A YEAR OF BENCH LABOR LAW.

Liberty is an attractive theme, but the liberty which is exercised in sheer antipathy does not plead strongly for recognition.—Justice McKENNA.

THE doctrine enounced in the Declaration of Independence that governments are instituted among men to secure certain rights, among which are life, liberty and the pursuit of happiness, was incorporated in part in the amendments to the Federal Constitution and is still a working principle in the judicial interpretation of the fundamental law. The matter of life and personal freedom has never been one of overshadowing importance under our government. The question of industrial liberty, involving the rights of the individual on the one hand and on the other the rights of the sovereign, not a capricious or tyrannical king but the sovereign people as organized in civil society, is the most important issue before the public in America and in other civilized countries. It confronts every government at every turn. Said a justice, by way of preface to one of the decisions to be discussed in this paper:

> One of the chief reasons for the creation of government, and therefore one of the chief functions of government, is to prevent extortion and oppression and to foster a productive industry by maintaining a just division of the fruits of industry.

The fundamental postulate on which our government acts in reference to industrial freedom is equality of right. Said the justice quoted above:

> Every one is perfectly free to bring his capital, or his labor, into the market on such terms as he may deem best. This is a fundamental postulate, and as an inseparable corollary therefrom, no one may, of right, impair or impinge upon this individual freedom to use one's labor or capital.

The negative rule is here regarded as a corollary of the posi-

tive proposition. The freedom here described is a general right, and the government is in duty bound to secure it to every individual unless considerations of public policy make a deviation from this principle imperatively necessary. In one of the notable decisions of the year, Mr. Justice Dayton emphatically says that the law knows no distinctions between rich and poor, between unlawful combinations of capital and unlawful combinations of labor. The same principle must apply to both. In regard to equality of right Mr. Justice Harlan says that "any legislation which disturbs that equality is an arbitrary interference . . . which no government can legally justify in a free land."

The main constitutional guaranties of industrial freedom, aside from the prohibition of slavery, are found in the fifth and fourteenth amendments, which say that no person shall be deprived of life, liberty or property without due process of law. The states are also forbidden to deny to any one the equal protection of the laws. The meaning of life and liberty is evident. Property was defined in the Slaughter House cases as "all the rights which are incident to the use, enjoyment and disposition of all tangible things. Property is everything which has exchangeable value." Subsequent decisions have emphasized the fact that things not tangible may be property, especially that "the privilege of contracting is both liberty and a property right."

With these historical antecedents in mind, let us examine the case for industrial freedom in the decisions of the judicial year 1907–08.

Several decisions were based on common law, which embraces principles of industrial freedom. These decisions proceed on the principle that the government must not only itself abstain from limiting unduly industrial freedom, but must prevent individuals and combinations of individuals from actively interfering with the rights of others in this respect. Many of the decisions were reached in cases growing out of strikes. The right of a laborer to quit the service of an employer is undoubted. The courts say that, if asked to enjoin from striking, they would refuse, because no case can be made in which they

would compel men to labor, for that would be making them slaves.[1] The right of members of labor unions to withdraw peaceably from any service, either singly or in a body, has always been upheld by the courts, says Judge Hazel of the western district of New York.[2] The mere polling of laborers on the question of strike or no strike, even if the strike be in violation of contract, is not a conspiracy and may not be restrained by injunction. Judge Hazel quotes from a decision by Judge Taft, who says that the officers of a union may advise the members

> as to the proper course to be taken by them in regard to employment, or, if they choose to repose such authority in any one, may order them, on pain of expulsion from the union, peaceably to leave the employ of their employer because any of the terms of employment are unsatisfactory.

But the officers of a union may be enjoined from using their influence to induce men to strike in violation of contract, says Judge Thompson, of Ohio; and Judge Loring, of the Massachusetts supreme court, says that they may be enjoined from combining together to further a strike to prevent an employer from keeping an open shop and from doing any acts whatever, peaceful or otherwise, in furtherance thereof, including the payment of strike benefits and putting the employer on "unfair" lists.[3]

If these latter cases indicate that employers may have some degree of protection against wrongful strikes, the laborer also has some protection against wrongful discharge. Judge Cartwright, speaking for the supreme court of Illinois, held that a laborer was entitled to damages where it was clearly proved that he had been discharged for malicious motives. In this case an employee, who had brought suit to recover damages for injuries sustained while working for a certain company, was discharged by the manager in order to prevent him from earn-

[1] A. R. Barnes and Company *v.* Berry, 156 Fed. Rep. 72.

