from it. Thus Comte, in virtue, doubtless, of his bringing-up and his surroundings, is biased in favor of an hierarchical arrangement of society, and of the supremacy of a spiritual directorate fashioned on the pattern of the medieval Church. Other sociologists regard altruism, or self-sacrifice, as the highest type of social behavior, though sometimes leaving us in doubt whether they regard the happiness which such self-sacrifice is supposed to promote as the chief end to be desired, or whether they regard the giving-up of one’s happiness as the chief thing desirable, and the state of society in which self-sacrifice would become the prevailing type of conduct as the noblest outcome of evolution. Others make self-realization the end, and regard partial self-sacrifice as subordinate and incidental to self-perfection. Other sociologists frankly express their ideals in terms of quantity and, in the fashion of Bentham, pronounce the greatest happiness of the greatest number to be the social end, although they fail to make it intelligible why the happiness of the greater number should be cogent as an end upon those who happen to belong to the lesser number. Others again,
seem to regard freedom as the *sumnum bonum*, and set up universal contractualism as the desirable end. It is especially worthy of remark that among those whose descriptions of the social good betray the most aggressive individualism are prominent the very thinkers who, like Spencer, have done most to bring the biological or organic conception to the fore in their account of the natural development of human society. Their premises are organic, their conclusions are strictly individualistic. Can there be a more striking illustration of the absence of relation between premises and conclusion, between the study of the social facts and the conception of the social end? Indeed when we review the various conceptions of the social end that are proposed by the leading sociologists of the present day, we find the same divergence of standpoint which characterizes the metaphysical and ethical pronouncements, the symptoms of the same disease for which sociology was supposed to possess the cure. And, what is more, we find that these various conceptions of the social end are mere masks behind which are hidden the differences of metaphysical and ethical bias that have prevailed from time immemorial. The nomenclature has been somewhat changed, the background is somewhat different, but in the main we recognize old friends or old enemies with new faces.

There remains my third task, briefly to show that in the nature of the case the result cannot be otherwise; that in the strict sense there are no social laws, and, therefore, in the absence of laws there cannot be prediction of the future, or ethical imperatives based on the conscious adoption into the will of a natural order of social development. I would not, indeed, be understood as denying that social science is a science. Science is methodized knowledge. In this sense philology is a science, history is a science, and the study of society is capable of becoming, and has already, in part, become a science. Because, moreover, every science is methodized knowledge, it does not follow that all sciences are restricted to the use of the same method. Methods may vary. The methods of social science may differ from those of physical science, and yet its claim to be scientific need not in the least on that account be impaired. Nor do I deny that there are social uniformities. I merely dissent from the assertion that these uniformities should or can, without serious mischief resulting, be called laws. I say, without serious mischief resulting, and this for a twofold reason. First, because already there are at least two, possibly three distinct significations which the word "law" connotes, the legal signification, the moral signification, and the physical signification. If the uniformities which we discern in social conduct are admitted to differ from the uniformities contemplated by physical science, by jurisprudence, or by ethics, then we shall connect with the same term a fourth connotation, and the multiplica-
ity of connotations will tend to confusion. If, on the other hand, we assimilate the social uniformities to physical laws, then we shall create the impression of the inevitable dominance of these uniformities over the human will, an impression which is in the highest degree prejudicial to social betterment. That such an impression has already been created by the use of the term "law" in the field of economics is matter of common knowledge. Shall we extend the mischief to other departments of conduct, or can we hope to avert it by surrounding the term "law" as applied in social science, with qualifications which are sure to be ignored?

The capital question is this: Whether the social uniformities are of the same kind as those uniformities which we designate as physical laws? If they are, let the same term be applied to both. If they are not, let the difference in the designations used indicate and emphasize the difference in the things designated. Let us in that case speak of social uniformities and not of social laws.

Is there such a difference in kind, and what is it? I can here only shortly outline my position, without attempting to elaborate it in detail or to defend it against adverse criticisms that may be brought to bear against it. Physical law is the expression of a fixed relation between antecedent phenomena as cause and sequent phenomena as effect. A social uniformity, on the other hand, is the expression of a relation between ends and means. All human conduct is directed toward the attainment of ends. All the uniformities of human conduct depend on the average fitness of certain means to make for the achievement of certain ends. The point of view from which Nature operates, if a metaphor be allowed, is causal. The point of view from which man acts is teleological. Nature is governed by forces. Man is determined by ideas. The difference is vital.

Again, physical law implies not only a fixed relation between phenomena, but also involves that these phenomena, together with the fixed relation between them, are of constant occurrence. A physical law which should be true only under transient conditions, that is, under conditions which fail to repeat themselves, is inconceivable. Physical truth is true semper et ubique. Undoubtedly this account holds good only of ideal physical law and does not perfectly apply to any of the physical laws which are formulated in the text-books. As Professor Sidgwick has it: "We assume the existence of natural laws, and the narrowing down of these into exactitude is the endless problem of discovery." An endless problem, indeed, a goal to which we only approximate asymptotically. A remnant of inexactitude remains unexpunged even in the most certain of natural laws. But the cause of the inexactitude is not any wavering or flickering in Nature's process, but is due to our subjective uncertainty whether we adequately apprehend the process as it actually goes on.
Nature is a pedant. Nature does not alter her habits. Nature always repeats herself. Not only is it true that, the same conditions being given, the same effects will always follow; not only is there this constancy of relation, but it is likewise true that the same conditions will repeat themselves, or conditions sufficiently similar to exhibit the constancy of relation. Indeed, when we speak of the physical order, we are speaking of an abstraction, of one side of things, to which our attention is restricted for the time, namely, of that side of things which is characterized by just this constancy both of relation and of recurrence. But in the case of the social uniformities, while there is an approximate stability of relations between sets of phenomena, there is no such constancy in the repetition of the phenomena. Physical nature is a pedant, human nature is a Proteus. In the case of physical nature the object studied may be compared, let us say, to a building, which for some reason we are not permitted to approach closely, the various features of which are foreshortened now in one way, now in another, according to our point of view. The object itself does not change its shape. Could we come near enough, we should be able to report it with perfect exactitude. But in the case of society, the object is not only remote from our apprehension, despite its apparent nearness, but in addition it changes its shape while we are engaged in the act of contemplating it. It is in this way that I should reply to the argument of those who hold that the law of gravitation also is but an incomplete transcript of Nature's process, and that the inexactitude which is put forward as an objection to the use of the word "law" for social uniformity would equally apply to natural law. In the one case the inexactitude is in the apprehension of that which is fixed and stable, of that which, by reason of its stability, permits of a considerable approximation to exactitude of description. In the other case the inexactitude is due both to the complexity of the object studied and to the unpredictable changes which take place in it. These changes, let me now again remind you, arise from the fact that uniformities of conduct are adaptations of means to ends, and that these ends are ideas, and, therefore, that the uniformity lasts only so long as the idea lasts or is dominant. But one dominant idea may be displaced by a different one, as happened at the time when the Germanic peoples were converted to Roman Christianity. And when a new idea becomes dominant, the order of the motives that govern conduct is revolutionized, the old ideas, to the extent that they still remain operative, entering into new combinations, and the whole complexion of conduct, in consequence, being altered. If, indeed, it could be shown, as has been attempted, that there is not only uniformity as between ideas and the mode of realizing them in a given society, but also a uniform pro-
gression from one dominant idea to another, the conception of social law might still be justified. But the attempts to prove such a regular law of transition are futile. The passage, for instance, from polytheism to the higher forms of religion does not indicate the working of any uniform principle of development, but has actually been achieved along the most divergent lines. In one case the next step after polytheism was intellectual monotheism or the monotheism that reflects the idea of intellectual unity, as among the Greeks; in another case it was the monotheism that reflects the idea of power, as among the followers of Mohammed; among the Hebrews it was the monotheism that corresponds to the idea of supreme righteousness. In other cases polytheism has passed over into pantheism, as among the Brahmans; and in still another into intellectual nihilism, as among the Buddhists. Race characteristics enter in largely to determine the course of development; and these in their nature, their development, and their influence are quite incalculable. The influence of great men, or of what from the standpoint of onlookers must be called the accident of genius, despite much that has been said to the contrary, likewise enters in as a determining force; and genius in its derivation and its possible effects, is incalculable. And I should be untrue to my inmost conviction if I did not add that the idea of moral freedom also enters in; and this, too, in the extent of the influence which it may acquire, is unpredictable. The conclusion, therefore, to which I am led is that social science is concerned with uniformities and not with laws; that these uniformities differ from physical laws not only in degree but in kind; and hence, that in the nature of the case there can be no such thing as a law of social development, and that it is not only useless, but in principle a mistake, to look to social science for the formulation of those ideals which are to shape the future evolution of human society.

But if social science cannot furnish ethical ideals, are we to infer that the time spent in it is a waste of effort, and, more particularly, that its help in the task of social improvement can be dispensed with? I most emphatically avow my conviction that the contrary is the case, that the help of social science is indispensable, that it has already rendered invaluable services to human progress, and that it will render still greater services in proportion as it exploits its opportunities within its own limits, instead of seeking to transcend those limits. For a moment let me attract your attention to some of the most signal benefits which we have received and may further expect at its hands. Social science has taught us the great and useful lesson that all institutions, even those that seemed most stable, have changed, and hence that they are liable to further change. It has thus lightened the yoke of custom, made us ashamed of our mental and moral provincialisms, and dissipated the false glamour that often
attaches to vested rights and vested interests. It has created a psychical disposition favorable to the idea of progress. At the same time, by disclosing the slow and gradual nature of all beneficent changes, it has impressed the necessity of caution and patience in the attempt to promote progress.

Social science has largely contributed to what may be called collective self-knowledge, and self-knowledge is as much a necessary precedent condition of improvement in the case of society as in the case of individuals. It has traced helpful if not perfect analogies between individual development and certain stages in the past development of the human race, and has also shown the survival of the more primitive types of civilization in certain strata of contemporary society. It is thus calculated to throw some light on the causes that bring about the conflict of ethical standards in modern societies, and to furnish us with hints as to the method by which the conflict may be diminished. It further contributes to social self-knowledge by such investigations as the study of the psychology of crowds, and it can make additional and important contributions in the same direction by careful descriptions of the chief types of human temperament and of race character, as objectified in literature, art, law, religion, etc.

Social science creates a disposition favorable to patient progress; it contributes to social self-knowledge. It also assists in the practical work of human betterment by giving definite expression, in its statistical averages, to the connection between great social evils and the conditions external and internal (the two can never be wholly separated) to which they are due, thereby greatly enhancing the social impulse to remove such evils. The connection between death-rate and social class, between intemperance and irregularity of employment, are examples in point.

Finally, the social end being given, the ethical formula being supplied from elsewhere, social science has its most important function to discharge in filling in the formula with a richer content, and, by a more comprehensive survey and study of the means that lead to the end, to give to the ethical imperatives a concreteness and definiteness of meaning which otherwise they could not possess. Thus ethical rule may enjoin upon us to promote the health of our fellow men, but so long as the laws of hygiene remain unknown or ignored, the practical rules which we are to adopt in reference to health will be scanty and ineffectual. The new knowledge of hygiene which social science supplies will enrich our moral code in this particular. Certain things which we freely did before, we now know we may not do; certain things which we omitted to do, we now know we ought to do. If a connection between intemperance and irregularity of employment is traced, in this particular too, the
moral code will be enlarged. We shall now know at least that it is our moral duty to unite our efforts with those of others in order to remove the social danger of irregular employment. Similarly in the finer instance of the duties of sexes to one another, in the duty of parents to the child, of the citizen to the state, etc., a new knowledge of the means that conduce to the moral end will enlarge, will diversify, and will enhance the stringency of the moral code. Surely this is a wide and noble field. Surely it is worthy of the devotion and enthusiasm of the social scientist, and offers ample opportunities for the exercise of his highest faculties, both as a scientist and as a man.

I have now reached the end of my argument, and here might fitly close this paper. But one question I know will linger in the minds of many who may have followed me thus far. Whence then, if not from social science, or sociology, are the sovereign ethical ideals to be derived? Who is to determine for us what the social end ought to be? Is the hope of unanimity with regard to the ethical standard to be relinquished? Is there no prospect of relieving our highest moral aspirations from the taint of subjectivity which adheres to them? My answer would be that the diversity of ethical standards is unavoidable, and is not the unmixed evil it is often represented to be. Ethical principles are not propagated by being stated as intellectual abstractions, but by means of the conduct to which they lead. "By their fruits they are known." Such formulas as the categorical imperative of Kant, or even the equation between our neighbors and ourselves, established in the Golden Rule are not convincing except they be translated and envisaged in the life which is led according to them. "Tis the life that converts. The differences in ethical standards are due to differences in degree of development and in temperament. The higher standards will overcome the lower by the convincing force of example. Our trust must be in the moral endowment that is latent in all men; the appeal must be to human nature in the last instance. But the process of change must in the nature of the case be gradual, and it is well that it should be so, since those who are morally advanced, or believe themselves to be, are thus put on their mettle to propagate the moral truth they hold dear, by putting the emphasis of their efforts upon the life, upon the side of feeling and will, rather than to seek the moral improvement of mankind by means of such intellectual unanimity as might be worked out in sociological laboratories. Furthermore, the prospect even of intellectual agreement among those who are upon the same moral plane would be greatly enhanced if only the independence of ethical science from other branches of human knowledge and interest could be secured. Ethics has been treated in the past as a mere handmaid of religion; at present, notably by the sociologists, it is treated as a mere branch of natural science.
There are intimate connections between it and religion, and relations also between it and physical science. But every branch of human investigation is handicapped so long as it is treated as ancillary to others, and true progress in any field of investigation begins only at the moment when the field is provisionally isolated from the rest. Let the isolation come first, and the connections and relations be sought afterwards; this is at present the great desideratum of the subject of which I speak.

Ethics is the science of moral judgments. Its office is to examine, to reflect upon, to search out the first principle, the fundamental formula that underlies these moral judgments. The chief moral judgments which it is called to examine, if I may here, in passing, express my own standpoint, are: First, the general judgment that there is such a thing as rightness and wrongness in conduct; and then, that rightness in conduct is constituted by the joint pursuit of the individual and the social end, of the end of the self and of the end of the other selves socially related to it. Wanted: a formula which shall satisfactorily express this junction of ends in the same act, which shall, if adopted, inspire society to make the end of the individual its end, and the individual to make the end of society his end. Does the egoistic formula correspond to this requirement? Does altruism, with its tendency to sacrifice the individual to society, correspond to it? It ought to be possible, if the problem is thus isolated, to make progress toward a successful solution. The test of success would be that the formula when found can be shown to subsume under itself the moral judgments accepted as valid in society to-day, and can also be used creatively to work out new moral judgments answering to the needs of society as at present constituted, and convincing when translated into action.

But in thus stating my conception of the scope and function of ethics I have transcended the scope of the topic I had set myself, namely, to raise, and, according to my ability, to answer the question whether the particular social sciences, or sociology in general, can furnish ethical imperatives; to set forth what social science cannot accomplish — not only has not, but in the nature of the case cannot; and on the other hand, to estimate justly its past achievements and the worth of what it may be hoped to achieve in the future.

In closing, I should like to leave this point with you for consideration: that as a matter of fact the greatest advances in the ethical progress of mankind have been achieved not by those who were more learned than others in the social science of their day, but by those whose inner life was profound, who searched the depths of their own experience, who were stirred and humbled by the discrepancy which appeared between the ideal of what they conceived ought to be and actual conditions, and whose efforts were directed by the desire in
some measure to overcome that discrepancy. Such was the case in the past, and such, I may be permitted to say, I expect will be the case in the future. The social scientist will help to enrich, refine, and specify the contents of the moral code; but because the nature of the individual is social, he who interrogates his own consciousness with a view to reaching the deepest springs latent in it will best help us to bring into view and to describe the social end.
SOCIAL TENDENCIES OF THE INDUSTRIAL REVOLUTION

BY GRAHAM TAYLOR


The industrial revolution, during the initial stage of which the nineteenth century dawned, dates and characterizes our contemporary conditions and order of life. The political revolutions of the eighteenth century were the expiring struggles of the dissolving feudal solidarity rather than the travail attending the birth of the present age.

The individualism which intervened between the medievalism ending with the French Revolution and the modern industrial era inaugurated by the introduction of machinery and the factory system is proving to be more transitional than persistent. Its phenomenal achievements and forceful individuals are exceptional enough to claim an age of their own. But they were destined to fulfill the higher function of preparing a way for, and making possible the still farther-reaching development which is only now evolving its form and order. The social disintegration intervening between these most distinct eras allowed, if it did not compel, the evolution of the individual as the new unit of society. No sooner had the type of this individualized unit been fairly and firmly set than the process of reintegation set in. The forces resident in or centred about machine production and the subdivision of labor began to assert their superiority to the domination of the individual who created and, until recently, controlled them. This reintegation of social units, more independent than had ever existed before or can ever exist on the same scale again while present tendencies last, is the phenomenon that distinguishes the close of the nineteenth and the opening of the twentieth century.

The tendency of these times in all spheres of life has been from individual independence to the interdependence of man upon man, craft upon craft, class upon class, nation upon nation; from unrestricted competition to a combination of capital and labor as inevitable and involuntary as the pull of the force of gravity; from the personal maintenance of the freedom of contract to the only possible exercise of that right among increasing multitudes by collective bargaining; from local autonomy and state rights to national consolidations; from racial populations to a cosmopolitan, composite
citizenship. That is, the irresistible ground-swell and tidal movement of the present quarter-century has been away from individualism toward a new solidarity. While the individual instead of the kindred group is its primary constituent unit, yet, as has been none too strikingly said, we are "struggling with this preposterous initial fact of the individual, — the only possible social unit and no longer a thinkable possibility, the only real presence and never present." But the synthesis of these elusive factors of the social problem, never more contradictory than now, was seen to be fundamentally inherent in human nature in the vision of a poet, who long antedated our era, and sang of it thus:

"Man is all symmetry, full of proportions,
One limb with another,
And all to all the world beside.
Each part may call the farthest brother,
For head with foot hath private amity
And both with moons and tides."

These tendencies of the times have dominated more and more those of the groups of individuals and interests under review in this department, with the outline sketch of whose trend I am charged. They have been most determinative, of course, in the industrial group. The freedom of contract, conceded to be the inalienable right of the individual, is no longer protected or effectively guaranteed by the law alone. Combination on either side controls the market and leaves the unorganized individual to accept what is offered with no alternative. To bargain freely with combined capital, the individual laborer has found it an economic necessity to organize his craft, even at the expense of abridging his personal liberty. The collective trade agreement, on one or both sides, is inevitably superseding the individual contract in the labor market. The form of organization developed by labor to meet this requirement left the individual employer or corporation as helplessly at the dictation of the united employees as ever the laborer has found himself at the mercy of his employer in dealing single-handed and alone with organized capital. Employers' associations became as much of an economic necessity as labor-unions. Both are organized on essentially the same basis of an instinctive class-conscious impulse for self-preservation. Each obliges the other to conform the type and tactics of its organization to virtually the same model. Swiftly and inevitably both constituents in the industrial group are adjusting their business methods and relationships to these inexorable conditions of modern industry.

Beneath all the overlying turmoil and friction, injustice and menace, attending this rapid and radical readjustment, there is to be clearly discerned the evolution of a larger liberty, at least for the
class, a rising standard of living for the mass, a stronger defense against the aggression of one class upon another, and a firmer basis and more authoritative power to make and maintain peaceful and permanent settlements of industrial differences. More slowly and yet surely there are developing legal forms and sanctions, which not only make for justice and peace between the parties of the first and second parts, but for the recognition of the rights and the final authority of that third and greatest party to every industrial interest and difference — the public.

Urban conditions most persistently deteriorated under the most persistent neglect through the whole period of the abnormal growth and complexity of city populations attending the establishment of the factory system. But they have fairly begun to show the hopeful and widespread indications of reorganization, of a constructive policy, and of a more democratic intelligence, interest, and control. Most conspicuous of the movements for civic betterment and fundamental to the success of all others is the rescue of municipal administration from partisan political control. The seizure of the balance of power between parties by voters who thus declare their independence of the national issues in municipal action, has proved to be the only hope of emancipating urban life from the exploitation for party spoils.

In Great Britain it has broken new lines of cleavage upon which the citizens divide on local issues according to their predilections and ideals. The marvelous rise of civic enterprise and administration out of the degraded corruption in which English cities were sunk prior to the middle of the last century is largely due to exchanging the names and issues of "Tories" and "Liberals" for those of "Moderates" and "Progressives" in policies and politics. In this country the redemption of our second largest city from the most avowedly debased control of thoroughly commercialized partisan politics is the most marked achievement in the American municipal reform movement that is destined to set the type of method by which only other cities are likely to attain their freedom and progress. Chicago's Municipal Voters' League has proved to be the simplest and most effective organization of independent citizens for the information, cooperation, and perpetuation of an electorate loyal to civic patriotism as well as for the restraint and purification of the management of political parties in cities.

More efficient departmental administration quickly follows every real gain in political regeneration. Such improvement in housing conditions as promises well-nigh to abolish the slums in Glasgow, Liverpool, and London; hygienic development of bathing-beaches, bath-houses, and gymnasiums by the city of Boston; the inspection, licensing, and regulation of manufacturing in New York City.
tenement-houses, which may yet restore the home to the family from the usurpations of trade; the almost unobserved, yet marvelous development of the South Park system in Chicago, with its playgrounds and rooms, its outdoor and indoor swimming-pools and gymnasiums, and its park houses for neighborhood social centres; the steady rise of a more scientific official and semi-official literature reporting civic conditions and the ways of bettering them, such as have been issued by the London County Council and the first commissioner of the New York City Tenement-House Department,—these public achievements, prompted or assisted by such voluntary associated efforts as local improvement societies and social settlements, are making possible the collective ownership and operation of municipal enterprises to supplement or supersede inadequate private initiative or management.

Thus may be fulfilled the ideal of the "ancient city" which has never been realized in fact, namely, a federation of families for the uplift and unification of the common life, formed under the sanction of a fundamentally religious faith in each other and in the obligations and privileges of the brotherhood of all men.

Scarcely less pronounced, if of more gradual growth, are the changes which are transforming the conditions of rural life. The interurban electric railways for freight and passengers, the telephone and rural mail service, the better roadways for bicycles and automobiles, the traveling libraries and permanent centres for educational and social interchange, are rapidly relieving the monotony of country life, lightening some of its drudgery, furthering better educational privileges by the union of school districts, making accessible the high school, college, and university centres, bringing farmers' institutes and academic associations of economists together for joint sessions, developing the extension work of agricultural colleges, rallying the grange movement,—all these things combine to hold out the first hope which has dawned upon the tendency to the excessive density of the urban population, and that promises a redistribution of the people which will make possible more normal life both in country and town.

The family has suffered an invasion of its community of interests from many directions. The unity of its kinship has been attenuated by the prevailing influence of excessive individualism, from which none of its relationships have wholly escaped. Among the disintegrating forces directly and powerfully brought to bear against it throughout this industrial age, the first to be reckoned with is the changed economic status of women. Although the woman has always done her full share, if not more, of the world's work, upon which the family has depended for its existence and well-being, it has been hitherto for the most part done at the heart of the home and the
centre of the family circle. The domestic system of industry, how-
ever, was never ideal, and one of the way-marks of modern industrial
progress is undoubtedly to be noted in the separation of the shop
from the house and the restoration of the home to the family. But
the family has never been subjected to such a strain as by the in-
creasing industrial necessity for the wife and mother to do so much
of her work out of the house and away from her home and children.
The growing economic independence of women may partially com-
penstate for this loss to individual homes by benefiting the institu-
tion of marriage in general. The abject dependence of so large a
proportion of women upon marriage for their livelihood did not
previously tend to purify the marital relation or put the wife in her
rightful place on an equality with her husband in the family circle.
Capacity for economic independence cannot fail to admit both the
man and the woman to the marriage contract on more equal terms
and establish the status which it involves upon a freer and more
ingenuous basis.

But great as is the gain of this more just and moral economic
independence of woman, it is attended with serious disadvantages,
not necessarily inherent in it, yet closely involved with it. The
dependence of the family upon it for support is at a fearful cost to
childhood and home life, and in a large proportion of cases under-
mines the self-respect and dependableness of the husband. Those
forms or methods of industrialism which have ignored the humanities
of sex and age stand at the judgment-seat of the medical profession,
the school-teacher's experience, the government's statistics, and all
child-labor legislation, convicted of deteriorating the very stock of
the race.

Wholesale emigration is for one or two generations a more serious
crisis in family life than is generally known. Especially among the
less assimilable races, and where a primitive peasant folk are precipi-
tated into the heart of the great and terrible city wilderness, the
effect is well-nigh destructive not only to family relationships, but to
individual character. The man who was seldom or never away from
home in the old country must wander far and wide in search of work
or stay away for months to keep it. The woman, if not overworked
in industry, is idle as never before in the crowded tenement-house.
The children, without knowledge or confidence in the ways of
the new world to compensate for the loss of their restraint and
familiarity in the old home-land, disobey their parents before learn-
ing self-control, have too little schooling before they begin work, and
too fragmentary employment to give them the discipline of the shop
or the acquisition of a trade. Thus among the many immigrant
families who strike root and bear the best fruitage grown on Ameri-
can soil at least, there are not a few who, despite the best intent,
become the most dangerous sources of pauperism and crime, as do not a few native families removing from country to city.

The precariousness of livelihood and the enforced mobility of labor are also a resistless undertow which undermines and sweeps away the very foundation of family life. It is the occasion of much of the desertion and divorce which so seriously menace the marriage relation.

Bad housing conditions are so seriously inimical to the very existence of a family worthy of the name that, in self-defense as well as for humanity's sake, great municipalities, like those of Glasgow and Liverpool, are amply justified in providing workingmen's dwellings for lowest paid laborers, reserving whole blocks of them for widows with their children, and erecting lodging-houses for widowers, with special nursery and kindergarten provisions for their motherless little ones.

The way in which family unity is ruthlessly disrupted by sectarian rivalry, the order of home life disregarded by stated public appointments, the separate recreations provided for men and women, younger and older apart, while little or nothing is offered the family group which all its members can enjoy together,—these and many other tendencies of the age denote the family to be the greatest ignored factor of modern life.

But most promptly and hopefully does it respond to the better conditions for its maintenance and development as they supersede the worst at all these points of resistance.

The tendency thus affecting the groups already considered by virtue of that fact have very direct bearings upon dependency and delinquency. The type and ratio of both are modified and intensified by the conformity of increasing multitudes to these molds of character and conditions of life. The legal and philanthropic measures dealing with them are equally conditioned by the same causes.

While, for instance, the tramping of farmer families is noted by Sir Thomas More, when sheep ranches first displaced agriculture in England; while landless serfs followed in the wake of the Black Death, yet the modern "tramp" is a distinct species and the exclusive product of our industrial age. He is a terminal of a tendency which gradually evolved him, not indeed without a certain inclination of his own, but far more, in most cases, by reason of forces for which society was more responsible than he, though almost as powerless as he to control them. Intermittent work in shorter runs and longer hours; intervening idleness and going afield for a job; temporary employment on the Dakota wheat-fields or some remote railway extension; discharge at a point too distant, measured by dollars, to get back home without "taking to the road" or "beating his
way,"—such are some of the short cuts from an industrious life to a career of vagrancy or crime.

The labor colonies of Germany, the municipal lodging-houses of England and America, with state employment bureaus and the necessity to make work, now and then, here and there, to keep the army of the unemployed from starving,—these surely are signs of the new times.

At no point is legislation gaining at so good a pace upon the wasteful abuses of industrialism as in the provision for compulsory education, the strict regulation of child labor, the maintenance of juvenile courts and probation officers to deal with delinquent and dependent children and in furthering and safeguarding the placing out of those who are wards of the state.

The tendencies to specialize, combine, and democratize the public and private administration of charities and correction are as characteristic of the industrial age as any of its developments. Indeed, the whole modern conception, method, and movement of philanthropy are hardly conceivable prior to or apart from our present point of view. But only within the last few years has this conformity to those economies and concentrations which are distinctive of industrialism been so marked. At no previous time has the socially well-informed person been expected to know, not something of everything, but everything of something. Specialties have narrowed down and also broadened so that it is more possible to meet this requirement, and yet in so doing find scope for the best academic discipline and culture. Every branch of philanthropy has long since shown the practical value in this specializing accuracy of observation and administration. Never before have more people of strong caliber and large personal equipment been in the social service, professionally and as volunteers. Teachers trained for professorships find satisfaction and reputation as superintendents of reformatories. Men of recognized talent and attainment, both in scholarly and business pursuits, are found in the wardenships of prisons, at the head of child-saving institutions, serving as chiefs of departments in city governments and in secretariats of state boards of charities. Their service as well as their literature is receiving deserved, though belated, academic recognition as of scientific value. Their specialties are taking rightful place among the arts.

The economy of personal and financial resource in combining the same and allied interests results in the largest output for the least expenditure in philanthropy as in business. The charity organization society has become as much of an economic necessity and as essential a part of the equipment of cities and towns as the clearing-house of the banks.
But this and such kindred developments as state boards of charities, state charities aid societies, and state and national conferences of charities and correction are not more expressive of an economic instinct than of a democratic spirit. Indeed, all these more representative associations arose coincident with and to meet the demands of the people's assumption of the control of their own affairs. Local autonomy in a district became coordinate yet co-operative with the centralizing yet exclusive headquarters which formerly claimed the whole field. Paid official positions became all the more indispensable and honorable when under the supervision of the unpaid representatives of the public. The salaried expert was recognized to be all the more a leader when there were volunteer workers and friendly visitors to be led. The few and select donors of large gifts, who not without reason have sometimes been suspected of monopolizing the "Lady Bountiful" type of benevolence, have found neither their legitimate influence nor the scope of their giving curtailed by sharing the democratic spirit which now supersedes whatever exclusiveness there used to be in philanthropy.

Moreover this spirit has begun to save the loss of individuality suffered by those in the dependent and delinquent groups who have been massed impersonally and indiscriminately together, under the congregate system of institutional administration. The reversion to the more normal type of individual life in smaller family or household groups is the belated recognition of the democratic right of each to personal consideration, which all are bound to respect in the care of the dependent, the defective, and the delinquent. In respecting this right the community equally regards its own welfare by taking the most direct means of restoring to self-help and rightful place among men whose whose capacity for self-control and usefulness is weakened, if not destroyed, by treatment, not less a violation of nature than it is inimical to public interests. In line with the same farther-sighted humanitarian economy is the enlistment of whole populations, through their city governments, to grapple with their social situation as a whole. The Elberfeld policy toward dependency; the public control of the liquor traffic as in Scandinavia; the marshaling of the legislative authority, resources of taxation, and a constructive civic programme for the abolition of slums and the equalizing of privileges and opportunity, as the borough and county councils of England are doing it; the regulation of industrial forces in the interests of the whole people, as in Australia and New Zealand,—such attempts to reach a saner social order and realize a more human ideal of collective life are impressive way-marks of progress such as only the whole community can achieve for itself.

The personal and community interests we have been considering are so permeated by the ideals and influence of the religious group...
that our review would be conspicuously deficient if we did not note its tendencies in the same direction. Slowly but surely the religious social consciousness is dawning again. Its appearance, now as before is identified with the world view and movement of the churches. Its social and even industrial expression has already begun to be worthily chronicled from original sources with scientific spirit and historical perspective, notably in Dennis's three massive volumes bearing the significant title *Christian Missions and Social Progress*. This first work of its kind deserves to be classed with Ulhorns's *Charity in the Primitive Church*, Schmidt's *Social Results of Early Christianity*, and Brace's *Gesta Christi*. The exigencies of missionary work on foreign fields, which is represented by this author, has not allowed the dualistic separation of religion from life, and has necessitated a closer identification of the common faith with the domestic, industrial, and community interests of the common life. Especially marked is this in some of the exceptionally successful work among the subject races and abject classes. No more expert work has been done by government or under scientific educational auspices than in some Christian missions and schools among the islanders of the Pacific, the negroes of Zululand, and in the American black belt by the American Missionary Association and under Booker T. Washington at Tuskegee, with the Indians at Hampton and Carlisle and on some of the reservations.

The conditions of life especially in the cities of Christendom are developing church agencies, which still far from adequate to meet the religious situation or the ethical need, promise much development. Typical among them are the Inner Mission and also Naumann's social propaganda in Germany; Christian social movements in the Established and Free Churches of England and the adult schools of the English Friends; the Young Men's and Young Women's Christian Associations, with their physical, educational, railway, and shop departments and equipment; the institutional type of church work, especially that of the Protestant Episcopal Church in New York and the Wesleyans in London; and the re-awakening among the sodalities and institutions of the American Roman Catholic Church to contemporary needs and methods.

These church activities are already having their formative influence upon the worship, thought, and legislation of ecclesiastical bodies. Hymns of social feeling and ideal are finding their place in authorized collections, hitherto almost exclusively individualistic. Christian ethics and even dogmatic theologies are placing new emphasis upon their bearings on the collective life. The polity of every church is becoming more democratic. The religious sentiment is being humanized. And last, and we fear least, but ultimately most inevitable of all the movements within religious bodies, is to be noted the
pressure, chiefly exerted from without, toward federating with each other for purposes of defense and cooperative effort, though not for the organic unity of government, creed, or ritual. The most conspicuously valuable results yet attained in this direction are recorded in the sociological census taken by the Federation of Churches and Christian Workers of the City of New York.

We have yet to trace the reciprocal influence of the social tendencies of this industrial age and contemporary educational movements upon each other.

About the middle of the last century the need of a new nomenclature to designate these new movements of thought and action began to be met. In 1830 Auguste Comte coined the term “sociology” to include the group of sciences which he designated “Social Physics.” Very slowly, however, is the terminology thus initiated finding its way into anything like accepted usage. The first title-page in American periodical literature bearing a sociological term and scope is that of Simon Stern’s Social Science Review which appeared in 1865. It discovered its raison d’être in the Civil War, which it predicted “will probably produce many changes in our social and political institutions” so that “it has become of the utmost importance that we should at this period, more especially, render ourselves familiar with the natural laws which govern mankind in its social state, and that public opinion and legislation may be in accordance with and not in contravention of those natural laws.” But the prospectus was so far removed from any scientific definition as to construct out of the single term sociology a veritable omnibus, into which, with our all too familiar tendency to overcrowding, it packed about all the political, economic, domestic, and moral issues then before the American people.

The new point of view required a reinvestigation and reclassification of the old and additional phenomena attending the tendency to such a gregarious, yet segregated life, such a subdivided and interdependent labor as the world had never known before. In the tables of his Descriptive Sociology, Herbert Spencer suggested, if he did not determine, a scientific classification of at least historical and literary data, which stimulated research and encouraged the application of the inductive method.

It was not until twenty years ago that any attempt to be compared with it was made to classify and summarize contemporary data. All England was then startled by the “Bitter cry of outcast London,” which was piteously but sternly raised by some Christian mission workers in the then all too little known East End. Amidst the clamor of protesting or appealing voices over the mute sufferings of poverty-stricken thousands and the growing discontent at the neglect of such conditions, one man went silently to work to get at
the root of the problem. He stood almost alone in his insistent and persistent self-exaction to ascertain accurately the facts of the actual situation. The opening years of the twentieth century have registered no greater achievement than the completion of Mr. Charles Booth's Life and Labor in London at the close of the nineteenth. The worth of this work, not only to London, but to all the cities of the world, can scarcely be overestimated. It supplies a practical classification and method which by a consensus of opinion are already widely recognized and used. Its conclusions are models of tested accuracy, cautious conservatism, and the fearless facing of ascertained facts. Its permanent reference value is assured by well-nigh perfect tabulations, abstract of contents, and full indices. Already the type of scientific investigation set by this colossal work of London's great shipper is reproducing itself in books of other thoroughly original investigators which deserve to be classed with it. It is a pleasure thus to rate Mr. B. Seebohm Rowntree's Poverty: a Study of Town Life in York; the report on the housing conditions of Manchester by Mr. T. M. Marr; and the London Daily News's investigation of Religious Life in London, edited by Mr. R. Mudie-Smith.

The endowment and equipment of the "Musée Sociale," in Paris furnishes and suggests a provision for perpetuating such efforts, preserving their data, and publishing their results, which is sure to create similar centres for archive and research with far too little resource, and, therefore, on a less exhaustive scale, the Institute of Social Service in New York is gathering a valuable collection of clippings, pamphlets, photographs, official reports, and books bearing particularly upon the welfare work of industrial establishments and municipal departments. The "Museum of Security" in Amsterdam by its permanent exhibition of appliances for protecting and saving life has established a centre of unique interest and far-reaching practical value. Great libraries, notably the Crerar Library in Chicago, have begun to specialize in these departments on a scale which promises to locate at several great centres not only exhaustive collections of their literature but also original data, which will open new sources to research.

The rise of university departments of sociology and social economics, so fully reported in the proceedings of the International Conference of Charities and Correction and Philanthropy held at Chicago in connection with the Columbian Exposition in 1893, has been followed by a steady and apparently permanent development, almost exclusively confined, however, to American institutions. The

1 Its collaboration of the hitherto incoördinate facts of official inquiry, departmental reports, and government census, is even more valuable, in setting a standard of scientific exaction and method, than in its great direct results.
practical knowledge for living and working together has begun to be directly inculcated in the teaching of our technical and public schools.

The co-operative societies for social research, discussion, and publication have differentiated along the lines of their theoretical and practical specialties. While the Social Science Association continues to cover its very general field, the American Statistical Association, the American Economic Association, and the American Academy of Political and Social Science have added greatly to the expert personnel and equipment of their several departments of research. The recent organization in London and also in America of the "Sociological Society" for the study of social theory, and the "Institute of Social Service," suggested by and modeled after the practical purpose and methods of the society bearing the same name in New York, assures needed reinforcement at the great centres of observation and scientific resource in the Old World.

The most natural and timely sequels of these industrial and social movements are the schools which are arising at the greatest centres of activity to offer both general courses and technical training in the theory, history, and practice of what deserve to be called the social arts. The demand for trained helpers is being widely increased, not only by the growing opportunities and exactions of these manifold agencies, but also by the extension of the civil service law to cover positions in public, charitable, and reformatory institutions. But the offer of the supply of trained helpers is the surest way to create the demand for them where it does not exist.

One of the earliest initiatives in this direction was taken by Miss Helen Gladstone at the London Woman's University Settlement, in conducting a small training-class from year to year, the graduates of which immediately found positions of trust and usefulness throughout the kingdom. The Charity Organization Society of that city has recently brought about the cooperation of this class with the "School of Economics," some departments of the University of London, and its own expert force, to establish a "School of Sociology and Social Economics," which is in the second year of successful operation. In New York City a well-patronized summer school, conducted for several years by the Charity Organization Society, has evolved the "School of Philanthropy." In its very full curriculum, covering the whole academic year, it has the cooperation of the Columbia University faculty and the Association of Neighborhood Workers, both of which, independently, offer some courses of similar instruction. In Boston the study class of the Charity Organization Society has been the pioneer effort, which is now to be supplemented by the "Training-School for Social Workers," jointly conducted by Harvard University and Simmons College for Women.
"The Institute of Social Science" was opened at Chicago in 1903 by experts at the head of specialized agencies and institutions, both public and private, assisted by teachers identified with several universities. A four years' course has been established at the University of Chicago in the new Department of Religious and Social Science leading to an academic degree. At all these schools the great centres at which they are located are used as laboratories in which the students are assigned to carefully supervised and progressive field-work which constitutes a principal part of their training. The appointment of a standing committee on training for social work by the National Conference of Charities and Correction will greatly promote the progress, cooperation, and unity of these courses.

Perhaps more significant than all the tendencies of industrialism which we have noted is that which sets irresistibly toward international relationships. Beneath the sinister influence which commercial interests have had upon politics, there may be a larger good evolving. But the very elements which have been creating internal strife and provoking foreign wars may soon become so international in their proportions as to be the chief impediment to war and mainstay of the world's peace. Organized workingmen, who were the first to frighten the world by ignoring national boundaries, are, without the loss of their patriotism, naturally developing international unions out of their national organizations. These great craft brotherhoods, by stretching hearts and hands across seas to organize for their common interests across every frontier, bid fair, by their refusal to fight each other, to command the world's peace. Among the world's congresses convening at this Exposition, none registers a higher-water mark of human progress than the "Interparliamentary Union," with its three hundred delegates, representing practically all the constitutional governments of the world. The twelfth session of this union is immediately followed by the Thirteenth International Peace Conference at Boston, with a personnel and prestige which more than keeps pace with the progress of war.

With the possibility of this climax in sight, and in view of the profound changes in social condition which it has already wrought, the Industrial Revolution is making good its claim to be the most radical transformation through which civilization has ever passed.
SECTION A—THE FAMILY
SECTION A—THE FAMILY

(Hall 5, September 21, 10 a.m.)

CHAIRMAN: PROFESSOR SAMUEL G. SMITH, University of Minnesota.
 SPEAKERS: PROFESSOR GEORGE E. HOWARD, University of Nebraska.
 DR. SAMUEL W. DIKE, Auburndale, Mass.

In opening the proceedings of the Section of The Family the Chairman, Professor Samuel G. Smith, spoke as follows:

"The problem of the family may be studied from the speculative point of view as the primary form of human institutions, the germ from which all others have been developed. It may be noted that the form of the family has varied by climate, food-supply, economic and political conditions, and in short that every bond of each social group has been affected by similar forces, and that all institutions are formed practically on parallel lines.

"Polyandry calls for a sterile soil, and polygyny must not only have surplus bread-stuffs, but it is accompanied by despotisms. The industrial tribe will differ fundamentally from the military tribe in domestic institutions, but it will also differ in the character of its gods and in the forms of its worship.

"But the problem of the family may be viewed as a practical question of modern civilization. The loosening of family ties, the easy and frequent divorce, the lack of a sense of mutual responsibility among the members of the family group, may stir the spirit of the reformer, and may seem to him purely a moral question to be solved solely by the aid of moral forces. To him the question of the family is one of surpassing importance to the woman and to the child, and must be settled by improved legislation and by an aroused public opinion.

"These two points of view may, perhaps, not be so far apart as they at first appear. If the family be the primary social cell, then a historic study will show that the strength of the family indicates the strength of all other institutions. The permanence of a larger social group will depend upon the preservation of the cells of the social body. So the reformer will be reinforced by the study of society as a whole. On the other hand, such a study will doubtless lead him to inquire whether or not the condition of present instability of the family is a local social disease, or whether it may not be in fact only a symptom of general conditions. He will seek to be instructed by the effect of woman in labor, the influence of the decay of faith upon social ties, the effect of the sudden increase within the last generation or two of the world's wealth, and similar inquiries will throw light
upon his problem. If the weakening of the family comes from general causes, he will ask whether the causes seem to be temporary, and present conditions, therefore, of no great social importance. He will ask also whether his attack upon the evils he laments should be direct or indirect.

"We are fortunate in having for the leaders in the discussion to-day one gentleman who has made an important contribution to the history of the subject, and another gentleman who has contributed largely to the practical task of the preservation of the family. But we are doubly fortunate in the fact that both gentlemen are conversant with all sides of the subject.
SOCIAL CONTROL AND THE FUNCTION OF THE FAMILY

BY GEORGE ELLIOTT HOWARD

[George Elliott Howard, Ph.D., Professor of Political Science and Sociology, University of Nebraska. b. Saratoga, New York, 1849; A.B., University of Nebraska, 1876; Ph.D., ibid, 1894; student of history and Roman Law, Universities of Munich and Paris, 1876–78. Professor of History, University of Nebraska, 1879–91; Professor of History and Head of History Department, Leland Stanford Jr. University, 1891–1901; Professor of History, Cornell University, summer term, 1902 ; Professorial Lecturer in History, University of Chicago, 1903–04; Professor of Institutional History, University of Nebraska, 1904–06. Member of American Historical Association; American Political Science Association; and American Sociological Society. Author of Local Constitutional History of the United States (1889); Development of the King's Peace (1891); Modern English History and Biography, in New International Encyclopaedia (1902); History of Matrimonial Institutions (3 vols., 1904); Preliminaries of the American Revolution (1905).]

