NOTES ON CURRENT LEGISLATION

MARGARET A. SCHAFFNER

The Constitutional Union of South Africa. Since writing the report upon the constitution of South Africa, published in the last issue, several important steps have been taken toward its final adoption which require chronicling. On June 2 the Transvaal and Orange River Colony led off by adopting the amended constitution. Cape Colony's assent was registered the next day. The referendum in Natal occurred on June 10, and, contrary to expectation, the constitution was carried by a large majority, 11,121 votes being recorded in favor, and only 3701 against. Every constituency gave an affirmative decision. Each colony then selected delegates to carry the new constitution to England, where it has been introduced into the British parliament, and at present writing is in process of enactment. No opposition has, of course, been encountered in this final stage and its passage in the course of a few weeks is certain. It will require some time to arrange the electoral districts and institute a general election, so that it will be next spring or summer before the new government can be set up. The delegates have proposed to the government that May 31, 1910, be fixed as the date, that being the eighth anniversary of the conclusion of the peace of Vereenigung which put an end to the South African war.

WALTER JAMES SHEPARD.

The Indian Councils Act. On May 25 a measure became law which is not untruthfully described by the *Times* as "one of the most momentous steps which parliament has ever been asked to sanction in Indian affairs." This act marks an epoch in British Indian policy. In the debate on its second reading in the lords, the position was definitely accepted by Lord Morley that administrative efficiency is no longer to be taken as the fundamental principle and criterion of English rule in India; efficiency must be supplemented by political concessions. The American ideal of colonial policy, viz: the development of the capacity for self-government by the natives, through active participation in representative institutions, is henceforth to stand along with the British

tradition of administrative efficiency as the guide-post of Indian policy. A writer in the *Quarterly Review* is not exaggerating the importance of this legislation in viewing it as "the first step down that slippery slope at the bottom of which lies a parliamentary government for India."

The proximate cause for the passage of this measure is the widely disseminated discontent and agitation among the educated classes of India against British rule. At no time in the history of British India has the spirit of unrest and dissatisfaction been so general or menacing. Lord Morley's wise policy of stern repression of the revolutionary extremists and the concession of liberal measures of reform have already born fruit; but the outlook is very far from clear, and the ultimate success of his measures in entirely dispelling discontent is at least still in doubt.

The Indian councils act is only the central measure in a great system of political reforms. It is a skeleton law, outlining in a very general manner the reforms in the administration of the country, which are to be effectually carried out by supplementary decrees and acts of the Indian government. It is in its nature an enabling act, giving to the government of India, with the approval of the secretary of state, broad powers in extending the representative principle. It cannot be fully or properly understood without reference to the proposals which Lord Morley has already announced will be carried out under its provisions.

Lord Morley's reforms fall naturally under two heads. The most important, and those which have received the most general acquiescence from all sections of opinion in England, have for their object the inclusion of a large element of native Indians, to be elected by a popular suffrage, in the legislative councils of India and of the provinces. Hitherto the legislative council of India has consisted of the six members of the executive council (the viceroy's cabinet), with not less than ten nor more than sixteen additional members.' The practice has been to appoint sixteen 'additional members, six of whom are drawn from official and ten from non-official classes. They are all, however, appointed at the discretion of the governor general, although four of the non-official members are nominated on recommendation of the non-official additional members of the provincial legislative councils, each of these bodies recommending one member, and a fifth is recommended by the Calcutta chamber of commerce. It will thus be seen that a majority of the legislative council is always composed of officials who

will presumably support the government on every question, and that the composition of the entire council is under the control of the governor general and the secretary of state. The provincial councils are likewise composed of official and non-official members, all appointed by the governor or lieutenant governor, but some of the latter being appointed upon the recommendation of certain bodies representing commercial, agricultural, manufacturing or other interests. In all these councils the majority has always consisted of officials, who are more or less bound to follow the government's lead in every line of policy. The result has been that the meetings of these bodies have assumed a perfunctory, almost a farcical character. The legislative councils under the new law will be greatly enlarged and assume much more the character of deliberative assemblies, the maximum number of members in the council for India being fixed at sixty, and of the provincial councils at from thirty to fifty. They will consist, as heretofore, of an official and a non-official element, but in the provincial councils the non-official element will be in the majority; and in both the Indian and provincial councils a part of the non-official members will be elected by popular vote. The proportion of elected and appointed members, the conditions of the suffrage and of office-holding, the term of office, the number required to make a quorum and the manner of filling casual vacancies are all left to subsequent regulations, and will doubtless vary in different councils.

Not only is the composition of the councils of India and of the provinces made much more popular by the introduction of the elective principle, hitherto unknown in India except in the case of municipalities and the smallest divisions of local government, but these bodies will probably enjoy enhanced privileges in the direction of discussion and criticism of the government's financial arrangements, and will exercise, by means of parliamentary questions, an important control over every branch of the administration. Lord Morley gives evidence of the extensive character of the reforms in the statements: "I do not conceal from myself the risks in such an arrangement. The non-official majority may press legislation of a character disapproved by the executive government. This should be met by the exercise of the power to withhold assent possessed by the government. . . . . On the other hand, and perhaps more often, there may be opposition on the part of the non-official members to legislation that the government desires." The principal safeguards lie in the fact that the council of India will still possess a majority of official members, and in a statute

already in force which withdraws from the competence of the provincial councils (unless the viceroy previously assents) the consideration of any law concerning taxation imposed by the central government for general purposes; or regulating currency or postal or telegraph business; or altering in any way the penal code; or affecting religion or religious rites and usages; or touching the discipline or maintenance of the military or naval forces; or dealing with patents or copyrights, or the relations of the government with foreign princes or states. These matters are all properly reserved to the central government, where official pressure may still be expected to have its effect.

The second part of the reform scheme, and the one which was most warmly attacked, is the provision for the establishment of executive councils in the provinces. The governor general of India, and the governors of Madras and Bombay, already possess such executive councils. The opposition to the measure was chiefly due to the announcement of the government in advance that native Indians might be appointed to these higher positions, when the right kind of candidates could be discovered. This policy of appointing natives to the highest administrative posts is almost as important a step as the introduction of partially elected legislative councils. Natives are frequently appointed to the legislative councils; but Lord Morley now proposes to place them upon the executive council of India, as well as upon provincial executive councils, and to entrust them with important branches of the administration. The house of lords succeeded in amending the original bill so far as to secure to either house of parliament the right to negative any proposal to establish an executive council in any province where none now exists. It is understood that for the present an executive council will be established only in Bengal.

The reforms in both the executive and legislative councils are seriously complicated and embarrassed by the ever-present question of the proper share which the two elements of Indian society, Hindu and Mohammedan, shall enjoy in the government. The Mohammedans demand equal representation on the executive councils with the Hindus and a proportion of members on the legislative councils larger than that to which their numerical weight would entitle them. The former would involve the appointment of two native members, one of whom would be a Mohammedan, if any native appointment were made to an executive council. This Lord Morley has declared impossible. The second demand is more reasonable and to it the secretary of state has agreed. This means that some form of proportional (or disproportional) rep-

resentation must be adopted for the elections to the legislative councils. Lord Morley has advocated a system of double registry, by which the sects would be entirely segregated in the choice of representatives. This scheme has not been favorably received by the authorities in India, and has therefore been abandoned. Just how the problem will be worked out is not yet known.

What the ultimate effect of these extensive reforms will be it is of course impossible now to say. Their immediate result has been to greatly diminish the tension under which the government of India has been carried on for some time. In the boldness and far-reaching character of their aims they certainly constitute a most significant turning-point in British Indian policy.

WALTER JAMES SHEPARD.

Employer's Liability. A bill compelling shipping companies to compensate seamen injured in the course of their employment was recently introduced in the parliament of the Australian commonwealth.

Factory Legislation—India. A bill to amend and consolidate the factory law of India was submitted to the viceroy's legislative council on July 30, 1909. The bill was introduced by the member of council for commerce and industry and embodies the principle of restricting the hours of adult men. The bill is intended to apply only to textile factories but power is reserved to extend its provisions to other industries in case of necessity.

