Address of the President

Simeon E. Baldwin

Yale Law School

Follow this and additional works at: https://digitalcommons.law.yale.edu/fss_papers

Part of the Law Commons

Recommended Citation
Baldwin, Simeon E., "Address of the President" (1891). Faculty Scholarship Series. 4283.
https://digitalcommons.law.yale.edu/fss_papers/4283

This Article is brought to you for free and open access by the Yale Law School Faculty Scholarship at Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship Series by an authorized administrator of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.
ADDRESS OF THE PRESIDENT,

BY

SIMEON E. BALDWIN,

OF NEW HAVEN, CONNECTICUT.

The constitution of the Association makes it my duty, on this occasion, to state to you the most noteworthy changes, during the past year, in American statute law.

No one who has undertaken the labor which this task involves, deeply interesting as it is as a study of social science, will regret that other provision of our constitution which makes the President ineligible for a second term. It calls for a review of a large part, perhaps the best part, of the history of the world since last we met: for where is history more truly written than in the legislation of the times, and what new field of legislation is entered upon in this age, in any quarter of the globe, that is not soon known and traveled in every other?

Here, in America, are fifty distinct and, for most purposes, independent governments. Each has a legislature expected and desirous to add something of value to the institutions of its people, and between them climate and soil and history have made wide differences of social conditions.

There is the frontier Territory, offering bounties for the destruction of lions and panthers; the river States, with their levee systems; the dry-season States, with their plans for irrigation and artesian wells; the South, with its ignorant and half helpless masses of colored laborers; one State, where commerce is a main object of regard; another where mining, another where manufacturing is; some rapidly increasing in wealth and population, some stationary, some going backwards;
some still overrun with Indians, and some built up on usages and traditions that have been the slow growth of nearly three centuries.

No land in human history has presented such a diversity of social forces working in different ways towards the same end, and under common principles and attachments. Our own country has not, before the past year, which brought the number of our States up to forty-four.

I turn first to the Acts of the last Session of Congress, a work surpassed in consequence by that of few of its predecessors.

There is no matter to which this Association has given greater attention than that of the relief of the Supreme Court of the United States. Many of those present will recollect the very full and able discussion at our Saratoga meeting in 1882 over the majority and minority reports of the special committee on that subject, one favoring a division of the Court into sections, and the other the creation of an intermediate Court of Appeals. Our vote of that year, in favor of the latter plan, was re-affirmed last Summer, and the labors of our committee contributed materially to secure its adoption by Congress, at its last session, in the form recommended by the Senate committee, of which one of our associates, Mr. Evarts, was chairman, and which is understood to have come mainly from his hand.*

That this law will, in a few years, greatly reduce the business of the Supreme Court there can be no doubt, nor can there be any that this result will be accomplished only by serious sacrifices. That great branch or, it might be said, trunk of its jurisdiction, which consists of controversies between citizens of different States, is cut away, except so far as points of special difficulty may be sent up by the action of the new Court, or called up by the action of the Supreme Court. The Supreme Court loses also, with similar exceptions, its right of review in patent, revenue and admiralty causes, other than

*Chap. 517, Act of March 3, 1891.
prize. It gains jurisdiction to reverse all criminal convictions, whether in the Circuit or District Court, for an infamous offence, (that is, one for which imprisonment in a penitentiary might be awarded,) and is likely to be freely appealed to in cases of this character.

Hereafter, this tribunal can be asked to review all questions as to the jurisdiction of the Circuit or District Courts (except so far as this may be affected by the statute as to the remand of a cause improperly removed*), decrees in prize causes, convictions of infamous crimes, and decisions on points of constitutional construction. It has also appellate jurisdiction over a narrow class of cases in the Circuit Court of Appeals. Of these, one of the most important would seem to be appeals from Territorial Courts. All these must now be brought primarily to the Circuit Courts of Appeal, but subject to a second appeal from their decision, in cases involving over $1,000.

Any questions of law arising in controversies between citizens of different States, or any other of the classes of cases within the final jurisdiction of the new Court, may be brought before the Supreme Court, at its desire or if specially certified up by the Court below.

How far this extraordinary grant of jurisdiction will be pursued must be determined by the future practice of both Courts, in view of what may be the demands of public sentiment. That the Supreme Court would call up any case coming to their attention where unsound doctrine on matters of general commercial laws had been announced, may safely be predicted, and if they allow counsel for the defeated party to move for the issue of a writ of certiorari, without restriction, such applications are likely to be not infrequent.

This Act is a combination of compromises, and the hasty manner in which it was finally pushed through in the last hours of the session is sufficiently indicated (were other proof wanted) by its providing that the new Court should open

in the January preceding its passage, and by its not providing when its immense alterations of jurisdiction should take effect, thus leaving them to go into force immediately. Both these defects were cured by a joint resolution, approved the same day.

This law introduces one new feature into our Federal procedure—an appeal (to the Circuit Court of Appeals) from an order for a temporary injunction.

The general appellate jurisdiction of the new Court also removes what had become, since the adoption of the $5,000 limit for ordinary appeals to the Supreme Court, a serious grievance,—the absolute power of a single Judge in most cases in the Circuit Court.

The increase of the salaries of the Federal judiciary, which has been favored by repeated votes of the Association, and promoted by the appointment of a special committee to urge it upon the attention of Congress, has been granted to the extent of raising the compensation of the District Judges to $5,000.*

The territory acquired by the United States, under its treaties with Mexico, brought with it numerous and embarrassing questions of private title, dependent on the existence and construction of former laws or grants of Spanish or Mexican origin. To settle all disputes between the United States and the claimants of any of these lands, a Court of Private Land Claims has been constituted†, to endure for four years, and to sit in such places in New Mexico, Arizona, Utah, Nevada, Colorado and Wyoming as it may find most convenient. Its judgments will be conclusive only as between the government on the one side, and land claimants on the other, and will not affect conflicting claims of private parties against each other. An appeal is given to the Supreme Court in all cases, both as to facts and law, which must add considerably to their docket for the next few years.