It is needful in the outset to mark the differentiation and to observe the close interrelations of the family, marriage, and the home. The problems of the family are necessarily involved in those of the home and marriage. The three forms of development are distinct in concept, but in their life or functions they constitute a trinity of interdependent institutions. Westermarck has suggested that in its origin marriage rested more on family than the family upon marriage. Biologically, of course, marriage comes first in the union of the sexes; yet it is certain that the culture-types of marriage have been determined less by the sex-motive than by the economic needs of the family,—the bread-and-butter problem in the struggle for existence. To-day this fact is decidedly true. In our age of social self-consciousness, of dynamic sociology, the reformer who would act wisely will not seek help in definitions but in a comprehension of the economic and spiritual needs of the family and those of the individuals which compose it. As in other cases, there must be an adjustment of functions to the environment. The social uses of the family and still more those of the home are too often neglected while speculating on the nature of wedlock and the ethics of divorce.

Accordingly the fundamental question which confronts the student of this trinity of institutions is the problem of social control. In the Western world the extension of the sphere of secular legislation practically to the whole province—the whole outward or legal province—of marriage is a fact of transcendent interest. In this regard the Reformation marks the beginning of a social revolution. Luther's dictum that "marriage is a worldly thing" contained within it the germ of more history than its author ever imagined. The real trend of evolution has not at all times been clearly seen or frankly admitted; but from the days of Luther, however concealed
in theological garb or forced under theological sanctions, however opposed by reactionary dogma, public opinion has more and more decidedly recognized the right of the temporal lawmaker in this field. In the seventeenth century the New England Puritan gave the state, in its assemblies and in its courts, complete jurisdiction in questions of marriage and divorce, to the entire exclusion of the ecclesiastical authority. For nearly three quarters of a century the clergy were forbidden to solemnize wedlock, while at the same time marriages were freely dissolved by the lay magistrate. Even the Council of Trent, by adjusting the dogma regarding the minister of the sacrament, had already left to Catholic states the way open for the civil regulation of matrimony, a way on which France did not hesitate to enter. Definitively the state seems to have gained control of matrimonial administration.

As a result in the United States, not less clearly than elsewhere in countries of Western civilization, marriage and the family are emerging as purely social institutions. Liberated in large measure from the cloud of medieval tradition, their problems are seen to be identical in kind with those which have everywhere concerned men and women from the infancy of the human race. Biologically they are indeed a necessary result of man’s physical and psychic nature; but institutionally they are something more. Modern jurisprudence is a practical recognition of the fact that matrimonial forms and family types are the products of human experience, of human habits, and are, therefore, to be dealt with by society according to human needs.

The greatest fact in social history is the rise of the state; and in the more vital or organic sense the state has never been so great a social fact as at the present hour. Moreover its authority, its functions, are every day expanding. The popularization of sovereignty has but added to its power. With the rise of this mighty institution all lower organisms have lost something or all of their institutional character. In the culture-stage of civilization the gentile organization is no more. The clan and the tribe have disappeared. The function of the family as the social unit, as a corporation held together by the blood-tie, has likewise vanished. In a perfectly logical way, however paradoxical at first glance it may seem, the social function of the individual has expanded with that of the state. The process of socialization and the process of individualization are correlative and mutually sustaining operations.

Consequently out of the primary question of social control arises the problem with which we are here chiefly concerned: the problem of protecting the family against harm from the dual process of disintegration just referred to. Already many changes of vast sociological meaning have taken place, but the most vital char-
acteristic of the family survives. From the infancy of the human race, in the light of our fullest knowledge, monogamy appears as the prevailing type of sexual life. Under diverse conditions, religious, economic, or social, there have been many aberrations from that type; but, at first for biological or economic and later for ethical or spiritual reasons, always the tendency has been toward a more clearly differentiated form of the single pairing family. Among all peoples, whether Christian, Jew, or Gentile, the highest ideal of marriage is that of lifelong partnership.

On the other hand, under the twofold leveling process, the interrelations of the members of the family group are being gradually transformed. The patriarchal authority of the house-father is crumbling, although here and there it is still sustained by the relics of medieval tradition. The wife is declining to pass into the husband's hand, in manu viri, but physically and spiritually she is more and more insisting on becoming an equal member of the connubial partnership. Not only are sons and daughters legally emancipated at a reasonable age; but during nonage, in the most enlightened households, their individuality is being recognized in a way which would have shocked social sentiment a few generations ago. Young boys and even young girls show a tendency to cut the parental moorings and embark in affairs for themselves. The business precocity of the American youth is notorious. Moreover, the state in the interest of the larger social body is attacking the ancient constitution of the household. It is taking a hand in the rearing of the young. Through educational requirements, factory laws, and other child-saving devices it is invading the ancient domain of the parent. Little by little, to use the generalization of Dr. Commons, the original "coercive" powers of the family under the patriarchal régime have been "extracted" and appropriated by society. Thus the family becomes "less a coercive institution, where the children serve their parents, and more a spiritual and psychic association of parent and child based on persuasion." The state, the "peculiar coercive institution," he declares, in the interest of children's rights has "annexed" a large part of the patria potestas; and "all families are thereby toned up to a stronger emphasis on persuasion as the justification of their continuance."¹ In fact the leveling tendency just considered, instead of being a serious menace to the family, is probably a regenerative force. The question is, may the old legal patriarchal bonds be adequately replaced by spiritual ties, and thus a nobler type of domestic life be produced?

In more sinister ways the solidarity of the family appears to be menaced through the individualism fostered by our economic and

industrial systems, operating chiefly in great urban centres. With the rise of corporate and associated industry comes a weakening of family ties. Through the division of labor the family "hearthstone" is fast becoming a mere temporary meeting-place of individual wage-earners. The congestion of the population in cities is forcing into being new and lower modes of life. The home is in peril. In the vast hives of Paris, London, or New York the families even of the relatively well-to-do have small opportunity to flourish—for self-culture and self-enjoyment. To the children of the slum the street is a perilous nursery. For them squalor, disease, and sordid vice have supplanted the traditional blessings of the family sanctuary.

Furthermore, the social trinity is seriously threatened by two opposite tendencies, each of which is, in part, the product of present urban and industrial conditions. On the one hand, marriage is shunned and the home is ceasing to be attractive. For very many club life has stronger allurements than the connubial partnership. For the poor, sometimes for the rich, the great city has many interests and many places more attractive than the home circle. The spirit of commercial greed and the love of selfish ease, not less than grinding penury, restrain men and women from wedlock. On the other hand, the urban environment has the opposite effect. In the crowded, heterogeneous, and shifting population of the great towns marriages are often lightly made and as lightly dissolved. Indeed, the remarkable mobility of the American people, the habit of frequent migration in search of employment, under the powerful incentives of industrial enterprise, gold-hunting, or other adventure, and under favor of the marvelously developed means of transportation, will account in no small degree for the laxity of matrimonial and family ties in the United States.

Yet these perils, although serious, need not become fatal. They are inherent mainly in industrial institutions which may be scientifically studied and intelligently brought into harmony with the requirements of the social order. The problems of the family are at once ethical, sociological, and economic. If the home is to be rescued from the encroachments of the shop and the factory, it must be earnestly studied in connection with the problems of organized industry and with those of state or municipal control of the great public utilities. Already through improved facilities for rapid transit the evils resulting from dense population are being somewhat ameliorated. Of a truth every penny's reduction in street-railway fares signifies to the family of small means a better chance for pure air, sound health, and a separate home in the suburbs. The dispersion of the city over a broader area at once cheapens and raises the standard of living. Every hour's reduction in the period
of daily toil potentially gives more leisure for building, adorning, and enjoying the home.

There is another result of social evolution which to many persons seems to be just cause of alarm. The liberation of woman in every one of its aspects profoundly involves the destiny of the family. It signifies in all the larger activities of life the relative individualization of one half of human kind. This means, of course, a weakening of the solidarity of the family group so far as its cohesion is dependent upon the remnants of ancient marital authority. Will the ultimate dissolution of the family, as sometimes predicted, thus become the price of equality and freedom? Or rather, is it not almost certain that in the more salubrious air of freedom and equality there is being evolved a higher type of the family, knit together by ties, sexual, moral, and spiritual, far more tenacious than those fostered by the régime of subjection?

In particular the fear that the higher education of woman, in connection with her growing economic independence, will prove harmful to society through her refusal of matrimony or maternity, appears to be without real foundation. It is true that the birth-rate is falling. So far as this depends upon male sensuality — a prevalent cause of sterility; upon selfish love of ease and luxury — of which men even more than women are guilty; or upon the disastrous influence of the extremes of wealth and poverty — of which women as well as men are the victims — it is a serious evil which may well cause us anxiety; but so far as it is the result of the desire for fewer but better-born children, for which, let us hope, the advancing culture of woman may in part be responsible, it is, in fact, a positive social good.

It is true also that, while fewer and fewer marriages in proportion to the population are taking place, men as well as women are marrying later and later in life. The marriage-rate is falling and the average age at which either sex marries is rising. Here, again, for the reasons just mentioned, the results are both good and bad. Certain it is that early marriages and excessive child-bearing have been the twin causes of much injury to the human race. It is high time definitively to expose the dual fallacy, derived mainly from ancient military and theological tradition, that early marriages and many children should be favored at all hazards. The gradual advance of the marriage-age may mean better mated parents and more stable families. Moreover, if it be admitted that a falling birth-rate is a sign of national decadence, it should be considered that an increasing population may now be sustained by families smaller than in earlier times. Better sanitation, the scientific mastery or prevention of disease, and the lessening of the ravages of war are producing a decrease in the death-rate which more than keeps pace with the fall in the rate of births.
In the last few decades the average length of human life has been considerably increased. Fewer children are born, but they are much better in quality.

There is really no need to be anxious about the destiny of the college woman. It is not marriage or maternity which she shuns; but she is refusing to become merely a child-bearing animal. It is simply wrong wedlock which she avoids. She has a higher ideal of matrimony. The rise of a more refined sentiment of love has become at once a check and an incentive to marriage. With greater economic and political liberty, she is declining to look upon marriage as her sole vocation. As a wife she asks to be admitted to an even partnership with the husband in the nurture of the family and in doing the world's work. Thus the liberation movement means in a high degree the socialization of one half of the human race.

It is perhaps not surprising that of all the alleged evils which threaten the integrity of the family divorce should be commonly looked upon as the most dangerous. In Europe as well as in America the divorce-rate is rising while the marriage-rate is falling. It is higher in the United States than in any other country collecting statistics except Japan. In this instance as in others it does not follow that the individualistic tendency is necessarily vicious. Nowhere in the field of social ethics, perhaps, is there more confusion of thought than in dealing with the divorce question. Divorce is not favored by any one for its own sake. Probably in every healthy society the ideal of right marriage is a lifelong union. But what if it is not right, if the marriage is a failure? Is there no relief? Here a sharp difference of opinion has arisen. Some persons look upon divorce as an evil in itself; others as a "remedy" for, or a "symptom" of, social disease. The one class regards it as a cause; the other as an effect. To the Roman Catholic and to those who believe with him divorce is a sin, the sanction of "successive polygamy," of "polygamy on the installment plan." At the other extreme are those who, like Milton and Humboldt, would allow marriage to be dissolved freely by mutual consent, or even at the desire of either spouse. According to the prevailing opinion, as expressed in modern legislation, civil divorce is the logical counterpart of civil marriage. The right of the state to dissolve wedlock is conceded, although it is clear that in marriage the family relation is more vital than the contract by which entrance into it is sanctioned. The rupture of that relation is indeed "revolutionary," as has been strongly insisted upon; but the state in granting divorce is merely declaring a revolution which in reality has already taken place.

Yet divorce is sanctioned by the state as an individual right, and there may be occasions when the exercise of that right becomes a social duty. Loose divorce laws may even invite crime. Never-
theless it is fallacious to represent the institution of divorce as in itself a menace to social morality. It is a result and not a cause; a remedy and not the disease. It is not immoral. On the contrary, it is quite probable that drastic, like negligent, legislation is sometimes immoral. It is not necessarily a virtue in a divorce law, as appears often to be assumed, to restrict the application of the remedy regardless of the sufferings of the social body. If it were, the only logical course would be to imitate South Carolina and prohibit divorce entirely. The most enlightened judgment of the age heartily approves of the policy of extending the legal causes so as to include offenses other than the one "scriptural" ground, as being equally destructive of connubial happiness and family well-being. Indeed, considering the needs of each particular society, the promotion of happiness is the only safe criterion to guide the lawmaker either in widening or narrowing the door of escape from the marriage bond.

The divorce movement is a portentous and almost universal incident of modern civilization. Doubtless it signifies underlying social evils, vast and perilous. Yet to the student of history it is perfectly clear that it is but a part of the mighty movement for social liberation which has been gaining in volume and strength ever since the Reformation. According to the sixteenth-century reformer, divorce is a "medicine" for the disease of marriage. It is so to-day in a sense more real than Smith or Bullinger ever dreamed of; for the principal fountain of divorce is bad matrimonial laws and bad marriages. Certain it is that one rises from a detailed study of American legislation with the conviction that, faulty as are our divorce laws, our marriage laws are far worse; while our apathy, our carelessness and levity regarding the safeguards of the matrimonial institution are well-nigh incredible. The centre of the dual problem of protecting and reforming the family is marriage and not divorce.

In fact there has been a great deal of hasty and misdirected criticism of American divorce legislation. Often it rests upon the facts as they were eighteen years ago, when the government report was compiled. Meantime great improvements have been made. Little by little the codes of the fifty-two states and territories, freed from their most glaring faults, are approximating to a common type. If American legislation is on the average more liberal than that of other lands, it would surely be rash to assume that it is worse on that account. The question is: Has American social liberalism, in this regard as in so many other respects, increased the sum of human happiness? Is there any good reason for believing that what De Tocqueville said fifty years ago is not to-day true? "Assuredly," he wrote, "America is the country in the world where the marriage-tie is most respected and where the highest and justest idea of conjugal happiness has been conceived."
The divorce movement in America is in part an incident of a
great transition phase in social progress. It cannot be denied that
the increase in the number of divorces is largely due to the new
economic and intellectual position of woman. The wife more
frequently than the husband is seeking in divorce a release from
marital ills; for in her case it often involves an escape from sexual
slavery. Indeed there is crying need of a higher ideal of the marriage
relation. While bad legislation and a low standard of social ethics
continue to throw recklessly wide the door which opens to wedlock,
there must of necessity be a broad way out. How ignorantly, with
what utter levity, are marriages often contracted; how many thou-
sands of parents fail to give their children any serious warning against
yielding to transient impulse in choosing a mate; how few have
received any real training with respect to the duties and responsi-
bilities of conjugal life? What proper check is society placing upon
the marriage of the unfit? Is there any boy or girl so immature, if
only the legal age of consent has been reached; is there any “delin-
quent” so dangerous through inherited tendencies to disease or
crime; is there any worn-out debauchee, who cannot somewhere
find a magistrate or a priest to tie the “sacred knot”? In sanctioning
divorce the welfare of the children may well cause the state anxiety;
but are there not thousands of so-called “homes” from whose cor-
rupting and blighting shadow the sooner a child escapes the better
both for it and society?

In some measure the problem of the family has now been stated.
What are the means available for its solution? The raising of ideals
is a slow process. It will come only in relatively small degree through
the statute-maker. Yet the function of legislation is important.
Good laws constitute a favorable environment for spiritual progress.
Already much effective work has been done, yet in almost every
direction there is urgent need of reform. In particular our matrimo-
nal laws should be thoroughly overhauled. The so-called “com-
mon law marriage” — a fruitful source of social anarchy — ought
to be absolutely abolished. The illogical and awkward system of
optional lay or ecclesiastical celebration should be superseded by
obligatory civil marriage on the European model. The adminis-
trative system governing the preliminaries of marriage should be
amended so as to relieve America from the scandal of clandestine
weddings of the St. Joseph (Michigan) pattern. The achievement of
a wisely conceived and carefully drafted uniform matrimonial law
for the entire country ought to be more zealously taken in hand. At
present, through the state commissions on uniform legislation,
practical workers are urging the adoption of a model statute relating
to divorce. Perhaps conventions of groups of states might be used to
advantage. In the end it may be found necessary, under a constitu-
tional amendment, to appeal to the federal power. What service could a national legislature render more beneficent than the creation of a code embracing every division of the intricate law of marriage and divorce? Aside from its educational value as a moral force, such a code in material ways would prove a powerful guaranty of social order and stability.

Far more important in the solution of the problem is the function of education. Apparently the salvation of the family must come mainly through the vitalizing, regenerative power of a more efficient moral, physical, and social training of the young. The home and the family must enter into the educational curriculum. In the sphere of the domestic institutions, even more imperatively than in that of politics or economics, there is need of light and publicity. It is vain to turn back the hand on the dial. The process of individualization for the sake of socialization should be frankly accepted. The old coercive bonds of the family cannot be restored. A way must be found to replace them by spiritual ties which will hold father, mother, and child together in the discharge of a common function in the altered environment.

The new social education must grapple fundamentally with the whole group of problems which concern the family, marriage, and the home. Through conscious effort the home should become an educational institution in which the family receives its most intimate training. In the work every grade in the educational structure from the university to the kindergarten must have its appropriate share. Already departments of sociology, social science, domestic science, and physical culture are giving instruction of real value; but the training should be broadened and deepened. Moreover, the elements of such a training in domestic sociology should find a place in the public school programme. Where now, except perchance in an indirect or perfunctory way, does the school-boy or girl get any practical suggestion as to home-building, the right social relations of parent and child, much less regarding marriage and the fundamental question of the sexual life? Indeed, almost the entire methodology of such instruction has yet to be devised. Is it visionary to hope that right methods may be developed for safely dealing even with such matters?

In the future educational programme sex questions must hold an honorable place. Progress in this direction may be slow because of the false shame, the prurient delicacy, now widely prevalent touching everything connected with the sexual life. The folly of parents in leaving their children in ignorance of the laws of sex is notorious; yet how much safer than ignorance is knowledge as a shield for innocence!

It is of the greatest moment to society that the young should be trained in the general laws of heredity. Everywhere men and
women are marrying in utter contempt of the warnings of science. Domestic animals are literally better bred than are human beings. There must be a higher ideal of sexual choice. Experience shows that in wedlock natural and sexual selection should play a smaller, and artificial selection a larger, rôle; the safety of the social body requires that a check be put upon the propagation of the unfit. Here the state has a function to perform. In the future much more than now, let us hope, the marriage of persons mentally delinquent or tainted by hereditary disease or crime will be legally restrained.

Moreover, the social culture of the future must consciously foster a higher race-altruism which shall be capable of present sacrifice for the permanent good of the coming generations. A wise sociologist has already outlined the elements of a new science of Eugenics — a science dealing with all the influences which improve and develop to advantage the inborn qualities of the race.1 Indeed, family sentiment in some measure must yield to race sentiment. Too often at present family sentiment is but an expression of avid selfishness and greed which are no slight hindrance to sociological progress. "When human beings and families rationally subordinate their own interests as perfectly to the welfare of future generations as do animals under the control of instinct," says Dr. Wood,2 "the world will have a more enduring type of family life than exists at present." May we not confidently believe that the family, surmounting the dangers which beset it, is capable of developing new powers and discharging new functions of vital importance to mankind? In the even partnership of the domestic union, knit together by psychic as well as physical ties, the house-father and the house-mother are already becoming more conscious of their higher function and responsibility as father and mother of the race.

1 Galton, Eugenics: Its Definition, Scope, and Aims, in American Journal of Sociology, x, 1 ff.
2 Dr. Thomas D. Wood, Some Controlling Ideals of the Family Life of the Future, 27.
THE PROBLEM OF THE FAMILY

BY SAMUEL WARREN DIKE

[Samuel Warren Dike, Corresponding Secretary, National League for the Protection of the Family, since 1881. b. Thompson, Connecticut, February 13, 1839. A.B., LL.D. Williams College; B.D. Andover Theological Seminary. Special Lecturer at Andover, Hartford, Meadville, and Garrett Biblical Institute. Member of Washington Academy of Sciences and various other scientific societies. Author of numerous articles on divorce and other topics of the family; also on methods of sociological study, problems of church organization and the country town.]

Within the last twenty-five or thirty years there has come to be recognized a problem of the family. It is the object of this paper to give a brief outline of this problem, especially as it has been treated in this country within this period, and then to look a little at some phases of it that seem most likely to call for attention in the early future.

Interest in the subject is due to two classes of causes: The first of these is the practical one — the growth of certain evils affecting the family. Mormon polygamy, the increase almost everywhere throughout the civilized world of the rate of divorce and the immense volume of it in the United States, the decrease of the marriage-rate and the postponement of marriage, the prevalence of unchastity and the lightness with which its offenses are regarded, the decrease of the birth-rate among those best fitted by their own training and resources to rear large families, the growing self-assertion of youth, and the lessened power of the home over character have combined to bring the family to the front as one of the most vital subjects for practical consideration.

The other cause is the new social conceptions of the times and the interest in the study of social problems in a scientific way. We are coming to see that what we call society is a most interesting as well as a most important subject of scientific study. In a way it has been studied for all the centuries of human learning. But we are now at work on it in the new field of social science with sociology and the social sciences for our instruments. In the pursuit of this line of study students are confronted everywhere with the family in some of its forms. In its history they find in great degree the story of the other great social institutions. And it has become apparent that the progress of social science must continue to interest students in the past, present, and future of the family.

As we cannot understand the present problem nor form a wise opinion about its future without some knowledge of the way in which the present came about, let us look a moment at some of the changes
that have brought the evils that we have noted. We will begin with
the introduction of Christianity into the Roman world.

The Founder of the Christian religion threw into the minds of his
disciples, in response to their question about divorce, the features of
the ideal family in graphic outline. The chief apostolic writer dealt
with the subject in relation to practical questions that came up
bearing on the relation of individuals to each other, with little or no
reference to the family as an institution. The work of the early
church was directed to the rescue of individual men and women
rather than to the creation or reëstablishment of a social order. The
rules of the early church, the canon law of following centuries, were
taken up with the regulation of the duties of individuals. Marriage,
divorce, chastity, and celibacy, and the whole round of the domestic
virtues were treated almost wholly from the individualistic point
of view. Indeed, one may go through a volume giving a digest of the
entire canon law of marriage and divorce without meeting with the
word family or its idea a single time. It is always the individual
that is under treatment. The same is largely true of all except the
more recent treatises on divorce. They scarcely mention the family.
For this reason and for its excessive reliance on the grammar and
lexicon for the interpretation of the Scriptures of the Christian
church the ecclesiastical literature of the divorce question is dreary
reading for the student of sociology who knows how profoundly this
and all questions of the family are at the root of sociological ques-
tions. And this early trend of Christianity was unwittingly accelera-
ted by the condition of Roman law at the time when the canon law
was formed. For, as Sir Henry Maine pointed out, Roman law had
at that time passed from the family as its unit to the individual, and
in its conception of social relations from status to contract. It was
this debased form of the Roman law that became the matrix in
which the canon law was molded. Thus the method of the early
church and the condition of the Roman law of the times combined
to treat domestic relations along individualistic lines with little
consciousness of the family and its significance.

The social ideas of a later period emphasized this tendency. The
Protestant Reformation was a protest against the claims of the
church by an assertion of the individual. The note of Protestantism
is distinctly individualistic. The position of Luther on divorce was
a natural consequence of it. But the influence of it on the religious
methods of the churches that came into being as a result of the
Reformation contributed still more powerfully to the forces that
made for an individualistic conception of the social order. Then
the invention of printing in a degree took the power of control over
life away from the church and put it into the hands of every one
who could read. The invention of gunpowder made the individual
soldier a new force in war as compared with the mounted officer and his retainers. The discovery of America opened a new field to individual enterprise. And a little later the impulse to modern science was given by the beginnings of the method of scientific study.

Within the last two centuries individualism received another impetus. The ethical philosophy of Locke made its mark on the theology of New England. It powerfully affected the political thinking of the times. Rousseau and Jefferson either directly or indirectly felt its profound influence. And through its effect on the theology of New England it came to mold in some degree the thinking of the political leaders of the American Revolution. The war of American Independence was fought on the rights of the individual. Blackstone is an example of the influence of individualism in law and Adam Smith of its power in the new science of political economy. Priestley and Franklin may be noted in the realm of natural science. And we should not overlook the results of the inventions of the period. The coming of the power loom and the spinning-jenny, also in the latter part of the eighteenth century, led to the transfer of labor from the home to the factory.

The early half of the nineteenth century witnessed another series of events in the same direction. The spread of the Sunday-school relieved the home of much of its responsibility for the religious training of the young, and the growth of the public school system had a similar effect in another direction. Perhaps a better statement would be that the rise of these two institutions withdrew attention from the home as a source of education and unconsciously prevented its development as an educational force. The great revival work of the first half of the last century and the tendency of the general work of the churches had the same effect. It was a century of the device and use of societies of the communal form and not one that attended directly to the home.

Then followed the temperance reformation, based on the rescue of persons one by one by the individual pledge, the anti-slavery reform founded on the rights of the individual, and the woman's rights movement, which was another application of the same principle. The use of steam power in manufacture, in transportation, and in printing, the invention of the uses of electricity, and the great migration to the west in this period all aided the movement of forces making for individualism and supporting it. America has felt the force of this movement beyond any other country, both for good and for evil. The United States have been the very centre of this stream of modern civilization. The problem is, therefore, more acute here than anywhere else. The subject is a most serious one. What has been done towards its treatment?
The Civil War marked a turn in our political conceptions. It changed us from a federation to a nation. This introduced to the popular mind the political idea of a status, or perhaps that of organic relations instead of a social relation of mere contract. Horace Bushnell had still earlier taught the principle of organism to the churches of his faith, though little heed was given to its wide applications. Sir Henry S. Maine of the historical school and Bachofen of the evolutionary, both in the same year—1861—pointed out the significance of the family to the student of society. Then came the work of Spencer—begun much earlier—and that of Morgan, Lubbock, McLennan, Hearn, Lyall, Fustel de Coulanges, Starcke, Westermarck, and others on the Continent of Europe, less accessible to English readers. All these dealt more or less directly with the family but in ancient or early types of society. Still there was no study of the family in any of our higher educational institutions. There was no book on the family in the English language prior to 1880. Probably there were few with that title in any language.

But within the last twenty-five years a great change has been going on in the literature of the subject. Bodio in Italy, Bertillon in France published their pamphlets on statistics of divorce. In 1889 our government issued its great report on statistics of marriage and divorce in this country and Europe; and later the British House of Lords published a collection, though a much less extensive one. Germany, France, England, Australia, Japan, and two or three more American states have begun to collect and publish this class of statistics annually. We are now able to study the subject statistically with some completeness.

Within the last twenty years the laws of many of our states have been amended for the better. New York has practically abolished its old so-called common-law marriage. The marriage of defective persons has been forbidden in several states. The systems of marriage licenses have been improved so as to check improper marriages, and the marriage of minors better regulated. Many states have provided for the more accurate record and return of marriages. Six states have raised the term of residence before a divorce can be sought in their courts from ninety days, and six months, to one year, and Congress has made this term the law for all the territories. One state—Delaware—now forbids divorce to all non-residents unless the cause for which divorce is sought is also a statutory cause in the state of former residence. Limited divorce has been provided in three more states. Stricter provisions regarding notice, the abolition of the notorious "omnibus" clause in nearly the last of the states where it existed, the reduction of the grounds for divorce from four to one in the District of Columbia, the prohibition of legislative divorces in Delaware—the only state where this practice lingered—
the restriction of the remarriage of the defendant or of both parties in fourteen states, and the prohibition of the advertising of divorce business in six, are some of the features of the divorce legislation of the last twenty-five years.

Meanwhile Congress has, as already intimated, made the term of residence before a divorce can be sought one year for all the territories and for the District of Columbia, and thirty or more states have created commissions to secure uniformity of law on these and other subjects of common concern. France enacted a new divorce law in 1884, and an imperial law uniform for all the Empire went into operation in Germany in 1901. New South Wales greatly modified its divorce law a few years ago, and now the new constitution of Australia provides for a uniform law throughout the federation. Japan has for the first time brought her people under the control of public law in respect to marriage and divorce, having established a marriage and divorce code very much like the Familienrecht of Germany. The age of consent — so-called — has been raised in many states of this country.

An important educational work relating to the family has begun within the last twenty years. Twenty-five years ago there was no study of the family in any of our educational institutions. Indeed, there was not then a single course of lectures given on the subject anywhere in the entire country. Now such courses of lectures or of study are frequent. Perhaps it may already be said that the higher educational institution that does nothing with the family has become the exception rather than the rule. The colleges for women have opened this important line of study to their students. And the study is taking on more practical form in what is now known as domestic science, but which, as pursued, is confined pretty closely to the study of housekeeping in its practical aspects, but along scientific lines. Domestic science has also become a department in some of our best secondary schools and is rapidly growing in public favor. There has been, too, a marked increase of attention to the home in the periodical press. Departments or pages for the home have taken the place of the old single column and are of a much more scientific character and more valuable as a whole.

I am speaking of the United States. Perhaps more has been done in parts of Europe. Within the last twenty-five years attention has been given in new ways to the practical value of the home in a number of directions, that is full of promise for the future. Our American churches, in their large use of the voluntary principle of organization, have had unusual opportunities for experiment, which some of them have used to advantage. They have developed a great number of small societies within the local churches for doing work by collections of individuals in groups of a portion of their adherents.
These have grown so that it is not uncommon to find a dozen of these little societies within a single church with a congregation of three hundred people. An incidental evil of this movement has been the concentration of attention and effort on collections of people in some central place of assembly to the neglect of the neighborhood and the home as centres of work.

But perception of this incidental evil has led to the invention of the Home Department of the Sunday-school. This provides for the use of the home as a place of Bible study for those who cannot or will not attend at the place of public assembly. Its practical value in additions to the Sunday-school — already numbering 400,000 — has won for it great favor. But its higher aim of showing that a great gain comes to the church when it brings the dormant forces of the home into activity is its best credential.

Interest has been awakened in the home as a factor in public school education. Under the lead of our National Superintendent of Education our people are beginning to see that there is more than one social institution at work in education; that, as he puts it, the great educational factors are the school, the church, the home, and the vocation; and the problem is to get each of these to do its share in the common task, and that in intelligent coöperation with each other. While the public school has as yet nothing like the Home Department of the Sunday-school, unless it be its required home study, it is having more aid than formerly in progressive communities from parental associations. It has already in some degree the benefit of the conviction that educational work constantly goes on in the life of the home and in the activities that engage the child outside the school-room. There is, too, it can hardly be doubted, a deeper sense of the fact that the educational processes of the adult in daily life are not essentially unlike those of the school-room and that there is more real unity between the study of the child at school and that of the parent at his work than we once thought. This is giving an educational importance to the home that is slowly telling for its good as well as for the good of parent and child.¹

In philanthropy we may note a steadily growing recognition of the place of the home in social reform. In Massachusetts and perhaps elsewhere, the charitable institution where large numbers of children have been gathered for care has given place to the single home. For it has been found that the average home available for the care of destitute children is a more natural, and, therefore, a better place, for the training of a child than the artificial life of a great caravansary. Poor relief is abandoning its former habit of reliance on the almshouse and the gift of money. It now seeks to keep the family

¹ As this goes to press two educational experts tell me that the proper connection of the home with the school and the discovery of the educational function of the home is now, in their opinion, the most urgent of educational problems.
together and to put the home on its own feet and lead it to self-support. The use of the social settlement in our cities tends strongly in the same direction. Indeed, it is almost a first principle of all expert charitable work now to make respect for the home and all possible use of its resources a cardinal principle of all philanthropic effort. The vigorous attack on the tenement-house problem proceeds on the assumption that the single home is the goal of its efforts and is already doing much to demonstrate the social and moral value of the home. Those who are dealing with the criminal are more and more impressed with the need of a better home life as the greatest single aid to the relief of society from the burdens of crime, and the surest protection against the beginnings of a criminal career. And the students of the evils of intemperance and licentiousness have of late come to see that the home, in its moral training, its cooking, and social activities, is, after all, one of the most important objects of their concern. Some go so far as to say that it is the most important of all. Something has been done to meet the evils of sexual vice. The more noticeable of these efforts are those of the Woman's Christian Temperance Union and the report of the Committee of Fifteen in New York.

I think a careful study of the conditions in these several directions can hardly fail to convince the thoughtful student that, with all the apparent evils of an excessive individualism, there has been slowly gathering within the last quarter of a century the forces of a strong movement in the direction of a better understanding and a better use of the home. I am speaking, let it be noted, of the excesses of individualism and am not forgetful of its invaluable contributions to social progress. Beneath all is a growing sense of the importance of those social relations that lie back of individual agreements and individual interests. The conviction that life is a unity and that this unity implies what may properly be called an organism is growing. And we are beginning to perceive that what is true of society as a whole may be true of its constitutional and characteristic institutions.

Such in brief outline is the present condition of the problem of the family under the treatment it has received in the last twenty years or so. From this survey it is not difficult to learn something of the work immediately before us. This work is both practical and scientific. Let us look first at the practical phases of it.

It is obvious that the experimental work of our state legislation should go on. Our political system has the great advantage for a democracy, with all its peculiar disadvantages, of enabling one or more states to make experiments for the benefit of the rest without involving the whole country in their risk. The summary of the legislation on marriage and divorce already given illustrates this. We have the results of these independent experiments and can see in
them a tendency towards a common system of family law. Now that we have Dr. Howard's history of the entire legislation of the country from the earliest times, comparative study will undoubtedly greatly increase this tendency towards uniformity. Our whole course will be more intelligently taken.

The work of the State Commissions on Uniform Laws on our marriage and divorce laws, and on the other subjects assigned to them, will probably promote this object. There are now, or have been, thirty-five states and territories engaged in this work. If Congress could appoint a commission on the part of the general government to coöperate with the state commissions and also provide a moderate sum of money for the necessary expenses of the work, which is now done by men who serve without pay, progress would be greatly facilitated.¹

The proposal for an amendment of the Constitution of the United States presents so many difficulties that it has been laid aside, at least until the commissions have time to show what they can do and what the elements of a good uniform law are. It is apparently impossible to get three fourths of the states to agree to any transfer of power from the states to the general government. And it is coming to be understood that the attempt to prescribe by an amendment a uniform system of marriage and divorce law, to be administered by the states, would expose the law to those risks that have defeated the object of the amendments adopted at the close of the Civil War. Then, should marriage and divorce be brought under the jurisdiction of the general government and its courts, what about the other branches of family law? Would the laws affecting inheritance and the care of children have to come under the same class of courts, whether state or federal? Or may these difficulties be surmounted? Such are some of the questions to be answered.

The possibility of working all our laws touching the family in any way into a consistent system of family law, such as I understand the Familienrecht of Germany to be, is also a part of the subject that should receive due consideration. And the growing intimacy of the nations may lead to some efforts at international uniformity.

A peculiarity of the political attitude in this country towards the family should not be overlooked. In Great Britain the family has a marked place in the political system of the country. The Crown depends on the family. One branch of Parliament is made up in the main of those whose position depends on the family relationship. And the British family is further protected by the right of primogeniture. The family in this way is wrought into the very texture of

¹ Under the lead of Pennsylvania the official delegates of thirty-nine states met in Washington in February, 1906, and agreed on seventeen resolutions as a basis for a uniform divorce law. A special committee is to report a proposed code, incorporating the ideas of these resolutions, at a later meeting.
THE PROBLEM OF THE FAMILY

the British constitution. The conserving influence of this system must be very considerable. But in the United States the family has no such constitutional position. It has no place either in the constitution of the United States or in the constitutions of the states themselves. We are as democratic in respect to the family as we are regarding the individual. With us the legal protection of the family is unsupported by any political recognition of it. And this difference is characteristic of most European countries. We are marked by a democracy of the family as clearly as we are by a democracy of the individual. And this imposes on us the disadvantages as well as the advantages of our democracy. I do not think this point has received the serious attention it deserves if, indeed, it has been noticed at all. Certainly this condition would seem to imply that, lacking the advantage of political recognition, the American family should receive unusual care in other ways to insure its integrity and social effectiveness.

The place of the family in the practical problems of economics and philanthropy will call for much more attention than it has been receiving. It is singular that, though the very word economics means the law of the house, yet the modern science, until within a very recent period, has largely neglected to consider the home as a very serious factor in the science. It is becoming to be understood now, however, that for the mass of mankind the home supplies by far the greater part of the motives for industry and for the accumulation of capital. The home, too, has a great deal to do with the efficiency of both labor and capital. For its training does much to supply those qualities of mind as well as those habits of industry which determine the value of both labor and capital. But the attention of those interested in the problems of capital and labor has not been sufficiently concentrated on this economic value of the home. The business need of an intelligent and advancing home life should have even more attention than it has been getting. The mere search for a laborer of simply industrial efficiency needs to be accompanied by more attention to those influences that make him valuable. Our entire people ought to see more clearly that they cannot afford to convert all the women and children of a family into wage-earners while they reduce thereby the home to a mere place for feeding and sleeping. The rights of the home to its own highest development must not be sacrificed.

The problem of the housing of the poorer classes should be the subject of much further care and experiment. The provision of a home for a family having an income of at least eight or nine hundred dollars in our largest cities is perhaps in the way of easy solution. But there still remains the more difficult problem of securing a wholesome tenement for the family with a smaller income, or else of
raising the income to meet the need. And then there is the condition of
the hundreds of thousands, if not of millions, of people who are
living outside the cities in houses of one or two rooms, whose condi-
tions are of the worst, but whose scattered situation or good air keeps
them from attracting attention to their unwholesome character.

The relation of the home to poverty, to pauperism, to crime, to
intemperance and to licentiousness needs far more attention than we
have yet given to it. Those who work in these fields of philanthropy
are increasingly sensible of the connection of their problems with the
home. But this is not true of our people as a whole. Nor will the
people perceive the connection until it has some concrete demonstra-
tion. More statistical work, therefore, should be done in this
direction. But the old method of studying a single cause of a social
evil at a time, like crime or intemperance, should be abandoned
generally, as it now is by some few, who are expert in the subject, as
unsound. Its results are misleading and have done much to make
progress in social improvement slow. For every social effect, like a
crime or a vice, is the result of more than one cause. And it is only
as we analyze the conditions that meet us and try to recognize and
measure the several contributing causes to a given social effect that
we can reach conclusions of much value. The beginnings made in
the last few years in a sounder method of statistical study need to be
followed up. When this is done we shall have a better appreciation
of the influence of the home for good or for evil in respect to the
defective and delinquent classes of society.

More attention is undoubtedly to be given in the early future to
the place of the family in education and in religion. I think this the
most important direction for our practical work for the home to take.
I say this both for the intrinsic value of the home in education and
religion and because of the strong tendency away from the home
that has been going on in both these fields the last hundred years,
incidental to the growth of the public and Sunday-school systems,
and of the large use that has been made of societies within the local
church, which have either taken over to themselves the natural
work of the home or have turned away attention from its develop-
ment. The Sunday-school and the numerous societies for the training
or activities of the young have absorbed the thought and care of
pastors and churches so much that the home has not received its
share of attention. The home has no such array of organizations,
conventions, literature, and study to show as we have for our religious
and secular schools. The Home Department of the Sunday-school
is the only invention of any importance that has been made in the last
hundred years in the interests of the home as a religious force.

But the growing perception that education is the result of several
important educational agencies, that the home, the ch
vocation, and the library, together with the school, make up the great educational force of society and that a sound educational system must give due place to all of them, carefully adjusting them to each other, will soon make a careful study of all the field a necessity. The growing conception of the interorganism nature of all social problems will press this on us more and more. With it will, of course, come a much greater attention to the home as an educational factor of the greatest importance, both in the work of the church and the public school. The plea that the home is negligent or incompetent and that for this reason the church and school must do its neglected work, will be met under a sense of obligation to do something to make it competent and get it to attend to its own part of the common work. One of the greatest opportunities of the church and the school lies just here.

These are practical needs. But back of them all lies the need of much scientific study. Anything like an adequate science of the family is yet to be created, though considerable has been done in the last twenty years. The early history of the family has been pretty well explored in connection with the study of the evolution of society. And the monumental work of Dr. Howard just published on the History of Matrimonial Institutions, a work of wonderfully complete survey and much of it a contribution in an unexplored field, has laid every scholar under the greatest obligations. But there is a large unoccupied territory remaining to be entered or more fully explored. Dr. Howard's work, great as it is, concentrates attention on marriage and divorce — the beginning and the premature end of the family. The history of the modern family as a whole, as he well knows, remains to be written. Its place in the history of the Christian Church needs to be studied. It is a singular fact that ecclesiastical literature is singularly barren on this subject. All the great questions of the family — marriage, divorce, chastity, celibacy, and the like — have been much discussed, but very seldom has the family as a whole been distinctly taken into the consideration. These facts need to be brought out and their reasons set forth. The story of the family in the history of law, of politics, of education, of economics, almost needs discovery and relation. The statistical study of marriage and divorce, which was well begun in our Government Report of 1889, needs to be, and it is hoped will soon be brought down to date.¹ The number of American states and foreign countries that collect annually their statistics of marriage and divorce should be increased, so that this world-wide movement can be studied comparatively and be treated intelligently. Special investigations should be made here and there into the causes of the great increase of divorces, and perhaps

¹Congress has since made provision for this and the supplementary report ordered may be ready in 1907.
some effort can be made to determine the extent of licentiousness. The decline of the birth-rate should receive careful attention. The determination of the classes among which the birth-rate is declining is very important. For if it is greatest among those best fitted by their intelligence and pecuniary condition to rear large families it becomes a far more serious problem than if it be found chiefly among the ignorant and the poor. The difficult but most important subject of sex merits scientific treatment.

Still farther and most pressing of all is the need of the most thorough investigation of the nature of the family and the home into which it grows, and its actual place in the human society of to-day and the place it should have. At present we are acting blindly and by rule of thumb. We rarely get beyond some conventional remarks and speak of the family as the "unit of society." It would puzzle most who use that phrase to tell what it means, even in their own thought of it. We need to ask ourselves, What is the family? What is the home? What is its true composition? What is its place in society? What are its functions? And what does it need from the point of view of the highest scientific consideration? What are the scientific defenses of monogamy as against polygamy on the one hand and free love on the other? What are the sound scientific reasons against easy divorce? How far and in what sense is marriage a contract? Is it a contract of such a nature as to permit of the remedies applied to contracts in business relations? Or is it a contract that establishes a status by which the parties are to abide? Is this status creative morally, and perhaps politically, of a new unity that is essentially an organic one? If so, may this unity be in some sense a moral personality, such as some have ascribed to the state? How far can the American people admit the contract theory in their treatment of the family after having rejected it as the political doctrine of the state?

Then in the flux of social conditions which marks our times nothing is more important than to have some sound basis of action to guide us. We must ask ourselves scientifically, for we shall have to do it practically, where are we to place the home in our work in religion, in education, in economics, in politics, and in social reform. Does the history and constitution of society point to any clear ideas, by which we may hope to guide ourselves in the readjustments that are going on?

Fundamentally these are problems for the sociologist. If the family, or rather the home, is in any considerable degree to social science what the atom is in physics and the cell is in biology, it is almost inevitable that social science must follow the method of those

\[1\] On these last points the reader may consult my paper on "The Theory of the Marriage Tie," in the Andover Review of November-December, 1893.
sciences so far at least as to concentrate attention on its study and
discover that the home contains within it the great secrets of all the
social sciences. Indeed, if this be true, the problems of the several
social sciences themselves depend on this work for the home. Es-
pecially is it true of the problems of government, economics, religion,
and pedagogy, that they all need a scientific knowledge of the home
as an indispensable condition of their solution.

Take certain problems in religious organization for an illustration.
The churches of the simpler type of organization, those of the inde-
pendent polity especially and those closely approaching it, are facing
the problem of reducing their heterogeneous collection of societies and
committees to order. For a century these internal organizations of
the communal type have been growing up until the distraction and
overlapping of their work have led to confusion and waste, and the
energies of pastors are scattered in so many directions that they can
do almost nothing at all thoroughly. The pastor is the one man and
the church is the one institution in the community that have profited
least by the modern method of specialization of work and the organ-
ization of the corporation that brings specialization about. As has
already been pointed out, the absorption of the ecclesiastical mind
on the development of communal forms of association in the minor
societies has led to neglect of the family as an agency of the greatest
importance to the church. And the church is in need of the aid of
sociological study. Its problems of polity are at bottom sociological
problems and demand sociological treatment. The historical and
comparative methods have an inviting field in the study of the struc-
ture and function of our social institutions as they are to-day. The
church, for example, needs to see itself, its structure, and working in
comparison with the town, the school, and the shop or other industry.
The church needs to see how it has within it all the essentials of the
municipal problem, and that the solution of the two problems — the
ecclesiastical and the municipal — must go on together.  