Specifically the bill requires that the use of mechanical power in any textile factory shall not exceed twelve hours in any one day, and that no person shall be actually employed in any such factory before half-past five in the morning or after seven in the evening. However, these two restrictions do not apply to any factory for ginning cotton or for pressing cotton or jute. Further provision is made for exemption from the requirement of a twelve hour day in case of state necessities or other exceptional emergencies.

M. A. S.

State Regulation of Fire Insurance Rates. The unsatisfactory results of the anti-compact laws, by which many states have attempted to prevent rate agreements between fire insurance companies, have led to a movement for public regulation of fire insurance rates. The Kansas legislature has passed a bill (S. B. No. 538, approved March 5, 1909)

directing every fire insurance company to file with the superintendent of insurance general basis schedules showing the rates on all classes of risks insurable by such companies within the state, together with all charges, credits, terms, privileges, and conditions affecting them. Changes may not be made until ten days after filing of notice of change unless the superintendent waives this requirement for good cause. The superintendent may reduce rates deemed excessive, or raise a rate if inadequate. No company is to be permitted to insure any property within the state except in accordance with schedules filed under the provisions of this act, and every sort of refund, privilege, advantage, favor, inducement, or concession is prohibited unless previously filed. In the case of property located within the state for which no rate has been filed by the company, the company may insure, but must file within thirty days a schedule of the property showing the rate, which must conform to the basis schedules already filed. All schedules and local tariffs are to be open to public inspection in the local agencies. Local discriminations within the state are forbidden. Violation of the law constitutes ground for revocation of license by the superintendent, as well as for prosecution of the company and its officers and agents The superintendent is not to make any regulation or order without due notice and hearing. An appeal from the insurance department may be laid before any district court, which may set aside any order found by it to be unreasonable, unjust, excessive, or inadequate. Proceedings in error may be instituted in the supreme court. Farmers'mutuals insuring only farm property are exempted from the provisions of the act.

A similar law has been passed in Texas.

WILLIAM HYDE PRICE.

Labor Exchanges. The substitute of the British government for the labor party's unemployment bill, described in the last REVIEW, is known as the "labor exchanges act, 1909 (Bill 207). It does not guarantee employment to workmen or failing that maintenance for them and their families, as the labor members of parliament demanded. It merely empowers the board of trade to establish and maintain labor exchanges in such places as they may see fit, or they may assist or coöperate with any other labor exchanges maintained by local authorities or private persons. The board of trade may also take over any such private or local public labor exchange. County and borough councils and distress committees which under the unemployed workmen act, 1905 (5 Edw. 7, c. 18), had power to establish and maintain

labor exchanges or employment registers, will no longer be able to exercise this power after 1910, except with the sanction of, and subject to any conditions imposed by the local government board for England, Scotland, or Ireland as the case may require, and such sanction cannot be given except after consultation with the board of trade.

The object of the labor exchanges is to keep registers of unemployed workmen in different localities and of employers who need help so that workmen may find out where there is work and employers where there are hands. The Board of Trade is also empowered "by such other means as they think fit (to), collect and furnish information as to employers requiring workpeople and workpeople seeking engagement or employment."

The regulations with regard to the management of the labor exchanges are to be made by the board of trade, and they may appoint advisory committees for the purpose of securing advice and assistance in the management of the exchanges. The expenses incurred under the act are to be met from funds provided by parliament.

The labor exchanges act falls far short of what the labor party demanded, but the government party promised gradually to enact legislation which will secure employment to all who desire it.

WM. M. LEISERSON.

Land. A bill to amend the "state closer settlement act" was recently introduced by the government in Victoria, Australia. The bill provides an annual grant of £500,000 for a period of three years for the purchase of estates for closer settlement, and also provides a sum not exceeding £200,000 a year to be used for advances to settlers.

Land. On August 12 the British house of commons passed the clause of the fiance bill which imposes a duty on undeveloped land.

Legal Aid. Colorado has recently enacted a law (1909, c. 183) relating to legal aid dispensaries. The act authorizes students of law schools which have been continuously in existence for at least ten years to appear in court as if licensed to practice law in order to represent any litigants who on account of their poverty may appeal to the dispensaries for legal advice or services.

M. A. S.

Mineral Waters. Two laws have recently been enacted for the protection of natural mineral springs which have a special interest on account of their bearing on the law of percolating waters. In May 1908 the New York legislature passed an act making it unlawful to pump waters or by any artificial means to accelerate the flow of water from any artificial well, the water of which contains in solution natural mineral salts and an excess of carbonic acid gas when such pumping interferes with the flow of water from any spring owned by any other person. This law was passed particularly for the protection of the Saratoga Springs.

Following the example of New York the owners of mineral springs in Indiana around French Lick and West Baden secured the passage in 1909 of a similar law prohibiting the pumping of water containing specified salts and acids, when the flow of any spring would be diminished or endangered or the quality of the water impaired.

Thus far the courts in New York have upheld the law of that state though it has not been passed upon by the court of appeals.

These laws are in conflict with the trend of judicial opinion concerning percolating waters. A similar law prohibiting waste of water from artesian wells passed in Wisconsin in 1901 was declared unconstitutional by the supreme court of that state. The general rule has been followed that unless there is a clearly defined water course underground the owner of the surface cannot be restricted in his use of waters from artesian wells.

JOHN A. LAPP.

Monopoly. The government of the Australian commonwealth recently introduced a bill to increase the effectiveness of anti-trust legislation. The minister of trade and commerce explained that the recent decisions of the high court made the proposed amendments necessary.

M. A. S.

Pensions—Railroad. The coöperation of the Boston and Maine Railroad, with their employees for the establishment of a pension system under state supervision is provided by a recent act of the Massachusetts legislature (Laws, 1909 Ch., 435). The system is voluntary with the company and the employees. It must be adopted by the directors of the company and by two-thirds vote of the employees voting on the proposition before it becomes operative.

The pension association consists of all present employees except those who vote against the acceptance of the act and give written notice that they do not wish to join, and all persons entering the service after it is put into operation. The management of the affairs of the association is placed in the hands of seven trustees, three appointed by the board of directors of the railroad, three by the pension association, and one selected by the other six. These trustees have the care of the funds. With the joint approval of the state insurance commission and state actuary they are required to adopt mortality tables and tables of withdrawals for causes other than death, and fix the rates of interest. With the approval of the directors of the railroad, the trustees classify the employees and establish voluntary and compulsory age limits; define the term "continuous service" and fix the period of continuous service which entitles the employee to retire. Employees reaching the voluntary age limit may retire or be retired by the company. At the compulsory age they must retire unless the directors of the railroad and the trustees decide otherwise.

An annual report in detail is required to be made to the state insurance commission.

The funds of the association arise from contributions by the railroad and the members. An entrance fee of one dollar and annual dues of fifty cents are charged to each member and an equal amount is paid by the railroad for the expenses of management. The fund is further divided into "annuities," or the amount paid from funds contributed by the employees and "pensions," or the amount paid from funds contributed by the railroad. The employees pay a per cent of their wages to be fixed by the trustees at not more than 3 per cent except by special vote and each member may deposit more to secure additional annuities. The railroad company contributes each month an amount sufficient to maintain the reserve for pensions and annually the railroad contributes an amount equal to the excess of annuity deposits over the pension contributions and also an amount sufficient to pay the current pensions of employees, who have been retired but who are not entitled to annuities from deposits. Suitable tables for determining excess interest and gains from mortality and withdrawals are required to be made by the trustees with the approval of the insurance commission and state actuary.

Members completing the service period or on being retired are entitled to a life annuity equal to their deposits with interest according to the tables adopted by the trustees. A pension equal to the annuity is paid from the funds contributed by the railroad. Continuous service for

twenty years entitles a member upon retirement to a minimum pension and annuity of $200, the excess to be paid by the company.