[2] Del. L. and W. R. R. *v.* Switchmen's Union, 158 Fed. Rep. 541.

[3] Reynolds *v.* Davis, 84 N. E. Rep. 457.

ing the money with which to prosecute the suit, and the manager said that he would try to prevent the laborer from securing employment elsewhere.[1]

While strikes are legal, a great many of the means employed to make them effective are illegal. Such are violence and intimidation. So Judge Gilbert, of the United States circuit court of appeals, declared that, while the waters of San Francisco Bay are free to all, it was not the right of strikers while on those waters to interfere with the laborers of their former employer engaged in carrying on his business, which was a property right, or to seek to induce shippers and travelers not to patronize him. An injunction was issued restraining the strikers from doing these things.[2]

The decisions relating to boycotts have attracted considerable attention, perhaps more than any other decisions of the year. The first of these was rendered in the Danbury hat case. Since 1901 the American Federation of Labor had striven to compel the hat manufacturers to unionize their shops. One of the weapons employed by the Federation was the boycott. Finally D. E. Loewe and Company, hat manufacturers in Danbury, Connecticut, secured an injunction against the California State Federation of Labor, which had notified wholesale dealers in San Francisco of the boycott and was threatening them with loss of trade if they did not observe it. The plaintiff alleged that the Federation was a combination in restraint of interstate commerce, in violation of the Sherman anti-trust law; and, although it was urged that the Federation was not engaged in interstate business, the plaintiff's contention was upheld by the United States Supreme Court.[3]

The most important decisions, however, have been based not on the Sherman Act but on the common law. On this basis the boycott and the various means of enforcing it have been declared illegal. The printing of circulars giving lists of closed shops and implying that all others are

[1] Gibson *v.* Fidelity and Casualty Company, 83 N. E. Rep. 539.

[2] Sailors Union of the Pacific *v.* Hammond Lumber Company, 156 Fed. Rep. 450.

[3] Loewe *v.* Lawler, 28 Supreme Court Rep. 301.

"unfair," and the delivery of such circulars to contractors, architects and owners of property; the ordering of strikes on buildings where material from open shops is used; the demand that contractors shall sign agreements not to use open-shop material; and the keeping of "unfair" and "we don't patronize" lists—these acts amount to conspiracy and may properly be stopped by injunction. Such is the law as laid down by Judge Hook, of the United States circuit court of appeals.[1] The publication of "unfair" and "we don't patronize" lists is illegal, and to restrain such publication is not an assault upon the liberty of the press. Such conduct is not an isolated fact, but is an act in a conspiracy to destroy business, an unlawful interference with the freedom of trade. The business which an individual has built up is a property right, capable and deserving of protection. An injunction is the proper method of protecting a business against boycott; and labor unions, their agents and members, and other individuals may be restrained from printing, issuing, publishing or distributing any newspaper, magazine or other document containing "unfair" or "we don't patronize" lists. Such was the opinion of Judge Gould of the supreme court of the District of Columbia.[2] The far-reaching effects of this decision will be appreciated when it is noted that four hundred and eight boycotts were approved and declared within twelve years, that the *American Federationist* regularly published "unfair" and "we don't patronize" lists, and that it was the custom of the Federation, at its annual convention, to appoint a committee on boycotts whose duty it was to see that they were made effective. As to the matter of publication, Judge Dayton, of West Virginia, summed up the law by saying that "no newspaper has the right to publish any matter intended to aid wrongdoers in accomplishing a wrongful purpose or doing unlawful things or to aid unlawful combinations in making effective an unlawful conspiracy."[3]

[1] Shine *et al. v.* Fox Brothers Manufacturing Company, 156 Fed. Rep. 357.

[2] Buck Stove Range Company *v.* American Federation of Labor, 35 Washington (D. C.) Law Rep. 797.

[3] National Telephone Company of West Virginia *v.* Kent, 106 Fed. Rep. 173.