Two forms of social institutions need study above all others.
These are the domestic and the communal — what are very nearly
the cell and the tissue of modern society. Both have received much
attention in their archaic forms. The early village community has
been pretty thoroughly exploited by the students of primitive
society. So, too, has the early history of the family. But we
have, somewhat prematurely I must think, jumped the next
proper step and turned to the wider problems of race and the like,
instead of mastering the present constitution of society, especially
in the domestic and communal forms of to-day, in a scientific way.

1 The insurance scandals have, since the above was written, greatly intensi-
ified interest in the problems of public service corporations and subsidiary organ-
izations. But we have yet to see that some of our churches are not lacking in
either of these forms of social organization, with possibly similar dangers.
We do not understand the structure of our society of to-day and the way in which it has grown out of the past. We do not see that our corporations, our churches, our schools as well as our municipal organizations, are the outgrowth of communal institutions of long ago and that the history of the modern home is closely interwoven with their rise and development. We do not see that municipal reform is closely allied with ecclesiastical reform and with corporate reform in general.

Here we must look to our universities for the original work that needs to be done in what may properly be called American sociology. The field for original work and for contributions to social science here, as well as for practical usefulness, is an open one and to my mind very attractive. Let us hope that it will soon be entered with enthusiasm. Some of us recall the great value of a little book on zoölogy by Agassiz and Gould that was put into the hands of college students forty or fifty years ago. How its classification and grouping of animal life stirred our imagination and opened to our boyish minds in an intelligent way the world it described! How it disclosed to us the value of the comparative method! And we remember the similar work that botanical science did for us in that day. Since those days other men have climbed on the shoulders of Agassiz and his co-workers and have seen farther and clearer. But the method remains and is continually winning new fields. But why should we not soon have a similar stimulating work done in social institutions? When it is done we shall have a different story of progress in the knowledge and treatment of the family than the one we tell to-day.

SHORT PAPER

Dr. Frank Sewall, of Washington, D. C., presented a short paper to this Section on "The Civic Ideal in the Family."
SECTION B—THE RURAL COMMUNITY
SECTION B — THE RURAL COMMUNITY

(Hall 5, September 21, 3 p.m.)

CHAIRMAN: Hon. Aaron Jones, Master of National Grange, South Bend, Indiana.

SPEAKERS: Professor Max Weber, University of Heidelberg.
President Kenyon L. Butterfield, Rhode Island State Agricultural College.
SECRETARY: Professor William Hill, University of Chicago.

THE RELATIONS OF THE RURAL COMMUNITY TO OTHER BRANCHES OF SOCIAL SCIENCE

(Translated by Professor Charles W. Seidenadel, Ph. D., University of Chicago)

BY MAX WEBER

[Max Weber, Regular Honorary Professor, University of Heidelberg, b. Erfurt, Germany, April 4, 1864. Dr. juris. Berlin, 1899. Assessor, Berlin, 1890; Privat-docent, University of Berlin, 1892; Special Professor of Commercial Law, ibid. 1893; Regular Professor of Political Economy, University of Freiburg, 1894; of Heidelberg, 1897; Regular Honorary Professor, Heidelberg, 1903. Author of History of Commercial Societies; The Condition of Agriculture in Germany, and numerous articles in commercial and scientific journals. Editor of Archiv für Sozialwissenschaft.]

Your committee has invited me to speak on "rural community," which I can understand only in the sense of "rural society," on account of the opposition of this society to the city and to industry as other topics of your programme. Your wish cannot possibly be fulfilled if taken in its literal sense. The social constitution of rural districts is the most individual and most connected with historical development of all social communities. It would not be reasonable to speak collectively on the rural conditions of Russia, Ireland, Sicily, Hungary, and the Black Belt. But even if I confine myself to the districts with developed capitalistic culture, it is scarcely possible to treat the subject from one common point of view. For a rural society, separate from the urban social community, does not exist at the present time in a great part of the modern civilized world. It does not exist in England any more, except, perhaps, in the thoughts of dreamers. The constant proprietor of the soil, the landlord, is not an agriculturist but a lessor; the temporary owner of the estate, the tenant or lessee, is an undertaker, a capitalist like others. The laborers are partly migrating laborers of the season, and the rest are journeymen of exactly the same class as other proletarians. All are joined together for a certain time and then are scattered again. If
there is a specific rural social problem it is only this: Whether and how the no longer existing rural community or society can arise anew so as to be strong and enduring.

But also in the United States, at least in the vast regions producing cereals, there does not exist now what might be called "rural society." The old New England town, the Mexican village, and the old slave plantation do not determine any longer the physiognomy of the country. And the peculiar conditions of the first settlements in the primeval forests and on the prairies have disappeared. The American farmer is an undertaker like others. Certainly there are numerous farmers' problems, mostly of a technical character or pertaining to the politics of communication, which have played their rôle in politics and have been excellently discussed by American scholars.

But there exists not yet any specific rural social problem. This is not the case since the abolition of slavery and the solution of the question, how the immense area of settlement which was in the hands of the Union have been disposed of. The present difficult social problems of the South are also in the rural districts essentially eth- nical and not economical. You cannot establish, on the basis of questions concerning irrigation, railroad-tariff, homestead laws, etc., however important these matters are, a theory of rural community as a characteristic social formation; this may become different in the future. But if anything is characteristic in the rural conditions of the great wheat-producing states of America, it is—to speak in general terms—the absolute individualism of the farmers' economies, the quality of the farmer as a mere business man. This is quite different on the European Continent. It will, therefore, probably be better to explain briefly in what respect and for what reason it is different. The difference is caused by the specific effects of capitalism on the soil of old civilized countries and the much denser population of these countries. If a nation, as the German, supports its inhab- itants, whose number is but little smaller than the white population of the United States, in a space smaller in size than the State of Texas, if it has founded and is determined to maintain its political position and the importance of its culture for the world upon this narrow, limited basis, the manner of the distribution of the soil gains determinative importance for the differentiation of the society and all economical and political conditions of the country. In conse- quence of the close congestion of the inhabitants and the lower valuation of the bare working forces the possibility of quickly acquir- ing estate which has not been inherited is limited. Thus social differentiation is necessarily fixed—a fate which also your country approaches. This increases the power of historical tradition, which is naturally the greatest in agricultural production, for which the
so-called "law of the decreasing production of the soil," the stronger bondage by the natural limits and conditions of production, the more constant limitation of quality and quantity of the means of production, diminish the importance of technical revolutions. In spite of technical progress production can be revolutionized least by purely rational division of labor and concentration of labor, acceleration of the change of capital, and substitution of the organic parts of raw material and working forces by inorganic raw materials and mechanical means of labor. This inevitably predominating power of tradition in agriculture creates and maintains, on the European Continent, those types of rural population which do not exist in a new country, as the United States; to these types belongs first the European peasant.

This peasant is totally different from the farmer in England or in America. The English farmer is, to-day, a sometimes quite remarkable undertaker and producer for the market; almost always he has rented the estate. The American farmer is an agriculturist who has mostly acquired, by purchase or as the first settler, the soil as his property; sometimes he has rented it. He produces for the market—the market is older than the producer here. The European peasant of the old type was a man who had, in most instances, inherited the soil and who produced mostly for his own wants. The market in Europe is younger than the producer. Of course, for many years the peasant sold the superfluous products and, though he spun and wove, could not satisfy his wants by his own work. But he did not produce to gain profit, like a business man, for the past two thousand years had not trained him to this. Up to the time of the French Revolution the European peasant was only considered as a means for the purpose of supporting certain ruling classes. In the first place his duty was to provide, as cheaply as possible, the neighbor-town with food. The city prohibited, as far as possible, rural trade and the exportation of cereals as long as its citizens were not provided. Thus matters remained up to the end of the eighteenth century; for the artificial maintenance of the cities at the expense of the country was also a principle of the princes who wanted to have money in their countries and large intakes from the taxes. Moreover, the peasant was doomed to support, by his services and by paying taxes, the proprietor of the land who possessed the superior ownership of his land and quite often also the right of the peasant's body. This remained so up to the revolutions of 1789 and 1848. Another of the peasant's duties was to pay to his political lord the taxes for his estate—from which the knight was exempt—and to supply the armies with recruits, from which the cities were exempt. This remained so until the tax-privileges were abolished and the service in the army became the duty of every one, in the nineteenth century.
Finally, the peasant was dependent upon the rural productive community into which the half-communistic settlement had placed him two thousand years ago. He could not manage as he wanted, but as the primeval rotation of crops prescribed. This remained so up to the dissolution of these half-communistic bonds. But also after the abolition of all this legal dependency the peasant could not become a rationally producing little agriculturist as, for instance, the American farmer. Together with the village and its characteristic contrast to the individual settlement of the American farmer, numerous relics of ancient communistic conditions of forest, water, pasture, and even arable soil, which united the peasants extraordinarily firm and tied them to the inherited form of husbandry, survived the liberation of the peasants. But to these relics of the past which America has never known, certain factors are added nowadays whose effects also America will one day experience,—the effect of modern capitalism under the conditions of completely settled old civilized countries. The limited territory causes there a specific social estimation of the ownership of land, and the tendency to retain it, by bequest, in the family. The superabundance of labor forces diminishes the desire to save labor by the use of machines. Where now by migration into the cities and foreign countries the working forces become limited and dear, there, on the other hand, the high price of the soil by purchase and hereditary divisions diminish the capital of the buyer. To gain a fortune by agriculture is not possible in Europe nowadays. The time in which this will be possible in the United States is approaching its limit. We will not forget that the modern boiling heat of capitalistic culture is connected with heedless consumption of natural material for which there is no substitute. The supply of coal and ore will still last for future times, which it is difficult to determine at present. The utilization of new forces, farm-land, here will also soon have reached an end; in Europe it no longer exists. The agriculturist can never hope, as husbandman, to gain more than a modest equivalent for his work. He is, in Europe, and also to a great extent in this country, excluded from participating in the great chances of speculative business talent.

The strong blast of modern capitalistic competition rushes, in agriculture, against a conservative opposing current, and it is exactly rising capitalism which, in old civilized countries, increases the counter-current. The use of the soil as investment of capital, and the sinking rate of interest in connection with the traditional social valuation of rural soil, push the price of real estate to such a height that the price of farm-land is always paid partly au fonds perdu, so to say, as entrée, as entrance fee into this social stratum. Thus capitalism causes the increase of the number of idle renters of land by the increase of capital for agricultural operation. Thus peculiar
contrasting effects of capitalism are produced; and these contrasting effects alone make the "flat land" in Europe appear as the support of a separate "rural society." For with the conditions of old civilized countries the differences caused by capitalism assume the character of a cultural contest. Two social tendencies resting upon entirely heterogeneous bases wrestle with each other. The old economic constitution asked: How can I give, on this given soil, work and sustenance to the greatest possible number of men? Capitalism asks: How can I produce as many crops as possible for the market from this given soil with as few men as possible. From the technical economical point of view of capitalism the old rural settlement of the country is, therefore, considered overpopulation. Capitalism produces the crops from the soil in mines, foundries, and machine factories. The past of thousands of years struggles against the invasion of the capitalistic spirit.

This combat assumes, however, partly the form of peaceable transformation. As to certain points of agricultural production the little peasant, if he knows how to free himself from the fetters of tradition, is able to adapt himself to the conditions of the new husbandry. The rising rate of rent in the vicinity of the cities, the rising prices for meat, dairy products, and garden vegetables, the intensive care of the young cattle, which the self-working small farmer can employ, connected with the higher expense for hired men, usually opens very favorable opportunities to the little farmer who works without hired assistance, near wealthy centres of industry. This is the case everywhere, where the process of production is developed in the direction of increasing intensity of labor, not of capital.

The former peasant is transformed here, as we observe in France and southwestern Germany, into a laborer who is in the possession of his means of production and perseveres in this independence, because the intensity and high quality of his work, increased by his private interest in it, and his adaptability of it to the demand of the local market, procures for him an economical superiority, which continues to exist, even where the agriculture on a large scale would preponderate technically.

The great success of the formation of corporations among the small farmers of the Continent must be ascribed to these peculiar advantages which, in certain branches of production, the work of the responsible small agriculturists possesses in opposition to the hired labor of the large farmer. These corporations have proved to be the most influential means of the peasants' education for husbandry. But through these corporations new communities of husbandry are created, which bind the peasants together, and change this way of economic thinking and feeling from the purely individualistic form which the economic struggle for existence in industry assumes under the pres.
sure of competition. This, again, is only possible because the great importance of the natural conditions of production in agriculture, its being bound to place, time, and organic means of work, and their publicity weaken the effectiveness of the individual competition of the farmers among each other. But where those conditions of a specific economic superiority of small farming do not exist, because the importance of self-responsible work as to quality disappears behind that of capital, there the old peasant struggles for his existence as a hireling of capital. It is the high social valuation of the owner of the land that makes him a subject of capital and ties him psychologically to the clod; the loss of the estate means for him degradation in an old civilized country with stronger economic and social differentiation. Not rarely the peasant's struggle for existence becomes the economic selection in favor of the most frugal, i. e., those most lacking culture. For the pressure of agricultural competition is not felt by him who uses his products not as articles of trade, but for his own consumption, sells but little thereof, and can, for this reason, buy but few other products. Thus sometimes a partial retrogression into natural husbandry occurs. Only with the French "system of two children" the peasant can maintain himself, for generations, as a small proprietor in the inherited possession. The obstacles which the peasant meets who wants to become a modern agriculturist urge the separation of the possession from management; the landlord keeps his capital for operation, and he can draw it out from husbandry. Partially the government tries to create a mean between property and lease.

The peasant cannot remain a peasant, and he cannot become a land-owner on account of the high valuation of the land.

It is not yet possible to speak of a real "contest" between capitalisms and the power of historical influence, in this case of growing conflicts between capital and ownership of the soil. It is a process of selection partly, and partly of depravation. Quite different conditions prevail where not only an unorganized multitude of peasants are powerless in the chains of the financial powers of the cities, but where there is an aristocratic stratum above the peasants, which struggles not only for its economic existence, but also for the social standing which the history of centuries has granted this class. This is the case especially where this aristocracy is not tied to the rural districts by pure financial interest, as is the English lord, or only by the interests of recreation and sport, but where its representatives are concerned, as agriculturists, in the economic conflict and are closely connected with the country.

Then the dissolving effects of capitalism are increased. Because ownership of land gives social position, the price of the large estates rises high above the value of their productivity. "Why did
God create him in his wrath?” The answer is: “Rents! Rents! Rents!” says Byron of the English landlord. And, in fact, rents are the economic basis of all aristocracies that need a gentlemanly, workless income for their existence. But exactly because the Prussian “Junker” despises the urban possession of money, capitalism makes him the rent-debtor. A strong, growing tension between city and country results therefrom. The conflict between capitalism and tradition is now tinged politically, for the question arises, if the economic and political power shall definitely pass over into the hands of the urban capitalism, whether the small rural centres of political intelligence with their peculiarly tinged social culture shall decay and the cities, as the only carriers of political, social, and esthetic culture, shall occupy the field of the combat. And this question is identical with the question whether people who were able to live for politics and the state, as the old, economically independent land aristocracy, shall be replaced by the exclusive domination of professional politicians who must live on politics and on the state. In the United States this question has been decided, at any rate for present days, by one of the bloodiest wars of modern times, which ended with the destruction of the aristocratic, social, and political centres of the rural districts. Even in America, with its democratic traditions handed down by Puritanism as an everlasting heirloom, the victory over the planters’ aristocracy was difficult and was gained with great political and social sacrifices. But in countries with old civilization matters are much more complicated. For there the struggle between the power of the historical notions and the pressure of the capitalistic interests summon social forces to battle, as adversaries of civil capitalism, which in the United States were partly unknown, or stood partly on the side of the North.

A few remarks concerning this:

In the countries of old civilization and of limited possibilities of economic expansion money-making and its representatives play necessarily a considerably smaller social rôle than in a country that is still new. The importance of the class of state officials is and must be much greater in Europe than in the United States. The much more complicated social organization makes a host of specially trained officials, employed for lifetime, indispensable in Europe, which will exist in the United States only in a much smaller number even after the movement of civil service reform shall have attained all its aims. The jurist and officer of administration in Germany, in spite of the shorter and more intensive German college education for the university, is about thirty-five years old when his time of preparation and his unsalaried activity is completed and he obtains a salaried office.” Therefore he can come only from wealthy circles. On the other hand, he is trained to unsalaried or low-salaried service, which
can find its reward only in the high social standing of his vocation; thus a character is stamped on him which is far from the interests of money-making and places him on the side of the adversaries of their dominion. If in old civilized countries, as in Germany, the necessity of a strong army arises, which Germany needs to maintain its independence, this means, for the political institutions, the support of an hereditary dynasty. Also the decided follower of democratic institutions — as I am — cannot wish to remove it where it has been preserved. For it is in military states, if not the only, yet the best, historically indorsed form (because it is interested personally in preservation of right and of a legal government), in which the Cæsarian dominion of the sword of military parvenus can be averted, by which France is again and again menaced. Hereditary monarchy — one may judge about it theoretically as one wants to judge — warrants to a state, which is forced to be a military state, the greatest freedom of the citizens — as great as it can be in a monarchy — and so long as the dynasty does not become degenerated, it will have the political support of the majority of the nation. The English Parliament knew very well why it offered Cromwell the crown, and equally well Cromwell’s army knew why it prevented him from accepting it. Such an hereditary, privileged dynasty has a natural affinity with the holders of other social privileges. To these conservative forces belongs in the European countries the church; first the Roman Catholic Church, which, in European countries, even on account of the multitude of its followers, is a power of quite different importance and character that it possesses in Anglo-Saxon countries; also the Lutheran Church. Both churches support the peasant, with his conservative conduct of life, against the dominion of urban rationalistic culture. The rustic movement of corporation stands, to a great extent, under the guidance of clergymen, who are the only ones capable for leadership in the rustic districts. Ecclesiastic, political, and economic points of view are here intermingled. In Belgium the rural corporations are means of the clerical party in the conflict against the socialists; the latter are supported by the consumers’ unions and the productive associations. In Italy almost nobody who does not present his confessional certificate finds credit with certain corporations. Likewise the aristocracy of a country finds strong backing in the church, although the Catholic Church is, in social regard, more democratic nowadays than formerly. The church is pleased with patriarchal conditions of labor because they are of personal human character, contrary to the purely commercial relations which capitalism creates. The church possesses the sentiment that the relation between a lord and a serf, but not the bare commercial conditions created by the labor market, can be developed and penetrated ethically. Deep, historically conditioned contrasts,
which have always separated Catholicism and Lutheranism from Calvinism, strengthen that anti-capitalistic attitude of the European churches.

Finally, in an old civilized country, the "aristocracy of education," the Bildungsaristokratie, as it likes to be called, a strong class of the population without personal interest in economics, views more skeptically and criticises more sharply the triumphal procession of capitalism than can be naturally and justly the case in a country, such, for instance, as the United States.

As soon as intellectual and esthetic education has become a profession, their representatives are bound by an inner affinity to all the carriers of ancient social culture, because also for them that profession cannot and must not be a source of heedless gain. They look distrustfully upon the abolition of traditional conditions of the community and upon the annihilation of all the innumerable ethical and esthetic values which cling to them. They doubt if the dominion of capital would give better, more lasting guaranties to personal liberty and to the development of intellectual, esthetic, and social culture which they represent, than the aristocracy of the past has given. They want to be ruled only by persons whose social culture they consider equivalent to their own; therefore they prefer the dominion of the economically independent aristocracy to the dominion of the professional politician. Thus it happens nowadays in the civilized countries — a peculiar and, in more than one respect, serious fact — that the representatives of the highest interests of culture turn their eyes back, stand with deep antipathy opposed to the inevitable development of capitalism, and refuse to cooperate in the rearing of the structure of the future. Moreover, the disciplined masses of working-men created by capitalism are naturally inclined to unite in a class party, if new districts for settlement are no longer available, and if the working-man is conscious of being forced to remain inevitably a proletarian, as long as he lives, which is bound to come about sooner or later also in this country, or has already come. The progress of capitalism is not hemmed in by this; the working-man's chances to gain political power are insignificant. Yet they weaken the political power of the citizen and strengthen that of the citizen's aristocratic adversaries. The downfall of the German civic liberalism is based upon the joined effectiveness of these motives. Thus in old countries, where such a rural community, aristocratically differentiated, exists, a complex of social and political problems arises. An American cannot understand the importance of agrarian questions upon the European Continent, especially in Germany, yea, even German politics, and must arrive at entirely wrong conclusions if he does not keep before his eyes these great complexes. It is a peculiar combination of motives which is effective in these old countries and
explains its deviation from American conditions. Besides the necessity of strong military preparations, there are essentially two factors: First, something which never existed in the greater part of America, which may be designated as Rückständigkeit, viz., the influence of a gradually disappearing older form of rural social constitution. The second factor, circumstances which have not yet become effective in America, but to which this country, which is so elated by every million of increased population and by every rise of the valuation of the soil, will infallibly be exposed, exactly as Europe has been: the dense population, the high value of the soil, the stronger differentiation of the profession and the peculiar conditions resulting therefrom, under which the rural community of old civilized countries opposes capitalism joined to the influence of great political and social powers which are only known to old countries. Capitalism produces, under these circumstances, even to-day effects in Europe which can be produced in America only in future days.

In consequence of all those influences, European capitalism, at least on the Continent, has a peculiar authoritative stamp which contrasts with the citizen's equality of rights and is usually distinctly felt by Americans. These authoritative tendencies, and that anti-capitalistic sentiment of all those factors of Continental society of which I have spoken, find their social backing in the conflict between the country aristocracy and the urban citizens. But the country aristocracy undergoes, under the influence of capitalism, serious inner transformations which alter completely the character the aristocracy has inherited from the past. I should like to show how this has taken place in the past and how it continues to be carried on in the present, by the example of Germany.

The social constitution of the rural districts in Germany shows sharp contrasts which every one traveling in the country does not fail to observe: the farther toward the west and south, the denser is the rural settlement, the more the small farmers predominate, the more dispersed and various is the culture; the farther toward the east, especially the northeast, the more extended are the fields of cereals, of sugar-beets, and potatoes, the more the gross culture prevails, the more numerous a rural class of journeymen without property stands in opposition to the aristocracy of land-owners. This difference is of great importance.

The class of the rural land-owners of Germany, consisting particularly of noblemen residing in the region east of the Elbe, rules politically the leading German state. The Prussian House of Lords represents this class, and the right of election gives them also a determinative position in the Prussian House of Representatives. It imprints upon the corps of officers of the army their character, as
well as upon the Prussian officials and upon the German diplomacy, which is almost exclusively in the hands of noblemen. The German student adopts their custom of life in the students’ fraternities in universities, and also the civilian “officer of the reserve;” a growing part of all the more highly educated Germans belong to this rank. Their political sympathies and antipathies explain many of the most important presuppositions of German foreign politics. Their obstructionism impedes the progress of the laboring-class; the manufacturers alone would never be sufficiently strong to oppose the working-men under the democratic rights of electing representatives for the German Reichstag. They are the props of protectionism which industry alone would never have been able to accomplish. They support orthodoxy in the state church. Whatever remains and vestiges of authoritative conditions surprise the foreigner—who only sees the exterior side of Germany and has neither the time nor opportunity to enter into the essence of German culture—and cause the erroneous opinions which are circulated in foreign countries concerning Germany, results directly or indirectly from the influence of these classes, as many of the most important contrasts of our interior politics are based upon that difference of the rural social constitution between the east and the west.

The question arises: How can this difference be explained historically; for it has not always existed. Five centuries ago landlordship ruled the social constitution of the rural districts. However various were the conditions of the peasant’s dependency which arose from this, and however complicated the social constitution of the country was, in one point harmony prevailed, in the thirteenth and fourteenth centuries; the usually far extended possessions of the feudal lord were nowhere — also not in the east — connected with gross culture; though the landlord cultivated a part of his estate, this culture was but little larger than peasants’ culture. By far the greater part of his income depended upon the taxes which the peasants contributed. It is one of the most important questions of the German social history, how from this comparatively great uniformity the present strong contrast has arisen.

Exclusive landlordship was dissolved at the beginning of the nineteenth century, partly in consequence of the French Revolution or of the ideas disseminated by it, partly in consequence of the Revolution of 1848; the division of the rights of ownership of land between land-lords and peasants has been abolished, the duties and taxes of the peasants have been removed. The brilliant investigations of Professor G. F. Knapp and his school have shown how decisive, for that kind of agrarian constitution which originated then and still exists, was the question: How was the estate divided, after the dissolution of the manor community, between the former land-
lords and the peasants? In the west and south the soil came, the
greater part, into the hands of the peasants (or remained therein),
but in the east a very large part fell into the hands of the former
masters of the peasant, the Rittergutsbesitzer, who established there
gross cultures with free laborers. But this was only the conse-
quence of the fact that the uniformity of the agrarian constitution
had disappeared before the emancipation of the peasants. The dif-
ference between the west and east was confirmed but not cre-
ated by the same. The difference had existed, in its main points
since the sixteenth century, and meanwhile had constantly grown.
Landlordship had undergone interior changes before its dissolution.
 Everywhere in the east and west the endeavor of the landlords to
increase their intakes was the urging factor. This desire had sprung
up with the invasion of capitalism, the growing wealth of the in-
habitants of cities, the growing possibility of selling agricultural pro-
ducts. The transformations effected in the west and south date
partly back to the thirteenth century, in the east to the fifteenth
century. The ways by which the landlords pursued their aim were
characteristic. In the south and west they remained landlords, i.e.,
they increased the rates of rent, interest, and taxes of the peasants,
but they did not go into rural culture. In the east they became
Gutsherren, cultivating lords; they appropriated parts of the
peasants' land (the legten Bauern, as the saying was), procured
thus a large estate for themselves, became agriculturists, and used
the peasants as serfs to till their own soil. Gross culture existed
there—only to a smaller extent and with labor of serfs—even
before the emancipation of the peasants; but not in the west. What
has caused this difference?

When this question is discussed, vast weight is laid upon the con-
duct of political power; indeed, this power was greatly interested in
the formation of the agrarian constitution. Since the knight was
exempted from paying taxes, the peasant was the only one in the
country who paid them. When standing armies were established, the
peasants furnished the recruits. This, in connection with certain
points of view of commercialism, induced the rising territorial state
to forbid by edicts the Bauernlegen, i.e., the appropriation of the
peasants' land by the lords, hence to protect the existing peasants'
farms. The stronger the ruler of the country was, the better he
succeeded; the mightier the nobility was, the less he succeeded.
According to this the differences of the agrarian constitution in the
east are based, to a great extent, upon these conditions of power.
But in the west and south we find that, in spite of the greatest weak-
ness of a great many states, in spite of the indubitable possibility to
appropriate peasants' land, the landlords do not attempt this at all.
They do not show at all any tendency to deprive the peasant, to
establish a gross culture, and to become agriculturists themselves. And also the important formation of the conditions of the peasants' rights to the soil cannot have been the decisive reason. In the east great numbers of peasants with originally very good rights of possession have disappeared; in the west also those with the most unfavorable rights of possession have been preserved because the landlords did not at all want to remove them.

The decisive question is, therefore: How did it happen that the landlord of the German south and west, although he had ample opportunity of appropriating the peasants' land, did not do this, while the eastern landlord deprived the peasants of their land in spite of the resistance of the power of the state?

This question can be put into a different form. The western landlord did not renounce the utilization of the peasants' land as a source of income when he renounced its appropriation. The difference is only that he used the peasants as taxpayers, while the landlord of the east, by becoming Gutsherr, began to use the peasants as a laboring force. Therefore, the question must be asked: Why there one thing, here another?

As with most historical developments, it is rather improbable that a single reason could be assigned as the exclusive cause of this different conduct of the landlords; for in this case we should chance upon this cause in the sources. Therefore, a long series of single causative factors have been adduced for explanation, especially by Professor von Below in a classical investigation in his work Territorium und Stadt. The question can only be, if the points of view can be augmented, especially from economical considerations. Let us see in which points there was difference between the conditions, in which the eastern and the western landlord were when endeavoring to extort from their peasants more than the traditional taxes.

The establishment of gross operations was facilitated, for the eastern landlords, by the fact that their landlordship as well as patrimonialization of the public powers had grown gradually on the soil of ancient liberty of the people; the east, on the contrary, was a territory of colonization. The patriarchal Slavonian social constitution was the edifice invaded by German clergymen in consequence of their superior education, German merchants and artisans in consequence of their superior technical and commercial skill, German knights in consequence of their superior military technic, and German peasants in consequence of their superior knowledge of agriculture. Moreover, in the time of the conquest of the east, German social constitution, together with the political forces, had been completely feudalized. The social constitution of the east was, from the very beginning, adapted to the social preeminence of the knight, and the German invasion altered this but little. The German peasant,
even under the most favorable conditions of settling, had lost the support given to him, also in the feudal period, by firm traditions, the old mutual protection, the jurisdiction of the community in the Weistümer in the west. The regularly more numerous Slavonian peasantry did not know anything of such traditions. Besides, in the west regularly the parcels of which the estates of the lords consisted, because they had gradually arisen upon originally free land, were intermingled even in single villages; they crossed everywhere the patrimonial rights of the small owners of territory and thus they secured for the peasant, by their variety and mutual conflicts, his toilsome existence; very frequently the peasant was politically, personally, and economically subjected to quite different lords. In the east the combination of lordship and patrimonial rights over a whole village was in the hand of one lord; the formation of a "manor," in the English sense, was regularly facilitated because much more frequently, from the very beginning, but one knight's court had been founded in a village or had originated already from the Slavonian social constitution. And finally there is an important factor, upon which Professor von Below correctly lays special stress: the estate of the knights in the east, though at first small in proportion to the entire territory of a village, was nevertheless usually much larger than was customary in the west. Therefore, the enlargement of the cultivation of his estate was, for the lord, not only much more easy than in the west, but also a much less remote idea. Thus from the very beginning there existed, in the method of the distribution of the land, the first inducement to differentiation between east and west. But this difference of the size of the original estate of the landlord was connected, as to its causes, with differences between the economic conditions of the east and those of the west; even in the Middle Ages considerably different conditions of existence were thus created for the ruling social class.

The west was more densely settled, and, which is decisive in our opinion, local communication, the exchange of goods within and between the smallest local communities, was undoubtedly more developed than in the east. This becomes evident by the fact that the west was so much more densely settled with towns. It is based partly upon the simple historical fact that the culture of the west was, in each respect, older, partly upon a less evident, but important geographical difference, the far greater variety of the agricultural division of the west in comparison with the east. Considered from a purely technical view, the communication on the extended plains of the German east must have met with less impediments than in the much intersected and differentiated territory of the west. But such technical possibilities of communication do not determine the measure of exchange; on the contrary, because, in the west and
south, bottoms, valleys of rivers, plateaux, are intermingled, because climatic and other natural conditions of the production of goods are very noticeably differentiated within narrow districts, the economic inducement to trade, to the development of a relatively intensive communication were so much stronger than on the large plains of the east where the neighboring towns have much more frequently nothing to exchange with each other (as even to-day), because all of them produce the same goods in consequence of the greater uniformity of production caused by their geographical situation. Historical and natural conditions of an intensive local trade were (and still are), for these reasons, more favorable in the west.

It is Professor von Below's merit to have pointed to the fact that, in the Middle Ages, the knighthood of the west was not only not exclusively but not even predominantly founded upon territorial possession. Taxes, toll traverse, rents, and imposts which depend upon a certain amount of local traffic played a rôle. This was undoubtedly much less possible in those days (as at present) in the east. Whoever wanted to live there as a knight must found his existence rather upon the income from his own operation of agriculture. Large organizations for the production of goods and for external commerce, as those of the "German Order," are only a different phase of the same fact; the monotony of Eastern production directed transportation into more distant regions, and the local money economy remained considerably inferior to that of the east, according to all symptoms. If the very uncertain possible estimations are only approximately correct, also the conditions of the peasants' existence in the east and west must have been very different. It is scarcely probable that the lord would have taken up the operation of agriculture with its toil, risk, and the little gentlemanly contact with the mercantile world, if he could have lived as well in the east as in the west on the peasants' taxes, tolls, tithes, and rents. But we may conjecture why it was not equally possible in the east as in the west; for to make it possible, the peasants must be economically able to pay taxes of considerable amount, sufficient for the wants of the landlord; it is by no means evident that the peasants could afford to do this. This would presuppose that the peasant's self-interest in the productivity of his land had reached a certain degree, that he himself had attained a certain amount of economic education. But nothing could and can be substituted for that educating influence which is exerted upon the peasant by an intensive formation of urban communities, by well-developed local communication, by opportunity and inducement to sell rural products in the nearest possible local markets; this great difference may still be seen by comparing the peasant of the plain of Baden with the peasant of the east.
It is not the natural difference of physical and chemical quantities of the soil or difference of the economic talent of the races, but the historically established economic milieu which forms the determinative factor in the difference of the results of peasants' agriculture.

A certain number of towns upon a given area was necessary to inspire the mass of the peasants with at least such a degree of interest in production that the lord was only enabled to draw from them the means necessary for his sustenance, using the peasants as "funds for interest." Where these influences of culture, which cannot be replaced even by the best labor and best will, were lacking, the peasant lacked frequently the possibility and always the incentive to push the income from his land beyond the traditional measure of his own needs.

But if number and area are compared, the cities in the east were much fewer in number than in the west and south. And the development of gross agriculture in the east dates characteristically from an epoch in which not the rise but the decadence of the cities, and a quite noticeable decadence, can be observed. For its surplusage of grain the east was thus directed to its development to an agricultural export territory, with all qualities of such. This direction reached its culmination in our century after the abolition of the English grain duties. On the other hand, several parts of the west needed, even at the end of the Middle Ages, large importations of foodstuffs, especially cattle. The entire contrast is perhaps most evidently expressed by the difference in the prices of almost all agricultural products in the east and west in favor of the latter, which difference was only lately removed in consequence of the hidden premiums of grain exportation which we now have granted for a decade. Even the railroads had somewhat diminished this difference, but left them, in the middle of the last century, still very great. The unreliable condition of German numismatical history, besides many other technical difficulties, prevents us from obtaining a sufficient quantity of reliable data for the Middle Ages, but it seems well-nigh impossible that it has been different in general in that period, in spite of great fluctuations in single instances.

If, therefore, the landlord wanted to make a more intensive use of his peasants, much greater difficulties obstructed in the east his plan to use them as funds for interest, on account of the peasants' traditional lack of development, the weakness of the local markets for rural products, and the smaller intensity of communication. I should like to ascribe to this circumstance a much greater importance — of course only in the form of an hypothesis yet to be proved at the sources — than has been done before, so far as I know: The landlord of the east has selected the method of operating his own agricultural estate, not because the gross operation was technically
more rational,—for this would have been true also for the west,—but because it was, under the historically established conditions, the only possible economic means to obtain a higher income. He became an operating landlord, and the peasant, bound more and more to the soil, became a serf with the duty to give his children to his lord as menials, to furnish his horses and wagons for husbandry, his own working force for all sorts of work of the entire year, while his own land was considered more and more a mere reward for his labor. In spite of the state's opposition the lord constantly expanded the land which he cultivated. When later on the emancipation of the peasants came, it could not, as on a 4th of August in France, cancel, in the German east, the landlords from the agrarian constitution. Not only because an impecuniary state with still undeveloped industry could not easily determine to renounce their gratuitous service in the administration and in the army, but above all, because the decree of the abrogation of the feudal rights there where lord and peasants found themselves in a production community did not decide at all the most important point: the fate of the soil which was considered to be in the possession of the landlord, not of the peasant. To declare it simply to be the peasants' property—as was done later in Russian Poland for political purposes, in order to ruin the Polish nobility—would have annihilated in Prussia some twenty thousand large operated estates, the only ones which the country then possessed; it would not only have obliterated a class of renters, as it did in France. Therefore only a part of the peasants, the larger estates, and only a part of their lands were saved from being encompassed by the landlords, the remainder was appropriated by the latter.

The east continued to be, and became henceforth more and more, the seat of agricultural capitalism, as industrial capitalism took its seat especially in the west. This development was completed by the Russian frontier, which cut off the rear country, for a gross industry which might arise in the east now placed its development closely behind that frontier to Russian Poland.

The Prussian Rittergutsbesitzer of the east, who was originated under these conditions, was a social product, very different from the English landlord. The English landlord is generally a lessor of land, not an agriculturist. His tributaries are not peasants, as in the Middle Ages, but capitalistic enterprises for cultivation of the land. He is the monopolist of the soil. The estate in his possession is kept in the family by the artful juristic mechanism of "entails," which arose, like the modern capitalistic monopolies, in a constant struggle with legislation; it is withheld from communication, obligation, division by bequest. The landlord stands outside of the rural productive community. Occasionally he assists his lessee with
loans of capital, but he enjoys an intangible existence as a lessor. As a social product he is a genuine child of capitalism, arisen under the pressure of those above-mentioned contrasting effects which capitalism produces in completely populated countries with an aristocratic social constitution. The "landed aristocrat" wishes to live as a gentleman at leisure. His normal striving aims at rents, not at profit. The technically sufficient measure of the estate and the measure of the property necessary for his maintenance are by no means in harmony with each other; more intensive operation, in German places, demands, for instance, the diminution of property; the rising luxury of the aristocratic class requires its enlargement, especially as the prices of products fall. Each purchase, each compensation of co-heirs, burdens the estate with heavy debts, while the operation of the estate becomes the more sensitive to fluctuating conjunctures the larger and more intensive it is. Only in an agrarian constitution, as the English, this development is abolished, which, together with the increased density of population and rising valuation of the land, endangers everywhere, nowadays, the existence of large rational agriculture, instead of the state's land monopoly which many reformers demand. The opposite extreme has been carried out — private monopoly of the land. But the private monopoly of the land produces, in certain economic respects, effects similar to those of the state's monopoly; it withdraws the soil from communication and separates operation from possession. Either may now go its own way. The interest of the capitalistic farmer striving after the undertaker's profit and the land-owner's interest in the rents, striving after the preservation of an inherited social position, run side by side without being tied to each other, as is the case with the agricultural operation of the free owners. The practical significance of this is that the elasticity of husbandry against agricultural crises is powerfully increased. The shock falls upon two strong shoulders, the land monopolist and the capitalistic landlord. The crisis results in lowering the rent, probably in the change of the lessee, in a gradual diminution of the cultivated soil, but not in a sudden destruction of many agricultural estates nor in any sudden social degradation of many land-owning families.

Quite different are the conditions of the eastern Prussian Junker. He is a rural employer, a man of a thoroughly civilian type, esteemed according to the size of his estate and income; he possesses scarcely more than one and a half to two United States "sections," but by tradition he is incumbered with high life and aristocratic wants. He is usually the free owner of the soil which he cultivates, and which is sold and mortgaged, estimated for bequests, and acquired by compensating the co-heirs; hence it is always burdened anew with running interests. Therefore the owner alone is exposed to the fluctuation of
the market prices; he is involved in all economic and social conflicts, which always menace directly his existence. As long as the exportation of grain to England flourished, he was the strongest supporter of free trade, the fiercest opponent to the young German industry of the west that needed protection; but when the competition of younger and cheaper soils repelled him from the world market and finally attacked him at his own home, he became the most important ally of those manufacturers who, contrary to other important branches of German industry, demanded protection; and joined them in a common struggle against the workmen's demands. For meanwhile capitalism had also gnawed at the social character of the Junker and his laborers. In the first half of the last century the Junker was a rural patriarch. His laborers, the peasants whose land he had formerly appropriated, were by no means proletarians. They received, in consequence of the Junker's impecuniosity, no wages, but a homestead, land, and the right of pasturage for their cows; during harvest-time and for threshing a certain portion of the grain, paid in wheat, etc. Thus they were, on a small scale, agriculturists with a direct interest in their lord's husbandry. But they were expropriated by the rising valuation of the land; their lord withheld pasture and land, kept his grain, and paid them wages instead. Thus the old community of interest was dissolved, the laborers became proletarians. The operation of agriculture became operation of the season, viz., restricted to a few months. The lord hires wandering farm-hands, since the maintenance of unoccupied laborers throughout the year would be too heavy a burden.

The more German industry grew up, in the west, to its present height, the more the population underwent an enormous change; emigration reached its culmination in the German east, where only lords and serfs existed in far extended districts and whence the farm laborers fled from their isolation and patriarchal dependency either across the ocean, to the United States, or into the smoky and dusty but socially more free air of the German factories. On the other hand, the owners of estates import whatever laborers they can get to do their work: Slavonians from beyond the frontier, who, as "cheaper hands," drive out the Germans. The owner of an estate acts to-day as every business man, and he must act thus, but his aristocratic traditions contrast with such action. He would like to be a landlord and must become a commercial undertaker and a civilian. Instead of him other powers endeavor to snatch the rôle of a landlord.

The industrial and commercial capitalists begin to absorb more and more the land. Manufacturers and merchants who have become rich buy the knights' estates, tie their possession to their family by a "feoffment in trust" (or "entails"), and use their estate as means to invade the aristocratic class. The fideicomissum of the
parvenu is one of the characteristic products of capitalism in an old country with aristocratic traditions and a military monarchy. In the German east the same thing takes place now which has been going on in England for centuries until the present conditions were established there and which America will also experience in future days, though only after all free land has been exhausted and after the economic pulsation of the country has slowed down.

For while it is correct to say that the burden of historical tradition does not overwhelm the United States and that the problems originating from the power of tradition do not exist here, yet the effects of the power of capitalism are the stronger and will, sooner or later, further the development of land monopolies. When the land has become sufficiently dear so as to secure a certain rent, when the accumulation of large fortunes has reached a still higher point than to-day, when, at the same time, the possibility of gaining proportionate profits by constant new investments in trade and industry has been diminished so far that the "captains of industry," as has occurred everywhere in the world, begin to strive for hereditary preservation of their possessions instead of new investments that bring both gain and danger, then, indeed, the desire of the capitalistic families to form a "nobility" will arise, probably not in form though in fact. The representatives of capitalism will not content themselves any longer with such harmless play as pedigree studies and the numerous pranks of social exclusiveness which startle so much the foreigner. Only when capital has arrived at this course and begins to monopolize the land to a great extent, will a great rural social question arise in the United States, a question which cannot be cut with the sword, as was the slave question. Industrial monopolies and trusts are institutions of limited duration; the conditions of production undergo changes, and the market does not know any everlasting valuation. Their power lacks also the authoritative character and the political aristocratic mark. Monopolies of the soil create infallibly a political aristocracy.

As far as Germany is concerned, in the east a certain approach to English conditions has begun in consequence of the tendencies of development, while the German southwest shows similarity with France in the social formation of the country. But, in general, the intensive English stock-breeding is not possible in the German east on account of the climate. Therefore capital absorbs only the soil which is most favorable for agriculture. But while the inferior districts in England remain uncultivated as pastures for sheep, in the German east they are settled by small farmers. This process has a peculiar feature, inasmuch as two nations, Germans and Slavonians, struggle with each other economically. The Polish
peasants who have fewer wants than the Germans, seem to gain the upper hand.

While thus under the pressure of conjuncture the frugal Slavonian small farmer gains territory from the German, the advance of culture toward the east, during the Middle Ages, founded upon the superiority of the older and higher culture, has changed completely to the contrary under the dominion of the capitalistic principle of the "cheaper hand." Whether also the United States will have to wrestle with similar problems in the future, nobody can foretell. The diminution of the agricultural operations in the wheat-producing states results, at present, from the growing intensity of the operation and from division of labor. But also the number of negro farms is growing and the migration from the country into the cities. If, thereby, the expansive power of the Anglo-Saxon-German settlement of the rural districts and, besides, the number of children of the old, inborn population are on the wane, and if, at the same time, the enormous immigration of uncivilized elements from eastern Europe grows, also here a rural population might soon arise which could not be assimilated by the historically transmitted culture of this country; this population would change forever the standard of the United States and would gradually form a community of a quite different type from the great creation of the Anglo-Saxon spirit.