The funds of the pension system are exempt from taxation and attachment and no assignment of any right in the fund is valid. The affairs of the pension system are subject to examination by the insurance commission and state actuary and any violations of law are required to be reported to the attorney general if the unlawful practices are not amended.

JOHN A. LAPP.

Primary Elections—Constitutional Law. The direct primary election law of Illinois which was enacted at a special session of the legislature in February, 1908, has been declared unconstitutional by the supreme court of that state (88 N. E. 821). This is the third direct primary law to be declared unconstitutional in that state in the last four years. The grounds of the decision are: first; that the law made no provision for registering voters who had become eligible to vote in a precinct after the registration for the general election and before the primary and, second; that the party committees were given power to determine the number of candidates to be nominated for the general assembly and restricted the voters at the primary to one vote for each candidate. The court held that the primary election is an election within the meaning of that term as used in the constitution and must be free and equal. The primary election law of 1908 by requiring voters at the primary to be registered and omitting to make provision for registry immediately preceding the election, deprive certain citizens, who have changed their residence, or become of age or have been naturalized since the general election, of their right to vote.

The second objection involved the constitutional provision for the cumulative vote. The law gave authority to the senatorial committee to determine how many candidates should be nominated for the general assembly and the voters were restricted to one vote for each candidate whereas at all elections according to the constitution, as many candidates must be named as there are places to be filled and the voters are permitted to cast a single vote for each or to cumulate their votes on one or two candidates. The primary election being held to be an election within the meaning of the constitution, it is obvious that any law which does not permit the cumulative vote is void. The supreme court in a previous decision (Rouse v. Thompson, 228 Ill. 522, 81 N.E. 1109), had attempted to point the way by saying that the senatorial committee

might "suggest to the voters of their respective parties the number of candidates that ought to be selected by their party at the primary election for representative in the general assembly and to have such suggestions placed in some form upon the official primary ballot for the guidance of the individual voter." If the parties had been compelled to nominate as many candidates as there were places to be filled the benefits of the cumulative system would be lost unless the votes could be concentrated upon one of the candidates. This would be unlikely if more than one candidate were in the field. The parties have therefore nominated as many candidates as they thought they could elect by cumulating their votes. The direct primary system does not lend itself readily to such an evasion of the constitution unless power is concentrated in some party committee. But it is not constitutional for such committees to do more than suggest the number of candidates and rely upon party loyalty to prevent the nomination of more candidates than the party can expect to elect by the cumulative vote. The grant of power to such committees in this respect was held wholly bad by the court. The voters must be permitted to vote at the primary election for as many candidates as there are offices to be filled and the three persons receiving the highest number of votes must have their names printed on the election ballots regardless of any resolution or suggestion of a committee. Party discipline must be relied upon to take some of the candidates out of the race or secure the cumulation of votes upon one or two of the candidates. The decisions of the court in the three cases involving primary election laws have given a fair outline upon which to base a constitutional law. Judge Carter in a concurring opinion, written because be believed the court should set forth its views on the direct primary in clear and explicit terms in order to aid the legislature said "After all the legislation and litigation on this subject, the legislative branch of the government should be told clearly and explicitly just what conditions must be met in order to draft a constitutional law governing legislative nominations by direct primary. If such a law cannot be drafted without rendering nugatory the constitutional provision for minority representation, as intimated in the majority opinion in this case, then in my judgment the court should state such fact in language that cannot be misunderstood."

There is a clear demand for the direct primary throughout the state. The present chaos of primary machinery is intolerable and a special session will probably be called to formulate a new primary law."

JOHN A. LAPP.

Primary Elections—Majority Nominations and the Second Choice Vote. Following our universal practice in regular elections most of the direct primary laws provide for nomination by a mere plurality. Hence when there are three, and especially when four or more, candidates for a nomination, the nominee is frequently chosen by a minority, even a small minority, in direct contravention of the fundamental principle of majority rule. This has given rise to what is generally recognized as a distinct problem in the actual workings of the direct primary system.

Thus far only two methods of meeting this problem have been tried by our states, the "second ballot" and the "minimum percentage" plan. Throughout the south, as a rule, an absolute majority is required to nominate. This is provided for by party rules in some states, and by law, general or special, in others.[1] If none of the candidates receives a clear majority a second ballot or primary is had to decide between the two highest. Outside the south no state has hitherto demanded a real majority to nominate, but four, Iowa, Michigan, South Dakota and Washington, have guarded against nomination by *too small* a minority by requiring for a given nomination a minimum percentage (varying from 25 to 40) of the total vote cast for all the candidates seeking it.[2] Last January, after four years' observation and investigation, the Connecticut commission on direct primary laws, recommended to the legislature a draft of a law which requires a minimum percentage of 30 to nominate for certain offices. Only in Iowa and South Dakota, however, is this feature as wide in its application as the direct primary itself, while in Michigan it applied to but two offices.

Hence throughout the north primary nomination by plurality vote, no matter how small (except in Iowa and Washington) is the rule with but one notable exception. This exception is Idaho, whose new direct primary law of this year seeks to meet this problem by a third method, heretofore practically untried in the United States, namely, the preferential or second choice vote.

In recent years bills providing for the second-choice vote have been introduced repeatedly in the legislatures of New York and Wisconsin, but have failed of enactment. Washington, in her direct primary law of 1907, provides for the second choice vote, but its use is very narrowly restricted by three conditions. It is to apply: (1) only to nominations

[1] In at least seven, Florida, Mississippi, Texas, North Carolina, Louisiana, Georgia, Tennessee.

[2] Two of these states, Michigan and South Dakota, have this year repealed this feature of their primary laws and returned to plurality nominations.

for congressional and state (excluding judicial) offices; (2) only when there are four or more candidates, and (3) only when no candidate receives 40 per cent of the total vote. In 1908 Oregon adopted a constitutional amendment legalizing preferential voting at primary and other elections, but as yet has enacted no legislation for putting it into practice. Therefore it is not too much to say that the Idaho law of 1909 is essentially an innovation, and marks a distinctly new development in direct primary legislation, whose workings will be watched with keen interest by students of political institutions and by both friends and foes of direct primaries.

Under this statute the application of the second choice vote is practically as wide as that of the primary law itself. The elector is to vote for both his first and second choice whenever there are more than twice as many candidates for nomination as there are positions to be filled, i. e., whenever there are more than two candidates for a singular office or four for two places in a plural office, or body. An absolute majority of first choice votes is required to nominate for any office, even the offices of congressman and United States senator. If no candidate for a given nomination receives a clear majority of first choice votes, the second-choice votes of each candidate are to be canvassed and added to his first choice votes. Then the candidate having the largest number of both first and second choice votes combined secures the nomination. Unlike the Australian systems, and the Remsen plan, this law makes no provision for the preliminary elimination of the successive lowest candidates, and the distribution of their vote to the other candidates according to the preferences indicated by the elector. The following tabulations will serve to illustrate graphically the "Idaho system." Supposing there are 300 voters divided among four candidates:

	FIRST CHOICE VOTES.	SECOND CHOICE VOTES.			
		Black	Brown	Gray	White
White	100	40	25	35	0
Gray	75	25	30	0	20
Brown	70	15	0	40	15
Black	55	0	10	33	12

No candidate having received the majority required to nominate, it becomes necessary to canvass the second choice votes of each candidate and add them to his first choice vote. This being done, Gray is found

to have the largest number of both first and second choice votes and so secures the nomination as follows:

	White	Gray	Brown	Black
First choice votes	100	75	70	35
Second choice votes	47	108	65	80
	147	183	135	135

LEON E. AYLSWORTH.

Railroad Passenger Rates—South Dakota. The great tidal wave of railway passenger rate regulation began in Ohio in 1906, swept over the south and middle west, reached its height in 1907, and since then has been slowly receding. The rising of the wave was marked by discontent with present conditions, a feeling of bitterness and a strong agitation for reductions in rates. Its fall was marked by injunctions, counter injunctions, threats, a struggle for state rights, special sessions, compromises, court decisions, some bitterness toward the courts, and a realization that there had been some hasty action. The laws have not all been contested, and where they have been, sometimes the state has won, sometimes the railroads have won, and sometimes the struggle has resulted in a compromise.

