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THE DEVELOPMENT IN PENNSYLVANIA OF CONSTITUTIONAL RESTRAINTS UPON THE POWER AND PROCEDURE OF THE LEGISLATURE.*

It is made the duty of the President to deliver, at this meeting, an address "with particular reference to any statutory changes in the State of public interest and any needed changes suggested by judicial decisions during the year." The laws enacted at the session of 1895 do not call for any minute or elaborate discussion, and what is to be said upon the topic specially assigned can be said incidentally. I propose, therefore, to trace the development, in Pennsylvania, of constitutional restraints upon the power and procedure of the Legislature.

Of late years, the condition of things in most European countries, and especially in France and in England, has attracted unusual attention to questions relating to the theory and art of government. The republican government of France is in a state of unstable equilibrium, and the Senate seems to be vainly striving to retain the share of power granted by the Constitution; and in the last general election in Eng-

*The President's Address, delivered before the Pennsylvania Bar Association, at Bedford Springs, Pennsylvania, July 3, 1896.

land, the House of Lords, which has always given way before the Commons when it was certain that the latter truly represented the wishes of the people, was threatened with annihilation for having refused its assent to a bill passed by the lower house, although the result of the general election which followed showed that the bill did not command popular approval.

Throughout Europe, with the exception of Russia, the tendency towards democracy seems to be steadily growing. The question which disturbs all thoughtful men is how the coming government of the people is to be regulated and controlled. The illusions, which swayed men's minds in 1790, when—

As if awaked from sleep, the Nation's hailed
Their great expectancy ;

and even the sanguine hopes, which inspired them in 1848, have died away, and the problems of government are dealt with rather in the prosaic fashion of a previous century, when it was said :—

For forms of government let fools contest ;
Whate'er is best administer'd is best.

It is in this temper that Bagehot, who in his political, as well as in his economic, writings was in the habit of looking at things rather than words, has discussed the English Constitution. No more curious contrast between two accounts of the same system can be found than between the vague generalities and platitudes of Blackstone and Bagehot's description of the way in which the English Government has come to be a government by a committee of the House of Commons, called a Cabinet, and of the manner in which laws are, in fact, made, and the work of administering the government actually carried on by this legislative committee. His little volume, however, is devoted to things as they were when he wrote, but the facts with which the English people have now to deal are that having virtually universal suffrage, they have no effective second chamber, no independent executive, no written constitution, and no court to annul unconstitutional laws. Confronted with this condition, they have recently

been studying the results of the experiment in popular government, which the people of the United States have been making, in a very different spirit from that in which they once criticised our institutions.

Writing in 1862, the historian Freeman says:—

At all events the American Union has actually secured, for what is really a long period of time, a greater amount of peace and freedom than was ever before enjoyed by so large a portion of the earth's surface. There have been, and still are, vaster despotic empires, but never before has so large an inhabited territory remained for more than seventy years in the enjoyment at once of internal freedom and exemption from the scourge of internal war.

History of Federal Government, vol. I., page 112.

So, too, in his Essays on Popular Government, which were published in 1885, Sir Henry Sumner Maine said:—

"On the whole, there is only one country in which the question of the safest and most workable form of democratic government has been adequately discussed, and the results of discussion tested by experiment. This is the United States of America. American experience has, I think, shown that, by wise constitutional provisions thoroughly thought out beforehand, democracy may be made tolerable. The public powers are carefully defined; the mode in which they are to be exercised is fixed; and the amplest securities are taken that none of the more important constitutional arrangements shall be altered without every guarantee of caution and every opportunity for deliberation.

"The experiment is not conclusive, for the Americans, settled in a country of boundless, unexhausted wealth, have never been tempted to engage in socialistic legislation; but, as far as it has gone, a large measure of success cannot be denied to it, success which has all but dispelled the old ill-fame of democracy.

Popular Government, page 110.

"The Federal Constitution has survived the mockery of itself in France and in Spanish America. Its success has been so great and striking, that men have almost forgotten that, if the whole of the known experiments of mankind in government be looked at together, there has been no form of government so unsuccessful as the Republican."

Ibid., page 202.

The favorable judgment of these high authorities has been more than confirmed by Mr. Bryce, in his American Commonwealth, and even Mr. Lecky, who augurs so unfavorably for the liberty and security of the citizen, when Democracy shall have established itself throughout Europe, points to the

exceptional conditions under which the experiment of Democratic government has been tried in the United States, as accidents which render the result of the trial an unsafe precedent for other countries. (*Democracy and Liberty*, pages 67-68.)