For Germany, all fateful questions of our economic and social politics and of our national interests are closely connected with that contrast between the rural constitution of the east and that of the west and with its further development. To discuss here, in a foreign country, the practical problems arising therefrom I should not consider correct. Destiny which has incumbered us with a history of thousands of years, which has placed us in a country with a dense population and an intensive culture, which has forced us to maintain the splendor of our old culture, so to say, in an armed camp within a world bristling with arms, has placed before us these problems. We must match them.

The friendly nation whose guests we are does not yet know such problems; several of them this nation will probably never encounter. It has no old aristocracy; hence there do not exist the tensions caused by the contrast between authoritative tradition and the purely commercial character of modern economic conditions. Rightly it celebrates the purchase of the immense territory in whose centre we are here, as the real historical seal imprinted upon its democratic institutions; without this acquisition, with powerful and warlike neighbors at its side, it would be forced to wear the coat of mail like ourselves, who constantly keep in the drawer of our desks the march order in case of war. But on the other hand, the greater part of the problems for whose solution we are now working will
approach America within but few generations; the way in which they will be solved will determine the character of the future culture of this continent. It was perhaps never before, in history, made so easy for any nation to become a great civilized nation as for the American people. But according to human calculation it is also the last time, as long as the history of mankind shall last, that such conditions for a free and great development will be given, the areas of free soil vanishing now everywhere in the world.

One of my colleagues has quoted here the words of Carlyle: "Thousands of years have passed before thou couldst enter into life, and thousands of years to come wait in silence what thou wilt do with this thy life." I do not know if, as Carlyle believes, the single man can or will place himself, in his actions, upon the sounding-board of this sentiment. But a nation must do so, if its existence in history is to be of lasting value.
THE SOCIAL PROBLEMS OF AMERICAN FARMERS

By Kenyon Leech Butterfield

[Kenyon Leech Butterfield, President of Rhode Island College of Agriculture and Mechanic Arts since 1903, and Professor of Political Economy and Rural Sociology. Since July 1, 1906, President of Massachusetts Agricultural College, b. Lapeer, Michigan, June, 1868. B.S. Michigan Agricultural College; A.M. University of Michigan. Assistant Secretary of Michigan Agricultural College, 1891-92; Editor, Michigan Grange Visitor, 1892-96; Superintendent, Michigan Farmers’ Institutes, 1893-99; Field Agent, Michigan Agricultural College, 1896-99; Instructor in Rural Sociology, University of Michigan, 1902.]

The title of this paper indicates that, for the present purpose, the words “the rural community” have been interpreted to apply chiefly to farmers. Eight millions of our people are classed by the census as “semi-urban.” The village problem is an interesting and important field for social investigation, but we shall discuss only the conditions and needs of farmers.

In America the farm problem has not been adequately studied. So stupendous has been the development of our manufacturing industries, so marvelous the growth of our urban population, so pressing the questions raised by modern city life, that the social and economic interests of the American farmer have, as a rule, received minor consideration. We are impressed with the rise of cities like Chicago, forgetting for the moment that half of the American people still live under rural conditions. We are perplexed by the labor wars that are waged about us, for the time unmindful that one third of the workers of this country make their living immediately from the soil. We are astounded, and perhaps alarmed, at the great centralization of capital, possibly not realizing that the capital invested in agriculture in the United States nearly equals the combined capital invested in the manufacturing and railway industries. But if we pause to consider the scope and nature of the economic and social interests involved, we cannot avoid the conclusion that the farm problem is worthy of serious thought from students of our national welfare.

We are aware that agriculture does not hold the same relative rank among our industries that it did in former years, and that our city population has increased far more rapidly than has our rural population. We do not ignore the fact that urban industries are developing more rapidly than is agriculture, nor deny the seriousness of the actual depletion of rural population, and even of community decadence, in some portions of the Union. But these facts merely add to the importance of the farm question. And it should not be forgotten that there has been a large and constant growth both of our agricultural wealth and of our rural population. During
the last half-century there was a gain of 500 per cent in the value of farm property, while the non-urban population increased 250 per cent. Agriculture has been one of the chief elements of America's industrial greatness; it is still our dominant economic interest, and it will long remain at least a leading industry. The people of the farm have furnished a sturdy citizenship and have been the primary source of much of our best leadership in political, business, and professional life. For an indefinite future a large proportion of the American people will continue to live in a rural environment.

In a thorough discussion of the "social problems of American farmers" it would be desirable first of all to analyze with some detail the general question which we have called the farm problem. Only thus can we understand the social difficulties of the rural community, the significance of the social agencies designed to meet those difficulties, and the real ambitions and needs of the farming class. But time will permit merely a concise, and necessarily a somewhat dogmatic, statement of what the writer believes to be the ultimate farm problem in America. We may perhaps most quickly arrive at the conclusion by the process of elimination.

Current agricultural discussion would lead us to think that the farm problem is largely one of technique. The possibilities of the agricultural industry, in the light of applied science, emphasize the need of the farmer for more complete knowledge of soil and plant and animal, and for increased proficiency in utilizing this knowledge to secure greater production at less cost. This is a fundamental need. It lies at the basis of success in farming. But it is not the farm problem.

Business skill must be added, business methods enforced. The farmer must be not only a more skillful produce-grower, but also a keener produce-seller. But the moment we enter the realm of the market we step outside the individualistic aspect of the problem as embodied in the current doctrine of technical agricultural teaching, and are forced to consider the social aspect as emphasized, first of all, in the economic category of price. Here we find many factors — transportation cost, general market conditions at home and abroad, the status of other industries, and even legislative activities. The farm problem becomes an industrial question, not merely one of technical and business skill. Moreover, the problem is one of a successful industry as a whole, not merely the personal successes of even a respectable number of individual farmers. The farming class must progress as a unit.

But have we yet reached the heart of the question? Is the farm problem one of technique, plus business skill, plus these broad economic considerations? Is it not perfectly possible that agriculture as an industry may remain in a fairly satisfactory condition, and yet the farming class fail to maintain its status in the general social
order? Is it not, for instance, quite within the bounds of probability to imagine a good degree of economic strength in the agricultural industry existing side by side with either a peasant régime or a landlord-and-tenant system? Yet would we expect from either system the same social fruitage that has been harvested from our American yeomanry?

We conclude, then, that the farm problem consists in maintaining upon our farms a class of people who have succeeded in procuring for themselves the highest possible class status, not only in the industrial, but in the political and the social order—a relative status, moreover, that is measured by the demands of American ideals. The farm problem thus connects itself with the whole question of democratic civilization. This is not mere platitude. For we cannot properly judge the significance and the relation of the different industrial activities of our farmers, and especially the value of the various social agencies for rural betterment, except by the standard of class status. It is here that we seem to find the only satisfactory philosophy of rural progress.

We would not for a moment discredit the fundamental importance of movements that have for their purpose the improved technical skill of our farmers, better business management of the farm, and wiser study and control of market conditions. Indeed, we would call attention to the fact that social institutions are absolutely necessary means of securing these essential factors of industrial success. In the solution of the farm problem we must deliberately invoke the influence of quickened means of communication, of cooperation among farmers, of various means of education, and possibly even of religious institutions, to stimulate and direct industrial activity. What needs present emphasis is the fact that there is a definite, real, social end to be held in view as the goal of rural endeavor. The highest possible social status for the farming class is that end.

We may now, as briefly as possible, describe some of the difficulties that lie in the path of the farmers in their ambition to attain greater class efficiency and larger class influence, and some of the means at hand for minimizing the difficulties. A complete discussion of the farm problem should, of course, include thorough consideration of the technical, the business, and the economic questions implied by the struggle for industrial success; for industrial success is prerequisite to the achievement of the greatest social power of the farming class. But we shall consider only the social aspects of the problem.

**Rural Isolation**

Perhaps the one great underlying social difficulty among American farmers is their comparatively isolated mode of life. The farmer's
family is isolated from other families. A small city of perhaps twenty thousand population will contain from four hundred to six hundred families per square mile, whereas a typical agricultural community in a prosperous agricultural state will hardly average more than ten families per square mile. The farming class is isolated from other classes. Farmers, of course, mingle considerably in a business and political way with the men of their trading town and county seat; but, broadly speaking, farmers do not associate freely with people living under urban conditions and possessing other than the rural point of view. It would be venturesome to suggest very definite generalizations with respect to the precise influence of these conditions because, so far as the writer is aware, the psychology of isolation has not been worked out. But two or three conclusions seem to be admissible, and for that matter rather generally accepted.

The well-known conservatism of the farming class is doubtless largely due to class isolation. Habits, ideas, traditions, and ideals have long life in the rural community. Changes come slowly. There is a tendency to tread the well-worn paths. The farmer does not easily keep in touch with rapid modern development, unless the movements or methods directly affect him. Physical agencies which improve social conditions, such as electric lights, telephones, and pavements, come to the city first. The atmosphere of the country speaks peace and quiet. Nature's routine of sunshine and storm, of summer and winter, encourages routine and repetition in the man who works with her.

A complement of this rural conservatism, which at first thought seems a paradox, but which probably grows out of these same conditions of isolation, is the intense radicalism of a rural community when once it breaks away from its moorings. Many farmers are unduly suspicious of others' motives; yet the same people often succumb to the wiles of the charlatan, whether medical or political. Farmers are usually conservative in politics and intensely loyal to party; but the Populist movement indicates the tendency to extremes when the old allegiance is left behind. Old methods of farming may be found alongside ill-considered attempts to raise new crops or to utilize untried machines.

Other effects of rural isolation are seen in a class provincialism that is hard to eradicate, and in the development of minds less alert to seize business advantages and less far-sighted than are developed by the intense industrial life of the town. There is time to brood over wrongs, real and imaginary. Personal prejudices often grow to be rank and coarse-fibered. Neighborhood feuds are not uncommon and are often virulent. Leadership is made difficult and sometimes impossible. It is easy to fall into personal habits that may mark off the farmer from other classes
of similar intelligence, and that bar him from his rightful social place.

It would, however, be distinctly unfair to the farm community if we did not emphasize some of the advantages that grow out of the rural mode of life. Farmers have time to think, and the typical American farmer is a man who has thought much and often deeply. A spirit of sturdy independence is generated, and freedom of will and of action is encouraged. Family life is nowhere so educative as in the country. The whole family coöperates for common ends, and in its individual members are bred the qualities of industry, patience, and perseverance. The manual work of the schools is but a makeshift for the old-fashioned training of the country-grown boy. Country life is an admirable preparation for the modern industrial and professional career.

Nevertheless, rural isolation is a real evil. Present-day living is so distinctively social, progress is so dependent upon social agencies, social development is so rapid, that if the farmer is to keep his status he must be fully in step with the rest of the army. He must secure the social viewpoint. The disadvantages of rural isolation are largely in the realm of the social relations, its advantages mostly on the individual and moral side. Farm life makes a strong individual; it is a serious menace to the achievement of class power.

A cure for isolation sometimes suggested is the gathering of the farmers into villages. This remedy, however, is of doubtful value. In the first place, the scheme is not immediately practicable. About three and one-half billions of dollars are now invested in farm buildings, and it will require some motive more powerful than that inspired by academic logic to transfer, even gradually, this investment to village groups. Moreover, it is possible to dispute the desirability of the remedy. The farm village at best must be a mere hamlet. It can secure for the farmer very few of the urban advantages he may want, except that of permitting closer daily intercourse between families. And it is questionable if the petty society of such a village can compensate for the freedom and purity of rural family life now existing. It may even be asserted with some degree of positiveness that the small village, on the moral and intellectual sides, is distinctly inferior to the isolated farm home.

At the present time rural isolation in America is being overcome by the development of better means of communication among farmers who still live on their farms. So successful are these means of communication proving that we cannot avoid the conclusion that herein lies the remedy. Improved wagon-roads, the rural free mail delivery, the farm telephone, trolley-lines through country districts, are bringing about a positive revolution in country living. They are curing the evils of isolation, without in the slightest degree
robbing the farm of its manifest advantages for family life. The farmers are being welded into a more compact society. They are being nurtured to greater alertness of mind, to greater keenness of observation, and the foundations are being laid for vastly enlarged social activities. The problem now is to extend these advantages to every rural community—in itself a task of huge proportions. If this can be done and isolation can be reduced to a minimum, the solution of all the other rural social problems will become vastly easier.

*Farmers' Organization*

Organization is one of the pressing social problems that American farmers have to face. The importance of the question is intrinsic, because of the general social necessity for coöperation which characterizes modern life. Society is becoming consciously self-directive. The immediate phase of this growing self-direction lies in the attempts of various social groups to organize their powers for group advantage. And if, as seems probable, this group activity is to remain a dominant feature of social progress, even in a fairly coherent society, it is manifest that there will result more or less of competition among groups.

The farming class, if at all ambitious for group influence, can hardly avoid this tendency to organization. Farmers, indeed, more than any other class, need to organize. Their isolation makes thorough organization especially imperative. And the argument for coöperation gains force from the fact that relatively the agricultural population is declining. In the old days farmers ruled because of mere mass. That is no longer possible. The naïve statement that "farmers must organize because other classes are organizing" is really good social philosophy.

In the group competition just referred to there is a tendency for class interests to be put above general social welfare. This is a danger to be avoided in organization, not an argument against it. So the farmers' organization should be guarded, at this point, by adherence to the principle that organization must not only develop class power, but must be so directed as to permit the farmers to lend the full strength of their class to general social progress.

Organization thus becomes a test of class efficiency, and consequently a prerequisite for solving the farm problem. Can the farming class secure and maintain a fairly complete organization? Can it develop efficient leaders? Can it announce, in sound terms, its proposed group policy? Can it lend the group influence to genuine social progress? If so, the organization of farmers becomes a movement of preëminent importance.
Organization, moreover, is a powerful educational force. It arouses discussion of fundamental questions,diffuses knowledge,gives practice in public affairs, trains individuals in executive work, and, in fine, stimulates, as nothing else can, a class which is in special need of social incentive.

Organization is, however, difficult of accomplishment. While it would take us too far afield to discuss the history of farmers’ organizations in America, we may briefly suggest some of the difficulties involved. For forty years the question has been a prominent one among the farmers, and these years have seen the rise and decline of several large associations. There have been apparently two great factors contributing to the downfall of these organizations. The first was a misapprehension, on the part of the farmers, of the feasibility of organizing themselves as a political phalanx; the second, a sentimental belief in the possibilities of business coöperation among farmers, more especially in lines outside their vocation. There is no place for class politics in America. There are some things legislation cannot cure. There are serious limitations to coöperative endeavor. It took many hard experiences for our farmers to learn these truths. But back of all lie some inherent difficulties, as, for instance, the number of people involved, their isolation, sectional interests, ingrained habits of independent action, of individual initiative, of suspicion of others’ motives. There is often lack of perspective and unwillingness to invest in a procedure that does not promise immediate returns. The mere fact of failure has discredited the organization idea. There is lack of leadership; for the farm industry, while it often produces men of strong mind, keen perception, resolute will, does not, as a rule, develop executive capacity for large enterprises.

It is frequently asserted that farmers are the only class that has not organized. This is not strictly true. The difficulties enumerated are real difficulties and have seriously retarded farm organization. But if the progress made is not satisfactory, it is at least encouraging. On the purely business side, over five thousand coöperative societies among American farmers have been reported. In coöperative buying of supplies, coöperative selling of products, and coöperative insurance the volume of transactions reaches large figures. A host of societies of a purely educational nature exists among stock-breeder, fruit-growers, dairymen. It is true that no one general organization of farmers, embracing a large proportion of the class, has as yet been perfected. The nearest approach to it is the Grange, which, contrary to a popular notion, is in a prosperous condition, with a really large influence upon the social, financial, educational, and legislative interests of the farming class. It has had a steady growth during the past ten years, and is a quiet but
powerful factor in rural progress. The Grange is, perhaps, too conservative in its administrative policy. It has not at least succeeded in converting to its fold the farmers of the great Mississippi Valley. But it has workable machinery, it disavows partisan politics and selfish class interests, and it subordinates financial benefits, while emphasizing educational and broadly political advantages. It seems fair to interpret the principles of the Grange as wholly in line with the premise of this paper, that the farmers need to preserve their status, politically, industrially, and socially, and that organization is one of the fundamental methods they must use. The Grange, therefore, deserves to succeed, and indeed is succeeding.

The field of agricultural organization is an extensive one. But if the farm problem is to be satisfactorily solved, the American farmers must first secure reasonably complete organization.

Rural Education

It is hardly necessary to assert that the education of that portion of the American people who live upon the land involves a question of the greatest significance. The subject naturally divides itself into two phases, one of which may be designated as rural education proper, the other as agricultural education. Rural education has to do with the education of people, more especially of the young, who live under rural conditions; agricultural education aims to prepare men and women for the specific vocation of agriculture. The rural school typifies the first; the agricultural school, the second. Rural education is but a section of the general school question; agricultural education is a branch of technical training. These two phases of the education of the farm population meet at many points, they must work in harmony, and together they form a distinct educational problem.

The serious difficulties in the rural school question are perhaps three: first, to secure a modern school, in efficiency somewhat comparable to the town school, without unduly increasing the school tax; second, so to enrich the curriculum and so to expand the functions of the school that the school shall become a vital and coherent part of the community life, on the one hand translating the rural environment into terms of character and mental efficiency, and on the other hand serving perfectly as a stepping-stone to the city schools and to urban careers; third, to provide adequate high-school facilities in the rural community.

The centralization of district schools and the transportation of pupils will probably prove to be more nearly a solution of all these difficulties than will any other one scheme. The plan permits the payment of higher wages for teachers and ought to secure better
instruction; it permits the employment of special teachers, as for
nature-study or agriculture; it increases the efficiency of superin-
tendence; it costs but little, if any, more than the district system; it
leaves the school amid rural surroundings, while introducing into the
school-room itself a larger volume, so to speak, of world-atmosphere;
it contains possibilities for community service; it can easily be
expanded into a high school of reputable grade.

There are two dangers, both somewhat grave, likely to arise
from an urgent campaign for centralization. Even if the move-
ment makes as great progress as could reasonably be expected, for
a generation to come a large share, if not a major portion, of rural
pupils will still be taught in the small, isolated, district school; there is danger that this district school may be neglected. Moreover,
increased school machinery always invites undue reliance upon
machine-like methods. Centralization permits, but does not
guarantee, greater efficiency. A system like this one must be
vitalized by constant and close touch with the life and needs and
inspirations of the rural community itself.

Wherever centralization is not adopted, the consolidation of two
or three schools — a modified form of centralization — may prove
helpful. Where the district school still persists, there are one or
two imperative requirements. Teachers must have considerably
higher wages and longer tenure. There must be more efficient
supervision. The state must assist in supporting the school, although
only in part. The small schools must be correlated with some form
of high school. The last point is of great importance because of the
comparative absence in country communities of opportunity near
at hand for good high-school training.

Agricultural education is distinctively technical, not in the re-
stricted sense of mere technique or even of applied science, but
in the sense that it must be frankly vocational. It has to do with
the preparation of men and women for the business of farming and
for life in the rural community.

Agricultural education should begin in the primary school. In
this school the point of view, however, should be broadly pedagogical
rather than immediately vocational. Fortunately, the wise teaching
of nature-study, the training of pupils to know and to love nature,
the constant illustrations from the rural environment, the continual
appeal to personal observation and experience, absolute loyalty to
the farm point of view, are not only sound pedagogy, but form the
best possible background for future vocational study. Whether
we call this early work "nature-study" or call it "agriculture"
matters less than that the fundamental principle be recognized. It
must first of all educate. The greatest difficulty in introducing such
work into the primary school is to secure properly equipped teachers.
Perhaps the most stupendous undertaking in agricultural education is the adequate development of secondary education in agriculture. The overwhelming majority of young people who secure any agricultural schooling whatever must get it in institutions that academically are of secondary grade. This is a huge task. If developed to supply existing needs, it will call for an enormous expenditure of money and for the most careful planning. From the teaching viewpoint it is a difficult problem. Modern agriculture is based upon the sciences; it will not do, therefore, to establish schools in the mere art of farming. But these agricultural high schools must deal with pupils who are comparatively immature, and who almost invariably have had no preparation in science. Nor should the courses at these schools be ultra-technical. They are to prepare men and women for life on the farm — men and women who are to lead in rural development, and who must get some inkling at least of the real farm question and its solution. The agricultural school, therefore, presents a problem of great difficulty.

A perennial question in agricultural education is: What is the function of the agricultural college? We have not time to trace the history of these colleges, nor to elaborate the various views relative to their mission. But let us for a moment discuss their proper function in the light of the proposition that the preservation of the farmers’ status is the real farm problem, for the college can be justified only as it finds its place among the social agencies helpful in the solution of the farm question.

In so far as the agricultural college, through its experiment station or otherwise, is an organ of research, it should carry its investigations into the economic and sociological fields, as well as pursue experiments in soil fertility and animal nutrition.

In the teaching of students, the agricultural college will continue the important work of training men for agricultural research, agricultural teaching, and expert supervision of various agricultural enterprises. But the college should put renewed emphasis upon its ability to send well-trained men to the farms, there to live their lives, there to find their careers, and there to lead in the movements for rural progress. A decade ago it was not easy to find colleges which believed that this could be done, and some agricultural educators have even disavowed such a purpose as a proper object of the colleges. But the strongest agricultural colleges to-day have pride in just such a purpose. And why not? We not only need men thus trained as leaders in every rural community, but if the farming business cannot be made to offer a career to a reasonable number of college-trained men, it is a sure sign that only by the most herculean efforts can the farmers maintain their status as a class. If agriculture must be turned over wholly to the untrained and to the
half-trained, if it cannot satisfy the ambition of strong, well-educated men and women, its future, from the social point of view, is indeed gloomy.

The present-day course of study in the agricultural college does not, however, fully meet this demand for rural leadership. The farm problem has been regarded as a technical question, and a technical training has been offered the student. The agricultural college, therefore, needs "socializing." Agricultural economics and rural sociology should occupy a large place in the curriculum. The men who go from the college to the farm should appreciate the significance of the agricultural question, and should be trained to organize their forces for genuine rural progress. The college should, as far as possible, become the leader in the whole movement for solving the farm problem.

The farm home has not come in for its share of attention in existing schemes of agricultural education. The kitchen and the dining-room have as much to gain from science as have the dairy and the orchard. The inspiration of vocational knowledge must be the possession of her who is the entrepreneur of the family, the home-maker. The agricultural colleges, through their departments of domestic science — better, of "home-making" — should inaugurate a comprehensive movement for carrying to the farm home a larger measure of the advantages which modern science is showering upon humanity.

The agricultural college must also lead in a more adequate development of extension teaching. Magnificent work has already been done through farmers' institutes, reading courses, cooperative experiments, demonstrations, and correspondence. But the field is so immense, the number of people involved so enormous, the difficulties of reaching them so many, that it offers a genuine problem and one of peculiar significance, not only because of the generally recognized need of adult education, but also because of the isolation of the farmers.

It should be said that in no line of rural betterment has so much progress been made in America as in agricultural education. Merely to describe the work that is being done through nature-study and agriculture in the public schools, through agricultural schools, through our magnificent agricultural colleges, through farmers' institutes, and especially through the experiment stations and the federal Department of Agriculture in agricultural research and in the distribution of the best agricultural information — merely to inventory these movements properly would take the time available for this discussion. What has been said relative to agricultural education is less in way of criticism of existing methods than in way of suggestion as to fundamental needs.
The Ethical and Religious Problem

Wide generalizations as to the exact moral situation in the rural community are impossible. Conditions have not been adequately studied. It is probably safe to say that the country environment is extremely favorable for pure family life, for temperance, and for bodily and mental health. To picture the country a paradise is, however, mere silliness. There are in the country, as elsewhere, evidences of vulgarity in language, of coarseness in thought, of social impurity, of dishonesty in business. There is room in the country for all the ethical teaching that can be given.

Nor is it easy to discuss the country church question. Conditions vary in different parts of the Union, and no careful study has been made of the problem. As a general proposition it may be said that there are too many churches in the country, and that these are illy supported. Consequently, they have in many cases inferior ministers. Sectarianism is probably more divisive than in the city, not only because of the natural conservatism of the people and a natural disinclination to change their views, but because sectarian quarrels are perhaps more easily fomented and less easily harmonized than anywhere else. Moreover, in the city a person can usually find a denomination to his liking. In the country, even with the present overchurched condition, this is difficult.

The ideal solution of the country church problem is to have in each rural community one strong church adequately supported, properly equipped, ministered to by an able man—a church which leads in community service. The path to the realization of such an ideal is rough and thorny. Church federation, however, promises large results in this direction and should be especially encouraged.

Whatever outward form the solution of the country church question may take, there seem to be several general principles involved in a satisfactory attempt to meet the issue. In the first place, the country church offers a problem by itself, socially considered. Methods successful in the city may not succeed in the country. The country church question must then be studied thoroughly and on the ground.

Again, the same principle of financial aid to be utilized in the case of the schools must be invoked here. The wealth of the whole church must contribute to the support of the church everywhere. The strong must help the weak. The city must help the country. But this aid must be given by cooperation, not by condescension. The demand cannot be met by home missionary effort nor by church-building contributions; the principle goes far deeper than that. Some device must be secured which binds together the whole church, along denominational lines if must be, for a full development of church work in every community in the land.
Furthermore, there is supreme necessity for adding dignity to the country parish. Too often at present the rural parish is regarded either as a convenient laboratory for the clerical novice, or as an asylum for the decrepit or inefficient. The country parish must be a parish for our ablest and strongest. The ministry of the most Christlike must be to the hill-towns of Galilee as well as to Jerusalem.

There is still another truth that the country church cannot afford to ignore. The rural church question is peculiarly interwoven with the industrial and social problems of the farm. A declining agriculture cannot foster a growing church. An active church can render especially strong service to a farm community, in its influence upon the religious life, the home life, the educational life, the social life, and even upon the industrial life. Nowhere else are these various phases of society's activities so fully members one of another as in the country. The country church should coöperate with other rural social agencies. This means that the country pastor should assume a certain leadership in movements for rural progress. He is splendidly fitted, by the nature of his work and by his position in the community, to coöperate with earnest farmers for the social and economic, as well as the moral and spiritual, upbuilding of the farm community. But he must know the farm problem. Here is an opportunity for theological seminaries: let them make rural sociology a required subject. And, better, here is a magnificent field of labor for the right kind of young men. The country pastorate may thus prove to be, as it ought to be, a place of honor and rare privilege. In any event, the country church, to render its proper service, not alone must minister to the individual soul, but must throw itself into the struggle for rural betterment, must help solve the farm problem.

Federation of Forces

The suggestion that the country church should ally itself with other agencies of rural progress may be carried a step farther. Rural social forces should be federated. The object of such federation is to emphasize the real nature of the farm problem, to interest many people in its solution, and to secure the cooperation of the various rural social agencies, each of which has its sphere, but also its limitations. The method of federation is to bring together, for conference and for active work, farmers, especially representatives of farmers' organizations, agricultural educators, rural school-teachers and supervisors, country clergymen, country editors, in fact, all who have a genuine interest in the farm problem. Thus will come clearer views of the questions at issue, broader plans for reform, greater incentive to action, and more rapid progress.
Conclusion

In this brief analysis of the social problems of American farmers it has been possible merely to outline those aspects of the subject that seem to be fundamental. It is hoped that the importance of each problem has been duly emphasized, that the wisest methods of progress have been indicated, and that the relation of the various social agencies to the main question has been clearly brought out. Let us leave the subject by emphasizing once more the character of the ultimate farm problem. This problem may be stated more concretely, if not more accurately, than was done at the opening of the paper, by saying that the ideal of rural betterment is to preserve upon our farms the typical American farmer. The American farmer has been essentially a middle-class man. It is this type we must maintain. Agriculture must be made to yield returns in wealth, in opportunity, in contentment, in social position, sufficient to attract and to hold to it a class of intelligent, educated American citizens. This is an end vital to the preservation of American democratic ideals. It is a result that will not achieve itself; social agencies must be invoked for its accomplishment. It demands the intelligent and earnest cooperation of all who love the soil and who seek America’s permanent welfare.

SHORT PAPER

Mr. John M. Stahl, of Quincy, Illinois, read a paper before this Section on "Present Problems in Social Science affecting the Rural Community."
SECTION C—THE URBAN COMMUNITY
SECTION C — THE URBAN COMMUNITY

(Hall 5, September 22, 10 a.m.)

Speakers: Professor J. Jastrow, University of Berlin.
Professor Louis Wuarin, University of Geneva.

THE RELATIONS OF THE URBAN COMMUNITY TO OTHER BRANCHES OF SOCIAL SCIENCE

BY J. JASTROW

(Translated by Professor Charles W. Seidenadel, Ph.D., University of Chicago)

[ J. Jastrow, Ph.D., Professor of Political Economy, University of Berlin; Economic Adviser of the Berlin Senior Merchants’ Association; Member of the Executive of the Charlottenburg Municipality. b. September 13, 1856. Universities: Breslau, Berlin, Göttingen, 1874-78; Ph.D., Göttingen, 1878. Docent at the Berlin University, 1885. Author of Strafrechtliche Stellung der Sklaven bei Deutschen und Anglesachsen (1878); Geschichte des deutschen Einheitsraumes (1881; 4th ed. 1891; prize paper); Deutsche Geschichte im Zeitalter der Hohenstaufen (1893); Dreiklassensystem (1894); Einrichtung von Arbeitsnachweisen (1898); Kommunale Anleihen (1900); Sozialpolitik und Verwaltungswissenschaft, Vol. i: Arbeitsmarkt und Arbeitsnachweis, Gewerbegerichte und Einigungsdmter (1902); Krisis auf dem Arbeitsmarkte (1903). Editor of Jahresberichte der Geschichtswissenschaft (1881-94); Soziale Praxis (1893-97); Das Gewerbegericht and Der Arbeitsmarkt (since 1897).]

If we want to gain information about the relations of the subject of this paper, the urban community, to kindred sciences, we proceed in the easiest way by considering that the urban community has three other communities beneath itself, above itself, and at its side: beneath itself the family, above itself the state, and at its side the rural community.

I

Wherever an urban community formed itself, it found the already existing family; by this fact it has been directed in its development. Nowhere is the urban community an original community grown out of individuals, but it is everywhere a coalition of existing social formations. The formation of a higher order is determined by the elements from which it has grown. And even to-day, after the urban community has long ago attained to independent activity separated from the family, the influence of that origin is still evident in the selection of the objects of its activity. Perhaps there is no country in which this dependency is more apparent than in Germany.

The principal objects of activity of a German urban community, i. e., those which bring the greater part of the citizens, either actively
or passively, in contact with the community and which characterize
the urban community, are the school and charities. Both are an
integral part of familiar activity.

The school originated when a part of education, instruction, was
separated from the family and instituted for several families in
common. The municipal school is an institution established for the
purpose of making this part of education common to all families of
the city (or to make the common education possible). As long as
the families paid school fees according to the number of the children
using the school, the public school was a common institution of all
participating families. Where the fees are abolished this connection
is dissolved and a part of the familiar duties have been transferred to
the community. But now the different parts of education are so
closely connected that no part could be separated from the whole
without drawing other parts along. Even the school libraries which
furnish the pupils reading material in their leisure hours recognize
that the child is, in a certain measure, under their supervision and
care during the time in which it does not go to school. Since not
only mental but also physical culture is the object of instruction, and
since special stress must be laid upon this in accordance with the
old saying "mens sana in corpore sano," also the care of the body
becomes a part of the activity of this institution. The cities begin,
therefore, to connect baths with the institutions (Schulbrause-
bäder), and the sanitary supervision, in the hands of school physi-
cians, is performed from the higher point of view that in a country
with universal education this supervision gives the best opportunity
to review the sanitary condition of the future generation and to
prevent, at least with good advice and little remedies, the diseases
of eyes, teeth, etc., on which the necessary care is not bestowed in
the families, as experience has shown. Free instruction contains the
recognition that the community has taken up this part of education
instead of the family. From this the deduction is made that the
community must furnish not only the common means of instruction,
but also the individual means for every child, not only the means
of teaching, but also of learning. To a certain degree an agreement
in this much-disputed demand has been reached, inasmuch as it is
considered to be, under all circumstances, the duty of the school ad-
ministration to provide children with school-books. There is still
a controversy whether this provision shall become general or shall be
confined to the cases of poor families (more expressly: whether the
 provision of school-books shall be general or subsidiary). If, accord-
ing to the Latin proverb, "plenus venter non studet libenter," — a full
stomach is not inclined to study, — certainly an empty one is less
capable of it. The impossibility to instruct hungry children urges
the necessity of feeding the pupils; it is done as a formal school
institution (in Switzerland, and in Norway) or in connection with charitable societies, as is preferred in Germany. This development is spreading fast. Now the needs of life urge to proceed from feeding of children also to clothing them (to furnish shoes in mountainous regions); now the apparently useless recreations which make life more enjoyable cause play and sport to be added to instruction; they open an infinite space for the extension of the school to activities which had formerly belonged to the family. In no country of the world is this more evident than in America.

But also in other respects the activity of the urban community of the public school draws its objects from the family. Formerly the family itself had been the school for the education of the girls; the daughters received their education for their duties as mother and wife by their activity in the family. The more the family is dissolved by the drift of the women to the trades, and the more the home education is impaired, the more the family is in danger of losing that important historical connection which is founded upon the tradition of the mother to her daughter. Here the school appears as a remedy, as it offers instruction to girls in domestic science for their future activity in the family.

The familiar origin of urban activity shows itself also in charity, in a different way but not less clearly, either in public institutions for the poor or in the care for the poor in their homes. In either case urban charity has the same object as the care of the family for its members. Only in one instance the activity of the family is entirely replaced; in the other it is supplemented; this difference determines the two systems of the charity administration. English charity, a large indoor relief system, gives every one who does not find in the family what life demands, a compensation, but it demands (at least according to the rules) that the poor give up his family and move into the urban poorhouse; only exceptionally he is supported while living within the family. The opposite system is followed in Germany: as long as it is possible, the poor is permitted to remain in his abode, and urban charity furnishes only the necessary additional support; only in exceptional instances, if no other way is possible, is the poor separated from his family and sent to the poorhouse. But in either system familiar duties are transferred to the city. It would be a mistake to believe that this development is confined to those countries in which legislation recognizes the obligation of charity. There are no longer any large cities without public charity, whether legislation urges it or not. France is considered the classical country of exclusively voluntary charity. But while French legislation has not mentioned expressly the obligation to establish administrations of charity, it has instituted obligatory branches of charity for a great many special cases, so that France
surpasses, in many respects, even the countries with obligatory charity; and where charity is voluntary, it is voluntary not only for the individuals but also for the communities, the largest of which have gone farthest in performing voluntary charitable duties. In the United States of America, where there is no uniform system and where all intermediate degrees from strictly voluntary to completely obligatory charity exist, the necessity of uniform administration appeared most urgent in the urban centres of population. As London has set an example by its Charities Directory, so did New York with the great idea of the local concentration of its charitable institutions. A constantly growing circle of private, of familiar activity occupies itself with charity, by rising from the idea of removing existing need to the higher idea of preventive charity. Thus the administrations of charity either endeavor to improve sanitary conditions as sources of pauperism, or they attempt to diminish the lack of employment and occupation by caring for finding work more easily, by erecting small houses at the right time in order to prevent the ill effects of abnormal high rates of renting, etc. With all these aspirations charity does not create any new objects of its activity, but it selects certain activities from those of the family which are appropriate for the wide circle of the community. Charity is the intermediate stage through which a number of activities pass in order to be taken out of the hands of the family and to be performed at first only under compulsion of necessity and in a provisory manner, and later to become a problem of enormous significance.

For example: To procure a dwelling is the matter of the family. A place of refuge for the homeless and the inducement to build little cottages when no houses are available is a provisory assistance through charity; the policy of land and of home is a great modern communal problem.

While school and charity demonstrate, especially by the example of Germany, that the sphere of communal activity is determined by the condition that the authority finds everywhere the family, yet a number of other urban problems represent activity taken from the family, as water-supply and canalization. Often it is said that the modern technic has not done anything to facilitate housekeeping, since the wife stands even to-day at the primitive hearth and must work with the same primitive utensils which her great-grandmothers and their ancestors had possessed. But in those days housekeeping comprised also carrying water into the house and removing the garbage. To-day it is difficult to imagine how in high apartment houses the burdens of housekeeping could be overcome, if these two functions had not been taken by the urban community from the family. And this transition was accomplished so thoroughly that it
First, from each Roman). The Athenians. were a commonwealth in the city-state, whose members are considered only allies of the Athenians. In a greater measure the same was repeated at Rome. The city of Rome remained the Roman commonwealth (república Romana). Only he who possessed citizen's rights in this city was a citizen of the empire. In order to appease the revolting Itali, who wanted to have their share in the government, no other means could be found than to grant them citizens' rights in the city of Rome. And the unity of the empire, as it was understood since Caracalla, was only founded upon the fact that every inhabitant of each province of the far-spread empire was simultaneously a citizen of the city of Rome. While city and family stood in close relations from the very beginning, the relations between state and city cannot
be traced on those distinctly visible natural lines which pointed out the ways to the statesman.

The embodiment of free urban communities into a firmly organized state is a problem. An important part of the difficulties in the structure of the administrative organization of the different states has to deal with this one problem. How difficult it is to comprehend, in this regard, national peculiarities is shown especially by the various, partly contrasting opinions which can be heard, in a foreign country, about the condition of the urban communities of Germany.

Frequently one finds there the notion that a free civic activity does not exist at all in Germany. This conception was formed in consequence of certain occurrences in German urban life which have gained publicity and attracted greatest attention. These were cases in which the government of the state had not sanctioned the elections of mayors and members of the magistracy. Of foreigners who have spent some time in Germany, especially of Americans, one hears quite often the opposite opinion, that they were astonished by the great, free, and fruitful activity of citizens' spirit which they recommend to their own countries as an example. In reality, either conception is correct; there exist limitations for the German cities which are unconformable to citizens' self-administration and, as the experience of other states shows, unnecessary for the purpose of a firm state organization. But there remains, nevertheless, a considerable space for free activity, for great aims. However conscious we must remain in Germany that we have to strive after the improvement of the position which is prescribed to the cities in the state, yet we are not forced, in view of this need of improvement, to decline the favorable judgment of the foreign nations about the accomplishment and partly also the organization of our cities. We must not believe that the difficult problem of the embodiment of the free city into the German state organism has been solved; but we may probably accept the complement that a remarkable attempt is made in this line. The difficulties to be considered can be clearly seen from history.

From the thirteenth to the sixteenth century the urban development of entire western Europe bears that bold feature of autonomic expansion of culture and power which we have seen in the ancient "city-states" of Athens and Rome. The history of Italy consists almost exclusively of the history of its urban communities. If Milan sacks Lodi and Coimo, this means that in its realm no other citizen's right shall exist besides the Milanese. At the time of the Crusades, Genoa and Venice founded a circle of settlements around the eastern part of the Mediterranean Sea which had their common government in the city authorities of Venice and Genoa. The same was the case when in Spain the urban community of Barcelona took
an equally independent position by which it was enabled to establish its own maritime law and to spread it among all maritime nations; when the Provençal and French cities, at the time of the great wars with the English kings, appeared as independent powers, and when in Germany Lübeck and its allies engaged in northern European politics with the supremacy over Scandinavian empires. In Germany the development was furthered by the assumption that the monarch, by virtue of his imperial title, was at the same time the lord of the world; even the recognition of their belonging to the empire did not, therefore, diminish their independence. This period of the independency of the cities was followed in Germany by an epoch (about from the sixteenth to the eighteenth century) of rising princely territorial power which forced the cities into the greater organism, justifying their despotism by their utility. In a third period beginning with Stein's municipal order (Stein's Städteordnung) an attempt is made to reanimate the free forces of the citizens and to retain them nevertheless in connection with the state. In four years Prussia and Germany will celebrate the centennial anniversary of this law enacted in 1808; but we stand, nowadays, still in the midst of the attempt which had then only been begun.

The relations between city and state go far beyond politics and administration; it is only a section from the problem of the relations between large centres of population and the community of the people. As an example of the influence of a capital upon the entire country, always the position is mentioned which Paris holds in France. Not only the three great French revolutions have originated in Paris, but also literary taste, theater, painting, sculpture and architecture, the fashions are dictated to the country by Paris. The very contrary relations exist in America. The founders of the Union have placed the seat of the government in a city which should be nothing more but the seat of the federal authorities. And, although Washington has developed, contrary to the intentions of its founders, into a metropolis and enjoys to-day the just reputation of being one of the most beautiful cities of the world, yet this urban community has never been of much political importance in the history of the Union. Its inhabitants, excluded from the right of voting, are rather bound to let themselves be ruled than to claim predominance. While in the position which Paris takes in France there is still a faint remembrance of the ancient city-state, Washington represents the strongest logical contrast. Also in the whole intellectual life of the American people there is no movement that has taken its issue from the population of Washington.
III

The urban community which has beneath itself the family and above itself the state, has at its side the rural community. Although much has been written about the difference between urban and rural communities, yet the simple truth should not be forgotten that the natural difference between city and village is in their size. That the city is large and the village is small, nobody will dispute. Only in the question where the limit shall be drawn, the opinions differ. Frequently it is said that only the metropolis, cities with more than one hundred thousand inhabitants, are real cities. This opinion imparts to the word "city" a significance that never before had been attached to it. If the languages of all peoples have formed the word "city" without thinking of a large city, there must be something which the smallest communities (that may still be named cities) have in common with the largest centres of population and which, at the same time, separates them from the still smaller places, the villages. It is not difficult to find it out. One needs only wander from village to village, for a few weeks, and then arrive in a town of two to three thousand inhabitants in order to become aware of the difference. There one can find shelter only through a villager's good will or be received hospitably by some one who only occasionally accommodates a transient stranger, though he is not a professional hotel-keeper. Here one finds regular hotels which provide for the stranger. There it is difficult to find a servant who can do the most necessary repairing of clothing, and, in emergencies, as sickness, one is helpless. Here one finds tailors, shoemakers, physicians, druggists, etc. The city begins with the division of labor.

In this point our subject does not only approach the subject of industrial common life (Department 22, Section D, "The Industrial Group,"") and economic history (Department 19, Section A), but also the whole large group of social culture (Division G). I shall add some words about the manifold relations of urban life to social culture. In social regard the city differs from the country in two points: the few inhabitants of a village are, generally considered, homogeneous; the many inhabitants of the city are dissimilar. These combined factors give the urban community its importance in the cultural movement.

In the programme of this Congress under "Social Culture" the topics "Education" and "Religion" are discussed. Of the first group, Education (Department 23), we have discussed at length one of the most important points, the School (Section B), as an example to show how the urban community takes its tasks from the familiar community. The school is certainly not an urban, but just as well a
rural institution; it belongs to the urban community not because this is a city but a community. But no other example demonstrates so clearly that the solution of the cultural problems of the community is really reached except in the urban communities. Also in all other points of this Department (23) the enormous urban influence becomes manifest. The educational theories originated in cities. The two great founders of modern pedagogy, Rousseau and Pestalozzi, have sprung from cities. The universities can, in their modern organization, be traced back, in Europe as well as in America, to the model established by Bologna and Paris, centres of urban culture. The numerous foundations of universities in the fourteenth and fifteenth centuries were made exclusively in cities; they represented the reaction against the older, monastic, world-shunning learnedness, as also only those monastic orders took hold of them, which in the two preceding centuries had sought their seats not in rural loneliness, but in the cities, and were supported there by the people, the beggar monks, the mendicant friars.

If we call the cities centres of culture, we want to express, of course, that they shall not wish to retain their acquired possession of culture. The city acquires cultural treasures, but only in order to let them radiate and in order to begin, thereupon, the work again on new materials. Its educational work is a constant renunciation of acquired privileges. This is shown especially clearly in America in the history of the library movement. This movement has begun especially in the cities. First it was the ambition of each city to surpass the country by the possession of a public library, accessible to everybody. To-day it is the ambition of the cities to induce the country to follow their example. On my wanderings through small towns on the coast of Massachusetts I have visited, in each place, the public libraries, such as in no European state have been carried out into the villages.