In selecting Judges for this new Court, the President—greatly, it seems to me to his honor—has not limited his range of choice

†Chap. 539: Act of March 3, 1891.
to members of the party of the administration. Appointments
to the bench from the ranks of the opposition have, I believe,
never been made before in the history of the national judiciary,
though such a practice has not been unusual in many of the
States.

The anomalous practice of confining government prisoners
in State penitentiaries, which grew up when prosecutions under
the laws of the United States were few, is to be changed, under
the law for the erection of three large prisons, at a cost of half
a million each, two East and one West of the Rocky Mountains.
Convicts under twenty years of age are to be kept apart from
older prisoners, and, so far as may be practicable, under
reformatory treatment*.

The powers of the Inter-State Commerce Commission, in
regard to railway investigations and to the enforcement of their
rights by the aid of the Courts, have been materially
reinforced†.

In view of the decision of the Supreme Court in the Dressed
Beef cases‡, Congress has passed an inspection law as to
cattle or meats which are subjects of foreign or inter-state
commerce. The Secretary of Agriculture must cause all
cattle, sheep or hogs, whose carcasses, or other products, are to
be sent into other States, to be inspected before their slaughter,
and may also provide for another examination after their
slaughter.§ An exception is made in favor of farmers who
slaughter on their own farms.

Another law¶ has been passed for the restriction of immi-
gration. Owners of vessels are forbidden to advertise the
advantages of the United States, in order to procure passen-
gers. No one can land who has come here by the assistance of
others, unless he can show affirmatively that he is not likely to

*Chap. 529: Act of March 3, 1891.
†Chap. 128: Act of Feb 24, 1891.
U. S., 78.
¶Chap. 551: Act of March 3, 1891.
become a public charge. Any immigrant who does become a public charge within a year from his arrival, will be sent back at the expense of the line which brought him. The office of Superintendent of Immigration is created, and attached to the Treasury Department as a separate bureau. Professional men are, on the other hand, exempted from the law as to importing contract-labor.

The reclamation of the dry lands in the New West by irrigation has been the subject of much legislation. The States and Territories interested have generally passed statutes authorizing the construction of reservoirs and canals, in part, at least, at the public cost, on a vote of the majority of the inhabitants to be benefited. Congress has granted to all irrigation companies the right to construct and maintain their works over the public lands.*

For every Territory not passing a general statute to secure the "safe operation" of mines, the President is to appoint a Mine Inspector, and elaborate provisions are made for the manner of constructing coal mines and regulating the labor employed in them.†

Another law of importance is that for subsidizing mail steamers built in America and manned, as far as practicable, by Americans; and authorizing any of our naval officers to volunteer for duty upon them.‡

The Act refunding to the States all moneys collected by direct taxation during the Civil War is familiar to you all.§

The final settlement of the French Spoliation claims is an act of justice long deferred. By the Act of 1885, the Court of Claims was authorized to take cognizance of such claims, so far as to examine into their merits, and report the result to Congress, but it was expressly provided that such report should be treated as merely advisory, and that the United States did

† Chap. 564: Act of Mar. 3, 1891.
‡ Chap. 519: Act of Mar. 3, 1891.
§ Chap. 496: Act of Mar. 2, 1891.
not commit itself to the payment of any of them. The recent law* makes a definite appropriation for the payment of a large number, as to which there had been a favorable adjudication.

The principle of international copyright has been at last recognized,† and foreign authors accorded like protection with our own, when their government accords us reciprocal rights. It is burdened by the provision that they must have their books printed on types set up in this country, and that if they do this, but also print a home edition from types set up abroad, no copies of the latter can be sold here.

By a proclamation of July 1st, the President has declared the Act applicable to citizens of Belgium, France, Great Britain and Switzerland.

The wild whirl of hurry and excitement which has come to mark the closing days of every Congress, and which throws an almost despotic power into the hands of a few leaders, is greatly to be deprecated. The natural current of legislation is repressed to the very end, when its accumulations break through all barriers, like a freshet, and carry everything before them, a large part of the members having little or no knowledge even of the main points in the bills for which they vote.

Of the 423 pages of general legislation which constitutes the work of the last session of the Fifty-first Congress 284 pages are covered by the enactments of the closing day, and 139 only are occupied by those of the three months preceding.

The opportunities for "log rolling" which such a condition of things involves, the injustice to the President, on whose attention fifty bills are pressed at the same moment, and the ready excuse it offers for evading the responsibility for any measure in the shape it finally assumes are obvious. The remedies are obvious, too, but there are many and powerful interests opposed to their adoption.

* Chap. 540: Act of Mar. 3, 1891.
† Chap. 565: Act of Mar. 3, 1891.
The leading Acts of the preceding session were called to your attention by my predecessor a year ago. I will refer but to one other, enacted last Fall,* by which the President of the United States is clothed with the great power of dispensing with the operation of our customs laws, in respect to certain classes of imports from any country which does not, in his judgment, receive our goods on a basis of substantial reciprocity.

Taking up, now, the legislation of the States, let us look first at that affecting ELECTIONS.

Our President reported last year that 14 of our States and Territories had adopted the Australian ballot. The number has since grown to 33 by the accession of Arkansas, California, Delaware, Idaho, Illinois, Kentucky, Maine, Maryland, Nebraska, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Vermont and West Virginia.

John Randolph of Roanoke once said at a London dinner-table, that "the adoption of the ballot would make any nation a nation of scoundrels, if it did not find them so."† The power to vote one way and talk another would make men hypocrites. It is a singular instance of rapid revolution in political ideas that within sixty years from the time of this remark, England has adopted the ballot in a form securing the utmost secrecy; that the English form has been followed in a majority of our States; and that the last to retain the viva voce vote, Kentucky, having already abandoned it in her largest city, has now, by her new constitution, pronounced against it altogether in popular elections, and makes the Australian system part of her fundamental law.

There are some practical inconveniences in adapting this system to our American plan of voting for a large number of officers at the same time, and often on the same ticket. One

---

* 26 Stat. at Large, p. 612, Sec. 3; Act of October 1, 1890.
of the ballots printed by Montana, for her recent election, contained 84 names, with 42 blank spaces for writing in that of any unnominated candidate, and was nearly a yard in length, and nine inches broad.