In view of some recent developments, and of tendencies which are becoming more and more apparent, it is probable that some of the commendation, as well as some of the censure, bestowed by these foreign critics should be seriously qualified. It is certain that the Senate of the United States has never been held in such low esteem as at the present time, and the adjournment of Congress is welcomed as a cause of public congratulation. A few weeks ago the prevalent view was accurately expressed by a leading journal, which declared that "At no time, in the lifetime of the present generation has the public opinion of the National Legislature been so contemptuous, and so deservedly contemptuous." The methods of lawmaking in use in Washington are beyond question as bad as can be devised, and with the growth of population and wealth, and the resulting growth in the demands for future legislation, the dangers of corrupt, hasty, and imperfect legislation must steadily increase. Whether it will be possible to limit the subjects of legislation by Congress, and to insure a more intelligent and thorough consideration of the bills which are passed, are questions which can only be satisfactorily answered by those who have had experience in the practical work of framing and passing laws in the House and Senate; but some light will be thrown upon the subject by the history of what has been done, in this State, for the protection of the people and their property against their representatives in whom is vested the legislative power of the Commonwealth.

It is to a brief sketch of the history of the methods adopted for this purpose, in the constitutions and constitutional amendments of Pennsylvania, that I now invite your attention.

In pursuance of a resolution of the Continental Congress, adopted May 15th, 1776, recommending assemblies and conventions of the United Colonies—

Where no government sufficient to the exigencies of their affairs had been established, to adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular and America in general,

the Provincial Conference Committee of the Province of Pennsylvania met at Carpenters' Hall, in Philadelphia, June 18th, 1776. Upon the following day it was unanimously resolved to call a Provincial Convention—

For the express purpose of forming a new government in this Province, on the authority of the people only.

After prescribing the qualifications of members and providing for the method of holding the election (and, upon the 24th of June, declaring their willingness to concur in the vote of Congress declaring the United Colonies free and independent States, provided the forming of the government and the regulation of the internal police of this colony be always reserved to the people of the said colony), the Conference upon the 25th of June dissolved itself.*

The Convention met on the 15th of July, and upon the 28th of September adopted the Constitution of 1776. It appears from the brief minutes which have been preserved that the declaration of rights received a large share of attention, and, after a long preamble, this declaration constituted the first chapter or article of the Constitution. In accordance with the views of Dr. Franklin, the President of the Convention, the supreme legislative power was vested in a single body, styled the House of Representatives, with express authority to—

Redress grievances, impeach State criminals, grant charters of incorporation, constitute towns, boroughs, cities, and counties, and all other powers necessary for the legislature of a free State or Commonwealth :

Subject to the condition that—

The members shall have no power to add to, alter, abolish, or infringe any part of this Constitution.

The only provisions relating to the form or mode of procedure were a requirement that the votes and proceedings

* Proceedings relative to calling the Conventions of 1776 and 1790, &c. Hbg., 1825.

should be printed weekly, with the yeas and nays when required by two members, and that all bills of a public nature should be printed for the consideration of the people before final reading, and, except on occasions of sudden necessity, should not be passed into laws until the next session of the Assembly. A Supreme Executive Council of twelve persons was created, and the President and Vice-President were to be chosen annually by the joint ballot of the General Assembly and Council. The final section provided for a Council of Censors to be elected in 1783 and in every seven years thereafter, whose duty it should be to inquire whether the Constitution has been preserved inviolate, and the executive and legislative branches of the Government had assumed or exercised greater powers than they were entitled to under the Constitution, with power to call a convention and propose amendments.

The real control of all departments of the Government was thus really centred in the Legislature, and by the time the Council of Censors met in 1783, its many usurpations, both of executive and judicial power, had caused great discontent, and protracted and earnest discussion took place as to the necessity of calling a convention to revise the Constitution. It was pointed out, in a report submitted in August, 1784, that the peculiar circumstances of Pennsylvania, under the proprietary government, had naturally led to such usurpations. The enormous influence of the Proprietor, having an interest adverse to that of the people, had prompted their representatives anxiously to embrace any opportunity to get the public revenues into their disposition, and thus the same body which levied the money from the subject also expended it, in some instances by their resolves, without control or accountability. In like manner, the unwillingness to give the proprietary government the increased power which would have been derived from the creation of a court of chancery, had led to the retaining of the exercise of equitable power by the Assembly. These precedents, it was declared, had been too often recurred to since the Revolution.