The country can, however, claim for itself a certain superiority in religious culture (Department 24), much rather than in education. The development of Buddhism proves that rural solitude and contemplation are able to imprint their stamp upon great world religions. But Christianity shows the influence of urban culture. Though the origin of Christianity may be found in the synagogue of Capernaum, a little community, almost more rural than term-like, that was so poor that it had to accept its house of worship as the donation of the foreign captain, yet the work of the founder of this religion attained to its penetrating significance only when He stepped upon the soil of the city. And this fact lives still in tradition so powerfully that it is scarcely comprehended that Christ passed but few days in Jerusalem. The founder of the Mohammedan religion was a merchant, and even in the oldest doctrines of Islam the interest
in communication becomes evident. The connection of religious and urban culture is shown also by the fact that a sanctuary and sacred place to which the processions of many pilgrims are directed bears in itself the germ of an urban centre; not only Mecca and Medina, but also the Parthenon and Capitol, the height of Zion, the medieval Rome, and the multitude of bishops' seats in all European countries. And even if, now, we want to designate the life after death with a worldly metaphor, we do not select any of those steads, removed from the world, which have induced lonesome men to contemplative meditation about the last truths, but we select even now the idea of an urban community and we speak of the "heavenly Jerusalem."

The universal cultural significance of the urban community is also expressed by the secondary meaning which the expression "urban" has in various languages. As in classical Latin urbanus and rusticus point out the difference between higher and inferior culture, so the word "urbane" is still used to denote refined manners, contrary to boorish manners. But we find also, in languages, traces of that mission of the city to spread culture and to gain advantages only in order to let others partake of them. From the city the word "citizen" is derived, as "burgher" from burgh and borough, and citoyen from cité. But after the citizens' rights and duties had been placed in relations of more general validity, they were transferred to the larger community.

The notion of the citizen is probably the most important contribution made by the urban communities to modern political culture.

Literature

My treatise occupies itself merely with the formal character of the urban community. Only through examples has it been shown how its formal peculiarities find actual expression. To treat exhaustively this part of the subject it would be necessary to discuss all branches of urban administration. But this is the subject of a special theme (Department 20, Section E, "Municipal Administration"). By means of the different branches of administration the doctrine of the urban community is connected with each human discipline whose object can become in some way the object of administration; hence not only, as has been shown by an example, by means of the school administration with the entire pedagogical science, but likewise by means of the sanitary administration with medical science (Department 17), by means of the administration of buildings and ways with the entire science of engineering and architecture (Department 18; cf. the example of water-supply and canalization), by means of the administration of transportation and economics with political economy
(Department 19), etc. All these connections are left to Department 20, Section E, which, in a certain sense, runs parallel to this section. But in the following review of the literature I shall consider it at least so much that a bridge is formed for the investigator.

German literature on urban community is split in three literary directions, that exist side by side almost without mutual contact: the historical, juristic, and administrative.

Historical literature, especially the literature on the origin of the German municipal constitution, is very copious. Into the hypotheses concerning this origin Heusler attempted to bring light by his orientating treatise. Although more than thirty years have elapsed since, this orientating treatise is still indispensable. (A. Heusler, Der Ursprung der deutschen Städteverfassung, Weimar, 1872.) Doch muss für den gegenwärtigen Stand der Forschung hinzugenommen werden: K. Hegel, die Entstehung des deutschen Städtewesens, Leipzig, 1808. The extraordinarily large literature on the development of single German cities is collected in the section Städtewesen in Dahlmann-Waitz, Quellenkunde der deutschen Geschichte, Neubearbeitung von Altmann und Bernheim, Göttingen, 1904. The German history which describes adequately the influence of city and country is: K. Nitzsch, Geschichte des deutschen Volkes bis zum Augsburger Religionsfrieden. Nach dessen hinterlassenen Papiern und Vorlesungen herausgegeben von G. Matthäi, Leipzig, 1883–1885.

The German juristic literature on municipal law is influenced especially by the fact that the most prominent German thinker who made the legal relations between state and city the object of his studies made only occasional scientific remarks about Germany. This is Gneist, in whose works the investigation of English conditions is treated almost exclusively. Thus the juristic literature has remained in the hands of officials. The juristic literature on the position of the cities within the state organism reproduces especially the opinions of governmental bureaucracy expressed in ministerial rescripts, etc.; the municipality yields to these opinions now unwillingly, then unconsciously. Also the more liberal teacher of state law is under this influence. In Rönne’s Preussisches Staatsrecht this subject is not treated by the author, but in an additional volume: Schön, Recht der Kommunalverbände in Preussen, Leipzig, 1897. Only lately new life has been brought into this state literature, as the juristic side of municipal constitution was regarded from the urban point of view. Preuss, a student of Gneist, is at present the only teacher of state law who follows this direction. Preuss, Das Städtische Amtsrecht in Preussen, Berlin, 1902.

The administrative and social literature starts, in Germany at present, with the numerous attempts of reform of different parts of urban life, which are being made in almost all German cities. How-
ever, it might suffice to point to the results which we owe to the great German municipal exposition of 1903. The administration of almost all important cities of Germany had united for this purpose. The exposition was held in Dresden where, during the preceding winter, the Gehe-Stiftung established a course of lectures in which an historian, a geographer, a statistician, a political economist, a philosopher, etc., should each express his opinion about urban culture. The lectures have been collected and printed in the Jahrbuch der Gehe-Stiftung, 9 Bände, Die Grosstadt, Vorträge und Aufsätze von Bücher, Ratzel, v. Mayr, Waentig, Simmel, Th. Petermann, D. Schäfer. After the close of the municipal exposition its president caused a large work to be compiled about each of the different sections; this book may be considered a synopsis of the latest progress in the different branches of German municipal administration; its author is Wuttke (Dresden, 1904). Finally the pamphlets which the city of Dresden had distributed at the exposition and in which the various branches of administration were described offer an intelligible introduction into a municipal administration which can serve as an example. (Führer durch das Vorwaltungsgebiet der Stadt Dresden, 1903.)

Most German municipal regulations prescribe the annual publication of an administrative report. The city of Berlin goes beyond the legal obligation and publishes besides these annual reports quinquennial statements of acknowledged excellence. Where the putting in print was not usual, even this has been of advantage to literature, as in the first edition a comprehensive review was given. In this way the first administrative report of the city of Essen contains an introduction into the development of modern municipal administration. (Die Verwaltung der Stadt Essen im 19. Jahrhundert, 1 Band, Verwaltungsbericht erstattet von Oberbürgermeister Zweigert, Essen, 1902.) Schoeneberg, one of the quickly risen suburbs of Berlin which had been a rural community until lately, at the time of its admission to the immunities and privileges of a town, published an exhaustive and retrospective report of its administration which describes the development of a great urban community (1899). In connection with the bicentennial jubilee of the city of Charlottenburg, in 1905, the same subject will be treated, upon a broad historical basis, in Gundlach's work (under the press) Geschichte der Stadt Charlottenburg, Berlin, 1905; the entire modern municipal administration will there be discussed. Finally I should like to call attention to the fact that I have taken the examples in the first volume of my work Socialpolitik und Verwaltungswissenschaft, Berlin, 1902, mostly from the modern municipal administration of Germany and foreign countries.
THE PROBLEMS OF THE URBAN COMMUNITY

BY LOUIS WUARIN

(Professor of Sociology, University of Geneva)

The causes of the rural exodus and the rapid growth of cities, which form the characteristic feature of our times, are familiar to every mind. Though numerous, they can, in fact, be reduced to the appearance of steam and then of electricity as practical means of mechanical power, motion, and communication.

Should these two forces be ever suppressed; things would be reversed and come back to their primitive condition, but they are permanent and insuppressible agents. We must, therefore, expect to see the great demographic revolution continue its course, notwithstanding the amazement mingled with anxiety as to its ultimate results which it awakens.

The era of scattered population has definitely given way to that of agglomerated population. Every reasonable man ought, at every turn, to reflect on the best way of facing new situations; now it is but the bare truth to say that the public are painfully indifferent to problems of vital importance. It is evident, for instance, that cities, their future development and necessities, have not received proper consideration. Have not most of them grown unrestrained and without order, so as to become a dread to thinking men? Grievous, irreparable blunders have been committed; errors more deplorable still will be added to these, if we are not on our guard. Then the question arises: "What shall be done to avoid the disastrous results of these shortcomings?"

It has been my privilege, after a long search, to discover the city of the future. A worthy friend, Initiator, helped me to see it thoroughly. All that I saw filled my mind with a kind of rapture, and roused my indignation at the deplorable apathy in which most of the modern cities remain as to their supreme interests. Indeed, I had a clear sense of the needs and responsibilities of the present hour, and consequently felt justified in accepting the flattering invitation, for which I thank you most heartily, gentlemen, to come to St. Louis to speak about the urban community.

I. Moral Reforms

Great was my impatience on entering the city of the future to get new light about the material conditions best fitting our agglomerations. I was, perhaps, too sanguine about the result of my inquiry,
for Initiator stopped me a while and pointed in another direction. "Your strictures," said he, "about our modern cities are correct; still allow me to observe that housing the body is not everything, housing the soul requires consideration.

"Not long ago cities in general were held in bad repute. They were dreaded as hot-beds of agitation, for the citizens were constantly clamoring to obtain broader liberties. This danger is now removed. On the democratic basis they lead or follow, according to circumstances, and have no other will than that of the nation as a unit. Still, if the political revolutionary era is closed, other terrible perturbations have followed which, as a rule, take place again in crowded cities. We allude to the economic conflict, to the labor wars which are called strikes. These alarming feuds rapidly degenerate into everlasting struggles between fratricidal factions. Such a state of affairs must be remedied. And how can this be accomplished? To put it briefly, by justice and liberty; but justice and liberty are handicapped both when workmen are denied the right of joining trade-unions and of giving voice to their political or religious opinions, and when employers are denied the right of taking non-union as well as union men.

"Moreover, justice and liberty are imperiled when strikers interfere with the work of non-strikers or maliciously invade the premises of dissenting employers. Such trade-unions as exist in England will, in the opinion of the best judges, become a social safeguard, and the day is not far off when workmen will consider violence as hurtful to their cause, for a lasting change can only be brought about when public opinion backs it, since the laws take their stand on actual conditions of life and not on artificial devices.

"A committee of control and arbitration should be intrusted with the duty of adjusting the difficulties that may arise between employers and employees, of warding off violations of contract, and providing for full publicity to be given to the claims of both parties. Let me repeat that public opinion must be considered as the supreme tribunal. The New Zealand arbitration committee, whose decisions, are compulsory, has a tinge of absolutism which may threaten both justice and liberty.

"Many people in comfortable circumstances are apt to be one-sided. They believe that men on a strike must necessarily be agents of disorder, to be brought to better feelings by the police and the army — a foolish view, for the way that leads to peace, in spite of a dangerous old proverb, is not war, but peace. In times of peace, let us then strive to reconcile economic antagonisms.

"There are also methods of making money which are responsible for much evil. I have not in view only mischievous trusts; cases have occurred where labor organizations have joined hands with employers and had work done at abnormal prices. The benefits
stealthily obtained are shared between the conspirators, who thus oblige the public to purchase articles at an advanced price. There remains much to do to found an effective economic order resting, so to speak, on axioms which would be received as those on which modern democracy has been established. The present economic order of things is still often blurred by the stain of its origin, for it was drawn up by the privileged classes. Let democracy also come here and put things aright. The rule of life is reciprocity, Confucius says, and the gospel upholds the same principles."

Thereupon Initiator denounced another peril. He insisted on the duty to fight systematically against the demagogues who but too often succeed in imposing upon a community their disgraceful tyranny and forming a state within the state. "This grave problem," he asserted, "is not solved by intermittent fits of indignation. All the energy of good citizens should be employed to thwart the rascals, whose only aim is to take possession of power and then divide the spoils and to make allies by corruption and unworthy promises. The domination of such men is spreading its pestilential effects in all directions. To support them in any way, even by remaining indifferent in their presence, is a crime. But let it be remembered that the institutions which have permitted the politician to burrow his way into our public administration, like a rat into the floors of old houses, have to be remodeled according to the fruits of experience. And here we would like to have the following measures taken into consideration:

"First. State supervision over local boards, for self-government, however desirable, may be abused by astute men ready to shout: 'We are masters here, close the doors!' And again a detailed publication of municipal accounts wherein the sums paid and the names of the persons receiving them are fully stated. This would not be a superfluous incumbrance.

"Extension of the principle of direct democracy are represented by the referendum, the popular initiative, and, last but not least, proportional representation, this reform being the principal instrument for the regeneration of public life. Besides, there ought to be compulsory voting and an extensive local option for various issues.

"Finally, the starting of an independent press ready at any time to expose and break abominable rings."

"The supreme task," Initiator continued, "will consist in stimulating morality. There are holy crusades to organize against drunkenness, gambling, libertinism, obscene literature, the demoralizing theater. Every effort is needed to develop institutions, secular and religious, official and private, all associations which aim at propagating instruction, education, a taste for wholesome pleasures conducive to good health, both physical and moral.
"'Jean Jacques, love your country,' said Rousseau's father to his son. This should be our motto. We look with suspicion on globe-trotters whose country is nowhere. The soul, the soul of the city, I tell you, should be looked after in the first place."

II. Material Reforms

"(a) General Principles. But since you have come here especially to investigate the material structure of our city, a walk through the streets will serve as a practical lecture on the subject," continued Initiator, and we then began to visit the new city. As we went on along wide streets broadening into squares or across gardens and crescents enlivened by unexpected vistas of sky, our guide enlarged on the principles which have inspired the founder of the up-to-date urban agglomeration. I was amazed both at the simplicity and the grandeur of the scheme.

"Plenty of air, and sun for everybody! Air, an abundance of air, everywhere! Down with stuffy buildings! Light and air are primordial necessities. The sun brightening dwellings and streets, even the humblest of huts! Let us benefit by the progress of science! We know now upon the best authority that a dwelling deprived of light is predisposed to be the receptacle and the nursery of pernicious microbes. Among them there will be found the germ of tuberculosis, the most terrible plague of modern times, causing more victims than war and cholera together. An Italian proverb says that where the sun does not go, the doctor surely will. Air and sun! this is the problem in a nutshell, but great difficulties had to be overcome. Our end could not be attained without a considerable outlay of money. Well! there is no reason to regret the expense, which proved an excellent investment. A badly built city means a superabundance of invalids and an increase of the death-rate. Therefore, from a business point of view, a sacrifice of money to the public health is a saving to the public purse. Prevention is better than cure.

"In our city, as in all towns, the ancient part stands shoulder to shoulder with the modern quarters. It was not easy to harmonize these two parts so different one from the other, and our success has as yet only been partial. At all events, we have done our best to prevent the old quarters from becoming more objectionable, by improving them as much as possible. First of all, we have drawn up a plan of rectification which we are gradually working out to the best of our ability. Our municipal authorities buy up numerous houses situated on the lines of projected streets and especially those which pay a fair interest. With the sanction of the law, we appropriate others at fair prices. Indeed, according to our improved regulations,
the prices paid are the real value of the houses. At the same time, we forbid the letting of unhealthy tenements, as we forbid the sale of poisonous mushrooms, and here is the result. Some house-owners whom we compel to repair their houses prefer to sell these to the town or to builders who will hasten to demolish them. Thus, sooner or later, the plan of rectification will be carried out, the filthy buildings being either reconstructed or removed for widening the street or the square. Such is our method of rational transformation.

"Our old quarters require a plan of rectification, the new ones one of extension, stating how they must be laid out and comprising the streets, the public gardens, the parks, the athletic grounds, the future schools, hospitals, and other official buildings. The area of the open spaces is always in proportion to the importance of the quarter they are intended to serve, and we endeavor to have many of them rather than a few big ones.

"The building of the federal city, now Washington, under the inspiration of the French engineer, Major L’Enfant, has been to us an object-lesson. The thoroughfares and streets were traced according to ‘celestial observation,’ says the original plan of 1792, so as to assure an equal distribution of the sun’s rays between the two sides of houses. We do not exactly follow the directions N–S, W–E of the compass; in drawing our streets, where we have more freedom of action than in laying out avenues (these being often a result of circumstances); we take the line N–S with an inclination of 19 degrees toward N–S — S–W. Roman cities, as archeologists assert, already presented a fixed orientation.

"But the crucial point of our campaign was reached when we had to draw up our Building Code. We were met by violent prejudices. We insisted on limiting the height of houses as a primary condition of health. Being requested to make an exception for the business quarter, we turned a deaf ear. We remembered having seen elsewhere in ‘sky-scrapers,’ offices situated above the tenth story, where gas or electricity was needed at mid-day. We declined to consider modifications of any kind. Had we proposed setting the quarter on fire every twenty years, we would not have elicited a more indignant outburst. What? No sky-scraper? And why? And how? Are they to be doomed in cities where land is worth its weight in gold?

"We believe that the exorbitant price of city land is the outcome of the free hand given to builders, that if lower houses were the rule, houses would; nevertheless, be required and found, and that if land went cheaper, the calamity would not be a national one. We were surprised to find citizens in favor of houses whose height is injurious to the public health. We could not help exclaiming in our turn: ‘And why? And how? What should we be guided by? Private or public interest?’
"Our opponent maintained that our exacting ordinances would put a stop to city building and cause the rents to rise enormously, thus terribly cramping the working classes. 'Well, be it so,' we answered. 'In that case, both the outskirts of cities and the neighboring country where land is less expensive will be utilized; suburban villas will be built, a result which is highly satisfactory. Indeed, it becomes more and more apparent every day that large cities with their railroad stations, their ports, their proximate canals, their market-place, their exchange, their workshops and their warehouses, are destined to become, in the course of time, business centres. The tramway enables their inhabitants to have a dwelling-house at some distance and there quickly to enjoy the open air in the midst of nature.' This reasoning seemed to be acceptable, and we need not add that the building spirit has not in any way suffered. On the contrary, the same rule that made order prevail in the growth of the city has given it fresh life. The thing is plain enough. A great contractor pointed out to me that if our buildings are not as high as some would have wanted them, our houses at least, thanks to the existing laws, are not liable to be depreciated by the enormous and brutal sky-scraper. The tenements of the city being less numerous, we obtained higher rent for them, the more so as many of these, provided with lifts, are used as offices and command larger prices than ordinary flats. If building technicalities are sometimes rather aggravating, we accept them, however, in consideration of the benefits derived from them.

"Our Building Code has proved a decided success. We have gone into minute details in order to defeat the objections that were raised against the system. Just one or two instances. In new houses we have fixed the height of the façade cornice, but having heard that in other cities builders evaded this rule by constructing a kind of second edifice above the regulation cornice, we have determined also the conditions of structures for the roof itself.

"And again, a small paragraph in our code, like a snake in the grass, would have made it possible for the authorities to infringe the code itself. We did not permit the introduction into it of exceptions to the stated ordinances. We were opposed to such sentences as this: 'However, in certain cases the authorities will have a right —' well, not to submit to the law. We have avoided giving carte blanche. Why should the public powers be authorized, not to say encouraged, to do the reverse of what the code established?

"To sum up: three leading interests have inspired us in drafting our legislation for the city of the future: sanitation; public safety; beauty.

"(b) Sanitation. Streets drawn according to the compass, as has been stated, are favorable to sanitation, but further dispositions are
also required. While we approve of spacious courtyards with bedrooms in the back part, in order that sleepers may be protected against the noise of the circulation, we disapprove of those suffocating pits the occupants of which are condemned to inhale impure air coming from the kitchens and the lavatories. When compelled by circumstances to tolerate these narrow courtyards, we have done our best to ventilate them. To prevent abuses in the line of insufficient yards, we have made the dimensions of lots such as to permit of a good-sized yard or no yard at all.

"We have also taken measures to prevent there being narrow side-streets and awkward lanes, windowless servants' rooms, underground porters' lodges, miasmatic and microbic alcoves.

"We have an eye to doors and passages, to the proper height of ceilings, to honest work in all the details of the buildings. More than once we have put our veto on buildings whose contractors tried to elude our rules. We supervise the laying down of sewers, water-pipes, gas and electricity in houses, all of which, if badly done, may be dangerous to the tenants. Intelligent architects and builders understand and back our regulations, thereby increasing their credit and patronage."

Initiator begged me to notice a tablet fixed on the walls of a newly built house; it bore the name of the architect, the builder, and of the municipal officer who authorized the building to be constructed. He also pointed out to me another house full of blunders. The men who built it were tabooed by public opinion, and the municipal magistrate responsible for its existence was deemed unfit to occupy his post and not re-elected.

"Perhaps you take it for granted that we do away with the skyscraper. By no means; but it is true we allow it only in streets or places too broad to be injuriously overshadowed by its immense size. Besides it is bound to be incombustible, and we command it to be constructed of genuine fireproof materials. It is known that shrewd speculators have more than once helped the erection of the mammoth house with no other purpose than to retain the business centre on land which they own and to which they confer, by so doing, a great additional value. Why should we encourage such schemes?

"Neither do we neglect a supply of the purest drinking-water. Within a few years we have entirely eliminated typhoid fever, the result, as a rule, of contaminated water. The frequent breaking-up of the streets for underground municipal work is an unhealthy and costly necessity which may be avoided, as will be explained later on.

"Our parks and public squares are our glory. Rich citizens occasionally contribute to their enlargement and to their maintenance and are rewarded by the gratitude of the inhabitants. English-
speaking people justly qualify these oases as the city’s lungs. Besides trim gardens, neat lawns, shady avenues and clusters of trees, we have borne in mind the requirements of sport. We have reserved a playground which is useful for every kind of game and out-of-door amusement. Nurses and their babies have at their disposal sand-heaps near water-basins filled with gold and silver fishes. The picnicking public feels at home here. A refuse-box is near at hand, where are thrown the remains of their repast, such as paper, tins, etc. Untidy individuals are called to order by the keeper of the place. Ill-behaved people must be trained by law, a principle justified by experience.

“But how prevent the crowding of these pleasure-grounds? This eventuality is not to be feared in view of the fact that many people of every class, having their own pleasant home in the suburbs, make but little use of public places.”

“You must admit,” went on Initiator, “that towns provided with rural suburbs are a great blessing. Well, let us look at our pretty suburbs. See the outskirts of one of them covered with peaceful little houses of varied styles. Behold the sweet scenes, charming terraces, vegetable and flower gardens, a clear fountain, friendly birds flitting about the trees and the eaves. Many are the houses, but no giant house is to be found among them; we give a permit to such an intruder only when two thirds of the landlords of the quarter consent to it. The rising piece of land may sometimes make it difficult for us to resist the temptation of admitting the big houses, but still we manage to put some order in the spontaneous growth of our city. The will of the majority of the interested parties decides also concerning the admission of workshops into the midst of the residential district.

“Had these general sanitary conditions of our city prevailed everywhere, as they should have done, there would have been no sufficient reason for Mr. Ebenezer Howard to start his ‘Garden City’ scheme. Look at these roads of reasonable width, on both sides of which are open spaces leading up to the dwelling-houses. These open spaces may be cultivated and arranged according to the taste of the owners. Proper sewers, supplies of water and electricity, as well as telephones, are to be found in every home. The satisfactory development of these remote parts of our city is due in some measure to a system of restrictions, final or temporary, adopted by the original land-owners and forced upon the new-comer. The measures may be more or less repealed when the suburbs of the garden city come into contact with the advancing town. Indeed, the rural illusion is complete, though, thanks to the means of rapid and cheap transit, the garden of the townsman is within a few minutes of the neighboring metropolis.
Virgil and Horace would congratulate us on the successful interpretation of their verses:

O fortunatos nimium . . . agrícolas!
Pauca ruris jugera . . .
In culpa est animus qui se non effugat unquam.

Now every one of us may aspire to the pleasures of country life. Numerous building-societies, through their credit and agency, have helped those persons wishing to leave the town and settle in these rural districts.

As you stroll out of them, you may have noticed many small inclosures on the roadside, where plants of different sorts, intended to please the eye or to serve in the kitchen, are grown. Here and there a green arbor or a little shed peeps out. These inclosures are small gardens let at a very low rent to those of our fellow townsmen who might fancy them. Philanthropic land-owners having large estates or vacant lots contribute their share for this needed work. These gardens are the resort of numerous citizens of small means. You may see them coming in the evenings or on Sundays; their rosy children and themselves enjoy there the country air and develop a love for nature. Such feasts are due to the commoner as well as to the nobleman, and we are very happy to see other people following our experiment on this point.

Other special reforms have been accomplished. Thus, for instance, we have found out an excellent system for the removal of street-sweepings. We turn them into a fuel out of which we produce electricity, while the heat so obtained is used for preparing the water of our public baths. Further, we wage war against the street dust; for the present we sprinkle the road with tar or petroleum, but we hope to be able to improve upon this treatment. We wage war against town smoke; we have prevailed on those who burn coal to use smoke-consumers. In all things we consult the most experienced specialist, we invite competition, and we institute inquiries to be made where practical processes are fully tested.

Lastly, we plant along our public highways, as well as along the roads radiating in the interior of the country districts, trees known for their hygienic properties, strictly avoiding those that spread unpleasant odor or irritating particles.

(c) Public Safety. Beside our vigilance in behalf of sanitation, we had to insure public safety, especially as regards buildings.

Limiting the height of buildings is, in an indirect way, a precaution against fires, for the deep air-shafts of enormous houses produce strong drafts, thus sending the flames rapidly through the numerous stories and the neighborhood. Skyscrapers, being very rare and at the same time absolutely fireproof, are no longer a danger. We insist on easy exits for all kinds of houses, and on abundant
water-supply with special fire apparatus kept in working order; our fire-brigade is not large, but always on the alert. We even insist on things which might surprise a new-comer; we should, for instance, feel very much ashamed if we heard that a child had fallen from a window because it was not provided with a sufficient railing.

"We condemn the cruel neglect with reference to the dangers of electricity. We have taken technical precautions, and explanatory warnings have been posted wherever needed. A century of electricity commands unceasing efforts to avoid accidents.

"Automobiles, bicycles, motor-cycles, and in fact all vehicles, are kept under severe control. Our ideal is not Shakespeare's school-boy, creeping like a snail, but we require that all means of rapid transportation be accompanied with automatic brakes, insuring a moderate speed.

"Everything which might lead to wanton misfortunes on land or water must be strictly forestalled. Unsafe river-boats must disappear from the public piers; bathers must be reminded by a special notice that bathing too soon after meals means risking one's life. Mountain-climbers must be made to beware of rashness, by placards or even fences indicating danger in particular places.

"If, according to Montesquieu virtue is indispensable to republics, we think that respect for human life is the first of republican virtues. The invitation to the public to attend shows reminding one of the old gladiatorial fights seems to us absolutely monstrous. We are not satisfied with the enforcement of laws made in the interest of the citizens; we are anxious to make citizens wise and prudent, even in spite of themselves. In circuses we would not allow professionals to expose their lives to amuse us. Bull-fighters and wild-beast tamers, who court death to satisfy the morbid brutality of some spectators, are, with us, things of the past. We should do our utmost to check those tempters of Providence who, packed up in a cask, would shoot the wild rapids of a river for the entertainment of thousands. Were not dueling and boxing out of fashion among our advanced people, we would certainly have stopped such practices. It is not in vain that philosophy and religion have taught us the love of our fellow creatures.

"(d) Beauty. Sanitation and public safety being provided for, we can turn our attention to the embellishment of our city.

"We have many charming points of view which show to advantage, our mountains, our pleasant river, our public buildings, and our historic spots. We are always anxious to prevent anything which might impair their beauty. Builders are not permitted to obstruct the view of any interesting scenery if it can be spared; special laws and regulations have been laid down for that purpose.

"Straight streets, more or less lined on both sides by gardens and shrubs, are restful to the eyes. The footpaths, being separated from
the carriage-road by a ribbon of grass where trees stand as sentinels, are protected against the dust. We have drawn up elaborate plans to secure rational and esthetic streets. Even the workman's dwelling may contribute to the charm of our familiar vistas. For beauty's sake we are ready to sacrifice a building-plot, to open up a new street plunging into old quarters, which will also become more healthy, to plant a tree or to relieve the monotony of a bleak spot with a fountain. Our parks, our bridges, our public edifices, are sober but elegant. At the street-crossings we substitute rounded, instead of sharp corners; this is more graceful, and wayfarers are protected against unforeseen jostling. We fight for beauty and against ugliness. Down with conspicuous party-walls; we cover and disguise them. We make our chimneys a pleasant accessory of the building. We will have nothing to do with gigantic signs on the stores, and are opposed to glaring advertisements on our street-cars, but we do not oppose placards posted on special stands, for they give some gayety to the street, while they render service to the public. We do not permit booths and repulsive erections to occupy privileged places and spoil the general impression.

"Our esthetic efforts have met with the sympathy of all, and any attempt to spoil the nice features of our city is sure to awake a prompt and unanimous resistance.

"(c) Roads and Municipal Services. Roads being of primary importance, we keep ours in good repair, after having constructed them with the necessary expense.

"On the inside of footpaths, a little tunnel easily opened at the surface contains, beside the sewers, pipes and wires necessary to the needs of each house and of the street. Thus no repairing causes any trouble.

"The clearing-away of the dust has been dealt with, and its removal causes no nuisance to the pedestrian. We use our sewerage for fertilizing gardens and meadows, and we thus turn it into a source of profit, making it at the same time inoffensive to the senses.

"Our city tramways, for a moderate fare, put the inhabitant in rapid contact with every quarter. Some of the tramways work on a short-time concession. If their profits exceed a certain sum, we provide that the surplus be divided between the corporation and the city, or partly spent in reducing the fares. Other lines are worked by the municipality. Time will show which of the two systems is the most advantageous to us.

"The ticklish railway question is now settled. Our central railway station will eventually be removed from its outlying position. The land reserved for other railways has been bought up by the city, which pro tem is letting it for different uses. The question of rapid transit has also been studied and solved.
"We are careful that municipal services, such as drinking-water, gas, electricity, and street-cars, be not injured by the mercantile spirit. We need moderate tariffs; we obtained them, and to the surprise of many we found them sometimes more remunerative than high ones, while they add to the comfort of the people by inducing them to make a liberal use of necessaries.

"Domestic service in some parts of our agglomeration is offered by the community, as for instance the heating of houses by a central station. This interesting house service will probably be extended before a long time to the supply of hot water and even of meals. The advocates of co-operation, with their keen acumen, had long ago foreseen that what is now called municipal socialism would come to their help in the achievement of their programme.

"(f) The General Headquarters of the City of the Future. And now let me explain to you what I consider to be the mainspring of all our efforts," said Initiator. "The growth and development of our city are continually supervised by a parliament which is formed by engineers, electricians, architects, medical men, artists, competent administrators, and citizens distinguished for their ability and devotion to the public welfare. Come and see for yourself, since our Organum meets this very afternoon."

In this important body Initiator occupied the presidential chair. He had been appointed for four years Supreme Ædile, with extensive powers. In municipal matters, experts affirm, nothing is worse than irresponsible administration. Find a good man, pay him well, and give him a free hand. This is the principle upon which we work.

The Organum lays before the municipal authority the requirements and the necessary information to carry them out. Then the aldermen act according to their best judgment, but, as a matter of fact, they simply ratify the decisions of the Organum, thus giving them the force of law.

A Technical Committee presided over by the Supreme Ædile enforces the rules of the Building Code in letter and spirit. The library of this committee contains the Building Archives, wherein may be found the history of each house, and especially the sanitary repairs it may have undergone. These archives may be consulted by every one.

**Practical Conclusions**

Having returned to my old-fashioned home in the city of my forefathers, I resolved to aid the advent of the city of the future in my own country.

But some one may ask, "Tell me where is the wonderful city which you visited and described to us!" Complete it is not to be
found anywhere at the present time. Old cities, however, such as Berlin, London, and Paris, are evolving toward it, and new localities, such as Washington, some model villages or towns in different countries, and ahead of all Garden City, near Hitchin, Hertfordshire, just now making its appearance, approach it still more closely. Moreover, the city of the future is an ideal which every one should try to achieve, since reflection and common sense command it. Let us then unite to bring about the noble and desirable city.

Here we have no time to spare, for it has become evident to all thinking men that our urban communities frequently present a regular state of anarchy, which makes one shudder with a feeling of awe when looking at them.

But some one objects: Why should not every landlord assert his right to make the most of the property he owns and erect upon it what he likes? If he dwarfs surrounding houses, deprives them of their part of light and air, and, in fact, depreciates considerably his neighbor’s property, well, he is not to blame. It is the conflict of human interests, the struggle for life which is to be found everywhere. The weak shall certainly be defeated if they are too weak to protect themselves. Look at the business competition; the department stores crush the small shops, the trusts kill the small industries. Look at nations with their rivalries and their wars for supremacy.

This is, in some countries, a pretty general form of reasoning, but that does not make it any more conclusive. Indeed, anarchy is unorganized society, and if it appears that things have been allowed to go adrift, it becomes then the imperative duty of civilized men not to accept them, but to bring them under proper control. Moreover, we do not hesitate in affirming that if unlimited power should be given to private interests, such a state of affairs could not but end in great distress, nay, in bloody and disastrous convulsions. And, to confine ourselves to this point, let us proclaim again that cities must be made convenient for men to live in, and that if they were to become hells, this would be our fault and our punishment.

There are three periods in the onward march of human progress. First, the period of complaints, criticisms, and inaction. Secondly, the period of intermittent, tentative, half-hearted efforts. Thirdly, the period of thorough-going reforms, enthusiastically taken up by every citizen conscious of the duty of the hour.

The first period is absolutely fruitless. The second period presents an apparent effort on the part of administrative bodies to enroll themselves for the public good; but this interest is more apparent than real, and what they aim at is not so much to make effective work and go to the bottom of the evil as to avoid the reproach of being careless or inactive if some evil should happen which might have been prevented. It is then that conflagrations take place like those of the
Charity Bazaar at Paris, the Paris Opéra Comique, the Iroquois Theater at Chicago, and the General Slocum at New York, rousing the indignation of the world. It is then that the community is lulled by the setting of deceptive fire-escapes running along dizzy house façades. The same shuffling spirit is manifest in politics; what can we think, for instance, of the Berlin treaty meant to protect Armenians and then permitting their periodical extermination?

The thorough-going reform period carries everything before it, for the people and the government are one. The welfare of humanity now requires a concerted initiative from public-spirited men of all countries. An International League for the Rational City must be formed whose aim would be to prepare the best conditions to suit the special needs of urban communities. It ought to work through its congresses, by competitive prizes, petitions to the authorities, and by the agency of a widespread journal giving authoritative information.

Let us consider and not forget for a moment that our apathy toward this momentous object is responsible for the sufferings of millions affected in mind, soul, and body, so many of whom are doomed to become an early prey to disease and death. "O Varus, give us back our legions!"
SECTION D—THE INDUSTRIAL GROUP
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(Hall 14, September 22, 3 p.m.)

Speakers: Professor Werner Sombart, University of Breslau, Professor Richard T. Ely, University of Wisconsin. Secretary: Professor Thomas S. Adams, Madison, Wisconsin.

THE INDUSTRIAL GROUP

By Werner Sombart

(Translated from the German by W. H. Price, Harvard University)

[Werner Sombart, Special Professor of Political Economy, University of Breslau, since 1890. b. Ermslehen, Saxony, January 19, 1863. Ph.D.; Recorder of Chamber of Commerce of Bremen, 1888-90. Author of Socialism and Social Movements of the Nineteenth Century; Modern Capital; and numerous other works of note on political and social economy.]

My task is to sketch the historically peculiar circumstances of life amid which the industrial proletariat lives. By the industrial proletariat I mean the body of wage-earners in the service of modern industrial capitalism. And I intend to point out the relation of these conditions to modern progress in general. This problem might be attacked in either of two ways,—first by making prominent those phenomena, such for instance as state interference, which have a peculiar significance in the establishment of a definite social ideal and which furnish encouragement, as well, for undertaking definite reforms. This is the political point of view.

A second method would be to correlate such of these phenomena as we are able to recognize as the points of departure, the occasions, or the conditions from which arise the movements of the laboring class itself. This is the evolutionary point of view, from which can be answered the question, What makes the social movement possible? In the language of Hegel and Marx this sort of inquiry would be called the dialectic method. And this is the method of inquiry which will be adopted here.

In order rightly to judge the conditions of existence of the modern proletariat we must first of all understand what it has lost as compared with other groups of people, what it no longer possesses of the conditions of living of its own former generations. Hence I must pay special attention to European conditions, which indeed are necessary to an understanding of all social phenomena. My discourse cannot be more than an introduction to a big subject.

Estrangement from nature is the most important feature of the proletarian existence. The contact of the country lad with nature
ceases, — the friendly relation with the animal world, the growing up with the elements, rain, storm, and inclement weather, the dependence upon the events of nature, the rotation of summer and winter, of day and night. The modern industrial wage-earner becomes a characteristic representative of that artificial race of men now growing up in cities. Away from his natural environment, that is, away from home, the thousandfold spiritual ties and tender sentiments are lost. His home is the world, he is a child of the world.

Another feature of the laborer's existence is his liberation from old institutions which confined him but restrained him as well. Among these was the village community with its customs and its usages, its festivals and fashions, which in part survive in the smaller towns. Propinquitas! But the proletariat has cosmopolitan customs and usages. Thanks to the development of commerce, provincial manners are abandoned.

There was also the family group. Not only is the old family connection, with its far-reaching interdependence, giving way, but the immediate family is also losing its binding power because the economic basis upon which it rests is disappearing owing to labor away from home, night work, and the labor of children and women who no longer find satisfactory employment at home. The early employment of children and youth makes them independent at an early age, and thus is weakened the discipline over children by parents. To this must be added the sordidness of the dwelling-houses in cities, for this narrows even more the basis of family life.

We must note, also, the decay of trade-associations built up by the medieval handicrafts, by which membership in a definite craft provided the individual ample internal and external status. Membership in a trade, however, is losing its hold as a result of the frequent change of occupation. For an individual passes with greater ease than formerly from one occupation to another, while the array of labor arrangements mobilized for a united productive activity has to be constantly remarchaled owing to the influence of the modern revolutionizing technique. The mechanical arrangement of individual operations which constitute an industry leads to a constant change, just as surely as a personal classification leads to the stereotyping of the industry.

Another cause of the decay of the trade fellowship is the dissolution of the intimate relation of the worker and his work. Activity is no longer the expression of a lively human interest, it is only the mechanical turning-off of some one simple process. The empirical technique of the olden time rested upon personal skill; the modern technique rests upon objective science. The organization of industry upon the principle of the division of labor separates the laborer from his work and makes him a mere soulless piece-worker
in the social process of production. The capitalistic organization also separates the worker economically from his work. He is no longer economically interested in the results of his work.

The old servile rights and obligations have been destroyed. Every earlier time has recognized mutual responsibilities with respect to the dependent man, which indeed bound him, made him unfree, but gave him physical and moral support, protected him from hunger, and helped him over crises in his life, such as sickness. Even the slave or serf had this claim upon his lord. The journeyman of the Middle Ages was united to his master by a close fellowship supported by the feeling of moral obligation. This relation is disappearing. The modern workman is a "free" laborer, legally free, who now stands only in a business relation with his employer; services are rated on both sides at a money value. Therewith he is free to go hungry because without protection from commercial crises. He must win his bread from day to day and be prepared at any time to lose his position. In other respects his freedom is a mere formality; he cannot exercise it by not working; he can at best change masters. But this is becoming closed to him because capital is being monopolized in trusts. As soon as he succeeds in finding work, he is for the greater part of his life driven to the hardest drudgery in the service of the capitalistic undertaker. He is then less free than any Turkish peasant who plows with his oxen in a free field.

How will, how can this "free," that is to say, uprooted cosmopolitan live? This is the question which presents itself for him as well as for all who have experienced the same process of emancipation. This is the question of the time, which receives only one definite response from the proletariat. The recovery of the content of life is to be sought in two ways,—by means of pleasure and by means of labor. Pleasure as one of the features of life is necessarily denied to the great mass, clearly from external causes, perhaps also from internal causes, because people are still too "sensible" to find a motive of life in pure pleasure, material or spiritual, i. e., in estheticism! They still require self-sacrifice, an object, morals. There remains clearly open only the second way,—labor. "To labor and not to despair," has been proclaimed as the watchword for our hollow age. And the poet sings so sweetly

"'Tis labor alone that helps us along
Over this wilderness of gloomy doubt;
It gives to each passing moment a goal
Which our life itself is without."

But how is it with the labor of the wage-earner? Often enough he has no work at all. The condition known as "being out of work" has established itself as a matter-of-course accompaniment of capital-
ism,—another novelty of our age. But also, by the time he finds work its power of yielding satisfaction has for the most part been lost. This is, perhaps, the most significant consequence of modern civilization. Labor as the sanction of life, as the director of energy, has ceased to round out the worker into the complete man and hence to make him peaceful and contented. The reason for this lies in the peculiarity of modern technique as well as the organization of modern business, for the modern factory labor is in large measure destructive of health, above all because it calls for too intense an exertion, and because of that disregard for the limits of human endurance which characterizes the modern technical development.

Moreover, labor has frequently become a disagreeable, repulsive act, in the depths of the earth and amid the noise, dust, and heat of many modern factories. Labor has become more and more monotonous and unrhythmical, mere piece-work of unvarying nature in the modern great industries built up by division of labor and consolidation. The laborer is now separated from his work, he creates no longer, he fashions no longer, he brings nothing to completion, nothing appears as his work, nothing in which his labor is embodied. He is no more than a secondary wheel in a gigantic mechanism.

The labor of the modern industrial wage-worker has thus lost all concreteness, all qualitative significance, and so has for him only an abstract and hence purely quantitative significance. And so it becomes a burden of which he seeks to be relieved as much as possible. (If we realize this we come to comprehend the endeavors for shortening the hours of labor, which give the characteristic impress to the modern labor movement.) And so also it comes to be measured in the terms of the money for which it is exchanged. Thus it was that the wage-earner was involved in the circle of ideas of the capitalistic world. The mechanism which accomplished his inclusion was the piece-wage system, after the pure money-wage had already accustomed him to value all labor power in terms of money. This valuation in money is imbued in him from early youth, for he enters "service" early, at a period of life when hitherto a youth lived without responsibility as a dependent member of a family.

Here lie the roots of all class strife between proletarian and entrepreneurs, who are now at odds regarding their respective shares in the joint product. "The right to the whole produce of labor!" The foregoing sketch of the peculiarities of proletarian life explains what we mean by the modern "social movement," wherein the proletariat struggles against the position into which capitalism has brought it.

When we observe the proletariat setting forth to emancipate itself from its position, and see how the movement is carried on with the passions of hatred and envy, the conviction forces itself upon us that
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the origin of the movement is not hopeless misery, for this is no characteristic of the proletariat. The cause is rather the contrast which the laborer observes between his own frequently pinched position and that superabundance of wealth in which many of the employing class live, wealth which the laborer has, in his own opinion, produced. For in their service he wears himself out. And this contrast is constantly brought to his attention, not so much because he sees that insolent wealth used in display, oftentimes vain enough,—the poor serfs of the Middle Ages endured that sight,—but rather because he daily witnesses the accumulation of new fortunes, whose possessors grow rich before his very eyes. Frederick Albert Lange accurately and forcibly expressed this attitude when he once said, "The spirit of jealousy never completely disappears while a poor man lives in the neighborhood of a rich man; it may, however, be rendered very dull by constant relative wealth." But by fluctuating relations and by every occasion which makes the present contrasts more striking, the feeling of envy is quickened. To this, what we might call objective insecurity of wealth relations, which is characteristic of our times, and which the proletariat observes, is added another insecurity which for the laborer is a subjective one. This is the uncertainty as to the means of his livelihood, the fact that he does not know from day to day whether he is going to earn his bread. For an industrial depression may result in the wholesale discharge of laborers, and thus in widespread famine.

It is this continual change which brings to a member of the proletariat a consciousness of his position. The increasing intellectual training, to which his life in great cities powerfully contributes, enables and inspires him to reflect upon the causes of this insecurity and upon the contrast between his own position and that of the rich. And then a secret is revealed to him, the discovery of which becomes the ground of justification for the modern agitations of the laboring class, the secret, namely, that all the circumstances of his existence are not founded in unchangeable, natural relationships. On the contrary, they are based upon the peculiarities of the prevailing social and economic organization. "No man can assert any right against nature, but in society distress at once assumes the form of an injustice inflicted upon this or that class." (Hegel.) Thus the ground is prepared upon which a social movement may be developed, for now a point of attack is found,—the existing social order.