The latest legislation on passenger rates has been in South Dakota. The 1907 law provided for a two and one-half cent rate on all but the narrow gauge roads; they were to be classified by the commission on the basis of their annual earning capacity and their rates fixed accordingly. In 1909 a flat two cent rate was passed. No allowance was made for narrow gauge roads, none for short lines, none for branch lines; they were all placed in the same class and all subjected to the same rate. The only exception that is made—and that was made in a subsequent act and applied only to that portion of the road having the required characteristic—was to exempt railroad companies having roads with a maximum grade exceeding seventy-five feet to the mile, and an average grade exceeding fifty feet to the mile. Violations of the law are made punishable by heavy fines on both the company and the individual agent. The individual may also be imprisoned.

Injunctions have already been issued and we await the final hearing and decision without comment.

ROBERT ARGYLL CAMPBELL.

Stock Gambling. How to prevent gambling in stocks and produce, without injuring legitimate and necessary transactions and to prevent the manipulation of the stock and produce markets by speculators, is one of the greatest moral and economic problems of the day. The stock exchange of New York and with it the whole of Wall street where it happens to be located have come to be looked upon by the public as a place for gambling on a large scale—an American Monte Carlo,—where men bet upon the price of stocks instead of the roulette table. The conditions existing have brought discredit to legitimate business and for the sake of business as well as of morals, a reform is necessary.

Recognizing the public distrust of the exchanges in New York, Governor Hughes, on December 14, 1908, appointed a special committee consisting of Horace White, Maurice L. Muhleman, Charles A. Schieren, David Leventritt, Clark Williams, John B. Clark, Willard V. King, Samuel H. Ordway, Edward D. Page, and Charles Sprague Smith, to ascertain what changes are advisable in the laws of the state to better regulate speculation in securities and commodities. The work of this committee was voluntary. They possessed no power but they were able through the willing coöperation of business men, members and officers of the exchanges and others to secure the necessary data for a complete report. The report was delivered to the governor, June 7, 1909. It is a document of twenty pages containing a summary of the facts learned about the various exchanges and the recommendations of the committee. On the whole, the report is conservative. It does not seek to minimize the evils of gambling in connection with the exchanges but frankly recognizes the difficulties of eliminating gambling without seriously injuring legitimate business. The report says: "The most fruitful policy will be found in measures which will lessen speculation by persons not qualified to engage in it. In carrying out such a policy exchanges can accomplish more than legislatures." The recommendations for legislation are therefore few. The committee strongly recommends better regulation by the exchanges themselves because they have absolute power over their members. The committee does not favor the prohibition of margin trading or short selling, recognizing these transactions as legitimate in a large number of cases and impossible of separation from the cases of pure gambling. Pyramiding is condemned and the suggestion made that in valuing securities for margins or collateral, the average price for two or three months be taken unless it is higher than the price at the moment. Manipulation of prices is considered but the committee confesses that in case of manipulation there is no remedy short

of the abolition of the stock exchange itself, though the worst forms of the evils could be prevented by the exercise of the authority and influence of the exchange. "Wash sales" and "matched orders" are also condemned but the regulation is held to be beyond the power of legislation. The authorities of the exchange could it is believed effectually discourage "matched orders." "Wash sales" are unenforceable at law and are condemned by the exchange. The members of the exchange attempting it run the risk of expulsion and consequent financial ruin. The evils arising from "corners" are also considered as subjects of regulation by the exchange. The proposal is made that the governors of the exchange shall have power to decide when a corner exists and to fix a settlement price.

Examination of the books of the members of the exchange is recommended for the exchange but examination by state authority is not favored because of the confidential relations between brokers and their clients. In the listing of securities for admission to the exchange it is recommended that the exchange require frequent statements of the condition and transactions of the issuing companies and in the case of new stocks, a complete statement covering the details of the financial condition of the companies and the terms of the stock issue. The committee advises against abolishing the stock clearing house but recommends that the clearing sheets be preserved for at least six years and be at the disposal of the courts. Branch offices of the exchange are condemned and if not abolished by the exchange it is advised that they be effectively regulated.

The evils of the curb market are outlined but it is not believed advisable to abolish it or to require too elaborate an organization for the reason that another curb would arise free from such restraint. Since the business of the curb comes largely from members of the regular exchange, it is believed that the exchange could effectively regulate the curb by rules affecting its members. The rules of the exchange already prohibit dealing by its members on any other organized exchange. This accounts for the unorganized curb. The powers of the exchange are believed to be sufficient for the purpose of control. The committee was strongly urged to favor the incorporation of the exchange. They advise, however, against it at this time, believing that more good can be accomplished by rules of the exchange. The committee adds: "If, however, wrongdoing recurs and it should appear to the public at large that the exchange has been derelict in exerting its powers and authority to prevent it, we believe that the public will insist upon the incorpora-

tion of the exchange and its subjection to state authority and supervision."

The committee reviews the work of the incorporated exchanges i.e., the consolidated stock exchange, and the commodity exchanges. Dealing in futures on these exchanges is upheld as necessary to the insurance of business, although the evils are recognized and condemned. The report also reviews the English and German experience in regulating stock and produce exchanges, and touches upon the cognate subjects of holding companies, receiverships, effect of the money market on speculation, and the usury law. While not recommending the repeal of the usury law it is intimated that the committee favors such action on the ground that "money will inevitably seek the point of highest return for its use" the repeal of the exception made to the usury law in 1882 whereby loans of $5000 or more payable on demand and secured by collateral are exempted is not favored because its operation is not confined to speculative loans.

The legislation reommended will not satisfy the advocate of radical measures. The attitude of the committee is that reform can come through the exchanges and that time should be given them to amend the evil practices now existing. They believe that too detailed government regulation will harm legitimate business. Specifically they recommend laws to prevent brokers from rehypothecating or loaning securities held for customers; to prevent fictitious trades; to regulate advertising securities; to better regulate bucket shops by providing that if one party instead of both to a transaction did not intend the delivery of the property, it should be considered gambling, also to require in all cases names of persons to whom stocks are sold and from whom bought, and to require testimony of witnesses. The report broadly hints that if the exchanges do not use their powers of regulation to eliminate the evils, the public demand will be for more detailed and radical regulation.

JOHN A. LAPP.

Stocks and Bonds. The old problem of regulating the issue of stock and bonds at last seems near solution. The problem is an old one; inadequate, misguided attempts were made early without a realization of the difficulty or the evil effects of non-regulated issues, real attempts at solution came more recently and what seems a real solution belongs to a very recent date. Massachusetts seems to have been the leader in the movement toward a real solution beginning first with railroads and fol-

lowing with other public utilities at a somewhat later date. Texas followed Massachusetts, and was in turn followed by New York and Wisconsin. They in turn have been followed by Kansas—Kansas beginning where Massachusetts did, with railroads and common carriers. The Kansas law is modeled after the Wisconsin measure, containing both its elements of strength and its elements of weakness. Neither have been materially modified.

In Kansas no corporation transacting the business of a common carrier within the state is to issue any stock, stock certificate, bonds or any other evidences of indebtedness payable more than one year from date until it has first obtained a certificate permitting such an issue from the board of railroad commissioners. The actual facts that must be reported depend upon whether the stock and bonds are to be issued for money alone or for money, property or services. In case the stock, stock certificates, bonds, or other evidences of indebtedness are to be issued for money alone, the corporation must file a statement with the board of railway commissioners, signed and verified by its president or other chief officer, having knowledge of the facts, showing the amount and character of the proposed stock, certificates of stock, bonds or other evidences of indebtedness, the general purpose for which they are to be issued, and the total assets and liabilities of the corporation. The board of railroad commissioners may also require the corporation to furnish such further statements of facts as may seem reasonable and pertinent to the inquiry. When this is done, the board must issue a certificate to the corporation stating the amount, character, purposes and terms on which the evidences of indebtedness are proposed to be issued.