Many instances enumerated in the report were of a very

flagrant character. As, for example, a law was passed to vest in one claimant, real estate in the possession of another, after it had been shown that an action in ejectment was pending in the Court of Common Pleas of Philadelphia County, and it was objected that in view of the constitutional right to a trial by jury, the right to "redress grievances" did not extend to such cases unless the word "grievances" had changed its import. To this it was replied that—

It was of no importance what the word "grievances" meant or means in England or elsewhere. It was very well understood here, and here as well as in other countries there may happen cases of oppressive proceedings of executive power and of the courts of justice, and when they do happen we trust the Legislature will interfere and afford redress.

Numerously signed remonstrances against a convention having been received, the Council adopted an address stating that they had determined not to call one, and adjourned with an earnest appeal to the people to give the Constitution a fair and honest trial for seven years more.

The adoption of the Federal Constitution, in 1787, naturally strengthened the movement for the amendment of that of Pennsylvania, and in March, 1789, the Legislature adopted a preamble, reciting the language of the Declaration of Independence in reference to the right of the people to alter or abolish the form of government, and of the Pennsylvania Bill of Rights to the same effect, as proving that they could not be limited to the method of amendment provided by the Constitution of 1776, and, therefore, resolved to submit to the people whether it was necessary to call a convention for the purpose of revising, altering, and amending the Constitution. No popular vote was actually taken upon the question, but in the following September it was reported that the members had reached a full and thorough conviction that the views of the great majority of the people called for the measure, and thereupon it was determined to call a convention to meet upon the 24th of the following November.

On the 2d of December, upon motion of James Wilson, the Committee of the Whole resolved, as the opinion of the Convention, that—

The Legislature of this State should consist of more than one branch ; and upon the 3d of December, upon motion of William Lewis, this resolution was amended so as to read—

That in the opinion of this committee, the legislative department of the Constitution of this Commonwealth requires alterations and amendments so as to consist of more than one branch, and in such of the arrangements as may be necessary for the complete organization thereof.

Upon the 7th of December, upon motion of Mr. Wilson, the following resolution was adopted :—

Resolved, That in the opinion of this committee the Constitution of this Commonwealth shall be so amended as that the supreme executive department shall have a qualified negative on the legislative.

These resolutions were adopted by the Convention upon the 9th and 10th of December. The draft of the legislative articles, submitted on the 21st of the same month, corresponded substantially with the final revision in the Constitution as adopted on the 2d of September, 1790.

The general frame of the Constitution was, of course, modeled after that of the Federal Constitution. Neither instrument evinces any great jealousy of the power of the legislature. Except the clause as to the writ of *habeas corpus* and bills of attainder, the restrictions upon the power of Congress were intended to prevent discrimination against a section or a State rather than encroachments upon the rights of individuals, and as the new agent, constituted to act for the common convenience and the common welfare, was to act under a letter of attorney containing carefully specified and enumerated powers, it was not even thought necessary or proper by the Convention to add any distinct reservation of the powers not expressly granted, nor any enumeration of rights regarded as unalienable and indefeasible. This was doubtless the logical view of the subject, but the objections to the new government would probably have prevailed, if it had not come to be understood that the first Congress would submit amendments which would constitute a substantial bill of rights. These amendments were ratified by the Legislature of Pennsylvania upon the 10th of March, 1790, while the Constitutional Convention was in session, and upon the 2d of September, 1790, the Con-

vention ratified the new Constitution under which the people of Pennsylvania were to live for nearly a century.

Among the members of the Convention were Thomas McKean, who had drawn the constitution of 1776 for the State of Delaware, in a single night ;* James Wilson, who had taken so prominent a part in the Federal Convention of 1787; William Lewis, a lawyer whose fame still survives; Albert Gallatin, one of the two great Pennsylvanians born outside the State; Thomas Mifflin, and others whose names are still well remembered. Gallatin afterwards said that this Convention was one of the ablest bodies of which he was ever a member and with which he was acquainted, and except Madison and Marshall, that it embraced as much talent and knowledge as any Congress from 1795 to 1812.† They were peculiarly fitted, therefore, to frame a constitution for the Commonwealth, and having adopted a bill of rights in which they specifically curtailed the power of the Legislature by prohibiting laws *ex post facto* and impairing contracts—laws restraining the right of any person, who should undertake to examine the proceedings of the Legislature or any branch of the government, to the use of the printing press, as well as acts of attainder, and the grant of letters of nobility—they, too, thought it unnecessary to do more than to divide the legislative power between a Senate, elected for four years, and a House of Representatives, elected annually, and to give the executive, elected by the popular vote and having a term of three years, a qualified negative on legislation. The requirements as to the keeping of journals and entering the yeas and nays, and originating bills of revenue in the lower House, and the limitation of the power of adjournment, were important as far as they went, but they did not go far.