Another difficulty arises from splits in party organizations, and rival conventions, which each present to the State what is claimed to be the regular ticket. The new laws in this case generally provide for the recognition of the conventions called by "regularly constituted party authorities," or for affixing to each list of names not only the party they claim under, but "the party principle they represent."

Several of our States have from time to time passed statutes imposing a penalty for fraudulent voting at political nominating conventions. Oregon has now gone a step beyond in declaring that in the larger places all elections for delegates to party conventions must be warned and conducted in a manner particularly described. Seven days' notice of the election must be given by newspaper advertisement. Judges and clerks must be appointed who take an official oath, and a poll book, showing the result of the vote, must be filed with the clerk of the County Court. Kansas and Wyoming have passed similar statutes.

Louisiana has made it penal to offer anything of value to any voter to influence his vote at any political meeting.

The new Kentucky constitution makes deprivation of office the penalty for securing either nomination or election by corrupt practices.

Missouri has gone further still, by requiring the public Recorder of Votes in St. Louis to call all primary elections for the principal parties, print and supply the ballots, and certify the result. For every candidate for a nomination, or for a place as delegate to a nominating convention, the Recorder must be paid $10. Any balance, not required for the expenses of the proceedings, goes to the School Board.

These minute regulations of the procedure in party nominations are only a frank recognition that with us a fair vote means
nothing unless it be preceded by a fair nomination. If there is a way by which a free government can be long continued without a government party and an opposition party, the world has not yet, at least, found it out; and some State regulation of the American "primary" is a necessary corollary to the adoption of the secret ballot.

Michigan has passed a Corrupt Practices Act, much like that of New York, to apply to her municipal elections.

Illinois has joined the States allowing women to vote at School elections.

Arkansas provides that in election precincts containing over 100 voters, whites and colored persons shall be permitted to vote alternately.

Delaware has authorized the appointment of a sufficient number of special constables to protect the electors at elections in Wilmington from any unlawful interference from the Marshal of the United States or his deputies.

Michigan has provided for the choice of her Presidential Electors by districts, and each district is to elect also an alternate, whose duty it shall be to attend at the day set for opening the electoral college, and take part if the proper or original elector from his district should be unable to act.

Mississippi, by her new constitution, makes ability to read any of its sections and to write one's name a condition of suffrage, with a proviso in favor of those who, unable to read, are yet sufficiently acquainted with the constitution to be able to explain its general provisions. It is said that the illiterate whites are found to pass this examination in constitutional law more to the satisfaction of the authorities than their colored brethren.

MUNICIPAL CORPORATIONS.

The municipal charters or general incorporation laws of the year evince a growing disposition to enlarge the functions of the Mayor, both as to supervision, appointment and removal.
Of this character is that passed by Ohio, for cities in the second grade of the first class (meaning Cleveland), and that of Indiana, for cities having a population exceeding 100,000 (meaning Indianapolis). The latter does something towards introducing the principles of Civil Service Reform, by providing that, while the Mayor is to appoint the heads of departments, for minor positions a selection is to be made under some "common and systematic method of ascertaining the comparative fitness of applicants," except in the Department of Public Safety, "without regard to political opinions or services." The Department of Public Safety corresponds to the ordinary fire and police commissions, and its employees must, as nearly as possible, be equally divided politically. The heads of departments constitute a sort of cabinet, to meet with the Mayor, at least once a month, for consultation and advice.

Ohio authorizes, in Cleveland, an inspection, without notice, of the affairs of any municipal department or officer by three citizens to be appointed by the Probate Judge on the application of any ten freeholders. Their report of the investigation is to be recorded in the Mayor's office, and spread before the City Council at its next meeting.

Ohio also requires every municipal corporation issuing bonds to offer them first to the trustees of its sinking fund, or other officers "having charge of its debts," and only on their refusal to take them at par and interest can they be placed on the market.

It will be recalled that in decisions* which gained wide attention a couple of years ago, the Supreme Court of Indiana pronounced unconstitutional two statutes authorizing the General Assembly to appoint police commissioners for cities having over 29,000 inhabitants, and a Board of Public Works for cities with a population of over 50,000. It was declared that appointment to office was not a legislative but an executive function, and that the clause in the bill of rights that "all

power is inherent in the people" guaranteed to the people of
a municipal corporation the right to choose their own rulers.
By laws passed this year, the legislature has given the appoint-
ment of these police commissioners to the Governor and minor
State officers, and left the Boards of Public Works to be
elected by the people. The former statute had provided that
policemen must be selected equally from the two leading politi-
cal parties in the place, and this the Courts, in the cases to
which I have referred, had decided to be unconstitutional, as
granting special privileges to special classes, since there might
be plenty of suitable men who belonged to neither of these
parties. In the statutes of this year, this objectionable provi-
sion is replaced by the requirement of an oath of office, from
the commissioners that "in no case and under no pretext" will
they appoint or remove any policeman "because of any
political feeling held by him."

In Ohio the principle of "home rule" has been applied to
all the larger cities.

Michigan allows all her cities and villages to buy, construct
and operate works for the supply of gas or electric light, on a
two-thirds vote of the electors.

Indiana has established an elaborate scheme for pensioning
disabled firemen in cities, and providing for their families.
The sum paid is not to exceed $75 a month, in any case, and
the funds are to be raised, in each county, by an assessment of
one per cent. on the gross earnings, less the losses paid, on
business done in the county by foreign fire insurance companies,
and by the fines collected from firemen, for misconduct, and
witness fees received for their attendance in Court while under
pay of the city.

Wisconsin has passed a similar law, covering both firemen
and policemen.

The great height to which, since the general introduction of
the elevator, the larger business buildings have been raised has
led Massachusetts to fix 125 feet as the extreme limit in any
city, a limit exceeding by over 50 feet that set by Augustus for the Roman house.

Utah has introduced the feature of municipal disincorporation by popular vote. Three-fourths of the taxpayers in any town may require the question of disincorporating it to be submitted to the electors, and if they, by the same majority, are in favor of it, the corporate existence of the municipality is thereby ended, and the county succeeds to its property in trust for its inhabitants.