Two decisions relating to the force and effect of injunctions deserve notice. An appeal may be taken from the final order in an injunction[1]; but the injunction is not thereby suspended nor is its operative force impaired pending the appeal. However improvidently or erroneously an injunction may have been granted, all persons are bound, at their peril, to obey it while it remains in force.[2]

With all these facts before them, the leaders of the American Federation of Labor decided to disobey the injunction prohibiting the printing of "unfair" lists and continued to list the Buck Stove Range Company as "unfair" in the *American Federationist*. In reaching this decision Mr. Gompers is reported by the press to have said: "When it comes to a choice between surrendering my rights as a free American citizen or violating the injunction of the courts, I do not hesitate to say that I will exercise my rights as between the two." Messrs. Gompers, Mitchell and Morrison were then summoned before Justice Wright, of the supreme court of the District of Columbia, and were found guilty (1) of bringing about a breach of the plaintiff's existing contracts with others; (2) of depriving plaintiff of property (the value of the good-will of its business) without due process of law; (3) of restraining trade among the several states; and (4) of restraining commerce among the several states. They were sentenced to twelve, nine and six months respectively in prison for violation of the injunction forbidding them to do these things. At this writing the case has been appealed to the court of appeals of the District of Columbia, and probably it will go to the United States Supreme Court.

With the foregoing decisions should be contrasted one rendered by the supreme court of Montana. An injunction was secured against the Montana Federation of Labor prohibiting it "from declaring the plaintiff unfair, or from boycotting the plaintiff, or from printing, publishing, circulating, posting or distributing any circulars" *etc.* intended to injure the plaintiff. Only two facts of consequence were proved against the defend-

[1] Vilter Manufacturing Company *v.* Humphrey, 112 Northwestern Rep. 1095.

[2] Barnes and Company *v.* Chicago Typographical Union, 83 Northeastern Rep. 932.

ants, *viz.*, that they had boycotted the plaintiff and that they had published and distributed circulars making known this fact. The supreme court, in reversing the decision of the district court, held that the union workingmen had committed no unlawful act in withdrawing their patronage from the plaintiff, since he had no property right in their trade. No one would contend that it was unlawful for an individual, acting alone, to withdraw his trade from any particular firm. Continuing for the court, Mr. Justice Holloway said:

> But there can be found running through our legal literature many remarkable statements that an act perfectly lawful when done by one person becomes, by some sort of legerdemain, criminal when done by two or more persons acting in concert, and this upon the theory that the concerted action amounts to a conspiracy. But with this doctrine we do not agree. If an individual is clothed with a right when acting alone, he does not lose such right merely by acting with others, each of whom is clothed with the same right. If the act done is lawful, the combination of several persons to commit it does not render it unlawful. . . It is the illegality of the purpose to be accomplished, or the illegal means used in furtherance of the purpose, which makes the act illegal.

Assuming that the boycott itself was not illegal, the court then asks if the means of enforcing it, the printing and distribution of circulars, was illegal. Could a court of equity enjoin the publication of such circulars, either by an individual or by individuals acting in concert? Justice Holloway continued:

> Article 3 of our constitution . . . reads as follows: "No law shall be passed impairing the freedom of speech; every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty." . . . The one fundamental idea conveyed by this section is penalty for a violation of the privilege, not prevention of its abuse. The language of the section is not susceptible of any other meaning than this: that the individual citizen of Montana cannot be prevented from speaking, writing or publishing whatever he will on any subject. If, however, what he writes or publishes constitutes a criminal libel, he may be held responsible for the abuse of the liberty in a criminal prosecution; or, if what he speaks, writes or pub-

lishes wrongfully infringes the rights of others, he may be held responsible for the abuse in a civil action for damages. But it is suggested by counsel for respondent that these defendants are insolvent, and that a judgment for damages would be worthless. Even granting this to be so, still the constitution does not discriminate among men according to the amount of their possessions. The guaranty of this section extends as fully to the poorest as to the wealthiest citizens of the state; and, though the abuse of the liberty so guaranteed may result in loss for which there can not be any adequate compensation, the framers of our constitution in preparing it, and the people in adopting it, doubtless concluded that it was better that such result be reached in isolated cases than that the liberty of speech be subject to the supervision of a censor. To declare that a court may say that an individual shall not publish a particular item is to say that the court may determine in advance just what the citizen may or may not speak or write upon a given subject—is, in fact to say that such court is a censor of speech as well as of the press.[1]

The decisions thus far cited take little account of any interest in industrial freedom save that of the employer and the employee; but an Ohio judge of the court of common pleas, Phillips, holds that the community has a vital interest in the maintenance of industrial freedom and that neither individuals nor associations may enter into agreements to restrict it. This opinion was elicited in proceedings for the dissolution of the Amalgamated Window Glass Workers of America as an illegal association. In proof of the illegality of this union extracts were read from its rules, which showed that it sought to prevent any one not a member or apprentice of the union from working at the trade of window-glass blower, gatherer, flattener or cutter, that it was seeking to limit the number of glass workers, that it sought to put restrictions upon the work of its own members and upon their freedom of contract, and, finally, that it sought to control manufacturers. Two of the many rules of the union will serve as examples:

No one not a member of the Amalgamated Window Glass Workers of America shall be allowed to work at any of the four trades, excepting our own apprentices.