And to the extent that social criticism of this sort becomes refined and sharpened, as discontent and the desire for improvement become intensified, another circumstance which defines the position of the wage-earner becomes more and more intolerable. This is his dependence upon his employer. This dependence is no longer a legal one, as in the time of slavery, but is no less complete on that account.
It appears in the fact that the laborer is assigned to his position by the entrepreneur through stress of hunger; it appears in the humiliating subordination under the command of an entrepreneur. It often assumes a medieval form when the factory-owner regards himself as the "patriarch" of his people and seeks to guide and determine their lives. It reaches out into the sphere of political right when the capitalist classes use their power in order to limit the participation of the wage-earners in the activity of the state.

Apparently these are the causes of the proletarian criticism of the existing organization of society, yet we must attend to some other special conditions of life among the modern laboring classes in order to understand the peculiar current of ideas which we continually meet with in all clamors for the "emancipation" of the proletariat. These might be distinguished on the one hand as a tendency toward communistic dreams, and on the other as a love for the masses.

The love of the masses and regard for the masses follows immediately from the association of each individual wage-earner with his thousands of fellow workers, all of whom are united by no other tie than their common labor in the service of the entrepreneur. They are grouped together without distinction, like grains in a heap of sand, and outside the factory undertake no higher social activity than some sort of union. What capitalism has tossed together, in crowds, in great cities and centres of industry, is, as we say, an inarticulate mass of individuals who have completely broken with the past, who have cut themselves loose from all communal ties, from home, village, and kindred, beginning life anew with a complete destruction of their old ideals. The laborer's only support is the comrade of his fate, who signifies as little as he, and who like himself does not belong to any historic community. With this individual he allies himself, and becomes his confederate. Hence arises a host of confederates who are distinguished by one thing above all others, not by individuality, not by common tradition, but by their mass, their massiveness. Never in the history of the world have so many individuals stood together for united action. Never in history has the impetus of mass-action so characterized any movement as has this of the proletariat. Everywhere we hear "the heavy tramp of the labor battalion" with which Lassalle sought to frighten his opponents. And if we would picture to ourselves the social movement of our day, it invariably appears to us as an inexhaustible stream of men hardly one of whom stands out clearly, flowing over the whole land as far as the eye can see, to the farthest horizon where the last of them roll away into the darkness. Translated into psychological terms, it signifies that there has grown up in the individual a tremendous strengthening of the consciousness of combined power, and a strong mass-ethical feeling to conflict with class-ethical
doctrine. Membership in his class, therefore, signifies for the wage-earner exactly what for others membership in a noble rank, in a community, a city, or a state has implied. With pride, he proclaims, *Proletarius sum.*

This dissolution of all quantitative or individual distinction in the mass, now viewed and, therefore, now valued only qualitatively, is parallel with and affects in the same manner the development of modern technique in other directions. Only he who has familiarized himself with their peculiarities will be in a position to understand the important features of the proletarian movement, and above all to comprehend the above-mentioned communistic tendency.

The increasing differentiation and integration of separate economies, their absorption into an indissoluble whole, on the one hand, and on the other, the progressive specialization and organization of labor in the modern "great industries" constitute what has been called the socialization of the process of production. This socialization has brought it about that a particular commodity appears no longer as the product of individual labor but as the joint product of common labor. Formerly the cobbler who made a pair of boots regarded himself as the fashioner of this particular article. The laborer in a modern shoe factory, who pursues only a single task in the general process, has lost this personal relation to the particular product. To-day the actual process is collective for individual articles, and, therefore, to the task laborer engaged in it, the conception of a collective organization of general production is no more strange. In the same way, however, and at the same time, the idea occurs to the laborer in the great city, of a common, of a communistic consumption. This idea is made more and more familiar to him by the character of his own home surroundings.

The separate dwelling, which satisfies man's original instinct for privacy, loses for the poor man in his congested tenement more and more of its charm. Instead, he feels a growing liking for public places where he can satisfy more completely his material and immaterial needs. Workingmen's clubs, public reading-rooms, concert-halls, and beer-gardens become a new home for the masses in great cities. The aggregated advantages of the public institutions, the public gardens and parks and museums, with their uninterrupted series of pleasures and delights, rise in the estimation of the laborers as the charm of their private or family life diminishes. The family itself dissolves under the influence of the excessively long day or night work away from home, through woman's labor, and the early employment of children. The result is that the proletariat is involuntarily led to transfer the weight of its interest from the individual to the social life.

Now, however, to gain a full understanding of the modern social
movements, we must become acquainted with the general conditions of the time under which they operate. Here also a few remarks are necessary. That which distinguishes the modern time is, above all, an alertness such as I can think of in no other time. A current of life flows through present-day society, of which no other time has known, and thus is made possible a stimulus between individual members of society, which was before inconceivable. This has been brought about by the machinery of commerce which capitalism has provided. The possibility of communicating across a great country within a few hours by means of the telegraph, the telephone, and the newspaper; the possibility of transferring from one place to another great masses of people by the modern facilities of transportation, has brought about an appreciation of the solidarity of the great masses, and a sense of omnipresence that to earlier times was unknown. This is especially true of the great towns of the present. The possibility of great mass-movements is thus extraordinarily increased. And in like manner is attained that development within the mass which we are accustomed to call education. Knowledge, and with knowledge pretensions.

Closely connected with this activity, however, is that phenomenon which we call the nervousness of our time, the lack of composure, the hurrying, the restlessness pervading all the walks of life. Through the peculiarity of business relations in all branches not only of economic, but also of social life, this restless spirit prevails. The era of free competition is manifest in all fields. Every one vies with his neighbor. No one longer finds joy in life. Beautiful contemplative peace is gone.

And finally, one more suggestion. This might be called revolutionism. For there never has been a time which has experienced such a complete subversion of every form of existence. Everything is in a fluid state, business, science, art, morals, religion. All ideas are in such a ferment that we are finally driven to the conclusion that there is nothing certain left. And this is one of the most important criteria for the interpretation of the modern social upheaval. For it explains two different things. In the first place it accounts for that destructive criticism of existing conditions which seeks to throw a bad light upon everything; which casts to the scrap-heap all former ideas in order to bring new ones to market. This critical spirit first took its rise among the bourgeoisie, who applied it to political, moral, religious, and esthetic relations. The proletariat is now adopting the same critical spirit, and applying it to the whole intricate field of economic and social institutions.

That revolutionary spirit produces, furthermore, fanatical ideas concerning the possibility of a blissful future state. Since miracles have been realized before our own eyes, such as none could have hoped
for; why not still more? Why not anything we wish? Thus the revolutionary present becomes the breeding-ground for the social Utopias of the future. Edison and Siemens are the spiritual fathers of Bellamy and Bebel. Here we have at hand the elements of which are constructed the "Socialism and Social Movements" of our time.
CERTAIN PSYCHOLOGICAL PHASES OF INDUSTRIAL EVOLUTION

BY RICHARD T. ELY

[Richard T. Ely, Ph.D., LL.D., Professor of Political Economy, University of Wisconsin. b. Ripley, New York, 1854. Graduate, Columbia University, 1876; Fellow in Letters, Columbia University, 1876–79; student at Universities of Halle, Heidelberg, and Geneva, and at Royal Statistical Bureau, Berlin, 1877–80; Ph. D., Heidelberg University, 1879. Professor of Political Economy, Johns Hopkins University, 1881–92; Director, School of Economics, Political Science, and History, University of Wisconsin, 1892; Secretary, American Economic Association, 1885–92; President, American Economic Association, 1899–1901. President, American Association for Labor Legislation, 1906. Editor, Macmillan's Citizen's Library of Economics, Political Science and Sociology. Author of French and German Socialism; Taxation in American States and Cities; Introduction to Political Economy; Outlines of Economics; Socialism and Social Reform; Social Law of Service; Monopolies and Trusts; Labor Movement in America; Past and Present of Political Economy; Problems of To-day; Social Aspects of Christianity; The Coming City; Studies in the Evolution of Industrial Society; with Dr. George Ray Wicker, Elementary Principles of Political Economy.]

A few years ago we heard a great deal about a new forward movement in economic theory that was attributed to a profounder study of the psychological forces at work in man's socio-economic activities than had previously been made. Professors Menger, Böhm-Bawerk, and Wieser, leaders in the so-called Austrian school of economists, were most prominent in this renaissance, and their chief service was a new elaboration of the theory of value based upon a more careful analysis of man's mental processes. But the distinguished German economist, Adolph Wagner, of the University of Berlin, who long before the Austrians were widely known, achieved fame, has frequently insisted upon a deeper study of psychological forces in our industrial life as a condition of an improvement in economic science. Wagner's treatment of capital affords illustration. An examination of psychical considerations disclosed by the study of economic society, he tells us, gives reason to believe that only under private ownership will there be a sufficient accumulation of capital.

Strangely enough, with all this emphasis upon the psychology of economic life, the peculiarly psychical elements at work in industrial evolution have received little distinctive attention even at the hands of scientists, while their existence appears to be almost unknown to those whom we ordinarily call the educated public. Nevertheless, it is precisely the so-called psychological considerations which are decisive in the elaboration of a wise policy as well as in the correct scientific treatment of industrial problems. In other words, in my opinion we have had the smallest attention given to the psychological considerations precisely in that field of economics where the
psychological method is likely to yield the richest returns. It is my purpose now and here simply to throw out a few suggestions which go to prove that we cannot understand industrial evolution unless we give careful consideration to psychical forces at the same time. These considerations, it is hoped, will throw some light upon a correct solution of important industrial problems.

The fact of the evolution of industrial society is generally recognized, although its implications are not a part of our familiar knowledge. A study of the history of industrial society reveals clearly that we have passed through various stages. It is not necessary when we say this that we commit ourselves to any particular theory of stages. According to the old and well-known classification mankind has gradually progressed from the hunting and fishing stage to the pastoral stage, from the pastoral stage to the agricultural stage, and then has passed through the agricultural stage to the handicraft stage, and finally to the machine stage of production. Each one of these economic stages has, of course, a sub-classification into phases. This gives us simply a general line of industrial evolution and does not imply that every portion of the human race must pass through the same stages and the same phases of evolution within the stage. It would take an undue amount of space to enter into a discussion of the scientific arguments and reasons for the position that this classification is sound. It seems necessary, however, on account of the limitations of the human mind, to divide our industrial evolution, which has a history of thousands of years, into periods in order to help us arrange our facts systematically and accumulate knowledge. We find men in historical periods living in each one of these stages. Each stage has in its full development characteristics of its own distinguishing it from the preceding and likewise from the following stage, when we consider these also in their full development. Between the stages at their culmination we have the transitional periods where one gradually changes into the other. No one will deny that the handicraft stage of the Middle Ages is radically different from the industrial life that we live now. Now, it is precisely when we consider our industrial evolution psychologically that we find the most meaning in the division of our economic or industrial life — for the two terms here are used interchangeably — into stages and sub-stages, designated as phases. As we pass from stage to stage and from phase to phase in the stages we notice certain changes in those habits, mental traits, and characteristics which lead to success. We have a certain psychical type of man corresponding to every phase in our industrial evolution. Where an individual has this psychical nature he is in harmony with his environment. The absence of this psychical nature results in disharmony and lack of adjustment. This is our first main position.
Our second main position is that as we advance from lower to higher stages a better man is required. What is essential in a higher stage is not a later period of time but a greater control gained over nature by man. The purpose of our economic activity is to gain subsistence through control over nature, and just in proportion as we gain more abundant subsistence through increased control over nature we may be said to advance to higher stages and phases in our economic life.

Our third position is that there are those who in their life do not keep pace with the general industrial movement. They are left behind and, unless special measures are taken to prevent it, a period of rapid movement means a relatively large number who are unable to adjust themselves to conditions.

Our fourth main position is that the movement in our economic life has continued for thousands of years and that those who are most advanced economically are separated psychologically by thousands of years from those living in the earliest conditions. They are the descendants of generations of men who have had all this time for adjustment, an adjustment secured very largely by natural selection.

If we reflect upon the change from the agricultural stage to the handicraft stage it will help us to understand these psychological features in industrial evolution. The handicraft stage is one in which man gained a greater control over nature, first, through the larger use of tools of a higher kind; second, through greater wealth accumulation with a devotion of a larger part of this wealth, particularly in the form of capital, to the preparation for future needs; third, through closer association with his fellows. Let us examine in its implications each one of these three methods by means of which nature has, to an increasing extent, been subjugated. The use of more tools of a higher kind means more complex brain operations. As we go forward in our industrial life an examination of the features of this life shows clearly that the man who is fully equal to it has to meet increasingly severe mental tests. Next we observe that a greater degree of self-control is required as a condition of success in a higher stage of economic life. Wealth must be accumulated not for immediate consumption but for future consumption. This means abstinence and self-control. It has been found necessary to pay some men of a low type twice a day in order to induce them to continue their work. A man of an advanced economic type will make an effort now without the slightest thought of reaping the fruit of the effort inside of ten years. The closer association of man with his fellows is one of the means whereby we gain increased power over nature; and as our efforts in production advance associations of an economic character continually become larger and closer. This means the ability to work for others steadily and persistently in
organic relations. If large success is to be achieved there must be
power to command and a readiness to obey while a state of liberty is
at the same time maintained.

What has been said finds an increased emphasis when we compare
the present machine stage of production, characterized by a high
degree of competition, with the earlier handicraft stage. Especially
are alertness, adaptability, and quickness of adjustment conditions
of large success at the present time. The ties of an economic char-
acter binding us to our fellows have increased extensively and in-
tensively with unprecedented rapidity. The term "industrial
society" has only recently become familiar, and this is a result of
these ties. As a further result we have a growing social self-conscious-
ness which imposes its own problems upon members of an economic
society, but which at the same time is one of the essential conditions
of our advanced life.

It follows naturally enough that those who succeed in a lower stage
are crowded down and out in a higher stage. It is proved conclu-
sively by history and by present observation of easily accessible
facts. The piratical merchant who is a hero in an earlier stage hangs
from the yardarm in our stage. The ancient Germans, Tacitus tells
us, thought it a disgrace to gain by the sweat of the brow what could
be secured by the sword. There is no room for doubt that many
a modern bandit would, in an earlier and cruder stage of society,
have been a hero. This is, perhaps, a sufficiently familiar observation,
but the implications of it are often overlooked even by scholars when
they come to treat present economic problems. Men are in varying
degrees mentally prepared for the present economic conditions which
have been gradually reached during thousands of years. Within the
nation there are those who, in mental traits and characteristics, are
only imperfectly prepared for modern economic life and must be
treated correspondingly. Man's mental and moral makeup is
able only of a limited modification after the period of maturity,
and even in the case of children heredity sets a limit to the possi-
bilities of modification, although this limit is a far more flexible one.
To take a very marked illustration, we have, in the United States, on
the one hand, the Negroes, and on the other hand, the Redmen, who,
themselves or their near ancestors, were brought up in a stage of
industrial society separated from ours by a period of hundreds if not
thousands of years. Is it conceivable that in a short period they can
acquire those characteristics, such as forethought, careful planning,
and awaiting results, which lead to success in the most advanced eco-
nomic society? What is true of these races is true only in a less
marked manner of other classes of society. We may lay it down as
a general proposition that during the past century the generalization
of economic progress has been more rapid than the generalization of
psychical traits corresponding to the phases of industrial evolution through which we have been passing. We have a society which, broadly speaking, has become coöperative under competition, but many men have not acquired those psychical characteristics which adapt them to a society at the same time coöperative and competitive.

This point, that there is a lack of correspondence between many men and classes of men and the particular phase of industrial evolution reached at a given moment is one to which in my opinion great importance should be attached; and I beg, therefore, to offer an illustration taken from the changed and changing conditions of American agriculture. Not that I mean thereby to imply the absence of similar changes elsewhere. Quite the contrary. I take this illustration because it is familiar to me from observation and because it is especially striking.

Successful agriculture is becoming daily a more complicated occupation, requiring a larger and higher type of man as time goes on. We have more and better machinery and less and less merely manual toil. We plant, cultivate, dig, and harvest by machinery. This means the accumulation of an increasing amount of capital, an awaiting results or a lengthening-out of the period between effort and the fruition of effort; also it means the capacity to handle the machinery effectively.

We have a continuous evolution from simplicity to complexity. As Professor Elwood Mead has well said in one of his Irrigation Reports: "The traction engine and the automobile have both an assured place in the economic operations of farms. Improvements in electrical transmission render it certain that water power is to be used more largely than in the past. Farm buildings, instead of being simply storage places for grain or shelters for live-stock, are becoming as complex in their designs and uses as factories." 1

Irrigation also shows the need of a new type of man in agriculture. The old-type farmer was by training an individualist. He looked to himself for success, and his isolation in his activities so influenced his character that his individualism seemed to become a part of his nature. But when the farmer from Old England or New England goes to the "Far West," where the only agriculture is irrigated agriculture, he must unlearn his individualism and become a coöperative man as a condition of success. The first farmers in a state like Colorado cultivate the bottom lands by means of simple, inexpensive ditches. Even this implies the use of more brain power, as a knowledge of the proper ways to apply water to secure the best result

is required. But as time goes on the ditches must be made increasingly large and expensive in order to cultivate the higher, so-called bench lands, which it is discovered are the more fertile. A single ditch means the investment of hundreds of thousands of dollars. Reservoirs are next constructed so as to save the flood-waters and to equalize the supply of water, bringing water to crops late in the season when natural streams run dry. The relations of farmer to farmer and of farmers to others who need water for manufacturing purposes or for urban purposes become daily more complicated, until the solution of the problem thus presented becomes a task worthy of the best intellects of our time. Now it is said that it requires a high type of man to succeed in agriculture in a state like Colorado, and I must say that I have never elsewhere seen farmers who, as a whole, impressed me as so active and alert, so much like capitalistic manufacturers. Those equal to the task set by irrigated agriculture seem to make large gains, and the others to be crowded down and out. At the same time the proper regulation of the economic relations involved in irrigated agriculture is a condition of the utilization of natural resources and also a condition of liberty, for without regulation we have the oppression of the weak and the tyranny of the strong.

The American Economic Association has recently published a monograph by Dr. H. W. Quaintance, instructor in economics in the University of Missouri, that throws a good deal of light on the nature of agricultural development. It is entitled *The Influence of Farm Machinery on Production and Labor*. One fact brought out clearly is the newness of our present farm implements and agricultural methods. It is stated that agriculture in our colonial period was not markedly different from that of Egypt two thousand years ago. On the other hand it is shown that on an average for our nine principal crops, namely, barley, corn, cotton, hay, oats, rice, wheat, potatoes, and rye, nearly four fifths of the present yield is due to the use of farm machinery. That is to say, farm labor is estimated to be nearly five times as effective in the production of these crops as it was as recently as 1850. With the exception of one of the nine crops, namely, cotton, a decrease of labor is absolute as well as relative. But this means difficulty of adjustment along several lines and also increased demands upon brain power and moral force. It requires a far larger amount of capital than formerly to carry on agriculture with success and consequently hired laborers have been increasing rapidly in states like Illinois. It requires a better man to use machinery than to carry on agriculture by the old methods. Consequently we find a large increase in the daily wages of workmen employed in the production of crops which require a use of machinery and a knowledge of machinery on the part of the hired laborers. On
the other hand it is stated that the average daily wages of agricultural laborers who are engaged in those branches of agriculture which require little machinery have actually decreased.

Even more striking are recent methods in corn culture which are being introduced in the Central West. We have long heard about pedigreed stock and now we are becoming familiar with pedigreed corn (maize). A bulletin published by the University of Illinois in August, 1903, gives an analysis of corn taken from forty ears, each of which represents seven generations of pedigreed corn and each bred with reference to some particular quality. It is not enough to raise corn, but corn must be raised for special purposes in order to achieve the largest success. Stock-feeders want protein in corn, and by breeding it is easy to make a variation of 100 per cent in protein. Manufacturers of starch and of glucose sugar want more starch in the corn. They, however, want less protein. It is stated in an earlier bulletin, likewise of the University of Illinois, that "the yield of corn can be increased and the chemical composition of the kernel can be changed as may be desired either to increase or decrease the protein, the oil, or the starch." The purpose of this reference to pedigreed corn is to bring out clearly the significance of economic evolution with respect to the kind of man who is going to achieve the greatest success in agriculture.

The use of automobiles elsewhere than in agriculture affords further illustration of the thesis under consideration. Automobiles are not used so much as they would be in retail trade because the employees are so frequently not equal to the higher requirements thereby set. A grocer's boy who can drive a horse may not always be trusted with the automobile. But progress is simply delayed. In the end those not equal to the higher requirements will be pressed down and out and will render existence more difficult in the overcrowded ranks of those with the minimum skill and capacity.

Let us now seek illustration in certain phases of the labor problem. A good illustration is afforded by a comparison between transportation by the steam railway and transportation by a wagon drawn by oxen or horses. The more advanced kind of transportation carries with it higher physical and moral requirements for those engaged in it. Not only are temperance and sobriety requisites, but eyesight must be tested as a condition of employment for the locomotive-driver, whereas an inferior man may drive a team of horses.

The minimum wage established so generally by trades-unions has a similar consequence. Those who are not equal to that degree of efficiency warranting this minimum wage are crowded out of their trade. This is a condition for which, in some cases at least, provision has been made by labor organizations, so clearly has it been recognized.
On the other hand we have an antinomy, as we may call it, in the fact that this same industrial evolution has in consequence of the division of labor given us some employments of a routine character exceedingly simple, apparently soul-deadening, and very poorly paid. These occupations fall to the most helpless classes in the community, recruited by those crowded down and out of those kinds of labor requiring growing efficiency.

All this we may bring into direct connection with the struggle for equality of opportunity. The progressive evolutionary stages of industrial society set increasingly difficult tasks, and as a result of the unequal development of men we have capacities almost infinitely varied when they are applied to these tasks.

The subject of contract brings before us in a new way the increasingly complicated nature of modern industrial society and enables us to see it from a new viewpoint. This is of particular importance in the consideration of the labor problem. Labor remuneration is governed by contract and contract determines the other conditions of employment. Now modern contract becomes daily a more intricate affair, which, for its interpretation, taxes the ingenuity of our ablest legal minds. On the other hand it requires a rather developed mind to grasp even the essential elements of contract. One of the obstacles to reform in Turkey is said to be the difficulty the ordinary Turk has in understanding the significance of time. Yet the concept time is one of the first elements in the labor contract. Let us pause for a moment to consider the difficulties with which we are confronted when we consider contract. Contract must be viewed as sacred. It is a necessary foundation of our socio-economic order. We admire the man "that sweareth to his own hurt and changeth not." Thomas Jefferson wrote in his Bible opposite that verse and the verses accompanying it in the Psalms, "the description of a perfect gentleman." And we feel that he was right. Yet in contract we have all the hardnesses, injustices, and cruelties of nature. It is simply a medium through which existing forces find expression. The individual must obey his individual contract; but it is apparent that there must be a higher power, a public power, controlling, regulating contract, forbidding some contracts, determining the conditions of others, and in extreme cases dispensing from the obligation of contract, as the courts in Germany may do in the case of usury. Public authority must be the binding and loosing power. Let us again seek an illustration in irrigation. From the Platte River system in Colorado, Wyoming, and Nebraska more than two thousand ditches take water. The absurdity of the idea that voluntary agreement expressed in unregulated private contract can divide

1 North American Review, August, 1904, "Obstacles to Reform in Turkey," by Charles Morawitz.
up this water satisfactorily becomes apparent on a few moments' reflection to one who knows even the primary elements of the problem involved.\footnote{Elwood Mead's "Review of Irrigation Investigation," in the \textit{Annual Report of Experiment Stations for 1902}, pp. 374, 375, United States Department of Agriculture.}

If space were sufficient it would be interesting to consider at some length those who are left behind by industrial evolution and the problem that they present. We have those who make up the element in our population that has been called the submerged tenth. These must be carried as painlessly as possible for themselves but without injury to society. Criminals are included in this submerged tenth. It is now generally conceded by criminologists that they should be shut up during criminality and that the aim in their incarceration should be reformation. It is also clearly perceived that we must define our terms and not place among the criminal class those who by nature do not belong to it. No one can say how large the class of natural criminals is, but it is much smaller than has been frequently supposed. When we look at the facts of the case we discover that in our bungling we have been making criminals of men. It is as true as it is trite to say that the ordinary county jail is a school of crime. Through juvenile courts and modern methods we know how to reduce the number of criminals.

We may consider also the feeble-minded who require custodial care and those educational methods that will give them the highest development possible. At the same time they must be confined to prevent reproduction.

We have the insane who are not equal to the strain of modern life. Thus we could continue. We have a permanent condition in those left behind in the transition from stage to stage and from phase to phase. The only way that this can be prevented is through the control of reproduction of human species. Something can be done in this direction and is being done, as for example, in Wisconsin, where the feeble-minded are confined, and as in Connecticut, which has the most advanced legislation in this country on the subject of marriage.

The main industrial problem is found in the conditions of the great mass of men who are capable of development, but require help to help themselves in order that they may become equal to modern industrial conditions.

We have, as we advance, and with every stage in our advancement, an increased expensiveness of adjustment on account of the greater demands on the individual in the more complex society. This is part of the price of industrial progress, and the wealth to pay this price is furnished in the very increased productivity which causes the higher price.
The great problem then is the creation of institutions in accordance with the needs of the different elements in the community, if we arrange these into classes to correspond to their mental and moral characteristics. We have as a matter of fact been creating such institutions during the past one hundred years. All civilized lands have been engaged in this activity and they have created institutions to serve the purposes of classes of men with widely varied needs and capacities even in opposition to preconceived and generally accepted theories. This has been particularly the case in the United States. I believe that this is an explanation which throws new light on social progress. The movement is destined to continue as it is an inevitable outcome of that mighty struggle for equality of opportunity which is shaping human history.

We also have this economic problem when we come to deal with those of other nations as we do in this era of expansion. It is a problem, for example, to what extent landed property in severalty, with its free sale and purchase, is adapted to those tribes of people who have not acquired the type of mind which has been gradually evolved by the most civilized nations during the course of their history. Let us once more take the case of the North American Indian. If this line of argument is valid, is it possible that in a few short years he should become adapted to that form of property which the most highly developed people in the world have reached as a result of an evolution of hundreds and thousands of years? If the problem is to change the nature of the Indian, must we not shape our institutions to his conditions and allow him generations to adapt himself to the most modern institutions? If this line of argument is true, we must expect that the results of property in land in severalty among the Indians will be that they will lose their land. To prevent alienation of the land allotted to the Indians for the period of twenty years seems absurd, as the real problem is a change of Indian nature.

Continuing this line of thought, that we must provide institutions adapted to the needs of the various classes in the community, we come to the problem of insurance. The gifted and capable can make their way and do make their way in competitive society based upon private property if they do not meet with accidents. It is absolutely impossible that the ordinary man should prepare for all the contingencies of modern industry. Accidents may befall the worker just at the initial period of activity, and they may come in middle life. It is beyond possibility for the ordinary man with ordinary wages to make adequate provision therefor through his own unaided efforts. The solution of the problem of contingencies is found in insurance, which is making such rapid headway throughout the world and in which Germany has left all the rest of the world so far behind. There is no greater labor problem than that of insur-
ance. This can be provided by government or by private individuals. In the United States great private corporations are doing something in this direction. There are obvious limitations to what can be accomplished by private effort. A great proportion of the wage-earners must always be employed by private individuals or by firms and corporations not sufficiently powerful and stable to furnish satisfactory insurance. Apart from this, there arises the question, to what extent may a really desirable freedom of movement be impeded if employment and insurance are furnished by the same persons?

I think it is now generally conceded that the risks of industry should be borne as a part of the cost of production, and this must be secured by general measures. England has, perhaps, gone as far as possible through employers' liability. The investigations of the Industrial Commission of the United States show that, to a very great extent, the blame for accidents cannot be laid either on the employer or on the employee, as accidents are a natural outcome of production. In many cases there is blame, especially when the best safety appliances are not provided, but the establishment of blame does not bring with it a remedy for the economic incapacity of the individual wage-earner. Much governmental activity in the way of supervision is required to make the industry bear the burden of the accidents and contingencies which befall the workers and to make indemnity certain.

The question of pensions is closely connected with that of insurance. When old age is reached we have also reached an appropriate period of rest. Competition has done its work and society has no further economic services to expect from the individual. The problem is to provide for those who have reached old age without weakening the springs of right economic activity in others.

Returning once more to competition, the trite phrase, a high ethical level of competition, suggests a large number of problems and appropriate methods for their solution. Society determines what we may call the rules of the game and does so in accordance with its ideals, which gradually become clearer as social self-consciousness becomes more pronounced. When we determine that no child under fourteen shall be employed in a manufacturing establishment we do not lessen competition, but we simply determine one of its conditions. We make one of the rules of the game. That is what we do in all our labor laws, in our pure-food laws, etc.

This suggests in the United States the subject of interstate competition and, for the world as a whole, the subject of international competition and its bearing upon the general level of competition. Just as we cannot in local matters rely upon voluntary effort, because we have the problem of the twentieth man who, through the force of
competition, tends to drag others down to his own mean ethical level, so it would seem that in one state or nation we cannot rely upon other states and nations to establish as high a level of competition as we might desire. This subject has been agitated more or less for three quarters of a century, but so far little that is very tangible has been reached. An International Labor Conference was called by Switzerland fifteen years ago, but Switzerland gave way to the German Emperor, William II, and a congress was held in Berlin, March 15 to 29, 1890. But the first international treaty designed to protect labor is that between Italy and France dated April 15, 1904. A beginning has been made and that is all that we can say. Fortunately up to the present time it has not been clearly demonstrated that any nation or even a state within a nation has suffered on account of a high level of competition. Success in competition depends upon the kind of man who is engaged in industrial pursuits, and a high level of competition naturally means a larger and better man, and consequently an ability to maintain one's own in competition. Generally speaking it is those nations and those parts of nations which have done the most for the workers that are most dreaded in competition. It must be admitted, however, that as we draw closer and closer together in our economic life and as world economy gains relatively upon national economy, the problem of international economic legislation, particularly international labor legislation, gains in importance.

The presence of monopoly in modern industry is one of the facts revealed by a survey of industrial history; monopoly has existed in the past in all civilized countries as well as in the present. In a study of the industrial history of England we come upon the words "monopoly" and "exclusive privilege" on almost every page of that history. The ceaseless iteration of the terms becomes almost wearisome. So far as monopoly itself is concerned, meaning thereby exclusive control over some portion of the industrial field, we have no new thing. The character of monopoly has simply changed with the progress of industrial evolution. The significant monopolies of our own time are those which are extra-legal. They have not grown up as a result of the intention of the lawmakers nor indeed have they come as a result of any conscious desire on the part of society as a whole. Certain industries have shown monopolistic tendencies by virtue of their inherent properties, and there is an increasing tendency in civilized countries to recognize this fact and to make these pursuits, the so-called natural monopolies, also legal monopolies in order to prevent waste and to secure certain gains resulting from monopolistic methods. It is recognized by the common law of England and America and, I think I may say, by what corresponds to our common law in other countries, that private monopoly uncontrolled
is a menace to public weal, inasmuch as it removes the benefits of competition and creates special privileges. Monopoly due to external conditions is not like those extra gains coming to one as a result of peculiar excellence and which are suitable rewards for social service. The monopoly due to external conditions or to facts and forces external to the individual tends, so far as we can judge from history, to repress initiative and invention on the part of the individual. Consequently, the extra gain from monopoly is a gain not for social service but for social disservice. We have rewards either without service or without adequate service. We have then a special privilege which is hostile to the general interest and particularly to the wage-earning classes. The problem then before us is a problem of control of monopoly in such a way that we may remove the oppression of laborers and of others and retain equality of opportunity. This control may be secured either through direct ownership and management of the monopolistic industry or through regulation. We find both methods resorted to. In the case of industries of a routine character which can be carried on in accordance with certain general principles, public ownership seems on the whole to secure better results. It is in accordance with the principles of property to give control, and when we have private ownership and public control we are attempting to unite two antagonistic principles. This is an industrial problem which carries with it a great many subordinate problems. It is enough at this time and place to point out the nature of the problem.

Closely connected with the foregoing is a compact organization, (a) of capital, (b) of labor, also revealed to us by a general survey of industrial history and present economic industrial life. This survey reveals to us, and in my mind demonstrates the futility of efforts to suppress the large organization of capital and the large organization of labor. The only right method can then be to guide and direct both kinds of organizations in such a way that they may subserve the public interest.

What has been said in regard to industrial problems is general in its nature and designed to be merely suggestive. It presents specific problems of industrial society as problems produced by industrial evolution and also as problems which are largely psychical in their nature. The laws and institutions demanded are those which are required to meet the needs of the various classes in the community which are almost infinitely varied with respect to acquisitions, achievements, and capacities. We present one side of the problem when we say that we must create institutions to answer the needs of the various classes in the community. We present a different side of the problem when we say that we must attempt to adjust all members of society by educational processes to their
physical and more particularly their social and economic environment in its highest manifestation. This gives us the dynamic side of our problem. We must not simply attempt to meet the needs of a class with a low average of mental traits and moral characteristics, but we must attempt so far as possible to raise each class to the highest level. We have thus indicated the two great lines of movement of modern nations in their attempts to solve the industrial problems of the present age.
SECTION E—THE DEPENDENT GROUP
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(Ihall 5, September 23, 10 a. m.)

CHAIRMAN: DR. ROBERT W. DEFOREST, New York City.
SPEAKERS: PROFESSOR CHARLES R. HENDERSON, University of Chicago.
DR. EMIL MÜNSTERBERG, President, City Charities, Berlin.

THE DEFINITION OF A SOCIAL POLICY RELATING TO
THE DEPENDENT GROUP

BY CHARLES RICHMOND HENDERSON

[Charles Richmond Henderson, Professor of Sociology, University of Chicago, and Head of Department of Ecclesiastical Sociology in the Divinity School. b. Covington, Indiana, December 17, 1848. A.B. University of Chicago, 1879; A.M. ibid. 1873; B.D. Baptist Union Theological Seminary, 1873; D.D. ibid. 1885; Ph.D. Leipzig, 1901. Pastor, Terre Haute, Indiana, and Detroit, Michigan, 1873-92; Professor, University of Chicago since 1892. Member of American Economic Association; Academy of Political and Social Science; Membre de la Société générale de prisons; President of National Conference of Charities and Corrections, 1899; President of National Prison Association, 1902; Membre du Comité International institué par le Congrès de 1900 pour la préparation du Congrès de 1905; Member of Executive Committee, Bureau of Charities, Chicago; President, of National Children’s Home Society. Author of Social Settlements; Social Spirit in America; Social Elements; Modern Methods of Charity; Modern Prison Systems; Introduction to the Study of the Dependent, Defective, and Delinquent Classes; and other works on sociology; also associate editor of American Journal of Sociology, and others.]

The subject of the social treatment of dependents has been approached through several different disciplines, according to the previous training and bias of the investigator and writer. The economists have dealt with the topic as a problem of finance, of public expenditure, and of production, wages, and the distribution of the product of industry. Since the money spent in public relief must be raised by taxation, and since the method of giving relief affects the efficiency of labor and the rate of wages, the economists were right in giving serious attention to this matter.¹ The Poor-Law has naturally been treated by legal writers because it was a vital part of the system of control by governments in all modern countries, especially in northern Europe and the English colonies and their offspring. The "police power" of the state covers this function.²

The older "moral philosophy" or "moral science" sought to answer the question: "What is our duty to the very poor, and how can we best fulfill that duty?" In reality that is one problem

¹ Here may be mentioned, among many, Malthus, Chalmers, J. S. Mill, Fawcett, Roscher.
² See E. Freund, Politics Power, 1904.
of what may be called a branch of social science, differentiated as "social technology." For the steps that we take in accumulating facts about the dependent group, in the classification of subgroups, in the determination of causes, in the statistical measurement of misery, and in the definition of social aims, all culminate and find their supreme value in their contribution to the solution of this question: "What is our duty to the helpless poor and how may we best fulfill that duty?"

When we come to deal with special classes of dependents we encounter a series of professional disciplines and arts. For example, the care of the insane is a branch of the medical art, and only alienists who devote their lives to this department are trusted to speak with highest authority. This is also true of the public care of epileptics. The care of the feeble-minded, idiots, and imbeciles is chiefly a matter of a pedagogical specialty, although medicine and surgery lend important aid, as in physical culture, the thyroid treatment, etc. The care of normal dependent children is best determined by considerations of general education, and here we are brought into the field of the teacher and to the problems of domestic institutions.

It thus appears that the study of the social treatment of dependents makes drafts on almost all the funds of human knowledge, uses all the methods and results of investigation, and employs in turn all the great institutional agencies of the community.

This essay does not profess to announce for the first time any new discoveries or results of special original investigations as yet unpublished, but rather to mark the present stage of knowledge on the matter before us, and to indicate some of the points on the frontier of experiment and research where further data are needed. If, in thus restating the subject, some slight increment to science may be added, it will be incidental to the main purpose of the exposition.

Any attempt to describe the system of charity even in one country would result in a dry, tedious, and disappointing sketch. The essential features of modern methods fill a large volume, and detailed accounts require many volumes.

It would seem expedient to select a theme which will lead us to consider the most recent and successful endeavor of students of social science, (1) to construct a special discipline which is clearly marked off by its subject-matter and is deserving of independent and systematic treatment; and (2) to consider a method of taking up particular problems of practice, so as to guide experiment into the most economical and promising paths.

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1 My article, American Journal of Sociology, January, 1901.
2 Modern Methods of Charity Systems, by the writer and others, Macmillan Company, 1904.
A social policy is not aimless and irrational, but moves toward an end, seeks to realize a good. Soon or late social science, in the course of its development and specialization, must encounter the problem of values and standards which does not complicate the studies of inorganic nature, as chemistry, physics, and astronomy, and only incidentally biology. Thus, for example, we are forming judgments as to the best methods of dealing with dependents. What do we mean by "best"? We are really thinking of the welfare of dependents and of the people of the community of which they are members. Many specific ends we have in mind, as the restoration of the sick and the insane to health, or the mitigation of distress when cure is impossible; the improvement of the touch, hearing, sight, and skill of the feeble-minded; the proper nutrition and development of neglected infants; peaceful and quiet existence for aged men and women in almshouses; and many more such purposes. We give social honor and praise to the rich men who endow hospitals, and to the physicians and nurses who faithfully give their lives to the sick. It is evident that modern societies act as if they knew that such ends are rational and worthy.

But there is both theoretical and practical interest in the wider scientific problem: What is the general social end? For we neither know the full extent of social obligation nor the relative value of a particular object or institution until we see the specific action in its place in a comprehensive system of ends. Our theory is incomplete and our system of agencies falls short, and our devices are either superfluous and exaggerated, or halting and inadequate, until our definition of the ultimate purpose of social action and conduct is clear and rationally justified.¹

Since we cannot, here at least, critically follow this argument to a satisfactory conclusion, we may assume what society actually takes for granted, and what we find implied in all social institutions, laws, societies, movements, governments, that health, sanity, intelligence, morality, beauty, etc., are desirable for every human being.

The standard by which we judge a social policy must be a multiple standard, like the compensating pendulum of a reliable clock. The standard here assumed as valid includes the following ideas: (1) Welfare, well-being, analyzed into its various unanalyzable elements of health, wealth, knowledge, beauty, sociability, ethical rightness, and religious faith, is the most general conception involved (analysis of A. W. Small). (2) The welfare of all men, not of a limited class, must be the ideal, the regulative principle. Neither

¹ See Stammler, Wirtschaft und Recht.
the political will of a democratic age nor the authority of an ethical philosophy countenances any standard for social conduct which is not universal, purely human. Persons cannot ethically be treated as means to ends outside themselves. No policy which is partial to a family, a dynasty, an order, a church, a class, at the expense of others, can be defended. (3) Therefore our standard is set up for the defense of the helpless child, the undeveloped, the tardy, the incapable; not because of what they can now do for society, but because they are human and have potential capacity for future development. (4) The analysis of social ends shows that we include all qualities and kinds of the humanly desirable. As a nature-object every person must have a certain minimum of food and shelter, and, normally, the race-interest asks for provision for propagation, maintenance, and protection of healthy offspring. Hence the demand of our standard that all capable human beings have a chance to work and produce wealth, material objects of desire. As a psychical person, one who must find his own way in a knowable world, each human being must be taught what he can learn of the knowledge possessed by his community, and his power to learn must be developed. Culture must be many-sided, even in an asylum for idiots or a prison for the criminal. (5) Scientific social ethics transcends merely qualitative analysis of social elements of welfare, and is ambitious to employ mathematics as far as possible in the accurate and quantitative measurement of its standard. Our age is trying to define at least a minimum standard of life for all citizens. This process has already gone farther than many citizens are aware. The standardizing of weights and measures is a recent addition to the functions and offices of our federal government at Washington, and it marks an advance in the technical arts. At many points we are seeking to standardize the conditions of welfare of human beings. Naturally we are here concerned with a minimum standard; if we can discover and fix this measure, the more capable, aspiring, and energetic members of society may safely be left free to enjoy all above that level which they can justly acquire and rationally use.

At this hour no rational (scientific) standard for the minimum income of wage-earners has been generally accepted. (1) The rough rule of average employers is "the law of supply and demand;" which law actually leads to the destruction of human life on a gigantic scale for the sake of profits. It has no final social justification. (2) The gradation of wages according to the rate of profits is not rational nor equitable. The fluctuations and inequalities under such a rule would be unendurable. (3) The rule of the "sliding

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2 *The Outlook*, August, 1904, articles by Messrs. Hand and Poole.
scale," which means that the rate of wages fluctuates with the price of the commodity produced, has no ultimate basis in reason, and does not provide a socially acceptable minimum rate. (4) The rule of the strongest, in the fight between trade-unions and employers' combinations, which gives the advantage to the party which holds out longest, is simply a barbarous makeshift, with a rational standard far in the dim background. And where unions and combinations do agree the result is simply more hardship for the consumers, and bears with greatest weight on the very poor. (5) The only rational starting-point is a minimum standard below which public morality expressed in sentiment, custom, trade-union regulations, moral maxims, and law, will not permit workers to be employed for wages.

As I have elsewhere discussed this minimum in relation to the industrial group, it remains only to indicate the contribution which charity work has made to the discussion of a standard. The dietaries of asylums, orphanages, hospitals, and prisons are the outcome of a long series of experiments in chemical and physiological laboratories, in army and navy, in camp and mine, as well as in these institutions of charity and correction.

One field for the adoption of a standardized minimum remains to be cultivated, that of adequate outdoor relief to needy families in their homes. The stupid complacency with which only too many public officials and private benevolent societies pretend to relieve the destitute, while leaving many of them still partly to depend on begging, theft, or vice, is a sad commentary on the state of knowledge in this region. One result of this unscientific guesswork, where measurement is already possible, is that much public money is spent on the burial of pauper children which should have gone to feed and nourish them into vigorous producers of wealth.

Charity, in American cities, is far behind its task. It does not even have knowledge of those who need its aid. Under the "Elberfeld" system there are friends of the dependent in every small district of the city, and the individuals on the border of suffering can easily find their way to a helper. In America the public funds are frequently accessible only in one central office, and even when there is outdoor relief it is limited in amount.

There are many people in comfortable circumstances, and many charity workers, who think that our American charity is very nearly adequate. This optimism, I believe, is not based on facts, and is positively a barrier to necessary improvements. My own conviction is based on long personal observation and on certain professional testimonies and statistical data. For example: Physicians who practice among the poor frequently report sickness and mortality which arise from "starvation diseases." Teachers of public schools in poor quarters make similar statements. The London and Chicago
measurements of children in reformatory schools show an enormous ratio of dwarfed, underfed children. The reports of boards of health in American cities contain evidence of the same conditions.

A very common answer of some charity societies to this charge is that they are able to give relief to all applicants. But, with these facts before us, the answer is not decisive. People by the tens of thousands are trying to exist and bring up children in homes which are unfit for human habitation, and on food which is insufficient to meet the minimum requirements of growth. They do this because they either do not know where to apply for help, or because they know that, unless actually ready to perish, they will be treated as able-bodied and "not needing relief," or because they prefer to suffer from hunger and cold and disease rather than ask alms.