Turning now to the subject of

PRIVATE CORPORATIONS,

we find that the traditional feeling that a corporate franchise is a pearl of great price to be dealt out by the State only after a personal examination into each application or class of applications, still survives in many of our States in remarkable vigor, and clogs their statute books with lengthy charters never used, or class incorporation laws which cover the class in question for no reason not equally applicable to a hundred others. Michigan is one of these States, as witness one of her recent Acts, entitled "An Act to provide for the incorporation of the great hive and subordinate hives of the Ladies of the Maccabees of the State of Michigan." Pennsylvania offers an illustration of the opposite view, in a statute authorizing any corporation to increase its capital to not exceeding $10,000,000, even though there may be a limitation to the contrary in its charter.

Further laws against corporate trusts and combinations to raise prices, or in restraint of trade, have been passed by Alabama, Illinois, Louisiana, Maine, Missouri, New Mexico and Tennessee. That of Alabama contains an exception in favor of farmers holding their own products for higher prices.

The Constitution adopted by Kentucky makes cumulative voting the imperative rule, in the election of officers, of every private corporation.

Arkansas requires all insurance companies to give a $20,000 bond, with at least two resident sureties, for the prompt pay-
ment of all losses. In suits on policies, the sureties may be joined as defendants, and judgment rendered against all.

Wisconsin has joined those States which follow the principles of the civil law, in limiting the amount a man may will away from his family to charitable institutions, to half his net estate.

RAILROADS.

Minnesota has modified its Railroad Commission law, in deference to the decision of the Supreme Court of the United States in the case of Chicago, Milwaukee & St. Paul Railroad Co. vs. Minnesota,* by allowing an appeal on the question of reasonable rates from the Commissioners to the Courts, and Texas has adopted a similar provision. In Florida, where the State Courts have taken the same view of the constitutional question, † the law creating Railroad Commissioners was repealed altogether. North Carolina and Oregon make the decision of the Commissioners only prima facie evidence that the tariff they may arrange is a proper one, and Oregon expressly requires them to adjust it so as "to allow a fair and just return on the value of the railroad."

Louisiana, by a direct statute, forbids railroads to charge passengers over three cents a mile.

North Carolina, in creating a Board of Railroad Commissioners, has made an important innovation by constituting them a "Court of Record, inferior to the Supreme Court," invested with "all the powers and jurisdiction of a Court of general jurisdiction" as to the subject of railroad regulation.

The Supreme Court of Arkansas recently decided that railroads were not bound to look out for trespassers on their tracks. This has led to the passage of a statute there, requiring railroad companies to maintain such a look-out on all trains, and in case of any accident to prove affirmatively that this was done.

* 134 U. S., 418.
Ohio forbids railroads to employ as a conductor on passenger trains any one who has not served in some way as a train hand for two years previously, or as engineer any one who has not served three years as a fireman.

Georgia prohibits the employment by railroads of boys under eighteen as train dispatchers.

Louisiana, Tennessee and Texas require all railroads to provide separate cars or compartments, equal in character, for whites and blacks, and prohibits those of either race from riding in the cars set apart for the other, with an exception for nurses with children. Arkansas has passed a similar law omitting the provision for seating colored nurses in the car for whites, and adding one for assigning officers in charge of prisoners to the car where the prisoners belong. Alabama, in a similar statute, omits both of these exceptions, but makes another more necessary in a legal point of view, in favor of passengers brought into the State on through tickets bought in other States, where no similar law exists.

Arkansas requires all railroads to maintain bulletin boards at each station where there is a telegraph office, on which information shall be given, if any passenger train is ten minutes late, as to when it may be expected to arrive.

Arkansas also requires railroads to provide at each station suitable stage-planks or trucks for the removal of baggage, and prohibits "tumbling trunks and baggage from their car doors on to the depot platforms." For any damage to baggage, by rough and careless handling, the company must pay the owner, in addition to making good his actual loss, from $25 to $200, as an encouragement to long-suffering travellers to vindicate their rights by suit.

A few statutes may be worth remark which affect commercial contracts.

South Dakota forbids contracts for the payment of debts in gold.
Arizona provides that anyone trading by the style of "agent," or adding "& Co." to his name, must put the name of his principal or partner on a sign conspicuously posted at his place of business: otherwise all the property used in the business will be liable to his individual creditors.

Indiana makes it embezzlement for a banker to receive deposits, with intent to defraud, when insolvent, and his failure within thirty days after the deposit is _prima facie_ evidence of such intent.

Arkansas requires agents for the sale of patented articles, who take negotiable notes in payment, to draw them up on printed blanks, specifying the nature of the consideration; and all such notes are thrown open to any defences, though in the hands of an indorsee for value, as fully as if they were non-negotiable.

Indiana has passed a trade-mark law, but for the protection of her own citizens only.

Acts taking the benefit of the "Original Package" law of the last Congress, have been passed in Arkansas, Maine, Missouri and Oregon. By the Arkansas statute, all common carriers transporting intoxicating liquors "C. O. D." are made the agents of the seller, and the place of delivery is the place of sale.

A number of the States have recognized the general lowering of the returns on investments during the past few years, by reducing the legal rate of interest. In Michigan it is made six, in Illinois five per cent. Texas has, this month, incorporated a similar limitation in her Constitution, and punishes the taking of usury by a fine which may equal the loan.

**RELIEF TO THE FARMERS.**

Although several of our legislatures were controlled by those in sympathy with the "Farmers' Alliance," few of the measures which have been put forward in its name have become law. California, by a concurrent resolution reciting that farming cannot receive "the same protection that is given to
other industries by the American system of import duties," has requested Congress to pass laws giving any farmer, owning not over 640 acres, the right to borrow from the United States, on mortgage, such sums as he may desire, not exceeding $5,000, or sixty per cent. of the value of his farm, at two per cent. interest. No measure, however, was adopted by this legislature for loans by the State itself to her own farmers on similar security.