[1] Lindsay and Company *v.* Montana Federation of Labor *et. al.*, 96 Pacific Rep. 127.

All ten-pot furnaces shall be required to employ three flatteners, and no flattener shall flatten more than four pots, unless the president and executive board [of the union] deem it absolutely necessary.

Speaking of this union Judge Phillips said:

Because these men are skilled in the manufacture of an important article of commerce, they are able to contribute, in a special way and in special measure, to the productive industry of the community. Therefore the community has a special interest in the industrial freedom of these men and [of] each of them. One of these men could not obligate himself not to work at his trade. He might, of choice, decline to pursue his trade; but he could not obligate himself not to work at his trade; and if he should enter into a contract never again to work at his trade, the courts would not enforce the contract. Such contract would be against public policy. It would impair the industrial freedom in which the public is interested, and which it is the duty of the government to protect and promote . . . [Every member of an association with rules such as those quoted above] has surrendered his individuality, and his industrial freedom, and is no longer a personal factor in the industrial world. This is violative of fundamental personal rights, and of public rights, and is therefore unlawful.[1]

For this reason the association was dissolved and a receiver appointed.

Contracts such as the foregoing were declared to be illegal at common law as detrimental to society rather than to the individuals making them.

Some of the states and the United States have assumed the right to impose statutory limitations upon industrial freedom in several particulars, especially in the realm of contract. The famous anti-trust law of Texas forbids certain combinations of capital in restraint of trade, and a law passed two days later legalizing labor unions was held not to render the former law null and void.[2] A statute of Arkansas providing for the redemption in cash, at face value, of all scrip, punch-outs *etc.* issued as evidence of indebtedness to laborers was upheld by

[1] Kealy *et al. v.* Faulkner *et al.*, 18 [Ohio] Superior and Common Pleas Decisions, 498.

[2] Waters Pierce Oil Company *v.* State, 106 Southwestern Rep. 918.

the supreme court of the state. It was declared to be within the power of the legislature to regulate, in the interest of the public, the right of contract belonging to corporations which derive that right from the legislature.[1] A law of Washington requiring barbers to be examined and to procure licenses before practicing their trade was attacked as an abridgment of the liberty of the citizen and as tending to create a monopoly; but the supreme court of the state upheld it on the ground that the business in question has an intimate relation to the public health and is therefore subject to police regulation.[2]

The courts are generally inclined to sustain laws limiting the amount of labor or the kind of labor which minors and women may undertake. Judge Elkin, speaking for the supreme court of Pennsylvania, declared that to fix the age limit below which boys should not be employed in certain work about mines was a valid exercise of the police power.[3] A similar law was attacked in New Jersey as being violative of the bill of rights in the state constitution (which says that all men are by nature free and independent and have certain natural unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness) and also as abridging the privileges of citizens of the United States. In speaking for the court Judge Garrison held that the term "all men" did not include minors, who are the special wards of the state.[4]

In Montana a law restricting the freedom of contract of adult males has been sustained. The law in question limited the hours of labor of train crews to sixteen out of twenty-four and required that the men should have eight hours of rest before going on duty again. Said Judge Brantly:

It is apparent to every one that a continuance beyond a reasonable time each day in the performance of the exacting duties incident to an employment that is always attended with danger tends to impair both

[1] Union Sawmill Company *v.* Felsenthal, 108 Southwestern Rep. 217.

[2] State *v.* Walker, 92 Pacific Rep. 775.

[3] Lenahan *v.* Pittston Coal Mining Company, 67 Atlantic Rep. 642.

[4] Bryant *v.* Skillern, 69 Atlantic Rep. 23.

the health and the efficiency of employees and should not be permitted except in cases of necessity.