* "Two days after I went to Newcastle to join the Convention for forming a constitution for the future government of the State of Delaware (having been elected a member for Newcastle County), which I wrote in a tavern, without a book or any assistance." Letter to Governor Rodney, August 22d, 1813. *Life of Thomas McKean*, by Roberdeau Buchanan, page 51.

It was, however, a close copy of the Pennsylvania Constitution.

† "It was less affected by party feelings than any other public body that I have known." Gallatin's Writings, Vol. II., page 583.

Considering that the legislative powers vested in Congress by the Federal Constitution were only those therein granted, the failure to provide explicit limitations is easily intelligible; but in view of the record made by the Legislature of Pennsylvania under the Constitution of 1776, in the way of encroachments upon the judicial and executive powers of the government, further restrictions upon its mode of procedure or powers might naturally have been suggested; but while the jealousy of the executive and judiciary inherited from the contest with the proprietary government, to which the Committee of the Council of Censors had referred in 1784, still survived, and there was reason to apprehend that the authority confided to the Governor (who was, after all, a substitute for a king) might be abused, the feeling was that the members of the Legislature would be the representatives of the people, and full deliberation and delay having been insured by the establishment of two branches, and by conferring a qualified negative upon the Governor, in them the people could securely put their trust. The possibility of frauds in the methods of legislative procedure or of corruption upon the part of the members of the Legislature does not appear to have been considered, and no precautions were taken.

As Chief Justice Marshall said, in *McCulloch v. State of Maryland*, 4 Wheaton, 428:

The people of a State, therefore, give to their government a right of taxing themselves and their property, and as the exigencies of government cannot be limited, they prescribe no limit to the exercise of this right, resting confidently on the interest of the legislator, and on the influence of the constituents over their representative to guard them against its abuse.

For many years the result justified their confidence. The sufficiency of the safeguards, established by the Federal Constitution and by that of 1790, was tested by the experience of nearly a century, and during all that time no civil or political right of the citizen was infringed without the possibility of successful application to the courts of the State or of the United States for redress; and by the common consent of those living under it, the Constitution of 1790 gave the people of Pennsylvania the opportunity to provide themselves with a

good and efficient government. When it was proposed, nearly half a century after its adoption, to call a convention to revise it, the Governor of the State called it a "matchless instrument," and when the Convention assembled in 1838 the members alluded to it with as much veneration as is now used in speaking of the Federal Constitution. In the course of the debates one of the members asserted :

So far had some gentlemen been carried away by their reverence for the Constitution as it now was, that they attributed all the present disasters in the world to the attempt that was made to reform the Constitution of Pennsylvania. He had heard it said that the Constitution was made by the most enlightened men of any age ; that, inasmuch as it was a Constitution under which men had lived happily and prosperously, that therefore one ought not to want to alter it.

And another asserted :

That under no constitution that had ever existed had life, personal liberty, and property been more fully guaranteed than under the Constitution of Pennsylvania.

Debates Const. Conv., Vol XI., 123.

The general legislation of the State down to that time had been in the main judicious, and some of it was of exceptional excellence. The Senate and the House of Representatives always included among their members the leading men of the State and almost every lawyer of prominence—many of them afterwards members of the Supreme Court, and at least two of them—Thompson and Sharswood—succeeding to the Chief Justiceship—served his turn at Harrisburg.

The most important and valuable body of statute law ever enacted in this State was that prepared by the Commissioners appointed under a resolution of March 23d, 1830 :

To revise, collate, and digest all such public acts and statutes of the civil code of this State, and all such British statutes in force in this State as are general and permanent in their nature.

The three Commissioners, William Rawle, Thomas I. Wharton, and Joel Jones, were lawyers of ripe learning and indefatigable industry. Their reports are scarcely less valuable than the Acts which they drafted. They undertook to examine the whole body of British statutes down to the Revo-

lution, and to separately examine and study all of the Acts, more than six thousand six hundred in number, which had been adopted since 1700, for the purpose of ascertaining whether they were private or public, local or general, temporary or permanent, repealed, altered, or in force. It is impossible to read the record of the manner in which they discharged their arduous and responsible duties without the highest appreciation of their services. In the fourth report they thus describe the manner in which their work had been done :

The mode which has been adopted by the Commissioners to effect that cautious and thorough revision of the law which the Legislature seems to have contemplated is that each Commissioner separately studies and prepares the bills which the allotment requires of him ; his draught with explanatory notes and references, is handed to and separately and carefully considered by his colleagues, and returned to him for his further consideration. A joint conference then takes place ; every section, every line, is canvassed, retained, altered, or expunged according to the result of united deliberation. Two fair copies are subsequently made, both of the bill and of the explanatory remarks, which copies, before they are transmitted, are carefully examined and corrected. Less pains than these would be inconsistent with our trust, and could produce no result satisfactory to the Legislature.