Minnesota has been furnishing seed grain for two years, at the expense of the counties, to those of their inhabitants whose crops were lost by drought or other extraordinary cause. Kansas has now adopted the same policy, the State advancing the necessary funds, as a temporary loan to the county.

Laws to secure irrigation on a large scale at public expense have been passed by California, Kansas, Nevada and South Dakota, and irrigation bonds, issued for these purposes, are becoming a familiar security in Eastern markets. Wyoming, where each stream feeds, on the average, five ditches, built at a cost of $5,000 each, has memorialized Congress for aid in this direction.

New Mexico has adopted a plan somewhat similar, for securing public watering-places. She allows any one hundred of the inhabitants of any precinct to associate as a corporation to build and maintain a public reservoir or pond, and requires the county to furnish all necessary tools. Every corporator must work on the job until it is completed, and then the county is to pay a fair rent for the right of the public to use the water.

The war on oleomargarine continues with unabated vigor. Minnesota requires it to be colored a bright pink, and Michigan forbids its use in any of her public institutions.

Utah has offered a bounty of half a cent for every English sparrow killed in that Territory.

California has made an appropriation for the importation from "Australia, New Zealand, and adjacent countries" of "parasites and predaceous insects for distribution." I do not understand that this is because Southern California, at least, is
ADDRESS

not already sufficiently supplied by Providence with certain classes of predaceous insects, not to say parasites, but that her orange groves are infested by a kind of "scale" or moth, which can only be exterminated by introducing one of its natural enemies, or by destroying the tree itself. As Australia has furnished California with the official ballot, so now is she to be called on for an official insect—a "chartered libertine," furnished with its prey by public authority.

The general subject of

PROTECTION OF LABOR

has received rather less than usual attention.

Indiana and Ohio require all manufacturers and mining concerns to pay each employee his wages at least once every two weeks, and prohibit payment in anything but cash or commercial paper. Rhode Island insists on weekly payments, and, as respects corporations, Illinois does the same. California allows them to be either weekly or monthly.

The semi-monthly rule is that now fixed in Switzerland. The Continental plan of restricting deductions for fines, or to guaranty against loss by strikes, or stopping work without due cause, to a certain amount, does not seem yet to have found favor in America, except in a single State, Illinois, where none are allowed, except for cash advanced. Such deductions, in Germany are limited to one week's wages, and France now proposes to confine them to not exceeding three-tenths of the amount otherwise due. New Jersey forbids any corporation to make it a condition of employing or retaining any one that he shall agree to its retaining part of his wages, as an insurance fund for his benefit in case of subsequent disability.

Indiana makes it a penal offence for employers of women in manufacturing or mercantile establishments not to provide seats for them, and allow their use whenever they are not "necessarily engaged in the active duties for which they are employed." Similar laws have been enacted in Ohio and Missouri.
Indiana excludes women from labor in mines, and also children under fourteen.

Kansas provides not only that eight hours shall constitute a working day for all employed on public works, but that no contractor for such a work, with the State or any municipal corporation, shall permit any of his employees to work longer in any day, except in case of war, or for the protection of property or life. The trustees of several of the State charities have informed the Governor that, unless a special session of the legislature is called to repeal this Act, they cannot carry on the institutions under their charge later than the end of September.

Oregon has passed a law making threats or violence in aid of strikers, or the circulation of false intelligence in writing or print, to induce a boycott, a penal offence. Pennsylvania, on the other hand, provides that strikes are lawful, and that no agreements in aid of them in the nature of boycotts or to dissuade or prevent others from taking the places of the strikers shall be deemed a criminal conspiracy.

New Jersey has made every Saturday a bank holiday, by postponing the payment of paper, otherwise maturing then, to the following Monday.

Pennsylvania makes Saturday afternoon a half holiday, from June 15 to September 15, and requires notes due on such a day to be paid before noon.

Arkansas and Idaho have made it a felony to bring into the State any body of private detectives or police to suppress any domestic violence or disturbance. Similar provisions are in the new Constitution of Kentucky, and also that of Wyoming, where they are enforced by a recent statute.

Missouri makes it a misdemeanor to report falsely to any carrier that any of his employees failed either to collect or account for sums earned for transportation of person or property; the main object being to protect railroad conductors against the misstatements of private detectives.
Among the laws passed for the protection of MINORS are those of Florida and Tennessee which make it a misdemeanor to give or sell them cigarettes, while North Carolina allows it only to those over seventeen.

Wyoming forbids any sale of liquors to one, and Tennessee prohibits even giving him any, as a matter of private hospitality, without the consent of his parent or guardian.

Washington makes it a penal offence for any one to allow a minor to play at cards in his house without the written permission of his parent or guardian.

Minnesota excludes all persons under seventeen from the Court room during criminal trials with which they have no particular concern.

Arizona protects her girls against themselves by forbidding their marriage under sixteen years of age—the limit of Russia and Italy.

New Mexico forbids any one removing from the Territory to dispose of his property there, unless he shall first make reasonable provision to the satisfaction of the Probate Court for the support and education of any minor children whom he may have left behind.

EDUCATION.

Arizona and New Mexico have passed compulsory education laws. Illinois allows no child under thirteen to be hired by anyone without a certificate from the school authorities, to be granted only after proof that he has had the benefit of suitable instruction.

Delaware has been added to the number of states providing free text-books in their public schools.

South Carolina, apparently not agreeing with Napoleon in the opinion that all history is false, has directed her Governor and Superintendent of Education to confer and correspond with similar officers in the other southern States in regard to the adoption in all these States of a series of "true and authentic histories," and "uniform text-books" for use in their free schools.
Maine requires every teacher in her public schools to devote not less than ten minutes weekly to instruction in the principles of kindness to birds and animals.

ALIENS AND NON-RESIDENTS.

It is evident that there is a growing sentiment in favor of more restrictions on immigration, and greater protection in each State to its own citizens.

Arizona, Florida and South Dakota have abolished the office of Commissioner of Immigration.