In case the stock, certificates of stock, bonds or other evidences of indebtedness are to be issued partly or wholly for property or services, the corporation must file with the board of railway commissioners a statement signed and verified by its president or other chief officer having knowledge of the facts, showing the amount and character of the evidences of indebtedness proposed to be issued, the general purposes for which they are to be issued, a general description and an estimate of the value of the property or services for which they are to be issued, the terms on which they are to be issued or exchanged, the amount of money, if any, to be received in addition to the property, services or other consideration, and the total assets and liabilities of the corporation. The board may require further statements of facts if it seems reasonable and pertinent to the inquiry. When the corporation has complied with these requirements, the commission must issue a certificate to it, setting forth

the amount, character, general purposes, and terms of the proposed issue and in addition this certificate must show the value of the property or services for which, in whole or in part, the issue is proposed to be made and a general description of the property or services to be given in exchange.

Any stocks or bonds issued and not payable within a year by a corporation in return for property or services are to be void if the property or services are valued substantially in excess of the amount stated in the verified application. No stock or bonds can be issued until this certificate is obtained and no corporation can apply the proceeds from the sale of stocks and bonds to any other purpose or issue them on any terms less favorable than those specified in the certificate unless the consent of the board is obtained. The declaring of any stock or script dividends or the division of the proceeds from the sale of such securities among the stockholders is declared illegal and all stocks, certificates of stock, bonds or other evidences of indebtedness issued contrary to the provisions of this law are to be void.

The weakness of this whole measure is the provision stating that the railroad commissioners must issue the certificate as soon as the corporation has complied with all the requirements set forth in the statutes. No discretion is left in their hands, the law is mandatory, not permissive. The railroad commission of Wisconsin has given this section the one possible interpretation. It held in the case in re Southern Wisconsin Railway Company that the commission could not refuse to grant its certificate authorizing the proposed issue if the applicant had fully complied with the requirement and no illegality existed either in the amount, character, purposes or terms of the proposed issue and that the commission could not impose limitations not authorized by statute nor determine the purposes, terms or conditions upon which such bonds were to be issued, but was obliged to grant its certificate authorizing the amount, for the purposes and upon the terms proposed by the corporation if the proposed issue were legal.

This defect does not appear in the laws of New York, Massachusetts or Texas. In New York, the commission of either district may permit or it may refuse to permit the issue of stocks and bonds. In Massachusetts the whole question is in the hands of the board of railroad commissioners. The criterion by which they are to judge is simply whether or not the stock or bonds are reasonably necessary for the purposes for which they are to be issued. In Texas, as a rule, stocks and bonds can not be issued above the reasonable value of the property, but exception

is made in cases of emergency and if the company can prove conclusively that the public interests or the preservation of property demands it, the commission may permit stocks and bonds to be issued in excess of the value of the property but not more than 50 per cent in excess. No great evil results from the defect in the law in Wisconsin because the rates are so well regulated that the great motive for stock watering is removed.

ROBERT ARGYLL CAMPBELL.

Swiss Constitutional Amendments of 1908. In Switzerland there has been for many years a steady movement toward centralizing power in the hands of the federal government, involving of course a corresponding decrease in the powers of the cantons. The constitution of 1815 organized what was merely a loose confederation of cantons, but in 1848 a more strongly centralized federal union was created, and the federal power was still further augmented by the constitutional revision of 1874. Since 1874 the centralizing tendency has continued, and has found expression in constitutional amendments; the most important amendments of this character are those of November 13, 1898 extending the federal legislative power over the fields of civil and criminal law, and that of July 11, 1897 granting the confederation power to enact laws concerning the traffic in food products. Two amendments adopted in 1908 still further extend the federal power.

An amendment adopted on July 5, 1908 adds a new article 34 (iii) to the constitution, in the following language: "Art. 34 (iii). The Confederation shall have power to enact uniform regulations with respect to arts and trades." This amendment places practically the whole field of industrial legislation within the province of the confederation.

An amendment of October 25, 1908, adds a new article 24 (ii) to the constitution with respect to the utilization of water power. The most essential portion of this amendment is as follows: "The utilization of water power is placed under the supervision of the confederation. Federal legislation shall establish general regulations necessary to safeguard the public interests and to secure the proper utilization of water power. . . . Under this restriction the cantons shall have power to regulate the utilization of water power. . . . The consent of the confederation is required for the delivery abroad of energy produced by water power. . . . The confederation is authorized to enact legal provisions concerning the transmission and distribution of electric power."

Another amendment, which was adopted on July 5, 1908, relates to the

prohibition of the sale of absinthe, and extends federal power to a slight extent. This amendment introduces a new article 32 (iii), which reads as follows. "Art. 32 (iii). The manufacture, importation, transportation, sale, or keeping for sale of the liquor known as absinthe is forbidden throughout the confederation. This prohibition extends to all drinks, whatever may be their names, which constitute an imitation of absinthe. The transportation in transit and the use of absinthe for pharmaceutical purposes are excepted. The above prohibition becomes effective two years after its adoption. Federal legislation shall provide the regulations rendered necessary in consequence of this prohibition. The confederation shall have the right by legislation to decree the same prohibition with reference to all other drinks containing absinthe which may constitute a public danger."

W. F. D.

Taxation—England. England is again in need of an increased supply of revenue for the purposes of government. With the old rates and the old sources there must necessarily be a deficit unless there is more economy in administration or unless, perchance, the government gives up certain projects it has undertaken. It is the old and oft-repeated story; the expenses of government are increasing very rapidly and must be met; the old sources must not only be continued in use but the old rates must be raised and new sources of a slightly different character found.

The preliminary estimates of revenue and expenditure show a possible deficit of over £16,000,000. The proposed additional estate duties are estimated to yield £2,850,000; the additional rate and super-tax on incomes, £3,500,000; the additional stamp duties, £650,000; the additional spirit duties, £1,600,000; the additional tobacco duties, £,1,900,-000; and liquor licenses, £2,600,000; making a total of £13,100,000. It is proposed to make up the deficit still remaining in two ways; first by a diminution in the appropriation for the reduction of the national debt, and second by a new land tax estimated to yield £500,000.[1]

All of these items are of interest but this discussion will be limited to the land and mineral taxes, to the estate and succession duties and to the income tax.

Increment Value Duty. A duty, called an increment value duty, amounting to £1 for every £5 of the unearned increment, is to be charged, levied, and paid on the increment value of land. This tax, or a propor-

[1] "The Budget," by Robert Giffin, in *The Quarterly Review*.

tional part of it, is to become due whenever the land is leased, sold, or transferred, or if no lease or conveyance is made, then at definite and stated periods. It may be either on the occasion of a transfer of the land or any interest in the land by sale, or on the grant of any lease for a term of years, not less than seven, or on the death of any person where land or any interest in the land is included under the inheritance tax act of 1894, or where the land or any interest in it is held by a body corporate or incorporate.

In a problem so difficult as the amount of the unearned increment over a period of years, it is necessary to give some definitions and rules if the law is to be administerd and satisfactory results obtained. The English bill has attempted this. The total value of land is defined as the amount which the fee simple of the land, if sold at the time by a willing seller in the open market in its present condition, might be expected to bring; the site value, the amount which the fee simple of the land, if sold at the time by a willing seller in the open market, mighe be expected to realize if the land were divested of any buildings or of any otherstructures including fixed or attached machinery appurtenant to or used in connection with the buildings and of all growing timber, fruit trees, fruit bushes; and in fact anything else growing upon the land. For the purpose of both total value and site value, the land is to be deemed sold free from incumbrances, but subject to any easements affecting it and to any covenant restricting its use if entered into before the thirtieth day of April, 1909, and if in the opinion of the commissioner the restraint imposed is reasonably necessary in the interest of the public.

The commissioner must allow as a deduction from the site value of the land any part of the value directly attributable to works of a permanent character for the purpose of fitting the land for use as building land or for the purpose of any business, trade, or industry other than agriculture, and also any sums which in the opinion of the commissioners it would be necessary to expend in order to divest the land of buildings, timber, trees, or other things, for the purpose of realizing the full site value. The site value as reduced by these deductions is to be taken as the true site value for the purposes of this act.