To limit the hours of such labor was declared to be a proper exercise of the police power.[1]

It will be remembered that the United States Supreme Court has not been willing to sanction such restrictions of the freedom of contract of adult males, declaring that a New York law limiting work in bakeshops to ten hours per day was in conflict with the fourteenth amendment. It has, however, taken a different view of the limitation of hours of women's labor. An Oregon law limiting female labor in any mechanical establishment, factory or laundry to ten hours per day has been upheld. The reasons that make against limitation of men's right to work do not apply to women. "Woman's physical structure and the performance of maternal functions," the court declares, "place her at a disadvantage in the struggle for existence." Although much has been done to emancipate woman from the control which man established over her at the beginning, through superior physical force, the fact remains that, with all her increase in capacity for business, she is not an equal competitor with her brother. Theoretically she may be placed on equality with man by legislation, but "she will still be where some legislation to protect her seems necessary to secure a real equality of right." Being different from man, "she is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men and could not be sustained." Moreover, such limitations on her contractual right as those restricting her hours of labor "are not imposed solely for her benefit but also largely for the benefit of all."[2]

A law of similar intent was overthrown by the supreme court of Colorado, but solely because the legislature had left it to the discretion of the court to say to what industries the law should apply as being "dangerous to health, life or limb." In the view of the court the constitution commanded the legis-

[1] State *v.* Northern Pacific Railway, 93 Pacific Rep. 945.

[2] Muller *v.* State, 28 Supreme Court Rep. 324.

lature to pass upon that question itself, and the law was held to be unconstitutional because of the attempt to delegate legislative power.[1]

There are limits beyond which the state may not go in regulating and restricting industrial freedom, although the line of division may at times seem shadowy. While the Arkansas law requiring the redemption of scrip in cash was upheld by the judiciary of that state, the Indiana supreme court declared unconstitutional a statute providing that companies, corporations and associations should pay their employees engaged in mechanical or manual labor at least once a month. Judge Monks declared that this statute contained a denial of the equal protection of the laws, since it gave to those engaged in mechanical or manual labor the right to demand their pay at least once a month but denied the right to other employees of the same companies. Moreover, it accorded no such right to mechanics working for individuals.[2]

Another important limitation upon the legislative power to restrict industrial freedom was recognized by the United States Supreme Court in passing upon the Erdman act. This act of Congress made it unlawful for an employer to discharge an employee on account of membership in a labor organization. In passing upon the act the court said that it was an invasion of the fifth amendment, which says that no person shall be deprived of liberty or property without due process of law. Said Mr. Justice Harlan:

> Such liberty . . . embraces the right to make contracts for the purchase of the labor of others and equally the right to make contracts for the sale of one's own labor; each right, however, being subject to the fundamental condition that no contract, whatever its subject matter, can be sustained which the law, upon reasonable grounds, forbids as inconsistent with the public interests or as hurtful to the public order or as detrimental to the common good.

Justice Harlan then quoted from Lochner *v.* New York a state-

[1] Burcher *v.* People, 90 Pacific Rep. 14.

[2] Toledo, St. Louis and Western Railroad Company *v.* Long, 83 Northeastern Rep. 757.

ment that such restrictions were imposed in virtue of the police powers, which

> relate to the safety, health, morals and general welfare of the public. Both liberty and property are held on such reasonable conditions as may be imposed by the governing power of the state in the exercise of these powers; and with such conditions the fourteenth amendment was not designed to interfere. . . . [Although] there was a difference of opinion in that case among the members of the court as to certain propositions, there was no disagreement as to the general proposition that there is a liberty of contract which cannot be unreasonably interfered with by legislation.

Applying the law to the case at bar, Justice Harlan declared that it was the legal right of the defendant, Adair, to discharge an employee because of his membership in a labor organization, and it was equally the right of the employee to quit the service of the defendant because he employed persons who were not members of labor unions, although such conduct on the part of either may have been unwise. "In all such particulars employer and employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can justify in a free land." The right of such interference cannot be found under the power of Congress to regulate interstate commerce, for this regulation cannot be made "without any regard to any question of personal liberty or right of property." Besides: "What possible logical or legal connection is there between an employee's membership in a labor organization and the carrying of interstate commerce?" None; consequently Congress can have no power to legislate on the subject under that head.[1]

In a dissenting opinion Mr. Justice Holmes said:

> The section is a very limited interference with the freedom of contract, no more. It does not require the carriers to employ any one. It does not forbid them to refuse to employ any one, for any reason they may deem good. . . . The section simply prohibits the more powerful party to exact certain undertakings or to threaten dismissal or unjustly to dis-

[1] Adair *v.* United States, 28 Supreme Court Rep. 278.

criminate against those already employed. . . . I confess that I think that the right to make contracts at will that has been derived from the word liberty in the amendments has been stretched to its extreme by these decisions, but they agree that sometimes the right may be restrained. Where there is, or generally is believed to be, an important ground of public policy for restraint, the constitution does not forbid it, whether this court agrees or disagrees with the policy pursued.