I do not claim that charity should attempt to relieve all distress. No doubt the idleness and vices of men produce much misery which philanthropy cannot reach. No doubt moral reformation and schemes of thrift, insurance, education, and general sanitation will in time remove many of the causes of this distress. But what I urge is that we do not now realize the actual enormity of suffering from poverty, that our methods of finding out are very inadequate, and that our optimism is as cruel as it is unscientific. So long as many influential charity workers are teaching rich and well-to-do people that we are almost at our goal we shall never awaken the public to put forth the necessary effort to cope with the overwhelming evils of extreme need in our industrial centres.¹

The present efforts of the permanent Census Bureau of the nation, supported by the National Conference of Charities and Correction, by the National Prison Association, and by all experts, to collect continuous and reliable statistics relating to paupers and criminals, should be supported by all citizens. It is to be hoped that funds will be furnished to professors and students in university departments of social science for investigations in this field.

It might be thought that the elements of welfare in the higher regions of intellectual, esthetic, and moral culture are too refined, indefinite, and ethereal to be standardized. But all countries which have compulsory school attendance, at least up to a certain age, declare thereby that they have adopted a minimum standard of education; and they compel competitive exploitation of youth

¹ One illustration of an attempt to fix a minimum standard may here be given: "Dr. Franklin, of the United Hebrew Charities of New York, in a study of income and expenditure of a family just above the line of dependency, shows the disbursements for one month to have been about $32, the receipts from all sources (including $5 from lodgers) during the same period were from $33 to $35," Solomon C. Lovenstein in Jewish Charity, June, 1904, p. 210. See also, Charles Booth, Life and Labor; Rountree, Poverty: a Study of Town Life; F. T. Devine, Principles of Relief. Dr. Devine's book was not yet published when this paper was written.
to wait for maturity of body and mind. Child-labor laws are themselves the definite legal expression of a mathematical measurement of a social duty.

The trade-union world is stating its minimum standard more and more definitely, and insisting on it with courage and constancy, though sometimes also with acts of lawlessness and atrocity which show disregard of community welfare. This minimum standard includes such factors as the eight-hour day, the sanitary work-place, protected machinery, the age of beginning apprenticeship, and a minimum rate of wages for each branch of industry. The effect of the successful and general application of this standard upon the incapable and the feeble deserves our attention; but the enforcement of the minimum, being a community interest, should not be left to trade-unions, but should be, as far as possible, a matter of law and governmental action.

In the maintenance of this minimum standard we are compelled to face the problem of immigration of foreigners whose standard of living is below this minimum. So long as hordes of this class are permitted to come freely to America, to live herded in unfit habitations, and to compete for places with our naturalized citizens who have already won an advance, the case is hopeless for our own people.

Uncritical and traditional requirements of ethics produce an unreasoning sentimentalism which wrecks injury upon the race. The ethical demands of the future will become more exact, more capable of explanation and justification, because they will rest both upon inherited instincts of sympathy and also upon calculations of the consequences of methods on social welfare in our own and coming ages. Many of the moral standards of our times need to be profoundly modified by this process of scientific testing and experimentation.

II

The general form of our present problem is this: What is the best system and method of promoting the welfare of the dependent group considered as a vital part of the entire community? It is chiefly a problem of technique. This technique is a mode of action by a community. It is known and has its reasons in relation to the rational order of society. It can be taught and learned, for it is taught and learned. Hence it is a subject of science and has won proper recognition as a topic in this Scientific Congress. This technique is learned originally as other scientific conclusions are reached,—by systematic observation of social phenomena, by induction from facts, by performing experiments with methods under varied conditions, by inventing working hypotheses and putting them to the test of reality.
We are students of causes in a rational system of life; only we are trying to discover forces and conditions which will bring about a desired result, and we are not merely trying to explain a fact completed. We set before us not merely an effect to be accounted for, but a state of society and of persons which we desire and will to produce, on the ground that we represent it to ourselves as desirable. We are mentally adjusting a system of means to good ends, and not merely looking for the process by which what actually exists once came to be. One of these processes is just as truly scientific as the other, although the difficulty of prevision and provision is greater than that of explaining the past.

III

Elements in a Social Policy relating to the Dependent Group

(1) We need to distinguish as sharply as possible, both in social thought and action, the members of this group from those who belong to the industrial group. Perhaps one of the most disastrous forms of mental confusion is that of confounding these two groups and so treating them alike. The dependents have long been played off against the wage-earners, and are even now frequently used to lower the standard of living of the competent so as to reduce many of the self-supporting to beggary, shame, and demoralization, with a long train of vicious consequences through heredity for the future race. The typical historical example here is the national degradation which threatened the English people before the reform of the poor-law about 1834, when poor-relief was given as a supplement to wages, with the consequence that all common, unskilled laborers were fast becoming paupers as a condition of mere existence; and pauper labor proved to be incapable of producing wealth enough to support the nation.

But we do not have to go so far to discover flagrant illustrations of the same tendency, even in the fortunate economic conditions of the United States. There has not been an important strike in the past decennium, involving large numbers of low-skilled laborers, when charity-supported or charity-assisted persons or semi-criminals did not offer themselves in crowds to compete with the strikers. The "parasitic industries" are found in all cities, that is, industries in which the income which supports the family comes partly from wages, partly from charity, partly from vice, and partly from the physical and moral capital of the next generation.

Under a previous head the minimum standard of human existence has been defined as closely as the nature of the subject and our

1It is notorious that many of the professional "strike-breakers" are of the vagrant class, on the borderland between vice, pauperism, and crime.
present knowledge permit. The critical test lies here: Those who can
earn the minimum in competitive society belong to the industrial
group; those who cannot earn this minimum belong to the dependent
group. This is a rough measure, but it is far better than no standard,
and it is practically correct. In fact, it is already more or less con-
sciously applied in every instance where public poor-relief is given.
Of course, no thoughtful person will take us to mean that there is an
impassable barrier between the two classes, so that dependents cannot
be helped to ascend into and remain in the industrial group; and there
will always be some difficulty to decide the status of those on the
border-line.

The members of the dependent group, who cannot earn even the
minimum wage necessary to a human existence, are now actually
supported by society; but frequently, and on a large scale, in such
a way and by such methods as to keep them down and drag others to
their level. For example, the products of charitable and correctional
institutions are sometimes put upon the market in such quantities
and massed at such points as to reduce the wages of self-supporting
work-people below the level of the minimum. In the sewing indus-
tries very serious evil is thus introduced.

(2) A social policy relating to the dependent group must isolate
the criminal group. One of the plagues of public and private charity
is the anti-social criminal, the sturdy rogue and vagrant, the debased
drunkard, the cunning thief, who mix in the throng of the merely
dependent and appropriate by impudence or craft the fund intended
for the helpless and incapable. At the door and desk of the municipal
lodging-house may be seen daily the sifting and judging process —
one of the most delicate and difficult tasks which ever test the judicial
faculties of man. The same problem often confronts the friendly
visitor in the homes of the poor,—as when one is called to help the
wife and infant children of a lazy or absconding husband and father.

Recent experiments and discussions at this dividing-line have
shown that the rough and ready, but overworked, "work-test,"
even as a "workhouse test," is but one factor in the best method. One
difficulty is that the motley multitude called the "unem-
ployed" is composed of unlike elements, the vagrant, the inebriate,
the petty unsuccessful thief, the burglar "down on his luck," the
physical degenerate, the enfeebled convalescent just staggering back
from a hospital, the stranded country youth, the unskilled laborer
seeking a job without trade-union card, and others; some with hard
palms and thick muscles, some with deft but delicate fingers, some
accustomed to cold and heat, some with prophetic cough ready to
perish with slight exposure to sun or storm.

In order to treat with fairness, discrimination, wisdom, and
humanity all these "unemployed," and to transfer to the machinery of the criminal law those with whom charity cannot deal, several tests are necessary, and a merely automatic, mechanical method is totally irrational. (a) First of all a judicious, firm, courageous, and humane agent is necessary. The evil of depending entirely on a single coarse test, as the stone-pile, the bath, the workhouse, is that it seems to make the man unnecessary. It has long been observed that in an asylum for the insane where all the patients are kept within steel cages, one or two brutal attendants can carry out the policy; but where freedom, fresh air, play, industry, and rational treatment are given, the hospital must have many gentle, strong, and trained nurses. So exclusive reliance on a stone-breaking test tends to place surly and cruel keepers in charge of all applicants for shelter and aid, and thus the institution designed for charity and justice becomes an insult to honest workmen and a discouragement to the sensitive, without furnishing the quick insight which most unerringly discovers real criminals. (b) The work-test, in many forms, is only one useful method which works well under good direction, since crime is as parasitic as pauperism, and the mark of the parasite is that he wishes to live at the expense of others. (c) The employment bureau, with a reliable record and a sharp watch-care, is another means of marking the industrious man and discovering the cheat. (d) In cities, and often in towns, a certain amount of personal guardianship, a kind of probation work, is necessary to hold a moral weakling back from sliding down the easy incline toward criminality. All this information which is necessary for a wise treatment must be collected instantly, by means of messengers and telephone and telegraph, and from every available source. For the moment when a man can be helped and turned away from beggary or crime is the moment when he is under treatment and within the grasp of the official. The German Verpflegungsstationen, with their simple inns and their system of certificates and records, have much to teach us.

But whatever the tests employed, in some way the members of the criminal group must be distinguished, known, and isolated from the dependent group. Charity, public or private, has no machinery of compulsion, and ought not to have. The steamboat is not made to sail on land; the school-house is not constructed to hold burglars in confinement; and a charity bureau is not fitted for the task of managing deserting husbands, petty thieves, and confirmed inebriates. Society must erect specially adapted machinery for dealing with this class of men, and it must have agents trained for each particular branch of its service.

(3) Part of our social policy must be a better understanding between the public and private agencies of relief. So far as principles of administrative methods are concerned there are no radical differences,
both must aim at the real good of the recipients and of the community. It is also true that the division of labor need not be the same in every state and every county or municipality.

But the necessity of agreement and cooperation is easily illustrated and demonstrated from examples taken from practice. Thus private charity sometimes supports a feeble alien who has been rejected by the agent of public outdoor relief until he has gained the rights of settlement and becomes henceforth a public charge; and this happens even in states where it is a punishable offense to import a pauper from one county into another. This understanding should go far enough, in cities where there is legal outdoor relief, to secure for the salaried agents the assistance of voluntary, unpaid, friendly visitors. Our public relief in American cities sins against the fundamental principle of individual treatment, because it refuses thus far to learn from the German cities, which employ unpaid visitors and give to them, within certain regulated limits, the responsibility for the distribution of public funds.

The essential principles of division of labor seem to be: (1) the relief which is required by law is only that which is necessary to life and industrial efficiency, while private relief can deal with exceptional cases and provide a measure of comfort; (2) public relief is more suitable where there can be common, general regulation; private relief is more adaptable and can act in exceptional ways; (3) public relief may properly provide for permanent and universal demands; private relief, being optional and voluntary, may rise to meet changing situations, and hence can more readily try experiments for which the voting public is not ready to expend money or erect administrative machinery.

But division of labor is only one aspect of social cooperation, and it really implies and demands a conscious and concerted effort to work for the common welfare. This division of labor and this cooperation require organs and agents to make them effective. In German cities the initiative is naturally taken by the municipality; in American cities it must at first be taken by the Charity Organization Society or some kindred association.

(4) A social policy relating to the dependent group must include an extension of experiments with positive social selection. Each year competent thinkers come nearer to agreement on this principle, although it is not so clear that we have yet hit upon the most effective devices in its application. It is more than formerly assumed that persons who cannot improve, or at least will not degrade, the physical and psychical average of the race, should be prevented, so far as possible, from propagating their kind. Accidental and sporadic deflections downward from the average would still occur; but one of the principal causes of race-deterioration would cease at the source.
The device of extermination by painless death has not been seriously discussed among the competent.

The device of sterilization has been frequently suggested, and, in a few instances, chiefly on the ground of advantage to the individual, it has been employed. There is nothing absurd, cruel, or impracticable in this proposition, although it would be helpful only within a limited area at best, and would not make segregation unnecessary, since even a sterilized degenerate can do injury by example and actions. It could be useful only upon the recommendation of a medical administrator and in the case of persons isolated from social contacts.

A beginning has been made with the device of the custodial colony for segregation, already in quite general use with the insane, the feeble-minded, the epileptic. The idea is not absolutely new, but the scientific grounds and economic methods have not yet been worked out in a way to frame a cogent argument and appeal to electors and legislators. We must still interpret the partial and tentative experiments already made so as to throw light on extended applications of the principle. Until the entire community, or at least the governing majority, has accepted this policy with open eyes and united will, we must expect to pay the heavy costs of neglect.

Conviction of the importance of a rational and humane policy of social selection has been diluted, and aggressive effort has been delayed, by certain widely accepted errors. Thus we have a large number of citizens who cling to the belief that "natural selection" is adequate and preferable. They speak of the "evanescence of evil;" they cite the high rate of mortality of starved and sick infants, the sterility of prostitutes, the frequent celibacy of vicious and criminal men, the disappearance of degenerate families, the ravages of alcoholism and disease among the neurotic and inefficient. Doubtless, as was long ago abundantly illustrated by Malthus, misery, pain, weakness, vice, do tend to extinction without any conscious, concerted, and rational effort of the community through law. Why not leave the weeding-out process to these destructive agents and forces?

False modesty has been an important factor in hindering the calm and reasonable discussion of the selective process. Ignorance of biological science has contributed to the obstacles in the way of progress. We need to consider what the waiting, laissez-faire policy involves in order to understand why a humane society will not always stand by without a positive effort to modify the process and reduce its cost. It would mean, first of all, that hundreds of thousands of our fellow men who fail in competition would starve or freeze before our eyes in our streets. Among these would be innumerable
innocent little children and helpless old men and women, unfortunate and crippled veterans of the army of labor. We do not need to depend on imagination for a knowledge of the effect of such conduct. It is what Bill Sykes did, what miserly stepfathers and heartless tyrants have done. The king who heard that his subjects had nothing to eat, and sent word that they were welcome to eat grass, was inviting a revolution—and it came. Hunger breeds despair, and those who are left on the verge of starvation have nothing to risk when they steal and rob, or set the torch to palaces, and rob public stores and granaries in the glare of conflagrations.

The instinct of sympathy is too deep and general to permit neglect. The moral obligation of charity is now with us organic, institutional, and fortified by ethical philosophy. While we cannot "prove" it, as we can a physical cause of disease, we can show to all who are capable of appreciating the argument that charity is an essential factor in a rational view of life and the universe. In spite of the powerful and influential protest of Mr. Herbert Spencer, the civilized nations have gone on their way of extending the positive agencies of benevolence. The let-alone policy is impracticable. Evidence is accumulating to prove that charitable support, without a positive general policy of segregation and custody, is, in the case of those who are seriously defective, the certain cause of actually increasing misery by insuring the propagation of the miserable. We cannot go backward to mere natural selection, the process which was suitable with vegetable and animal life, and inevitable in the stages of early human culture. Nor can we rest with merely mitigating methods of relief. We are compelled to consider devices for direct elimination of the heredity of pauperism and grave defect.

Fortunately we have already discovered that an effective colony method is technically and economically possible, humane, and financially advisable. For example, it is not difficult to estimate the average cost per year for the support of a feeble-minded woman of child-bearing age in a farm colony where all the inhabitants work, learn, play, but none breed. If she were free to roam, the county or state would have during these same years to support the woman and her defective illegitimate children. The future generations of "the Jukes family" are in sight, and the burdens they will bring. We know the effects of these two policies; they "spring to the eyes." The method of segregation, as a device of negative social selection, is already at work and its results are before us. Gradually, tentatively, carefully, the method will be employed with others, as they are found to be manifestly unfit for the function of propagation and education of offspring; from the insane and feeble-minded society will proceed to place in permanent custody the incurable inebriate, the professional criminal, the hopelessly depraved. The marriage of consump-
tives and of others with feeble constitutions will be increasingly diminished under pressure of enlightened public opinion.

But the policy of segregation is applicable only within rigid limitations. Only those members can be cut off from family life and social freedom who are manifestly unfit for parenthood and for contact with fellow citizens in competitive industry. Many of the children of criminals may be so nourished and taught in a new domestic environment as to become valuable citizens. But society cannot afford to play the nurse and teacher for a very large horde of incapables and criminals. The cost would be too great and the sacrifice would fall on the wrong parties. It is in the improvements and reforms which promise the elevation of the group not yet either pauper or criminal that we may most reasonably hope to secure the best returns for our efforts. Something may be done to compel parents now negligent to perform their duties as parents and make better use of their wasted resources. The extension of probation work to parents, already begun in some of our juvenile courts, is a hint of what may be done.

(5) Not even a brief outline of a social policy relating to the dependent group can omit reference to the agencies of "preventive and constructive" philanthropy. Omitting details, yet bearing in mind the impressive array of inventions in this line, let us seek to define the essential regulative principles which at once inspire and direct these methods.

Pauperism is, in great part, the effect of known and removable causes. These causes are not obscure, concealed, or beyond our grasp. They are consequences of human choices which may be reversed. The reception of alms even in cases of innocent misfortune, is a social injury; it lowers self-respect, weakens energy, produces humiliation and mental suffering, diminishes productive efficiency, tends to the increase of pauperism. Hence those who know most of relief are most desirous of reducing the necessity for it to the lowest possible terms.

The National Consumers' League and the recently organized National Child Labor Committee represent a policy of prevention which is full of promise. It is perfectly clear to all competent observers, who are not blinded by some false conceptions of personal financial interest, that the vitality, industrial efficiency, fitness for parenthood, and intelligent social coöperation of the rising generation are profoundly affected by neglect of the children of the poor. In order to prevent juvenile pauperism and youthful vice and crime, the entire nation must work steadily to introduce and make operative something like the following programme of legislation and administration:¹

¹ Suggested by the paper of Mrs. Florence Kelley, published in the American Journal of Sociology.
All children must complete the first eight years of the common school curriculum and attain a certain standard of education before they are permitted to engage in bread-winning occupations, and none under sixteen years should be wage-workers unless this standard has been reached.

All children, when they begin work, should be examined by a public physician, and held back from intense labor if in weight, stature, and development of muscles and nerves they are dwarfed. Physicians and nurses should be charged with the duty of seeing that school-children are kept in good health.

All defective, deaf, and subnormal children, as well as the crippled, should have proper separate and special instruction.

Boards of education should provide playgrounds and vacation schools, under careful supervision, in order to prevent the evils of idleness, misdirected energy, and vicious associations.

Public libraries should extend their branch work, not only to different districts of the city, but, by means of home library agencies, into the very homes of the poor; and the easy and pleasant use of the English language should thus be promoted.

The street occupations of boys should be carefully regulated and supervised, and the employment of girls in public ways should be prohibited.

Boys under the age of sixteen years should not be permitted to labor in mines or with dangerous machinery.

If parents and other adults are in any way responsible for the delinquency of children, they should be held penally responsible.

At the same time, the curriculum of the schools should be so planned as to lead by a natural transition from the play and study of childhood to the specialized industries of maturity, by means of evening schools, technical instruction for apprentices, regulation of hours and shifts, so that youth may lay a broad foundation for the specialization of the factory and mill.

Among the methods of preventive philanthropy is that of new applications of the principle of averaging risks or "insurance." The only nation which has thus far developed a system as comprehensive as social need and as our present social science justify is Germany, and any discussion which ignores that splendid system must be regarded as tardy and provincial. No doubt each country must construct its own system, but any legislature which neglects German experience and success falls short of the best wisdom.

Sickness being one of the chief causes of dependence, all recent improvements in hygiene and sanitary science, with their practical applications in municipalities, must be counted among the direct
means of preventing pauperism. The contest with tuberculosis is a familiar and happy illustration of labors in this field.  

(6) Philanthropy would still have a large and even higher mission if the commonwealth could by a stroke abolish pauperism in all its present forms. Philanthropy will never become obsolete, but will merely move up to higher levels. There will always be superior and inferior; stronger men in advance, feeble men in the rear; but all will be members of the same community, knit by economic, political, and moral ties into one organization. Already the condition of social dependents is far higher than it was a century ago. When actual misery and depravity have been abolished, if that time ever comes, there will still be work for the most successful on behalf of those less gifted. Much of our charitable work is already on this level. In rural communities the desperate and tragical struggle with shameless pauperism is often absent; there are no "poor," none dependent on public or private relief; yet in many villages the higher charity has a very earnest mission. There are still spiritual and intellectual dwarfs to be stimulated; gossip dissipates; low vice lurks in unsuspected places; and those who lag in the rear hinder the march of the most advanced.

The philanthropic measures which have been developed in presence of pathological phenomena have reacted upon normal activities. Thus, for example, the methods of studying and training the feebleminded and the juvenile offenders, and the vacation schools for summer vagrants among children, have made substantial and appreciated contributions to the science of education.

Crises in commerce and industry are felt to be pathological; but a scientific study of crises reveals the principles which should regulate ordinary business in such a way as to avoid widespread financial ruin, as rules and laws controlling the issue of currency, the straining of credit, and the fluctuations in the production of commodities.

The labors of the philanthropist awaken and sustain those social habits of thought and sympathy which elevate and ennoble family life, refine customs, and inform legislation with a universal moral aim. Medieval charity was full of blunders, but its failures are our warnings, and its spirit of devotion inspires us through the literary monuments of its typical heroes. In a similar way the institutions and laws which public and private charity are now constructing will shine over the waste of years a veritable pharos for the centuries to come.

1 Other illustrations are given by Dr. E. Münsterberg in his paper.
THE PROBLEM OF POVERTY

BY EMIL MÜNSTERBERG

[Emil Münsterberg, Member of the County Council, and President, City Charities, Berlin, Germany, since 1898. b. Dantzig, Germany, July 13, 1855. Dr. Jur. Judge in Menden, Westfalen, 1887-90; Mayor in Iserlohn, 1890-92; Director of Public Charities, Hamburg, 1893-96. Author of numerous books and papers treating subjects of charity and social welfare.]

Poverty means a condition where there is lack of the necessaries of life. The preservation of the life of the body is a necessity, and the man who does not possess the means necessary to such preservation is poor. Whether it be directly through starvation, or indirectly through sickness brought on by insufficient nourishment, poverty must necessarily lead to the extinction of the physical life. The individual's instinctive love of life will not allow him to submit to this result without resistance, and so in one way or another, according to the circumstances in which he lives, he struggles against it. He will either beg the means of subsistence from his fellows, or, if this fails, he will resort to fraud or force in his efforts to obtain it. This means that he will strive to escape want by secret or forcible appropriation of the necessary means of subsistence. But so far as begging and force fail, whether it be because his fellow men are also poor, or because they take sufficient precautions to protect themselves against fraud and force, so far the condition of poverty continues to exist, and that consequence of physical degeneration makes its appearance which penetrates the whole being through disease, through moral neglect, and through embitterment of soul. Where wider circles of population fall into this condition we speak of collective poverty, in contrast to individual poverty.

There is this great difference between poverty and all other human conditions, that the man who suffers from it has at his disposal no means of resistance out of his own power; that here there is no service rendered which furnishes a claim for a counter-service, as is the case in all other human relations. Hence, when help is rendered to the poor, be it by the individual or by society in its various forms, the question is always of a service without return. For this reason, therefore, such service cannot, without further ceremony, be left to the general principles governing economics and equity which otherwise regulate the relation between service and counter-service. There are many other points of view on which the necessity of helping the poor is based. They may be briefly classified as "philanthropic" and "police." The spectacle of a human being suffering from want is so affecting that it calls out the feeling of sympathy which impels
his fellow men to help. From the standpoint of the police, however, the impulse evoked is almost the direct opposite—that of self-protection.

When an indigent, through need of the necessary means of subsistence, resorts to fraud or force, he can do this only through a breach of the law. Society, which imposes a penalty on such a breach of its laws, must guard against allowing such law-breaking, committed through the force of a natural instinct, to have the appearance of being justifiable. Means must be taken to anticipate such an instinctive action by voluntarily supplying the poor man with the means of satisfying his natural wants. The history of poverty furnishes numerous proofs of the fact that the instinct of self-preservation is under all circumstances stronger than the fear of penalty. The whole of the measures by means of which it is sought to alleviate the many and varied conditions of poverty, we designate "poor-relief." No civilized state is without such measures, although in various countries they have undergone a very different development. Their foundation is laid by a feeling of fellowship, which at first centres in the church parish and is directly shown by the members of the parish toward one another. Hence the custom passes over, as a religious exercise, to the church itself, which comes to recognize a definite religious duty toward the poor. It also grows up out of that feeling of fellowship which neighbors have, manifests itself in the mutual help of those bound together by a common occupation or calling into orders of knighthood, religious orders, merchant and trade guilds, unions, brotherhoods, and associations, and finds its final comprehensive expression in the recognition of the duty of poor-relief through political organizations, church, province, state. Yet its actual development assumes very different forms. In the Latin countries the exercise of poor-relief and charity continues to centre really in the church. In the Teutonic countries, on the other hand, it develops from an ecclesiastical to an ecclesiastico-civil, and then gradually to a completely civil, poor-relief. In keeping with this development, the ecclesiastical poor-relief in the Teutonic countries remains still in a mere modest, supplementary position, closely confined within the limits of those bound together by a common creed. The opposite is the case in the Latin countries. Here charity, which is administered through churches, monasteries, religious orders, and charitable endowments, is supplemented by state and parish measures. The traces of this historical development are to be found in numerous halfway forms. For example, even in the England of to-day the public poor-relief is administered by unions which correspond to the several church parishes. In the French bureaux de bienfaisance and in the Italian congregazione di carità the interest of the community at large finds
expression in the fact that the mayor is the chairman of these associations.

To these public and semi-public forms of poor-relief there is added an immense number of private charities, which either pursue precisely the same object as the former, or else supplement them in some way or other. Their promoters are either single individuals or societies and associations. Above all things, the standpoint of humanity is predominant among them, although this takes different forms of expression at different periods. The simple command to love one's neighbor, which makes it a duty to help one's suffering fellow beings, expresses itself in almsgiving and penitential offerings in the medieval church, where the spiritual welfare of the giver is the idea in the foreground, rather than the need of the receiver. The charitable foundations of the cities that grew up after the Reformation are the expression of a powerful sense of citizenship, which feels itself able to do more for its impoverished members than afford them mere sustenance. The period of rationalism which set in about the middle of the eighteenth century transformed the Christian idea of love of one's neighbor into that of pure humanity. And still to-day impulses to relieve suffering are produced by motives of the most various kinds. The means to this end are pouring in to-day as they have never done before. The applied methods of relief, especially where sickness and infirmity are concerned, have reached a degree of excellence all out of comparison with that of any previous period. How much also poor-relief has extended its scope, increased its means, and improved its methods! The method of poor-relief in itself, however, can boast of no progress. It was and continues to be an indispensable, but always crude, means of contending against poverty. So far as we can speak here of progress at all, it is not to be found within, but rather without the proper compass of poor-relief. It begins at the moment when poverty is no longer reckoned with as a condition established by the will of God, or as a necessary fact of human existence; and the question is thus raised whether poor-relief itself cannot be absolutely banished from the world by the absolute abolition of poverty itself, and, without prejudice to the physical and mental inequalities in natural gifts which divide men, by the removal of that monstrous inequality which exists in the things of this life. From this point of view the problem of poverty is a problem of economics and sociology which investigates the whole relationship of man to man and to nature about him, and whose final aim must be to render to all an equitable share in the treasures that are to be wrung from nature through work, and also, by the creation of universal prosperity, to banish poverty from the world as the very contradiction of such prosperity.
With an insight into this connection of the matter there begins a new conception of social and economic events. We hear at the close of the eighteenth century of the great doctrine of individual freedom. All legal obstacles which set bounds to this movement must fall. It is taught that, as soon as every one has liberty to unfold his own powers, the greatest possible guaranty of universal prosperity is attained. But the new economic development which, under the banner of steam and electricity, leads the way to a new era of discovery and invention, in reality created colossal riches on the one hand, and appalling poverty on the other. Poverty is not removed, but increased, and in its opposition to riches appears still sharper and more pressing. Man's ability to work has become an article of sale, which, according to the law of supply and demand, displays a tendency toward continuous depreciation as population increases. So economic freedom becomes the freedom of "sweating," which receives only the slightest check from the good will of philanthropists. The immense pressure from above calls forth the counter-pressure from below. As their feeling of self-consciousness develops, the laboring classes seek to realize themselves as a unity, and in their wishes, needs, and point of view to oppose themselves to the employing class. One can speak of this movement among the laboring classes as something quite new in the history of sociology and of the world. This does not mean that there ever was a time when the struggle of the impoverished classes to improve their social and economic condition had no existence. But no movement has seized hold of such great masses of people. First of all, the modern means of communication and the press, together with a universal political freedom which has, in spite of every obstacle, made great advances, have been the powers which have given that solidarity to modern labor which is its peculiar characteristic. This movement of labor to realize itself as a great unity gives rise to the modern social problem of which the problem of poverty forms a part. As a part of the social problem it assumes a new aspect. The conception of poor-relief, in the old sense of the term, is entirely foreign to the labor programme, the first principle of which is self-help; not pity, but justice; not a prayer, but a claim.

This social conception of the problem increases the difficulty of treating it, because the attention is now directed away from the outer appearance of poverty to its deep-lying cause, and the trouble now is to find those measures through which the cause of poverty may be counteracted. We are accustomed to classify the causes of poverty as "general" and "particular." The former comprise events over which the individual has no influence, such as the whole organization of state and society, business crises, wars, discoveries, and inventions which revolutionize a whole branch of industry, such
as especially the replacing of hand labor by machine labor; further, destructive events of nature, such as earthquakes, conflagrations, inundations, epidemics, etc. Through all these causes numberless individuals are simultaneously rendered penniless and countless families deprived of their bread-winners. The particular causes of poverty are disease, infirmity, old age, etc., which are again to be distinguished as those for which the individual is responsible and those for which he is not responsible. For idleness, prodigality, drink-mania, and unchastity he is responsible; for youth, old age, sickness, and infirmity, and death of the bread-winner he is not responsible. Yet a sharp line of distinction is not to be drawn here. A bad course of life, for which a vicious bringing-up is to blame, is something for which, in a higher sense, the individual is not responsible. Moreover, a similar consideration will show us how the individual case broadens into the general. Take, for example, the problem of criminality among the young, a problem which has lately been the subject of especially earnest consideration and which is bound up with domestic conditions. In like manner, the sickness of the individual assumes a general importance when the condition of dwellings, the general diet, etc., deteriorate the health of the population. And if the state of dwellings and food have such a result, there forces itself to the front the question of wage and labor conditions which do not allow a sufficient expenditure for food and dwelling. And from this wage and labor question we are immediately led back to the question of economic and social conditions. In short, we have an immense variety of circumstances produced through causes the ultimate source of which is hidden in almost impenetrable obscurity. Personal, physical, intellectual, and mental qualities exercise a contributive but not decisive influence, where the determining circumstances are more powerful than the will of the individual.

However difficult it may be in particular cases to press back to the ultimate cause, yet the knowledge of the connection between the individual case and circumstances in general affords us points of view for the measures that are to be taken to counteract poverty. Indeed, it is this insight into the indissoluble connection of the single case with the general which gives its decisive character to the efforts of to-day to solve the problem of poverty. The well-worn comparison between poverty and disease here obtrudes itself. It is not a piece of court-plaster fastened over a wound which heals a disease whose causes lie within, but only the treatment of the whole bodily condition, the improvement of the vital forces, the restoration of regular circulation of the blood, the stimulation of the activity of the heart. Thus poor-relief, as a means of protecting the poor from direct want, is only the court-plaster which serves as a temporary relief, but does
not produce a real cure. The farther the measures taken to counteract poverty are removed from this most external measure of poor-relief, the more effective are they. In the first rank stand all those measures which are fitted to elevate the general condition of prosperity. Here belong all those measures which concern public and economic life, commerce, the labor market, the administration of justice, etc., and also the question of protection and free trade, the conclusion of commercial treaties, the extension of the means of communication by land and water. In a similar position stand those measures for the elevation of the public weal through regulations promoting health and education, such as the fundamental demand of universal free elementary schools and of night schools, the equipment of technical, business, and higher educational institutions, the procuring of a good water-supply, the removal of garbage, the supervision of slaughter-houses, a good milk-supply, the promotion of physical training in the schools and homes, the furtherance of the building of sanitary dwellings; in short, those measures which are fitted to improve the mental and physical conditions of all the various classes of population.

The second division is formed by those regulations which have to do with single occupations and classes, especially the agricultural, artisan, and industrial wage-earning classes. Of first importance here is the regulation of the labor conditions, the legal protection of labor, labor coalition, and labor employment bureaus. Side by side with legal regulations, the claim to the highest importance lies with the activity of the independent organizations, of the artisan associations and trade-unions, of producers' and consumers' leagues, of building-societies; in short, of all those associations of laborers in a common field which are built upon self-help as their basal principle, and whose object is the regulation of the conditions of labor and mutual encouragement and support.

The third division has so far to do with the causes of individual poverty as certain circumstances can be foreseen which render the individual, either for a time or permanently, incapable of earning his bread. Such especially are disease, accident, disability, age, widowhood, and orphanage. The most important measures in this division are those comprised under the different forms of labor insurance, divided into sick, disability, old-age, accident, out-of-work, and survivors' insurance. Such insurance may rest chiefly on the basis of legal compulsion, as in Germany and Austria, or on the basis of friendly societies, as in England and America; which, however, are to be found in the first-mentioned countries also. Labor insurance stands in its effects next to poor-relief, in that in single cases it removes or mitigates the consequences of penury. It has this difference, however, from poor-relief, that here the claim is based
on the ground of an acquired right. On a similar basis rest the
claims on the state, church, and corporations for pensions, retiring
allowances, or maintenance of widows and orphans.

Sharply divided from these measures for the advance of general
prosperity, of self-help, and of social prophylaxis, there exist, in the
last place, the measures against poverty which constitute poor-relief
proper. The man whom these general measures for the public good
have not been able to prevent from falling into poverty, who, in the
case of lost capacity to earn his living, or want of work, cannot fall
back on the help of those upon whom he has some special claim, nor
has the right to claim help from insurance,—such a man has no other
resource than to accept outside help, which is offered by poor-relief
and charity, a help which has this peculiarity that it stands outside
the compass of that reciprocal service which determines and sets
definite bounds to all other economic relations. The results of this
peculiar relationship are plainly recognizable on the side of both
giver and receiver. The giver is inclined to limit his gifts to what
is only absolutely necessary, because he gives without return; the
receiver is humiliated by the gift, because he can do nothing in
return. Hardness on the one side, bitterness on the other, are conse-
quently in great measure bound up with the exercise of poor-relief.
And where poor-relief is not administered in this hard way, or where
it reaches a lavish or actually prodigal extent, it escapes indeed
arousing the feeling of bitterness, but produces in its stead other and
no less dangerous evils, above all the evil of accustoming the receiver
to free gifts, of making him covetous, of lessening his efforts to main-
tain himself out of his own endeavors. Where poor-relief so degen-
erates it becomes mere almsgiving, which has as its inevitable
consequence the unlimited increase of the number of those seeking
help. The lamentable fact that heads of families desert their wives
and children is really fostered by the feeling, encouraged through the
administration of adequate poor-relief, that sufficient provision will
be made, without the presence and work of the head of the family,
for the maintenance of those dependent upon him. Nay more: where greater riches afford the means of a lavish distribution of
charity, the begging of charitable assistance becomes a business
which supplies itself with specific expedients in order to secure its
share of the superfluous wealth without any effort. The appearance
of poverty is feigned. Hypocrisy, lying, and cunning in written and
personal representation form the stock in trade of this beggar
business, which, estimated by its moral quality, rivals the trade of
the card-sharper, receiver of stolen goods, and defrauder.

Thus the conduct of society toward poverty continues to oscillate
between two evils — the evil of insufficient care for the indigent, with
the resulting appearance of an ever-increasing impoverishment which
acts as an incentive to begging and crime; and the evil of a reckless poor-relief, with the resulting appearance of far-reaching abuses, the lessening of the spirit of independence, and the patronage of begging and vagrancy. The history of poverty is for the most part a history of these constantly observed evils and of the efforts to remove them, or at least to reduce their dimensions. No age has succeeded in solving this problem. In the early Christian Church the duty of poor-relief was based upon the love of one's neighbor, and the members of this community looked upon each other as brothers and sisters whose duty it was to render help to one another. Thus it was possible for a limited circle and for a limited time in some measure to avoid both these evils. But in the Middle Ages the church, now become a public power, encouraged and increased poverty to an appalling extent, without being able in a corresponding degree to meet the problem of helping the indigent. The state authorities during the latter part of the Middle Ages, and especially in the sixteenth and seventeenth centuries, in spite of their stringent laws against begging, remained powerless to contend with begging and vagrancy. The other course which, with overflowing love and compassion, sought to mitigate the lot of the poor, which finds expression in the Gilbert's Act of England with its system of allowances, or the French law of 1811 concerning the anonymous reception of children, plainly showed, in the appalling increase of the number of able-bodied persons demanding support and of deserted children, where a too charitable conception of the administration of poor-relief must lead. To-day we stand face to face with the same problem. Public poor-relief and private charity wage the thousand-year-old battle over the successful administration of poor-relief and the prevention of its abuses, and reap to-day precisely the same experience as was reaped in times past,—that human nature, in spite of all economic and technical advance, in this respect has undergone no change. Hence also arises the very noteworthy fact that the most modern poor-relief directs its attention more than ever to the simple administration of poor-relief in the early Christian Church, and that the much-talked-about "Elberfeld system" is nothing else at bottom than an attempt to revive that old form of administration on systematic lines. Thus there stands in the foreground of all discussion concerning the proper form of poor-relief the question of organization. If poor-relief is to help the needy according to his need, and have a reason for rejecting the undeserving, it must have for this purpose a thorough knowledge of the circumstances of those who apply for help. This knowledge can be obtained only through direct examination in the home of the indigent, through observing his mode of life, his household management, the conduct of his family, etc.; and must be supplemented by inquiry in other directions, of the
The greatest employer, neighbors, fellow-tenants, etc. This makes necessary a special equipment for examination which shall stand in fitting relation to the number of those seeking help. In this regard, the greatest success is displayed by the communities which are able to raise a sufficient number of volunteer helpers who enter into intercourse with the indigent in the spirit of brotherly love. Hence lie the roots and the power of the Elberfeld system, already referred to. The paid helper is perhaps better trained, but he lacks that vital element of love which distinguishes the voluntary helper. It is true that the voluntary-assistance office must have rooted itself in law and custom, as has been predominantly the case in German communities. This custom hardly exists in England and America. Hence the predominance of indoor over outdoor poor-relief in both these countries. In its place, however, America and England can point to a very great development in the sphere of private charity, which centres in the charitable organizations and societies, and offer here wider opportunities not only to volunteer helpers but also to paid workers who are trained by various plans and now by highly developed schools of philanthropy. The most valuable assistance rendered by woman makes itself conspicuous in the sphere of private charity, and leads to the demand, now advanced alike in all civilized states, that in public poor-relief woman shall have equal rights and duties with man.

The method of rendering assistance is closely bound up with the question of the organization of poor-relief. The German preference for outdoor relief is, without doubt, a result of the old custom of employing the help of volunteer assistants. In England the great reform of 1834 established as the very test of indigency the readiness of the applicant for help to enter an institution in which he had to forego his freedom of movement and many of his accustomed enjoyments of life. Whether this demand is expedient or not is to-day a matter of much dispute. The transactions of the National Conference of Charities, and the reports of state boards and of the English Central Poor Board, contain numerous discussions of the matter. That the number of those receiving assistance is lessened by a stringent application of the principle is without doubt. But, on the other hand, it remains doubtful whether in this way adequate relief is in all cases afforded, and whether it is not much more true that the rendering of money assistance to the indigent restores him more quickly to a condition of independence, and that the poorhouse tends to make him a permanent subject of poor-relief. Moreover, it has often been observed that a strict application of the principle of indoor relief leads to an increase of those two evils already mentioned — the want of those who are in real need, but whose pride is too great to allow them to enter the poorhouse; and the resort of the
others to begging and vagrancy, which they find more comfortable and profitable. More than this, neither England nor America would be in a position consistently to carry out its system of indoor relief, were it not richly supplemented by private charity which mitigates the severities of the system. Moreover, an increasing insight into the connection between poverty on the one hand, and disease and immorality on the other, in all civilized countries, and not least in America and England, has had the result of so narrowing the sphere of indoor relief that all those classes of indigents are refused admission which need special medical attendance, and for whose moral welfare dangers are to be feared from a stay in the workhouse. Above all is this true of the sick and the young. In its relation to the children especially is the development of the system of family relief, and the separation of children from adults, noteworthy. In sick-relief it is a matter of the first importance to render the relief at the right moment to insure the cure of the patient and, where possible, to seize the disease at a stage in which restoration of the power of earning his own living may be successfully accomplished. In this respect the movement for combating the evil of tuberculosis is especially of far-reaching importance.

The question of good organization, as well as the question of adequate relief, is handled by general efforts of the most various kinds, in which public poor-relief and private charity take part in different ways. This very diversity, however, conceals two serious dangers—lack of unity on the one side, and overlapping on the other. To counteract these dangers it is necessary that the directors of public poor-relief and the different representatives of private charity should associate with one another for the purpose of devising a systematic and mutually complementary relief. Information about the indigent, as it is sought in the "charity organization societies," in the offices centraux des œuvres de bienfaisance, in the Vereinen gegen Verarmung, and in the information bureaus, directs the indigent to the place where he can best find help, and leads to the discovery of those persons who misuse poor-relief and charity. Information about charitable institutions, as given in the digests and directories of great cities, show what measures are available, and how they can properly be made use of.

Beyond this activity, exercised almost exclusively by private parties, the need, at any rate, makes itself felt for a definite determination of the proper management and application of the means of poor-relief and charity. And here very different possibilities are open. The whole public poor-relief may be placed under one central board of control which is authorized permanently to supervise all the institutions and establishments that stand under it, to vote the estimates, to censure abuses, and to compel their redress by the authority
of the law. The most stringent form of supervision is exercised by the Local Government Board in England, with the assistance of general inspectors, local inspectors, and auditors. All boards of poor-relief are required to furnish regular returns, which render possible general poverty statistics at once of scientific and practical utility. In France, so far as one can speak of a public system of poor-relief—that is, as far as care for children, aliens, and the diseased is concerned—the supervision lies with a special department of the minister of the interior—the directeur de l’assistance publique. He has, as an advisory board, the conseil supérieur de l’assistance publique, which undertakes an exhaustive examination of all questions relating to poverty and charity, and expresses its judgment upon them. In Belgium a proposed law provides for a similar institution. In Italy, in accordance with a law which went into force a few weeks ago, a central government board, the consiglio superiore di assistenza e beneficenza pubblica, and besides for each separate province a provincial board of commissioners, missione di assistenza e di beneficenza pubblica, are created. The latter is authorized to exercise direct supervision over the local boards of management, and to interfere in their action; while the intention is that the functions of the central board should be more of an advisory nature. In the new laws of certain Swiss cantons and of the Austrian crown lands the institution of inspectors of poverty has been recently introduced. In Germany there is no such central authority in charge of poverty. The supervision of poverty here forms a part of the general government supervision whose duty it is to guard against all pernicious measures, whatsoever they may be.