With these general definitions and concepts in mind, we may consider the specific rules for calculating the actual increment value. It is to be the amount, if any, by which the site value, at the time when the increment value becomes due, exceeds the original site value. The method of ving at the site value at the time of lease, transfer, or at the end of

periodic intervals, differs with the lease or conveyance. When the occasion is the transfer of the fee simple by sale, then the site value is to be the value of the consideration; when the occasion is the granting of a lease or the transfer of any interest in the land by sale, then the site value is to be the value of the fee simple calculated on the basis of the value of the consideration for the grant of the lease or the transfer of the interest and when the occasion is the death of a person, then the site value is to be the principal value of the land determined by what it would bring in the open market.

These returns showing the site value are then subject to such deductions as the commissioners may allow. These diminutions may be due to the value of the buildings or other structures, to good will or any other matter which is personal to the individual interested for the time being in the land, and in fact all other values attributable to works of a permanent character. In the case of agricultural lands, the value which is due solely to its capacity for agricultural purposes may be deducted. The sum left after making these deductions is considered as the true site value.

The method of collecting this tax is comparatively simple. It is made a stamp duty and since the increment value is ascertained and payable at the time of transfers and new leases the tax is easily collected and almost unavoidable.

Where there is no transfer of land and no new leases, the object of the law must be accomplished by some other means than a stamp tax on the transfer or lease. Bodies corporate and incorporate in England are already required to render a full and true account of all their property, and the gross annual value, income or profits accruing during the year. The proposed law would require an account of the unearned increment accruing on the land during the period between times of collection. This tax is to be due on the first of April, 1914, and every subsequent fifteenth year thereafter. The duty may be paid yearly instead of in a lump sum if the body corporate or unincorporate so desire. This provision for the collection of the tax from corporations is not to affect the levy of the increment value duty when land or interest in land is sold by them.

Reversion Duty. A tax, called a reversion duty, is also to be levied on the renewal of a lease for a term of years. It amounts to a tax of £1 on the full £10 of the value of the benefit, accruing to the lesser by reason of the determination of the contract. The benefit is deemed to be the amount, if any, by which the total value of the land at the time

the lease expires exceeds the value of the consideration for the original grant of the lease. This reversion duty and the increment value duty are not to be double taxes, for if the increment value duty is due and it is proven to the satisfaction of the commissioners that the reversion duty has been paid, that payment is looked upon as a payment on the increment value, and, if on the other hand, the reversion duty is due and it is proven to the satisfaction of the commissioners that the increment value duty has been paid, that payment in turn is looked upon as a payment of the reversion duty.

Duty on Undeveloped Lands. The undeveloped land duty is to be a yearly tax levied at the rate of one-half penny for every twenty shillings of site value. Land is deemed to be undeveloped if it has not been improved by being built upon, or by being used bona fide for any business, trade, or industry other than agriculture. Even when land has been once developed and again becomes vacant or unoccupied, it is, after the expiration of one year, to be treated as undeveloped land.

Certain very important exceptions must necessarily be made to this rule and certain of them are made. Land with a site value of less than £50 per acre, agricultural lands of whatever value—but only in so far as the site value of the land is due to the value of the land for agricultural purposes—and parks, gardens, and athletic fields, if used for the benefit of the public, are exempt from the payment of the duty.

Mineral Rights Duty. In addition to the other duties and taxes levied on land, there is to be a mineral right duty at the rate of a half-penny for every twenty shillings of the capital value. The total value of minerals is defined to mean the amount which the fee simple of the minerals might be expected to bring if sold in the open market by a willing seller in their condition at the time of sale and the capital value means the total value after allowing deductions for any sums which have been spent for the purpose of bringing the minerals in working. The undeveloped land duty and the mineral rights duty are to be assessed by the commissioners and payable at any time after the first of January of the year for which the duty is charged.

The commissioners must, as soon as may be after the passage of this act, cause returns to be made for all landowners declaring the total value and the site value of their possessions. These returns are examined and if no objections are made to them, they are considered as the correct, original total value and original site value. If, however, the commissioners consider these values incorrect, they must object and ask the owner to revise them. If the amended return is satisfactory to the commis-

sioner, it is taken, but if it is not or if the owner refuses to amend them, the value of the land is determined by the commissioners themselves, and their determination is binding except upon appeal.

All owners of undeveloped land and minerals must make a return in the year 1914 and every subsequent year, showing the site value of the land and the capital value of the minerals.

In ordinary cases, any person aggrieved may appeal from the decision of the commissioners to referees appointed by his majesty. These referees are to be men experienced in the valuation of land, and their decision is to be final.

THE INHERITANCE DEATH TAX—DUTIES. Again they have proposed to amend the death duties act. The classification of estates on the basis of value is to be retained but made more minute, and an increase in the corresponding rates is to be added. Under the law now in force the rate begins with £1 per cent on estates exceeding £100, but not exceeding £500, runs up to £10 per cent on estates exceeding £1,000,000. After the £1,000,000 point is reached, the £10 rate per cent continues on the value of the estate up to £1,000,000 but increases very rapidly on the excess over that point until estates of £3,000,000 and over are taxed £10 per cent on £1,000,000 and £15 per cent on the amount over that sum. The proposed law makes the classification more minute and the rates correspondingly higher. A flat rate of 15 per cent is to be imposed on all incomes over £1,000,000 instead of a £10 per cent rate on the first million and an increasing rate on the excess.

The rate of the settlement of estate duty has also been increased from 1 per cent to 2 per cent.

The legacy or succession duty has also been changed and new and higher rates established, which are in part counteracted by higher exemptions. Under the present law, a succession duty of £3 per cent was collected if the successor was a brother or sister or a descendent of a brother or sister of the predecessor. The proposed law raises this rate to 5 per cent. Under the present law if the successor was a brother or sister of the father or mother of the predecessor the rate was £5 per cent, and if a brother or sister of the grandfather or grandmother of the predecessor, the rate was £6 per cent. It is now proposed to change both of these rates to 10 per cent. The exceptions have been increased under the proposed law and now the duty is not to be levied when the principal value of the property passing on the death of the deceased does not exceed £15,000 whatever may be the value of the legacy or necessaries, or when the amount of the legacy claimed by the same person from the

testator, intestate or predecessor does not exceed £1000, or where the person taking the legacy or succession is a widow or a child of the testator, intestate or predecessor, and the total amount of the legacy or succession claimed by the same person does not exceed £10,000. These exceptions are considerable higher than under the old law and afford some relief to those now subject to the higher rates.

The income tax rate has not only been increased but a super tax on incomes over £5000 has been added. The rate in force during 1907–1908 was one shilling but under the proposed law, it is to be raised to one shilling two pence.

The new feature of the English income tax law is the super tax. The characteristic feature of the English income tax up to date has been the system of collection at the source without any attempt at progression in the rate. In fact, it is a much disputed question whether or not a progressive rate can be used if the tax is collected at the source. England has attempted to solve the problem by adding a super tax but at the same time, has wisely retained the plan of collecting the bulk of the tax before the income reaches the recipient. The super tax seems to necessitate a personal declaration of total income.

The plan is as follows: the regular one shilling two pence tax is collected so far as possible at the source, and then an additional six pence tax on the pound is levied upon the individual's total income in excess of £3000 regardless of source, but only when his total income exceeds £5000. If his total income be less than £5000 the tax would not begin at the £3000 point.

Such, in brief, are the important tax items of the proposed budget. No attempt has been made to discuss the significance of the budget nor yet the tendencies.

ROBERT ARGYLL CAMPBELL.

Taxation—Inheritance, Income and Corporation Taxes—United States.

The task of the present congress (sixty-first, first session) is to revise the tariff and provide revenue sufficient for carrying on all the branches of the federal government. There is a strong belief in congress—in fact it is almost certain—that the new tariff schedules will not yield adequate revenue even if careful economy in administration is practiced. This being true, it is evident that other means of obtaining revenue must be resorted to. The vital question is, What means?