California has passed another Anti-Chinese law of great severity. No citizen of China can ever enter the State except he come as a representative of his government, or as attached to the household of one. Everyone now in the State must, within one year, take out from a State official a numbered certificate of residence, embodying his photograph and a description of his age, birth, station, and all particulars that may aid in his subsequent identification. This he must produce before he can enter any public vehicle of transportation from one town to another. Any Chinaman violating the provisions of the statute is liable to imprisonment in the State Prison for from one to five years, and then to be deported to his own country.

Texas has withdrawn her permission for the ownership of lands by resident aliens. Idaho has taken similar action, besides excluding them from employment on any public works.

Kansas has excluded non-resident aliens from taking or holding land in that State, except that those now owning land may sell it during their lifetime. Corporations, more than a fifth of whose stock is owned by aliens, come under the same ban. No exception is made in favor of land-owners who die before having had a reasonable opportunity to sell, or of those protected by treaties of the United States.

Missouri provides that no mortgage or pledge of property in that State by a foreign corporation (other than railroad or telegraph companies) to secure a debt contracted elsewhere shall
be valid as against existing general creditors residing in Missouri.

Alabama debars non-residents from her oyster grounds, and Washington from her salmon fisheries.

There are a few statutes of interest regarding

REAL ESTATE TITLES.

Wyoming forbids any one to engage in the business of furnishing abstracts of title to real estate without first providing himself with a complete abstract of all real estate titles for the territory he proposes to cover, and also giving a $10,000 bond to the State to protect any one who may be injured by his failure to make proper abstracts. Illinois and Minnesota have each appointed a commission to inquire into the merit of the "Torrens" system, and, if they deem proper, report a bill for its adoption. This is the plan now pursued in several of the British colonies, under which the government certifies to and guarantees all titles, providing the guaranty fund by a small duty on all transfers.

Massachusetts has abolished the ancient common law rule against conveyances of property held adversely to the grantor.

TAXATION.

The single tax movement seems to make no impression on American law-makers. Connecticut, in a statute passed in 1889, but not, I believe, heretofore called to the attention of the Association, has given it some indirect support by allowing all holders of bonds, notes, or other choses in action, to pay an annual State tax on them of one-fifth of one per cent. on their par value, in lieu of the ordinary local taxes, which would amount to from five to ten times that sum. This measure was dictated by the conviction that intangible securities can never be effectually reached by the tax-gatherer, if assessed as heavily as corporeal property.

The legislation of the past year, however, has been in decided opposition to these views.
Stringent laws for the taxation of all property, real and personal, tangible and intangible, by the same methods, and with equal hand, have been passed by Indiana, Michigan, Nevada, Ohio, North Carolina, South Dakota, Washington and Wyoming, and in Maryland a constitutional amendment is pending of a similar nature.

The statute of Indiana is the most searching and inquisitorial. Each tax-payer is required to return a list of his property on a printed schedule containing seventy-two items of his possible possessions, and must write "none" against each item, of which he possesses none. He must also disclose all property he may have or control as agent for another. All demands and claims he may have must be stated, whatever their description. A deduction is allowed from all amounts due him to the extent of his "bona fide indebtedness," and, as he is not obliged to name his creditors, it will probably be found an elastic item.

The South Dakota law is similar, as to deducting for indebtedness, but requires the items of such indebtedness to be given in some detail.

Massachusetts has followed Pennsylvania and New York in adopting the collateral inheritance tax. In New York, last year, it yielded over a million dollars of revenue.

There is a growing tendency to restrict to a greater degree

ADMISSION TO THE PROFESSIONS.

South Carolina requires all persons desiring to practice as physicians or surgeons to produce diplomas from some reputable medical college, approved as such by a County Examining Board.

Arkansas, which requires physicians to obtain a license to practice from a similar board, authorizes it to revoke the license for unprofessional conduct. Such conduct, among other things, includes: "employing or using what are known as cappers, steerers, or drummers, or the subsidizing of hotels or boarding-houses to procure practice," and "all advertising of medical business, in which untruthful and improbable statements are made."
Oregon and South Dakota also require a diploma of Doctor of Medicine as a condition of practice.

Similar laws as respects dentistry, to be enforced by a State Examining Board, were passed by Kansas, Maine, Michigan, New Hampshire and Tennessee.

Minnesota has adopted the plan of a State Board of Examiners for admission to the Bar, and the same thing has been done in Connecticut, by the action of the Judges, to whom discretionary power in the matter had been entrusted.

Washington, on the other hand, makes a diploma from any Law School a sufficient qualification.

California makes it an offence punishable by not exceeding six months' imprisonment to act "as a runner or capper for attorneys in or about police courts or city prisons."

THE COURTS

I may dismiss with brief consideration:

The Supreme Court of Indiana, for the second time within ten years, has been relieved by the creation of an intermediate appellate court. It is to endure for six years, and has no jurisdiction over questions of the constitutionality of statutes, but must certify all cases in which they arise into the Supreme Court. Temporary judges are to be appointed by the Governor, to serve until their successors can be elected, and of the original appointees not more than a bare majority can belong to the same political party.

Opinions of the Court in cases decisive of "new and important questions" are to be published, I almost regret to say, in a new series of "Indiana Appellate Court Reports."

The Supreme Court of the State was called upon by its clerk for advice as to how much of its jurisdiction was transferred to the new Court, and has responded in an opinion which is longer, by three pages, than the statute which it construes.

Nevada requires each of her Judges to subscribe an affidavit every month, before he can draw his salary for the month pre-
ceding, that no cause in his Court remains undecided, since the trial of which ninety days have elapsed.

Arizona requires a change of venue whenever either party files an affidavit of his belief that on account of the bias, prejudice or interest of the Judge holding the term, he cannot obtain a fair and impartial trial.

Wisconsin, by "An Act to aid impecunious litigants," allows attorneys to prosecute all claims for unliquidated damages, with a lien on the cause in action for such reasonable fees as may be agreed upon.

California has made provision for the establishment and maintenance of a law library in each county, by a tax of one dollar on every civil action brought before the Superior Court, to be paid on filing the first papers in the cause.

NEW STATUTORY OFFENCES.