Three ideas stand out prominently in these decisions. The first is that, while the government should follow the general principle of "hands off," it may and must intervene to maintain equality, if this equality as between man and man—or, more precisely, between male and male—is threatened by the active interference of one person with another. No recognition is given to the idea that a weak male may need help to put him on a plane of equality. This idea appears in questions relating to the employment of women and children, as was brought out in the decisions quoted above. Although by law woman may be placed on a theoretical equality with man, the fact of her inequality, due to weakness, remains, and the courts will take account of it. Since woman is different from man, "some legislation seems necessary to secure a real equality of right." No such distinctions, however, are admissible as regards men. One star may differ from another star in glory, but the law says that one man differs not from another man in strength.

The constitution does not recognize the distinction between man and woman made by the courts; this distinction rests upon the common law. A great deal of the common law has been outgrown, and a great deal of it has been changed because inapplicable to modern conditions. Occasionally a judge, generally in the minority, gets hold of the idea that the abstract equality of males does not work out well in practice. Such is the meaning of Mr. Justice Holmes's dissenting opinion quoted above, where he speaks of legislation necessary to put the weaker on terms of equality with "the more powerful party."

The second idea is that, while interference with industrial freedom may occasionally be justified, it is justifiable only on grounds of public policy, and it must not be unreasonable.

The third idea grows out of the second and answers the ques-

tion: Who shall decide what is for the public welfare and what is reasonable? Where can be found the bar of reason to which appeal shall be made? In themselves, say the courts. A legislature may pass a law requiring barbers to be examined and to procure licenses before practicing their trade, and this is a reasonable interference with industrial freedom, because the barber comes in personal contact with others and may endanger health. A legislature may think that an unskilled plumber may also endanger health, but the courts say that such thoughts are unreasonable, "because the business of plumbing does not bring the plumber in personal contact with the public." A state legislature and court may think it reasonable to forbid the members of train crews to work more than sixteen hours out of twenty-four, but the United States Supreme Court deems it unreasonable to forbid men to work more than ten hours in bakeshops.

On the whole, the prevailing tendency has been to justify interference with industrial freedom, and so far the decisions of the year may be regarded as good. The courts, with one exception, even say that the liberty of the press may be restrained when used to make the boycott effective. These decisions have created a great deal of dissatisfaction in labor circles, but they are likely to stand, at least until our law recognizes inequalities among men. The citizen is guaranteed the right to bear arms, but he may be restrained from using them to the injury of his neighbor, and this, too, before the injury is done. Is it unreasonable to apply the same rule to the press? So far as the writer is aware, the blacklist has never been declared illegal; but, if a case were brought up involving this question, the court must, in the light of the boycott decisions, put the blacklist in the same category. Also combinations of capital to fight organized labor should be put under the ban.

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THE CONSTITUTION OF OKLAHOMA

MR. BRYCE has commended to scholars the study of our state constitutions on account of their historic interest and their value for the science of comparative politics. In them, he urges with good reason, one may read the annals of legislative and political sentiment more easily and more succinctly than in any similar series of laws in any other country.[1] It may be added that these fundamental laws are all the more instructive to the student of practical politics, because they contain, in a large measure, the definite rules of law which are steadily being devised to meet concrete problems as social pressures from various directions bring them within the sphere of legislation. In fact, it is highly probable that the political philosopher who considered them in the abstract would go far astray; because they mainly reflect the legal adjustments which have accompanied the material development of our country and are well-nigh meaningless to anyone not acquainted with the course of our economic evolution during the past century. From this point of view, the constitution of the recently admitted state of Oklahoma possesses a unique interest, for its framers have searched with great assiduity among the fundamental laws and statutes of all the other states for the latest inventions known to American politics and have worked them into a voluminous treatise on public law—a mosaic in which the glittering new designs of "advanced democracy" appear side by side with patterns of ancient English make.

I. Structure of the central government.

In the bold framework of this new government, there is little that is novel or striking, and it would be a work of supererogation to describe it in detail. Accordingly we consider only the newer devices which have a special significance in showing the general tendencies in our constitutional development.

[1] American Commonwealth, vol. i, p. 450.