At one time or another, each branch of congress and the president

have had definite plans, and the plans of each have conflicted with the plans of the other. Even within the senate, there is no harmony and the president has reversed his decision and changed from the advocacy of an income tax to the advocacy of a corporation tax. Within the house alone does there seem to be harmony. The house proposed and worked for an inheritance tax, members of the senate introduced and struggled for an income tax and the president suggested and urged a corporation tax. The politics of the situation will not be discussed, only the bills as introduced and modified.

THE INHERITANCE TAX. The inheritance tax is a house measure. This form of taxation has been introduced, successfully worked out, and administered in a majority of the states, and for this reason mainly, tax experts have resolved that this source of revenue should be denied to the nation and reserved entirely to the states. The house, however, deemed that it should serve as a source of national revenue as well as state. This tax is to be imposed upon the transfer of any property, real or personal, of the value of $500 or over or of any interest in or income from property if that transfer is made to persons or corporations within the United States in either of the two following cases: first, when the transfer is made by residents of the United States or any of its possessions except the Philippine Islands; and second, when the transfer is made by a non-resident if the property is located within the United States or any of its possessions except the Philippine Islands. The law is to apply regardless of the form of conveyance and regardless of the time when the transfer is made or is to take effect.

This tax, as is usual with all taxes on inheritances, is divided according to relationship into the direct and collateral; but contrary to the usual practice, the tax imposed on property inherited by collateral heirs is to be at the flat rate of 5 per cent upon its clear market value above the $500 exemption allowed, while in the case of direct heirs, the rate is not flat but progressive and larger exemptions are allowed. The rate may be flat on either the direct or the collateral and is in a majority of the states, but when the rate is progressive, it is more highly so when property is inherited by collateral than when inherited by direct.

When property real or personal or any beneficial interest in property passes to or for the use of any direct heir, ancestor or one close of kin, it is not to be taxed if it is valued at less than $10,000. The exemption, however, stops here, and if the real or personal property or any beneficial interest in such property is of the value of $10,000 but not exceed-

ing $100,000 it is taxable at the rate of 1 per cent; if it exceeds $100,000 but does not exceed $500,000 at the rate of 2 per cent; and if it exceeds $500,000 at the rate of 3 per cent. These taxes are to be levied on the clear market value of the property or interest in each case and only upon the amount left after the deduction of the exemption allowed.

Any property devised or bequeathed for any religious, educational, charitable, missionary, benevolent, hospital or infirmary purposes is to be exempt from the provisions of the law and in addition to this, any personal property other than money or securities bequeathed to corporations or associations organized exclusively for the moral or mental improvement of men or women, or for scientific, literary, library, patriotic, cemetery or historical purposes, or for the enforcement of laws relating to children or animals, is not to be considered in the levy of the tax.

If the tax as levied is paid within six months from the time it accrues, a discount of 5 per cent is to be allowed and deducted but if the tax is not paid within eighteen months from the time it accrues, interest is to be charged and collected at the rate of 10 per cent per annum, unless claims made upon the estate, necessary litigation, or other unavoidable causes of delay make it impossible to determine and pay the tax. In such cases, interest at the rate of 6 per cent per annum is to be charged from the time the tax is due until the cause of the delay is removed, and after that the old rate of 10 per cent. The tax or duty is not due or payable until one year after the death of the donor and is to be a lien and charge upon the property for twenty years unless it is fully paid within that time.

The administration of the law is necessarily much different than in the states. There the administration centers around the state probate court. The court officers are also the administrators of the law and no estate can be probated and settled until the tax is either paid or very good security given. Estates are probated in the state and not in the national courts, and this being true, the nation must resort to other means. The administrator is held personally liable for the tax as proposed, but there is no means of stopping the final settlement of the estate. Every executor, administrator or trustee having any legacy or distributive share in trust is to give notice in writing to the collector or deputy collector of the district where the grantor last resided. This must be done within thirty days after the administrator takes charge of the estate and he must before distribution to the legatees, pay to the collector or deputy collector the amount of the tax

assessed upon the distributive share. As a check upon the payment, the administrator is required to make a statement under oath in duplicate of the amount of the legacy or distributive share. This statement is to contain the names of all persons entitled to a beneficial interest in the estate, together with a statement of the clear value of the interest. The duplicate is to be delivered and the tax paid to the collector and when this statement is delivered and the tax paid, a receipt is given which is declared to be sufficient evidence to entitle the administrator to be credited and allowed the payment in every court having power to settle the accounts of executors or administrators. If the administrator refuses to pay the tax or otherwise comply with the law, the collector must commence appropriate proceedings before any court of the United States against the persons having actual possession of the property or estate and if necessary subject it to seizure and sale.

The chief objection to the proposed national inheritance tax is that it is already in use by the states. The states have developed and perfected it. They need the revenue. Even granting this, the national tax might be justified if the rate were high enough to regulate large fortunes, but in the particular bill in question, they are not. Another fault with the proposed measure is that the rate should be made progressive among collateral as well as among direct heirs, the rate should increase as the relationship of the recipient grows more distant and the amount inherited increases.

THE INCOME TAX. The income tax received considerable attention in the senate. Two separate bills were introduced, one by the Senator Cummins providing for a personal declaration and a progressive rate, and one by Senator Bailey, providing for a tax on corporations and a flat rate.[1] The opposition against both was strong and well organized. This struggle resulted in a compromise which is practically Sentaor Bailey's bill with all of the characteristics of his original and with but few modifications.

The compromise measure provides for a flat rate and the system of collection at the source in the case of corporations. The flat rate in the original bill has been changed from 3 per cent to 2 per cent, and if the stockholder of a corporation has a total income of less than $5000, then the amount of the tax paid by the corporation on his share is to be refunded to him by the government. The intent is to

[1] Reviewed in the August number of the REVIEW.

exempt any person whose total income is less than $5000 from the payment of the tax either directly or indirectly. One very important addition made in the compromise measure is the provision authorizing the secretary of the treasury to prescribe and establish such a system of bookkeeping as is necessary to insure uniformity of reports.

Broadly speaking, it may be said that the income tax is the most just in theory and the least just in actual practice. It has some defects in theory and is not an entire failure in actual practice. It belongs to the nation rather than to the state and there is reason to believe that a national law can be successfully administered.

THE CORPORATION TAX. The corporation tax has been introduced at the suggestion of the president and for various reasons is meeting with much favor. Every corporation, joint stock company, or association organized for profit and having a capital stock represented by shares, and every insurance company, organized under the laws of the United States or of any state, territory, or dependency, or organized in any foreign country and engaged in business in any state, territory or dependency of the United States, is to be subject annually to a special excise tax equivalent to 1 per cent upon the entire net income over and above $5000 received by it from all sources during the year exclusive of amounts received by it as dividends upon stock of other corporations, or if the corporation is organized under the laws of any foreign country, then upon the amount of net income over and above $5000 received by it from business transacted and capital invested within the United States and its dependencies.

The law, however, is not to apply to labor, agricultural or horticultural organizations, or to fraternal beneficiary societies, orders or associations operating under the lodge system and providing for the payment of life, sick, accident, or other benefits; nor to domestic building and loan associations organized and operated exclusively for the mutual benefit of its members, nor to any corporation or association organized and operated exclusively for religious, charitable or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual.

The net income of domestic corporations is to be ascertained by deducting the following items from the gross income: all the ordinary and necessary expenses actually paid in the maintenance and operation of the business and properties, including all charges, such as rentals or franchise payments required to be made as a condition to the continued use or possession of property; all losses actually sustained

within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation and in the case of insurance companies, the sums other than dividends paid within the year on policy and annuity contracts and the net addition, if any, required by law to be made to reserve funds; interest actually paid within the year on its funded or other indebtedness up to an amount not exceeding the paid up capital stock of the corporation outstanding at the close of the year, and in the case of banks and trust companies, all interest actually paid during the year on deposits; all sums paid within the year for taxes imposed under the authority of the United States, state or territory, or imposed by the government of any foreign country as a condition to carrying on business there; and all amounts received by it within the year as dividends upon the stock of other companies or corporations.