The number of statutory offences has been largely increased. Among the more noticeable additions are that of Indiana, making it a misdemeanor for one not a member of a secret society incorporated or doing business in the State to wear its badge, uniform or emblem; that of Tennessee, putting in the same rank the intercepting, without authority, a dispatch transmitted by telephone; and two of Michigan, one making it a State prison offence to enter a horse, under a false name, or out of its proper class, in any race got up by an organized society or driving club, and the other prohibiting entering any public place or public conveyance while affected by small-pox, diphtheria, or scarlet fever, or inviting attendance at the funeral of a victim of one of these diseases.

Maine has appointed a Forest Commissioner to protect her rapidly thinning woods, and it is now a misdemeanor there to break camp without putting out the fire.

The attention of the Association was called, some years ago, by its committee on Jurisprudence and Law Reform, to the scandalous advertisements of cheap and speedy divorces, in
some of our city newspapers. California has made it a misdemeanor to print any offer to aid in procuring a divorce.

**PRISONS.**

Minnesota has taken another step in support of the theory that the main object of punishment is to reform the criminal, by allowing the Court to send any person under thirty, who is convicted for the first time of any crime, even a capital one, to the State Reformatory.

New York requires every city with a population of 25,000 to provide one or more police matrons to attend to female prisoners.

Ohio has carefully revised its laws as to the release of convicts on parole. This had come to be granted too easily, and new safeguards to the public have been provided, such as requiring the recommendation of both the warden and the chaplain, and an advertisement of his application for such release to be published in two newspapers in the county where the prisoner was sentenced.

New Mexico requires the instruction of illiterate convicts in the penitentiary in reading, writing and arithmetic.

Oregon has provided for a “Rogues’ Gallery,” at its penitentiary, with pictures of those convicted of the graver crimes against property. Michigan directs a full register to be kept of each convict’s description, measurements and former history, together with his photograph, and permits furnishing duplicates of all entries for use in prosecutions in other States.

**THE JURY SYSTEM.**

The constitution of South Dakota, adopted in 1889, authorized the legislature to modify or abolish the institution of a grand jury. A substantial modification has just been made reducing the number necessary to constitute a quorum to six, and allowing five to find a true bill. Wyoming, by her constitution, allows the reduction of the petit jury in civil cases to less than twelve, cuts the grand jury peremptorily down to that
number, and permits its abolition. The first legislature of the new State has substantially destroyed it by providing that none shall be summoned without the special order of the Court, and that original informations may be filed for any crimes which the prosecuting attorney is satisfied have been committed. Idaho has passed a law of the same nature.

Washington has reduced her grand jury to not less than twelve nor more than seventeen, and allows informations for any offence after a binding over by a committing magistrate. Montana permits informations under the same conditions, and also in any case by order of court. The new Kentucky Constitution reduces the grand jury to twelve, and authorizes the legislature to make nine jurors competent to return a verdict in civil cases.

For New York city it has been found necessary to create the new office of Warden of the Grand Jury. The warden is to keep them in charge and guard them from improper influences, both in and out of court. Quis custodiet custodes?

Louisiana has provided for the waiver of a jury in all cases in the criminal court of New Orleans, when the punishment, on conviction, is not necessarily imprisonment with hard labor or death.

Arizona allows three-fourths and Idaho five-sixths of a jury to return a verdict both in civil cases and in prosecutions for a misdemeanor.

We still, in running over our statute books, observe occasionally some lingering

ECHOES OF THE WAR.

Three more of the Southern States, Alabama, Arkansas and Georgia, are taxing themselves to pension disabled Confederate soldiers and the families of the fallen, and Tennessee has adopted a similar law, applicable equally to her sons who fought on either side.

Florida has made Jefferson Davis' birthday a legal holiday.
Congress has provided for the purchase of a large tract comprising 7,600 acres, in Tennessee and Georgia, comprehending the Chickamauga battle field, for a national military park, and Georgia has taken action in aid of it. Ohio, also, has made an appropriation for designs for memorials to be erected there to her soldiers who fell in the battle.

Arkansas has incorporated a State Ex-Confederate Association, one of the objects of which is "to fraternize on every fitting occasion with our late adversaries, extending to them those courtesies which are due from one soldier to another and which a common citizenship in a common government demands at our hands." A like spirit is shown in the language of an Alabama charter for a similar organization.

New Jersey provides that all persons now holding a position by appointment in any city or county, who served in the Civil War and received an honorable discharge, shall hold their places during good behavior, and not be removable for political reasons.

STATE SOCIALISM AND PATERNALISM.

The tendency towards the modern European policy of State Socialism seems most marked in the legislation of some of the middle States, of which Indiana may be taken as an example.

Our proximity to the British possessions, on the East, however, seems to have brought over the border some tendency to paternalism, or maternalism, if we may judge from the terms of a statute of Maine providing that, should one or both eyes of an infant become reddened or inflamed within four weeks after birth, it shall be the duty of the nurse or person in charge of it to report the matter at once to a physician, under a penalty of fine or imprisonment not exceeding six months.

Several more States have offered bounties to producers of beet or sorghum sugar. Utah offers a bounty of two dollars for each ton of iron manufactured there.

The wasteful use of natural gas has begun to receive attention from the government. Indiana prohibits its use in uncon-
fined "flambeau" lights, and requires all street lamps to be turned off between eight in the morning and five in the afternoon. The use of any artificial means to increase the natural outflow of the gas from the ground is made punishable by a fine of not less than $1,000.

And now, as I draw this review to a close, let me say a word or two as to what has been and what has not been done towards bettering our methods of

LEGISLATIVE PROCEDURE.

The new Constitution which has been adopted by Kentucky pursues what may be called the modern American policy of circumscribing the legislative power by sharp limitations in favor both of the whole people and of the individual citizen, reaching down to matters of mere administrative detail. The session of the General Assembly is restricted to sixty legislative days, and, perhaps with the recent example of Connecticut before their eyes, it is expressly provided that a legislative day shall be construed to mean a calendar day. Every law must be passed by yeas and nays, and receive at least a two-fifths vote of all the members of each house. No law can limit the damages for loss of life or damage to person or property. No law shall grant special exemption from taxation; none shall concede a larger exemption for the value of household goods and other personal belongings than $250. No statute, except one for "local option" as to the sale of liquors, shall be enacted to take effect upon the approval of any other authority than the General Assembly.