In the United States, of late years, public opinion has taken a very lively interest in this question, from the point of view as to whether such supervision is desirable and permissible. One must place over against this the institutions of the Old World, where the old absolutism exercised a strong influence on self-government, from which in modern times it seeks to free itself. The exact opposite is the case in the United States, where from first to last constitution and government are based on democratic principles. The result is that an encroachment here on the part of central government authorities would be viewed beforehand, from the standpoint of political freedom, with much greater distrust. At the same time, it is universally agreed that the government authorities have the right to remedy public evils and abuses from the standpoint of state protection, and to exercise supervision over state institutions proper. The problem becomes more difficult when the question is raised concerning the supervision of the remaining public institutions, and those which receive aid from public funds; and still more difficult
when purely private charity comes to be considered. The question has been answered in the United States, both theoretically and practically, in very different ways. First of all, a "State Board of Charities" was founded in Massachusetts in 1863. New York and Ohio followed in 1867. They bear very different names. Thus the above-mentioned State Board of Charities is in Washington and Wisconsin designated as the "State Board of Control;" in Iowa, "Board of Control of State Institutions;" in Maryland, "Board of State Aid and Charities;" and so on. Already in the names which they bear the essential difference makes itself felt, for which the Ohio and Iowa systems form the respective types. In the one case it assumes the form of a control, accompanied by the power of compelling, by government authority, the adoption of measures of improvement. In the other case there is simply a supervision, with the authority of exercising advisory powers solely. In some states the authority is intrusted to several boards. Thus there exists in Massachusetts a State Board of Charities; in Maryland and New York, besides this, a special Commission in Lunacy. In regard to the question of the supervision of private charities, the fact must be taken into consideration that here voluntary contributions are in question, and that as a rule every one must be allowed to spend his means in his own way. Yet it is only right to remember that, just as the state interferes in the management of insurance, banking, and manufacturing, from the standpoint of the welfare of society, so also the welfare of society is concerned with certain spheres of private charity. This is especially the case in the care of children and the housing of sick, old, and helpless people in institutions. The movement toward such a conception of the matter, however, has received a severe check through the decision of the supreme court of New York, which denied that the State Board of Charities in New York had the right of supervising the measures of the Society for the Prevention of Cruelty to Children. As an actual fact, in consequence of this decision, more than half of the charitable societies have been withdrawn from the supervision of the board.

In the countries of the Old World this question receives very different answers. While in Germany again the supervision of private charity is only a part of state supervision in general, in England charitable endowments in particular are assigned to charity commissioners, whose influence, however, is rather limited. In France the very vigorous fight over this question keeps pace with the fight over the bounds between church and state. In Italy, on the contrary, the powers of supervision of the state authorities have been greatly widened by the law of 1890, and by the institution of the new central boards of control already mentioned. All these measures point to where the highest importance lies. This is not simply
in a supervision which shall secure the remedy of whatever abuses exist, and the inauguration of a well-organized administration; but in furnishing the instrument of this administration with the most successful modes of management; in studying and making known new methods, especially in the sphere of insanity and of disease, as well as of the protection of children; and in general in elevating poor-relief and charity to a higher stage. And as the bounds between public relief and private charity have never been completely defined, there enters, side by side with the activity of the government, a very active private propaganda waged by the great charitable societies, and also by societies confined to the several departments of charitable effort. Here belong the English Poor Law Conferences, an annual assembly of those who administer public relief, to take council on all questions to which poor-relief gives rise; and also the Congrès national d'assistance publique et de bienfaisance privée in France, and the Congresso di beneficenza in Italy. In Germany it is the German Association for Poor-Relief and Charity which, during its twenty-five years of existence, has, in the most thorough manner, discussed all questions that appertain here, and has exercised an extraordinary influence on state legislation, on the control of poor-relief in the cities, and on the development of private charity. In the United States, the National Conference of Charities and Correction and the State Conferences possess an equal importance. Very real service is also rendered by the Charity Organization Societies and the State Charities Aid Association. International congresses for poor-relief and charity have been repeatedly held, for the most part in connection with the world's expositions, such as in 1856 in Brussels, in 1857 in Frankfort on the Main, in 1862 in London, in 1889 and 1900 in Paris, etc. At the international congress held in Paris in 1900 it was decided, through the appointment of a standing committee, that an international congress should be convoked at intervals of five years. The next will take place in Milan in 1905.

In this connection there is still one point that deserves attention. The distinction between public and private poor-relief rests on the fact that the one is regulated by law, and the expense, coming out of the means of the rate-payer, may be contested; while private relief is voluntary, and is administered out of voluntary contributions. Nevertheless, the difference between public and voluntary relief is not so prominent in practical administration as theoretical considerations would lead one to think. Moreover, in countries of which voluntary poor-relief is characteristic, the civic authorities place very considerable public means at the disposal of those who manage this voluntary relief; while, on the other hand, in the poorer communities of Germany or England the public relief falls far short of the demands made upon it. Moreover, the prevalence of voluntary
relief does not exclude the state or the community from appropriating means for single objects. Thus in France the care for children and the insane devolves upon the départements, and the care for the sick, on the local communities, to which, however, the state grants considerable assistance. On the whole, the participation of the state and its greater associations in the burden of poor-relief forms a prominent feature of the modern development of public relief. The whole body of modern legislation on poor-relief in Germany, Switzerland, and Austria provides for considerable state and provincial aid for poor-relief, and lays on the state or the province direct responsibility for the care of certain classes of poor, for example, especially the insane, the infirm, and idiots. Moreover, a marked tendency to introduce, or at least to extend the sphere of public relief makes itself evident in the Latin countries, as in the French law of 1895 concerning the care of the sick, in the Italian law of 1890 on public charity, and in the proposed legislation in Belgium and the Netherlands which has not yet been discarded.

These efforts to increase the sphere of public relief are at first surprising, and appear to stand in contradiction to the distinctive characteristics of the age in which we live — to counteract poverty rather by methods of prevention and by measures calculated to increase prosperity in general. Yet here there is no contradiction, but, on the contrary, a proof of the fact that poor-relief on its side has imbued itself with a knowledge of the importance of all such measures of prevention, and is directing its efforts to become what we to-day are accustomed to call "social relief." The legislation on the education of abandoned children, the oldest of which dates back scarcely twenty years, rests on the principle of this knowledge. It administers poor-relief to the children with the aim of preventing the young who grow up under the direction of this law from falling in future years into a condition of poverty. A like tendency is displayed by the societies for the prevention of cruelty to children, the juvenile courts, the promotion of immigration to Canada, the equipment of school-ships, etc. The care for disease has a far wider aim than the mere care of the patient. It searches out the lurking-places of disease in order to tear it out by the roots. It is no wonder that new problems have everywhere sprung up, where the light of new sanitary and social knowledge has lit up the corners and holes of poverty, and where the young science of sociology has taught us to understand economic and social phenomena. One need here only call to mind the very recent movement for attacking tuberculosis and the abuse of alcohol. At the same time, this movement against tuberculosis beyond all others makes very manifest how far we are still removed from a healthy condition of affairs, and how to-day, in spite of every effort, millions of our fellow beings still live in such
unfavorable conditions in respect to lodging, food, and education, that they fall victims in frightful numbers to this disease. No one who knows the circumstances can help seeing that all these measures, such as dispensaries, sanatoriums for consumptives, and administration of poor-relief, have no importance in comparison with the possession of permanent and remunerative employment, which renders possible the procuring of sanitary dwellings and sufficient nourishment, and strengthens the power of resistance against that frightful disease. But just this knowledge points us the way, not indeed of solving the problem of poverty, but of bringing ourselves in some degree nearer its solution, in that we see in this knowledge, which has grown up out of the social subsoil of our time, the most important sign of progress, and in that we place the furthering of general prosperity and the elevation of the working classes before even the very best measures of poor-relief and charity.

And here we must not be led astray by the fact that to-day these measures still demand an immense expenditure of public and private means, and that in the immediate future the question will be rather of an increase than of a diminution of this expenditure. And so far as we strive to enlighten the public mind in this sphere, and to effect improvement, we must always bear in mind that poor-relief and charity must always be content with the most humble position among those measures which are directed against poverty. He who helps the needy to help himself does better than he who supports the poor. The most earnest effort of every true friend of the poor must always be directed toward making poor-relief itself superfluous.
SHORT PAPERS

Mr. Frederic Almy, of Buffalo, New York, presented an interesting paper to this Section relating the story of the foundation and development of the George Junior Republic at Freeville, New York.

Mr. Homer Folks, ex-Commissioner of Public Charities of New York City, presented a paper on "Distinctive Features of American Child-Saving Work."
SECTION F—THE CRIMINAL GROUP
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(Hall 5, September 23, 3 p. m.)

Speaker: Mr. Frederick H. Wines, Secretary of State Charities Aid Association, Upper Montclair, New Jersey.

THE NEW CRIMINOLOGY

By Frederick Howard Wines

[Frederick Howard Wines, b. Philadelphia, Pennsylvania, April 9, 1838. A.B., Washington College, 1857; Princeton Theological Seminary, 1865; LL.D., University of Wisconsin. Hospital Chaplain, United States Army, 1862-64; Pastor, Springfield, Illinois, 1865-69; Secretary, State Board of Public Charities of Illinois, 1869-93, 1897-99; Assistant Director, Twelfth United States Census, 1899-1902; Secretary, New Jersey State Charities Association, 1903-04. Member of National Geographic Society; Royal Statistical Society; Société des Prisons (France); National Prison Association (President, 1904). Author of thirteen volumes of biennial reports of the Illinois State Board of Charities; The Liquor Problem in its Legislative Aspects (joint author); Punishment and Reformation; special decennial reports on crime, misfortune, and benevolence for the United States Census of 1880 and of 1890; and of numerous articles on charities and corrections.]

With the voyage of Columbus in 1492 the world awakened to self-consciousness. By that event the intellectual horizon of mankind was enlarged, and the birth of modern science and civilization foreshadowed and assured. Of the many changes in habits of thought and life that may be traced to this original source, not the least noteworthy is the altered attitude of society and of governments in general toward crime and criminals. Does the history of prison reform for the past four hundred years enable us to predict with any approach to certainty what its future is likely to be? I think so; because the prison, in common with other social institutions, has gathered into itself and reflects all the experience and tendencies of contemporary social evolution. All men of average intelligence and information know what have been the main lines of progress. The darkness of superstition has fled before the dawn of science, the arts have been developed, the art of printing and improved methods of transportation and communication have placed the experience of every nation at the service of all mankind, wealth has multiplied indefinitely, and civil and religious freedom have become the almost universal heritage of Christendom. Best of all, the material advance of the race has been accompanied by a moral and humanitarian uplift not less wonderful and even more beneficent. Since no revolution ever goes backward, we have no reason to anticipate any permanent
reaction in a movement which includes in its sweep the entire globe, with its diversified interests of every sort.

It is in the record of social evolution in the United States in the West, and in Japan in the East, that this movement can best be studied, for there it has been most recent, most rapid, and most conspicuously consistent. Let us confine our attention, however, to the United States.

It would be an exaggeration of the truth to say that all of the most fruitful reforms in criminal jurisprudence and in prison discipline have originated in America, and yet the practical genius of this nation, unfettered by precedent and tradition, has enabled it to adopt and realize conceptions formulated by leaders of thought in the Old World, but which were regarded by their compatriots and contemporaries as visionary, until we demonstrated their utility and value. Prison architecture may afford an illustration. The plan of the prison of Ghent was stellar, that is to say, it was constructed with wings radiating from a common centre; but it was not until an American architect, who appropriated this fecund Flemish suggestion, had devised the Eastern Penitentiary of Pennsylvania, in the city of Philadelphia, which is still occupied as a state prison, that official and unofficial visitors from Europe discovered its merits and imitated it — at Millbank in London, and elsewhere. The arrangement of cells next the outer walls, on both sides of a central corridor, at Cherry Hill, was identical with that in the Hospital San Michele, founded at Rome in 1704 by Clement XI, of which John Howard has left us a description, illustrated by drawings. In the prison of Ghent, however, the wing set apart for the detention of criminals contained a tier or tiers of cells placed back to back, opening into corridors next the outer walls (another idea borrowed from the prison of Ghent), which was the method of construction followed in the erection of the New York state prison at Auburn, the standard architectural type of the distinctively American prison.

If we turn to the criminal codes of the world, it was William Penn, the Quaker, who, in giving laws to the commonwealth which bears his name, erased, by a single stroke of his quill, all those bloody provisions of English law which prescribed the penalty of death for some two hundred listed offenses, and who limited capital punishment to a single crime, that of willful murder. The theory of the indeterminate sentence and conditional liberation, now incorporated in so many American codes, had been advocated as a theory of legal punishment by various distinguished Europeans — Archbishop Whateley, the brothers Hill (Frederick and Matthew Davenport), Bonnevile de Marsangy, of France, and others. Captain Maenomachie, of the Royal Navy of Great Britain, had experimented with it in Australia, at Norfolk Island, combining it with the graded system;
and Sir Walter Crofton, director of Irish convict prisons, had made it the cornerstone of his remarkably original and successful administration of the trust committed to his hands. But it was not until it had crossed the sea and been applied in practice at Elmira, in the State of New York, that it became the theme of a special literature, of vast extent, in all languages, and began powerfully to influence the governmental action of Continental Europe.

As to probation and the juvenile court, they are both American innovations in criminal jurisprudence and practice, for which we are indebted respectively to the state of Massachusetts and the city of Chicago.

I beg you to believe that these observations are not prompted by national vanity, which is a pseudo-patriotic sentiment, but by regard for the truth of history and in the hope of giving greater definiteness and stronger emphasis to what is to follow.

In the development of prison reform this country has enjoyed the advantage, in the first place, of being a new country. It imported its institutions and its laws from the Old World, but it was not wedded to them. These laws and these institutions had a tinge or cast due to their having originated under purely monarchical forms of government, while democratic ideals were here all but universally prevalent. The alteration in our laws and the change of form in our institutions took on a general direction which may be traced to this political impulse as its source. The one conspicuous exception is the county jail, the worst and most discreditable feature of the American prison system. English, not Roman law was the foundation upon which we built; and we transplanted to our own shores the English shire, which was and still is, everywhere but in the New England States, the political unit; and even in New England the distribution of courts and their adjuncts, the houses of detention for prisoners awaiting trial, conforms to the politico-geographical organization of the state by counties. The population of the original colonies was sparse and widely scattered; there were few towns of any considerable size; roads were bad and travel difficult, locomotion by steam power not having yet been invented; and there was very little crime, and only an occasional criminal. The early jails were very primitive in design, being for the most part nothing more than log huts with a single room (rarely two), into which the suspected and the convicted were thrust, pending the disposition of their cases and while undergoing sentence. This mode of incarceration has survived the original necessity for its adoption, partly because of the large investment of capital which has been made by the public in county prisons, and partly for political and other reasons. The county jail is acknowledged to be, in this country and at the present time, an anachronism; but many years may elapse before we are ready, as a people, to abandon it. It cannot permanently endure.
There were, too, it must be remembered, in colonial times, no state prisons. The settlement of America, in the seventeenth century, antedated the European movement for penal law reform. From the middle of the sixteenth century, it is true, workhouses and houses of correction had begun to spring up, here and there, in England and on the Continent, but the modern penitentiary dates from the war of the American Revolution, when a forcible stop was put to the English practice of shipping felons to this country and disposing of them by sale to the highest bidder. The prisons inspected and described by John Howard were county and local prisons. Before the Revolution there were no penitentiaries, even in England.

We had a virgin field in which to experiment, and we have experimented to some purpose. In other countries, the state or central prisons are the property of the nation. In the United States, on the contrary, in consequence of the partition of political sovereignty between the states and the nation, under which the punishment of crime is almost wholly relegated to the states, there have been, until within a few years past, with the exception of naval and military prisons, no prisons established and maintained by the Federal Government. We have, accordingly, as many distinct criminal codes as there are states and territories in the Union, with even a greater number of central prisons. Our opportunities for experimentation and for the comparative study of results would, therefore, have been unequaled in the history of the world, were it not for the lack of uniform and adequate criminal statistics, so desirable for scientific and other reasons, which the federal authorities do not yet feel it incumbent upon them to collect and publish.

From this hasty and superficial sketch it clearly appears, I think, that, while the prison reform movement in America has been in one of its aspects, a phase of a larger movement, in which all civilized nations have had a share, some of its features have been more or less local and peculiar. It has been accelerated and intensified by the unprecedented growth of the New World, its originality and independence, its intellectual activity and fertility of invention; and the peculiar bent of our national life has impressed itself upon the prison, as upon all other distinctively American institutions.

Let us cast a preliminary glance at the general trend of progress throughout the world. There was a period, in the remote past, when there was not a criminal code in existence, none having been yet formulated. The establishment of the first code in which punishable offenses were defined and listed was a tremendous step in the direction of criminal justice and of civil liberty, since it was a limitation upon the cruel caprice of tyrants; though it may well be questioned whether it has ever or anywhere constituted in practice a complete check to their anger and oppression. The earlier codes were short
and simple. They all proceeded upon the principle subsequently promulgated by the French Revolutionary Assembly, in 1791: "Penalties should be proportioned to the crimes for which they are inflicted." They prescribed definite and invariable penalties for specific offenses. The history of codes, following the general course of their successive evolution, is characterized by a gradual increase in the number of punishable offenses, and a tendency to diminution in the number of distinct varieties of legal punishment, culminating in the substitution, for most of them, of some form and duration of simple imprisonment. Imprisonment is, in the United States, practically the only penalty commonly inflicted. We retain the death penalty; it is true, but it tends to fall into disuse. We authorize the imposition of fines, but they may be commuted into terms of imprisonment at the pleasure of the convict. There is but one state — and that the least of all the states — in which the pillory and the whipping-post may still be found. But imprisonment as a penalty for crime is a historical novelty.¹ When it was recognized in France, little more than a century ago, the code itself prescribed definite terms of imprisonment. Twenty years later the French courts were authorized to determine the duration of individual sentences within certain maximum and minimum limits. The experience of France in this regard is typical of universal experience, and the growing tendency in this direction might be illustrated, did time permit, by references to the history of American legislation. The amendments made to all codes, both penal and judicial, are the result of dissatisfaction with their practical operation. They are a confession that the equitable apportionment of penalty to crime is not the easy problem of solution that the Revolutionary Assembly imagined it to be.

Through this entire process of change the subdominant note has been the gradual amelioration of penalty, or the softening of manners with the lapse of time.² If any one lesson has been driven home to the political consciousness of legislators and of judges, it is that brutal and needless severity in dealing with crime defeats the ends of justice and promotes the unnatural growth of crime.

Side by side with the tendency thus described may be noted another, namely, the diversion of attention, in an increasing ratio, from crime as an abstraction to the criminal as its concrete embodiment, from the act to the actor,³ and this has been accompanied by the

¹ "Our criminal procedure appears, in many instances, to point only at the destruction of the accused" — Beccaria (1764).
² Even in China the number of blows which may lawfully be inflicted upon an offender has been reduced from one hundred to forty.
³ "All responsible action is primarily postulated along the line of free will functioned upon the moral intuitions. Where freedom ceases, automatism begins. Beyond that point conduct may be a menace, but it can never be a crime; it may be an event, but in no sense an act." — Drahms.
conviction that if the perpetrator of a criminal act is an object of blame, he is also an object of pity, and that, if his crime merits reprobation, he himself may nevertheless be capable of reformation. This is not a new idea. The inefficacy of punishment has in all ages impressed the consciousness of those by whom it has been inflicted. Pope Clement XI declared it to be absolutely inefficacious, unless accompanied, in its administration, by a reformatory régime. The moral motive of the penitentiary system in the minds of philanthropists and statesmen like Howard, Blackstone, and Bentham was the hope of saving men. The very word "penitentiary" means a place for repentance and amendment. What is noteworthy is the rapid rate at which of late this conviction, this sense of moral obligation has gained ground in the world and modified penal law and its enforcement.

In this country prison reform began, as has been said, with the establishment of state prisons, organized and governed on rival methods, known as the Pennsylvania and Auburn systems. The former, also called the solitary system, provided for the isolation of all prisoners both by day and by night; the latter for their isolation by night only. By day they were employed, at Auburn, in association in large prison workshops; but to prevent mutual contamination, all conversation between them was strictly prohibited. The well-meant purpose of each of these systems was the same. Their authors and advocates argued that crime is contagious, and that the remedy is quarantine. The result hoped for by them was reformation; and the road to reformation was believed to be by the way of discipline. At Philadelphia the prisoner was left to his own reflections; interrupted by occasional brief visits from volunteer prison visitors. At Auburn he was flogged for talking contrary to the rules. Odd impressions of the criminal were then generally current. Captain Elam Lynds, the warden in charge at Auburn, held that no large prison can be governed without the aid of the lash. The directors of the Massachusetts state prison exhorted all its employees to think of it as "a volcano filled with burning lava," and laid down the rule that the discipline "must be as severe as the law of humanity would tolerate, in order to conquer the mind of the convict and reduce it to a state of humiliation." In Connecticut prisoners slept at night with their feet fast to iron bars and their bodies attached by chains around the neck to a great wooden beam. On the occasion of the first religious service held in the Walnut Street Jail, in Philadelphia, the jailer, by way of precaution against riot, and to insure the personal safety of the officiating clergyman, had a cannon placed in the yard, and stationed a guard beside it, holding in his hand a lighted match.

1 But more lately, first the "separate" and then the "individual" system.
Between the partisans of these rival systems a furious controversy broke out, the echoes of which may still be heard reverberating around the globe, for it has not yet completely died away. The Philadelphia Society for Alleviating the Miseries of Public Prisons defended the separate system, which was acrimoniously assailed by the members of the Boston Prison Society and of the New York Prison Association. The protracted discussion which ensued had the merit of bringing to light the inherent defects and essential cruelty of both systems; but victory rested with the opponents of the Pennsylvania plan, which was tried by three or four states, but soon abandoned. It nominally survives at Philadelphia, but not in fact, since that prison, with eight hundred cells, now contains over twelve hundred sentenced convicts. The Auburn system, with its rule of perpetual silence, impossible to enforce, has also died a natural death. Then, as now, prisons were of two sorts: one local and minor, in which there was no discipline; the other central or state, in which there was far too much. The juste milieu had not yet been discovered.

Without regard to the theoretical arguments for and against the separate or individual system, it may be said, in passing, that its abandonment is primarily attributable to financial and practical considerations. It is more costly to install. The ordinary American prison cell contains not more than five hundred cubic feet of space, while the separate cell requires the provision of at least one thousand feet, or double the quantity. It is, therefore, more difficult, in a country with a population multiplying so rapidly as does that of the United States, to secure adequate accommodation for prisoners on the separate than on the congregate system. Moreover, the earnings of the prison are less, since they depend on the employment of labor-saving machinery driven by the power of steam, which can be used in the shops of a congregate prison, but is not adapted to use in prisons of the opposite type.

All progress has its root in the sense of failure to realize an ideal. There are as many distinct ideals as there are groups of men. The economic ideal of the prison is that it shall be self-supporting; the administrative ideal, that it shall be secure and orderly; the political ideal, that it shall minister to the reputation and the stability of the party in power; the punitive ideal, that it shall crush its helpless inmates and strike terror into the hearts of men tempted to enter upon a criminal career; the sentimental ideal, that it shall be the abode of comfort and content; the philosophic ideal that it shall be so conducted as to reform as many of those committed to it as are susceptible of reformation and rehabilitation. These ideals spring up partly from within and partly from without. Prison officials have the opportunity to study the criminal at first hand by close and continued contact with him. They become familiar with his peculiar-
ities, his tastes, his notions, his sentiments, his habits. They note the effect upon him of every detail of the discipline to which he is subjected, and the changes in their attitude to him correspond to the keener insight and more accurate judgment gained by a large and long experience in prison administration. The outside world has a different standard of comparison. It judges by results as shown on the ledgers of the state, the dockets of the criminal courts, and elsewhere. It asks itself, Does the prison accomplish what the people expect and demand of it? Does punishment really punish? Does intimidation intimidate? Does reformation reform? Is there any appreciable diminution in the volume of crime in the community?

In the development of popular ideals and continually higher standards of excellence, prison societies and prison congresses play the leading part. The medieval prison societies were relief-giving societies, in an age when prisoners, if they did not supply their own food, got none; when imprisonment for debt was common, and poor debtors would have starved but for the generosity of the public. The modern prison society formulates theories of prison discipline, promulgates them, and endeavors to find employment for discharged convicts. In the prison congress the official and non-official elements, the expert and amateur, meet and exchange views, to their mutual advantage; and thus, step by step, slowly but surely, the cause of prison reform advances with the onward march of intelligence. Science ministers to it, and so does religion. Science endows it with its own rich gains in the knowledge of nature and of human nature and in the applications of science to the mechanic arts. Religion contributes the altruistic motive and the sentiment of moral obligation and of hope, giving to the reformer strength to persevere in the face of repeated and persistent discouragement. It supplies, in the prison, a specific element of personal touch, without which all routine treatment is powerless for good.

Nevertheless, or perhaps as a necessary consequence of this minute, critical study of results, the belief gains ground that the penitentiary system, like all the abandoned devices for the suppression of crime, will ultimately prove a disappointment. It accomplishes none of its avowed aims. As punishment, term imprisonment is inequitable and unjust. As a deterrent, its influence is inappreciable. As a reformatory agent, conducted as most prisons have been and still are, it is on the whole a failure. The minor prisons, in which men and women are incarcerated for short periods in association, unemployed, are pestilential centres of moral infection. The central prisons benefit a certain percentage of their inmates by the change of environment, the regular hours, the enforced abstinence, the industrial occupation, and the very partial educational and religious influence which incarceration in them implies. But the life led in
them is unnatural from every point of view, enfeebling and demoralizing. The volume of crime in the community does not diminish; there are even those who claim (but on inadequate evidence) that it is increasing.

Accordingly, the history of prison reform may almost be written in terms of progressive disuse of the prison, either for punitive or reformatory ends. The supreme folly of the harshness of the earlier discipline practiced by novices in the art of governing criminals soon became apparent. The second generation of wardens learned that the criminal is not a beast, but a man, who rebels against oppression, but responds to kind treatment and encouragement, with whom more can be done by privileges granted as a reward for good conduct than by disciplinary punishment.

The original germ of the prison system of the future was the passage, by state after state, of "good time" laws, which authorized a deduction from the term of imprisonment prescribed by the court, proportionate to its length, as the highest reward for obedience to prison rules. This was disuse, a reduction in the total number of the imprisoned; and (which merits especial notice) it was the negation of the principle that a sentence once formally pronounced by a court must be executed in accordance with its original and literal form. Either the original sentence was delivered, subject to modification in accordance with the new legislation, or else the legislature claimed and exercised the power to modify it, subsequent to its delivery. The foundation was thus laid for a complete subversion of the historical basis of all existing criminal codes.

The second step in the progressive disuse of the prison was the inclusion in some of these codes of the principle of conditional liberation, and the third was the adoption in others of the principle of suspended sentence or probation. Conditional liberation empties the prison at one end, and probation at the other.

We have now a third generation of wardens, trained under the later legislation, who are far in advance of their predecessors in point both of average intelligence and of average humanity, and the moral tone of the institutions under their charge has been correspondingly elevated and improved.

The trend of progress in this general direction was greatly aided by the influx of a stream of European influence, to which reference must now be made. Captain Alexander Maconochie, R. N., Governor of Norfolk Island, in Australia, was the inventor of the mark system. He attached to the marks bestowed by him a pecuniary value, and made the date of liberation of convicts depend upon the number of marks earned by them. After his recall to England he was appointed governor of the Birmingham Gaol, where he experimented further with it. Sir Walter Crofton, the Director of Irish Convict
Prisons, borrowed it from Maconochie, adding to it a system of grades. Marks and grades thus passed into English criminal law, and were accepted by some other nations, notably by Denmark and Hungary. Recorder Hill, of Birmingham, was the connecting link through which the knowledge of the Irish system was communicated to the American mind. Its philosophic soundness and practical utility were at once recognized, and an effort was made to apply it to American conditions. Progressive or conditional liberation was the heart and core of that system; but it was not carried to its logical conclusion either by Maconochie or by Crofton, probably because of its novelty and the natural operation of the cautionary instinct. The opportunity to transplant it came, when the State of New York created, at Elmira, the first intermediate or reformatory prison, designed for young men supposed to have been convicted for the first time of a felonious offense. Mr. Z. R. Brockway, an experienced prison officer, with a daring, original, and open mind, and a passionate love of his work, a man in whom the scientific temperament largely predominated, who was well versed in the literature of penology, and who united in his complex and versatile nature the impulse to save men by uplifting them with the enthusiasm of a born educator,1 was chosen to be its superintendent. This event marked an epoch, the turning-point in the history of prisons, not only in America, but, as I believe, in the civilized world. It was the birthday of the new criminology.

In the organization of the Elmira Reformatory, to the marks and grades of the Irish system there was added the indeterminate sentence. Strictly speaking, an indeterminate sentence would be one without either a maximum or minimum limit. Offenders were formerly consigned to prisons like the Tower or the Bastile, to be held during the pleasure of the King. That was an arbitrary act. The contrary idea, in the minds of the advocates of the indeterminate sentence, was that it should be (and some of them so called it) a "reformation" sentence, or a sentence to imprisonment until the convict should give satisfactory evidence of his reformation. It was felt to be impossible to induce the legislature to take so long a step in advance, and the New York Reformatory Act fixed an invariable maximum term of incarceration, usually five years (but in every case the maximum term authorized by the criminal code for the offense proved), leaving it to the discretion of the authorities in charge of the institution to release on parole at an earlier date such prisoners as they might deem it safe to set at large. At that time this was an absolute novelty in legislation. Juvenile delinquents, it is true, were in some states held to be wards of the state during the period of their minority, to whom the government stands in loco parentis, and, after

1 Froebel declares that education is "deliverance."
a term of apprenticeship in a reform or industrial school, they might be, and often were, paroled. This method of disposing of them had yielded excellent results. But the postulate on which that law rested was that a child of tender years, because of his immaturity, is irresponsible for his acts, and, therefore, incapable of crime. No similar claim could be made on behalf of the fully grown men committed to Elmira. And yet there must have been intellectual preparation of some sort for so great an innovation in criminal law and practice. What was it?

The inequity of definite sentences had been demonstrated by experience to the satisfaction of all competent observers. Almost invariably the term of imprisonment named in the mittimus was either too long or too short. The sentence of the court, nevertheless, once pronounced, was immutable and irrevocable. The only alternative was an appeal to executive clemency. After the indeterminate sentence (so-called) had gone into effect in New York, in Massachusetts, and possibly one or two other states, a comparative study of all sentences for crime in force at the date of the Eleventh Census (1890) was made, in the scientific spirit, by authority of the Federal Government. The tabulated result, which is accessible in the official report published by the Census Office, reveals in a striking manner the lack of any principle of uniformity or of due proportion in the distribution of imprisonment for given offenses, as between the states, or even within the limits of any single state. The inference is inevitable that the theory of adjustment of penalty to guilt, measure guilt by what standard you will, is a myth, a figment of the imagination, unsubstantial as a disembodied spirit and infinitely more dangerous and harmful.

The inequity of judicial sentences for crime having been once established, the question arises, how to equalize them? What is the remedy for the evil complained of? Of the three coordinate branches of the government, two have attempted to establish and secure penal justice, namely, the legislature and the judiciary. Neither has succeeded. Obviously, the only remaining alternative is to impose this duty upon the executive department. Has not the governor of the state the power to grant pardons and commutations of sentences? Yes, but the grant is an act of arbitrary sovereign power. What is needed is something quite different, to wit, the establishment of a system under which the authorities who have the custody of the prisoner, and who, being appointed by the governor, are his representatives and agents, and are empowered to establish rules, subject to executive (or even joint executive and judicial) approval, governing the date and the conditions of the prisoner's release. These officials are members of the executive branch of the government. They are in a position to gain, by observation and
inquiry, a full knowledge of the life-history of the convict, and of his character and intentions, such as no court ever can. They are, or should be, experts in criminal chicanery, who cannot easily be deceived by hypocritical professions or by simulated and self-interested obedience to rules, who are capable of forming a tolerably accurate judgment as to his actual state, and of determining whether or not the treatment given him has produced a genuine change in his attitude to the law and to the commonwealth. If any analogy is needed, in order to justify the confidence reposed in them, it may be found in the grant of precisely similar powers to the medical superintendent of every American hospital for the insane.

Let us now go deeper, and probe this problem to the quick. Let us ascertain, if we can, the underlying cause of the failure of lawgivers and of judges to secure and establish criminal justice. Nothing could be simpler or more obvious. The aim of both was to establish a mathematical proportion between the guilt of every offense and its appropriate penalty, and so to adjust one to the other. In order to realize this design, a common measure of guilt and of pain is indispensable. But no such common measure exists. Justice is an abstraction, elusive as a sunbeam, imponderable as a shadow. A criminal court is a trap to catch sunbeams. Neither the legislature nor the court can make use of a non-existing pair of scales with imaginary weights. Yet this is the instrument which the legislature gravely presents to the court, with an unuttered prayer that an infinitely wise God may overrule all judicial blunders to his own glory and the good of mankind. Grasp this thought firmly, and thereupon the seemingly solid foundation of the current penal codes of Christendom melts into vapor and disappears like a dream when one awakens from sleep. Its unreality, its absurdity, at once become apparent to the aroused normal intellect.

If, then, the indeterminate sentence proposed nothing more than to transfer responsibility for the achievement of an impossible undertaking from the courts to the prison officials, its failure would be assured in advance of its adoption. That is precisely what it does not propose.

It has been said, but without sufficient information, that the researches and conclusions of the school of criminologists known as criminal anthropologists were the original occasion and motive of the introduction into American criminal jurisprudence of the principle of the indeterminate sentence. There is no historic proof of the truth of this assertion. Criminal anthropology, uncertain and vague as its formulated teachings are in their yet partially developed stage, has unquestionably rendered valuable service to science, especially to the sciences of physiology and psychology, and to law. It has devoted its energies to the study of the criminal. It regards him as
a being to be treated rather than to be punished, and holds that his
treatment must be adapted to the individual, in the light of his actual
condition and possibilities, and not determined by the criminal label
with which he happens to be tagged. It has brought into strong
relief the relations between abnormal physiological conditions
reacting against a special environment and the crimes which such
reaction suggests and induces. The psychological experiences of the
criminal are in fact written, in characters more or less legible, more
or less obscure, upon his physical frame; and their decipherment is
a worthy task, a pursuit which may well absorb the attention of sci-
entific investigators. The labors of the criminal anthropologists
logically lead to the acceptance and adoption of the indeterminate
sentence; but they were little known, and had made no serious
impression in America at the date of the creation of the Elmira
institution.

What was, in fact, the unsubstantial basis of the vanishing crim-
inal code? It was retribution. It was the belief that crime is to be
punished because it merits punishment; that the criminal must
be made to suffer because he deserves to suffer; that guilt can be
removed only by expiation. True it is that crime merits punish-
ment, and that the criminal deserves to suffer. Does it follow that
I, you, or we are under a moral obligation to inflict this punish-
ment? True it is, that expiation is the antidote to guilt; but is not sorrow,
the pain of penitence, more truly expiatory than physical agony?
By what are men saved? By despair? Why may not the punish-
ment of offenses be left to the slow but sure processes of natural or
supernatural law? If it should be said that the reaction against
crime, the horror and indignation that it awakens in the human
mind, is an integral part of the process, that vengeance is a natural
instinct, it is nevertheless a brutal instinct, the same that animates
the murderer, and, therefore, to be held in check. The religious
instinct is opposed to brutality, forbids retaliation, and enjoins the
forgiveness of injuries. In any event it is needless to found impris-
onment on the instinct of retaliation, since the reactionary ends of
justice are met by the fact of imprisonment, and the treatment
accorded to the perpetrator of an unlawful act will be more, not less,
effective for good if its conscious aim is not punitive but restorative.

The criminal code must have a basis. If not retribution, what is
it? Social self-defense. Whatever is essential for the protection of
social order and security is lawful, whether it be the redemption of the
offender, his incapacitation for evil, or his extermination. Whatever
transcends this limit is unauthorized in ethics and contrary to public
policy. We incapacitate the criminal by confining him in prison.
If he can be reformed, this is his right and our duty. If he cannot be
reformed, he has forfeited the right to his personal liberty, and
society has the right to prolong his disability for any indefinite period — for life, if necessary, or until he ceases to be a social peril. This conception of the function of the prison ignores the popular clamor for vengeance; it protects the criminal, while it protects the community; and it accords with the humanitarian tendencies of the present age. The world has shifted its point of view. The material conquests of advancing civilization have been paralleled by moral victories no less signal. The power of intellect, both in the material and the moral world, increasingly takes the place of the grosser, more violent and primitive methods of brute force.

It is strange that the disbelief in the possibility of amendment on the part of the criminal should be so deep-seated and universal. Men and women equally guilty before law, human and divine, but who have not been exposed to the contamination and shame of prison life, have abandoned their evil courses in response to influences exerted upon them in free life. There have been many signal instances of transformation of character and conduct occurring in prison. It would be foolish to estimate the exact percentage of corrigible and incorrigible convicts, or to shut our eyes to the persistence of the criminal type of character or to expect from the average prisoner anything more than that he shall cease to be a lawbreaker and become a law-abiding citizen. Religion encourages this hope. So does science, as I shall now proceed to show.

The methods and achievements of science have profoundly modified metaphysical thought, so that a new word, psycho-physics, has been admitted to the dictionary. In the psycho-physical study of human nature there is a constant recognition of the vital relation between mental experiences and the operations of the brain and of the nervous system in man, of their interdependence and reciprocal relations and influence. The researches of physiologists have shed light on much that was formerly obscure in the anatomical structure and functions of the body. We have learned that every mental impression and perception, every act of memory, of the imagination, of the judgment, of the will, every passing thought or emotion, is accompanied, in this life, the only life of which we have experimental knowledge, by molecular changes in nerve-tissue, by nervous activity and motion. The paths followed in the accumulation and discharge of nerve-force have been partially traced. By the aid of vivisection, scientific proof of their existence has been secured, and the functional utility of certain tracts of the brain has been demonstrated, enabling us to localize, to a limited extent, cerebral action, and to inspire the hope that the further prosecution to the investigations now in progress may dispel some portion, at least, of the mystery which enshrouds our present dual existence. The correspondences between the order of succession of nervous phenomena and of the phenomena of
thought, feeling, and volition, and the fact that certain of them are demonstrably simultaneous, have given definiteness and precision to metaphysical speculation with reference to purely mental operations, if such there are; and they have given us an intelligible theory of the formation of habits which, physiologically speaking, are neither more nor less than reflex nervous discharges rendered automatic by their repeated recurrence, until the paths worn in the brain have become, so to say, broad and smooth. The current of nervous energy accordingly takes the line of least resistance. This parallelism extends as far as consciousness enables us to follow it, and no doubt it is still deeper and more far-reaching. It partially explains, perhaps, the well-known and familiar fact that bodily states, experiences, and habits affect the mind, while mental states, experiences, and habits equally affect the body.

The truth of this general view is illustrated and confirmed by the success attending the efforts made by expert neurologists to develop the mentality of backward children by means of physical exercise and the systematic training of the senses, and, through them, of the nerve-centres. It is also illustrated by the success attending the converse efforts made by mental healers to stimulate or soothe nervous physical action by means of suggestion addressed to the mind. We are able to gain admission to the areanum of life, as it were, by either of two doors, the avenue of sensation or that of ideation. We can modify mental operations by securing and exercising control of the body. We can modify physiological action by controlling the mind. The only question is whether we possess the requisite knowledge and skill. The knowledge and skill demanded for success, in either direction, is expert knowledge and skill.

It will not answer, therefore, to contend that, because criminals in the care and custody of an unskilled warden, with untrained and incompetent subordinates, have not been reformed, the same individuals might not have been reformed if they had been subjected to expert treatment at the hands of an expert. Expert treatment is the ideal of the new criminology. The new criminology aims at nothing less than the suppression of evil habits and replacing them by their opposites; in other words, the wearing of paths in the brain which shall offer less resistance than the old, familiar paths; the creation of new habits of thought, speech, and action, with or without the consent of the convict himself. This is a task of tremendous difficulty. It is revolution by means of evolution. It is education, in the etymological sense of the word; the education of all the prisoner’s faculties, physical, mental, and moral, on a well-considered, well-grounded plan, scientific and practical at the same time, but differentiated to meet the conditions and needs of each individual case. Kindness must be blended with severity, hope aroused as well
as fear, obedience insisted upon and enforced, and above all the good will and cooperation of the patient enlisted for his recovery. Difficult as the task may be, it is not impossible, but time is essential for its accomplishment. How long a time is uncertain and cannot ever be foretold in advance. Hence the necessity for an indeterminate sentence. No surer method can be devised by which to insure the desired cooperation on the part of the prisoner than to make the date of his liberation depend upon his own submission and exertions. The tendency of the indeterminate sentence is to change the atmosphere of the prison. The convict, when his opposition to a reformatory discipline has once been overcome, comes to regard it as the abode of hope, not of despair. Sooner or later he recognizes in the warden a friend, whose strongest wish is to lift him out of the degradation into which he has fallen. When he begins to perceive that it is himself who has made war upon society, and that society is not his enemy, as he had blindly imagined, his reformation is begun. When he learns the meaning and intention of law, and becomes reconciled to it, like a wild animal tamed, his reformation is achieved. Affirmatively, therefore, as well as negatively, the indeterminate sentence is shown to have a rational basis. The indeterminate sentence and a reformatory discipline presuppose each the other as its essential complement. The maintenance of any reformatory system of treatment which shall prove in the highest degree effective, without the aid of the indeterminate sentence, is impossible. The imposition of an indeterminate sentence to a prison in which skillful and curative treatment is not supplied is a judicial wrong.

Let no one think that these assertions are the language of a sentimentalist or a visionary. Their truth has been verified by experience. If the American reformatory prisons have not yet fully met the reasonable expectations of their authors and supporters, this is because the new codes under which they are operated have been faultily drawn, or because the courts are not all of them in sympathy with the new legislation, or because the right men have not been assigned to the charge of these prisons, or because sufficient time has not yet been allowed for the realization of the higher and true ideals set forth in this address. The positions taken, the views advanced, are essentially correct; and their general, if not their universal, acceptance may be safely predicted, so soon as they are comprehended by that portion of the community which at all concerns itself with the prison question.

To prevent misconception and misrepresentation it only remains to add that, while the new criminology regards the antiquated and obsolescent discipline of the prison of the past as worthy of reprobation on account of its excessive hardness and severity, it does not deny the necessity for the employment of force in the repression of
crime, nor does it propose to coax criminals to amend their ways by resorting to the use of flowers, confectionery, and attar of roses. The government is bound to maintain order and to protect life and property. The menace implied in all law-breaking must be met with stern determination to compel obedience to law. The incorrigible recalcitrant must be eliminated; he must be shorn of his power to injure his fellows. What the new criminology stands for is, in the first instance, discrimination between wrongdoers, and patient tolerance, under surveillance, of such as do not manifest marked or habitual criminal tendencies, and of whose amendment without incarceration there is reasonable hope. This would be secured by the more general use of probation of youthful first offenders. It then demands that those who cannot be restrained by purely moral influence exerted outside of prison walls shall be committed for treatment under the indeterminate sentence, not in the spirit of retaliation and revenge, but in order that they may be subjected to an appropriate reformatory discipline, in their own interest and in that of society. It by no means holds that such discipline, however skillfully devised and applied, is a panacea for crime. It entertains no unsound, sentimental notions of criminal character, conduct, and accountability. It cherishes no illusive expectation that the methods employed will accomplish the impossible; that all prisoners will yield to them, or that the change actually effected in any individual will transcend certain fairly well-defined limits. But it insists that the convict is entitled to his chance, a chance which possibly he never before had, and that it is the duty of the government to resort to all practicable means for his restoration and rehabilitation. A reformatory discipline is not a weak and vacillating but an heroic discipline. Of all forms of discipline, it is precisely that which the criminal by choice and not by chance most hates and dreads. The change of habits which it seeks to bring about can only be effected by a judicious mixture of persuasion and compulsion, in which compulsion often must be the chief ingredient. It is bitter to the palate, but it is medicine.

When persuasion and compulsion both fail, when it becomes apparent that the perversity of the criminal is ineradicable by education, instruction, or an appeal to his religious beliefs, hopes, and fears, that the law has no terror for him, that he is in love with evil, and that he proposes to return, when released, to his former criminal courses, then, for social protection, but not as a penalty for crime, the new criminology recommends his permanent detention in custody, or for so long at least as he is and continues to be a social peril.

Strangely enough, it is this feature of the indeterminate sentence which excites prejudice and hostility; which renders judges, steeped in the traditions of a retaliatory penal code, averse to pronouncing it,
and legislators unwilling to authorize it. Some justification there is for their mental attitude. It is found in the dearth of capable men competent to administer the reformatory discipline to which the indeterminate sentence is an adjunct, and in the probability that, under the spoils system in American politics, they would not, if found, be appointed. But we shall by degrees outgrow this phase of our political history. The creation of an ideal standard of qualification for headship of a reformatory prison will develop the class of officials required to meet this new demand, and, with the more general dissemination and acceptance of correct notions of social organization and social duty, public opinion and sentiment will be ripe for the reform which we advocate. We have not entered upon the full possession of our inheritance, but we bequeath it with confidence to posterity.
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