The principle governing the deductions allowed foreign corporations is the same as for domestic, but the law must necessarily be modified a little and the business of a foreign corporation carried on in America is looked upon as a unit and the corresponding deductions allowed. In addition to these deductions from the gross income, there is to be a deduction of $5000 from the net income, the tax to be computed only on the net income above that amount.

On or before the first of March each year, the president, vice-president, or other principal officer and the treasurer or assistant treasurer of every company or corporation must make a true and accurate return to the collector of the district in which the company or corporation has its principal place of business. This return is in a form drawn up by the commissioner of internal revenue and approved by the secretary of the treasury and must set forth the total amount of the paid up capital stock of the company or corporation outstanding at the close of the year, the total amount of the bonded or other indebtedness, the gross amount of income received during the year from all sources, the total amount of all the ordinary and necessary expenses actually paid out of earnings in the maintenance and operation of the business and properties of the company or corporation, stating separately all charges, such as rentals or franchise payments required to be made as a condition to the continued use or possession of property, the total amount of all losses actually sustained during the year, and not compensated by insurance, stating separately any amounts allowed for depreciation of property and in the case of insurance companies the sums other than dividends paid on policy and annuity contracts and

the net addition, if any, required by law to be made to reserve funds, the amount of interest actually paid within the year on its bonded or other indebtedness to an amount not exceeding the paid up capital stock of the company or corporation outstanding at the close of the year, and in the case of banks and trust companies all interest paid by it within the year on deposits, the amount paid within the year for taxes, United States, state, territory, or even foreign if imposed as a condition to carrying on business there, and finally the net income after making those deductions as authorized. Foreign companies and corporations must make a report on these same items but it is only for that part of the business carried on in the United States, its territories, Alaska and the District of Columbia. All of these returns when received are to be transmitted by the collector to the commissioners of internal revenue.

Whenever evidence is produced before the commissioner of internal revenue, justifying in his opinion the belief that the return made by any company or corporation is incorrect, or whenever any collector reports to the commissioner of internal revenue that any company or corporation has failed to make a return as required by law, the commissioner of internal revenue may require such further information with reference to its capital, income, losses and expenditures as he may deem expedient, and the commissioner of internal revenue, for the purpose of ascertaining the correctness of the return or for the purpose of making a return where none has been made is authorized by any regularly appointed revenue agent specially designated by him for that purpose, to examine any books and papers bearing upon the matters required to be included in the return of the company or corporation and to require the attendance of any officer or employees and take their testimony. The commissioner may also invoke the aid of any court of the United States to require the attendance of the officers or employees of the company or corporation and the production of their books and papers. With this information in his possession the commissioner may amend any return or make a return where none has been made. All returns made are to be retained by the commissioner of internal revenue and the assessments made by him.

When any return is made with false or fraudulent intent, the commissioner must add 100 per cent, and in case of refusal or neglect to make or verify a return he must add 50 per cent.

All assessments are to be made and the several companies and corporations notified of the amount for which they are liable on or before

the first day of June of each successive year and the taxes are to be paid on or before the thirtieth day of June. Any sum or sums due and unpaid after that date are to be collected with 5 per cent additional and 1 per cent per month interest as a penalty for the neglect and delay. In addition to this, if any of the companies or corporations refuses or neglects to make a return or renders a false or fraudulent return, they are made liable to a penalty of not less than $1000 and not exceeding $10,000. Any person making a false or fraudulent return or statement with intent to defeat or evade assessment, is to be deemed guilty of a misdemeanor and subject to a fine not exceeding $1000 or to imprisonment not exceeding one year or both, at the discretion of the court.

It is also made unlawful for any collector, deputy collector, agent, clerk, or other officer or employee of the United States to divulge any information obtained by him in the discharge of his official duty or to make known the contents of any document received, evidence taken, or report made, except upon the special direction of the president. Any offense against this rule is made punishable by heavy fines, or imprisonment, or both.

When the assessment is made, the returns, together with any corrections which may have been made by the commissioner, are to be filed in the office of the commissioner of internal revenue, and are to be public records and open to inspection as such.

Such, in full, are the provisions of the three schemes proposed by the government for raising additional revenues.

Congress has at last revised the tariff, adopted the corporation tax as a means of raising additional revenue, and adjourned. The inheritance tax was neglected entirely, the income tax voted down, and a proposed constitutional amendment permitting the introduction of an income tax passed.

The situation is not altogether deplorable. The inheritance tax in the form introduced should have been voted down. The inheritance tax belongs to the states and has no place in the financial system of the nation. The income tax bill, while the best that has been introduced in America, is still defective, and more study and thought must be given to its administration. If the constitutional amendment passes the way will be clear to introduce an income tax modeled after those of foreign countries. In the meantime, the administration of the corporation tax will throw light on the difficulties of administering the income tax. It is true, the corporation tax will be shifted in whole or

in part, depending largely on whether the business is subject to competition or is a monopoly. It will, however, expose some of the evils of corporate management and in the end may give way to a just and well administered income tax.

ROBERT ARGYLL CAMPBELL.

Workingmen's Insurance. Proposed Codification of Laws in Germany. On April 2 of this year, the chancellor presented to the Bundesrat a proposed reform of the workmen's insurance laws. This is not simply an amendment of the existing laws, but an entire reënactment. The proposed code covers 286 quarto pages and the explanation accompanying it adds 133 pages.[1]

No radical reorganization is attempted, the threefold division into sickness, accident, and invalidity insurance being retained. It is proposed, however, to unify the administration by organizing local administrative bodies to deal with all forms of insurance. Above these will be the *Oberversicherungsämter*, and above them the imperial (or provincial) insurance bureau. It is hoped by this means to relieve the imperial insurance bureau of its excessively large number of cases.

It is impossible to take up all of the proposed changes here. On the whole, the most significant feature, aside from the reorganization of tribunals above mentioned, is the extension of the system to cover additional classes of persons. Of especial interest is the addition of *Hinterbleibenbezüge*, that is, pensions for widows and orphans who are incapacitated. The labor press, while approving the extensions, is opposed to the reform in procedure as being less democratic than the old methods.

M. O. LORENZ.

[1] Entwurf einer Reichsversicherungsordnung. Amtliche Ausgabe mit Begrundung, Berlin, Carl Heymanns Verlag, 1909.

NEWS AND NOTES

Current Municipal Affairs

WILLIAM BENNETT MUNRO

On September 20 the voters of Montreal adopted by an overwhelming majority the act of the Quebec legislature which provided for certain radical changes of municipal organization in the Canadian city. Despite the current American notion that municipal government north of the border has been efficient and progressive, it has been a matter of common knowledge in Canada for some years that their own metropolis was as completely honeycombed by inefficiency, corruption, and brazen dishonesty as any city of equal size on the continent. At the urgent request of various business associations a royal commission was appointed early in the present year to investigate the affairs of Montreal and the evidence presented to this commission disclosed a state of affairs which was not outmatched by New York City even in the days of the Tweed ring. Places and promotions were sold openly, it was shown; contracts went rarely to the lowest bidder and invariably to the parties who stood close to the aldermen; extravagance, waste, and plain maladministration were shown to exist in every branch of the city's business.

The legislature acted promptly; passing an act which reduced the number of aldermen to 25 (one from each ward), and deprived these of all powers save those of making city by-laws and voting the appropriations. It established a board of control or commission, to consist of four members elected at large and the mayor of the city ex-officio. These commissioners are to be paid salaries of not less than $5000 or more than $10,000 as the aldermen may decide. This board of control is to prepare the municipal budget, to have exclusive powers in recommending the expenditure of money, to have charge of the awarding of all contracts, to supervise the spending of money, and to control the heads of all departments.

The act encountered vigorous opposition from interested local politicians; but all the substantial business interests of the city rallied to its support and the voters endorsed it by a decisive vote. The system