This last provision seems to me a particularly wise one in any State where general rather than special legislation is the rule. It keeps the responsibility where it belongs. Resort to a popular referendum is foreign to the nature of representative institutions, and, however Swiss democracies may regard it, with us is only to be justified where the question is one as to some fundamental change of relations between the government and the governed.
The ordinary provision in our State Constitutions that amendments to them must be proposed by the legislature and ratified by the people, is, of course, intended to secure a double responsibility for their adoption. Instances have often occurred of the passage of proposed amendments through an unwilling legislature, where the majority were really opposed to them, but believed they would be killed on the popular vote. This year California has resorted to a new method of evading legislative responsibility, by calling on the people in advance to say whether they wish a certain amendment proposed. The measure in question is that of an educational qualification for suffrage, the requirements suggested being the applicant's ability to write his name and read any section of the Constitution in the English language. It is probable that the legislature were in favor of such a change, but it is certain that they were afraid to declare their position until the people had spoken, thus reversing the order of proceeding contemplated by the Constitution.

California has also provided for asking the people, at the next State election, to indicate their preference as to whether United States Senators should be elected by popular vote or not, and the Governor is to inform every other State of the result. Idaho and Michigan have declared in favor of such a change, and requested Congress to propose a constitutional amendment to this effect. Michigan asks also for the popular election of President and Vice-President.

There are few of our States where occasionally bills that were about to become laws have not mysteriously disappeared from the files, or perhaps, in passing from hand to hand, have gained or lost a word or two, no one remembers how, by which their effect is materially altered.

Delaware has found here an excellent field for the application of that kind of reformatory procedure which she was for years almost alone in retaining, and visits with fine and imprisonment, or whipping, any person who fraudulently alters or
abstracts any bill or resolution during its passage through either house of the Legislature.

Since our last meeting, and in consequence, in part, of the action of members of our local Councils, taken at the instance of the Association, State Commissions to promote uniformity of legislation have been appointed in five more States, Delaware, Massachusetts, Michigan, New Jersey and Pennsylvania.

There is noticeable in the legislative proceedings of many of the States a want of respect for the spirit of their constitutions, while adhering to their letter, which one cannot but regard as a serious menace to the perpetuity of our institutions.

Obedience to law has no secure foundation which does not rest upon a certain reverence for it; and no people will long revere what they see their rulers daily evade.

In Indiana, for instance, there is a wise constitutional provision that "No Act shall take effect until the same shall have been published and circulated in the several counties in this State by authority, except in case of emergency, which emergency shall be declared in the preamble, or in the body of the law." Unquestionably, the framers of this article intended by their exception to provide for cases of instant and special necessity; but of the 200 laws of the last session, 155 contained a declaration that, "whereas, an emergency exists for the immediate taking effect of this Act, it shall therefore be in force from and after its passage." It is unnecessary to say that most of these were in fact measures of ordinary legislation, as to which there was really no reason for anticipating the time when they would naturally become operative.

The constitution of Tennessee declares that "no law of a general nature shall take effect until forty days after its passage, unless the same or the caption shall state that the public welfare requires that it should take effect sooner." Out of 265 laws passed by the last legislature, 230 contained a section stating that the public welfare required them to take effect
immediately; and of the remaining thirty-five a majority declared that the public welfare demanded that they should take effect at some date within the forty days. One of these Tennessee statutes is simply to amend a township charter by inserting after the word "lot" in one place, "thence West four chains to a stake; thence North, 4½ chains to an oak tree; thence West three chains to a stake; thence North two chains to the corporation line at the coal shute," after which follows:

"Sec. 2. Be it further enacted, that this Act take effect from and after its passage, the public welfare requiring it."

In Texas, the constitution provides that "no bill shall have the force of a law until it has been read on three several days in each house, and free discussion allowed thereon; but in cases of imperative public necessity (which necessity shall be stated in a preamble or in the body of the bill) four-fifths of the House in which the bill may be pending may suspend this rule, the yeas and nays being taken on the question of suspension, and entered upon the journals." Out of 118 laws passed at the recent session of her Legislature, which lasted ninety days, only five were without the "emergency clause," to nullify this constitutional provision.

As was said in the address of my predecessor, a year ago, there is a similar and almost equal tendency to evade the ordinary constitutional prohibition of special laws where general ones will do as well.

There is hardly an Act of the last Ohio Legislature affecting municipal corporations which does not furnish an illustration of this. The first of their session laws authorized any municipal corporation having a census population of 10,938 to buy land and build machine shops, and then to let or sell them to any railroad company. Enabling statutes followed, of a similar description, in favor of municipalities with a census population of 3,998, or of 3,940; villages with a population of 1,455; cities with a population of 6,046, 35,066, 17,565, 9,090, or 12,122; and counties with a population of 42,579, or
55,979. The official publication of the session laws often specifies upon the margin of the page the particular place, as "Alliance," "Hamilton," or "Piqua," which the law is intended to cover.

Our American system of government has been distinguished from all others by its giving through its written constitutions such guarantees of individual right as no sudden change in public sentiment, no sudden exigency in public affairs, could break over or break down. But constitutions are nothing, unless they are enforced in the spirit in which they were conceived. In them, more than in any other thing of human institution, "the letter killeth." The courts may be relied on for their faithful interpretation, but that our legislatures may be equally true, can be secured only by the constant insistence on the part of our profession, as the great leader of public opinion, at least as put in form by legislative action, that no constitutional principle ought ever to be undermined or evaded in statute law on a plea of public necessity. There is no necessity so imperious as that of supporting the constitution to which we are doubly bound by our oaths as citizens and our oaths as members of the Bar. Its formalities, its delays, its limitations are the best fruits of a thousand years of Anglo-Saxon history. The omnipotence of the British Parliament our fathers refused to reproduce on American soil, and it belongs to us to keep it out in substance, as it is in form.