Of the twenty-nine statutes which they prepared, twenty-five were adopted and are substantially still in force, and it cannot be doubted that, like the criminal code and code of criminal procedure of 1860, they furnish the precedent to be followed in the revision of the laws of the Commonwealth.

It was, in fact, followed in the appointment of a commission, under the Act of May 5th, 1876, to devise a plan or plans for the government of the cities of this Commonwealth, and the report then submitted resulted in the enactment of the Charter of the City of Philadelphia, known as the Bullitt Bill, which has at least made efficient government possible in that city—although until some change be made in the methods of legislation good government need not be hoped for.

Of the penal code, which is understood to have been largely the production of Judge Edward King, it may be permitted to mention that at the celebration of the eighth centennial of the University of Bologna, in 1888, I was much surprised to be

asked by the late Dr. von Holtzendorff, the head of the great Law School of Munich: "What is the date of your penal code, 1860 or 1861?" His knowledge extended beyond the date, and in the course of his remarks he went on to say that it was regarded, in Germany, as the most perfect code of criminal law in existence.

Unfortunately, all the laws passed prior to the Convention of 1838 were not so wise as those enacted upon the recommendation of the Commissioners, and the people of Pennsylvania were to learn that, while they had environed themselves with all the guarantees from Magna Charta down, which had been invented to secure them against any invasion of their rights except according to due process of law, they had given to the Legislature the power to impoverish them, and to place a perpetual mortgage upon their property and their earnings, for, in the language of Chief Justice Marshall, in giving a power to tax they had given a power to destroy.

In pursuance of a plan of internal improvements, which received almost unanimous approval, the Legislature of Pennsylvania authorized the expending of millions of dollars of borrowed money in the construction of public works. The indebtedness thus incurred, forced the Commonwealth to default and brought a stain upon its good name not yet altogether effaced, and placed an enduring burden of taxation upon its industries which is still grievous to be borne. The importance of this legislation will excuse a brief summary of the facts.

The late Judge Sharswood used to begin his lectures on corporations with the remark, "Pennsylvania is the paradise of corporations." From 1776 to 1837 eleven hundred and forty-two corporations were chartered, with an authorized capital of over \$150,000,000. Excepting banks and banking institutions, they were chiefly *quasi* public corporations, such as turnpike, bridge, canal, and railroad companies. William Penn himself had suggested the practicability of constructing a waterway between the Schuylkill and the Susquehanna, and in 1762 David Rittenhouse and Dr. William Smith, the Provost of the University of Pennsylvania, had surveyed a

route for a canal to connect the two rivers, and the preliminary survey of the Chesapeake and Delaware Canal was ordered in 1774 by the American Philosophical Society. Between 1792 and 1828 one hundred and sixty-eight turnpike companies were incorporated, of which one hundred and two went into operation and constructed nearly two thousand three hundred and fifty miles of road, at a cost of over \$8,000,000. From 1791 to 1828 over \$22,000,000 were expended in the construction of canals, railroads, turkpiques, and bridges, and between 1803 and 1822 the State subscribed for stocks in fifty-six turnpike companies, twelve bridges, and three canal and lock navigation companies, for an amount of nearly \$2,500,000.*

By an Act of the 27th of March, 1824, the Legislature appointed Commissioners for the purpose of promoting the internal improvement of the State, who reported that by the expenditure of \$27,500 a year for five years, the State could secure the completion of a canal from Pittsburgh to Philadelphia, which, in twenty-two years, would put the State in possession of a clear annual revenue of \$300,000.†

The following year Canal Commissioners were appointed, and the construction of canals, bridges, and turnpikes undertaken in all parts of the State.

It is easy to be wise after the event, and every one can now see that it was imprudent to undertake the construction of works of such magnitude in so short a time, and that the money should not have been provided exclusively by borrowing; but the State had not needed to raise revenue by taxation, and it was universally believed that the net income from the improvements under construction would more than pay the interest upon the cost. The fictitious prosperity, which resulted from the large expenditures made, was further aggravated by the distribution of the surplus revenue from the public lands under the Act of Congress of June 23d, 1836, and the general mania for speculation which took

* Historical Sketch of the Finances of Pennsylvania—Publications of the American Economic Association, vol. II., page 20.

† Laws of Pennsylvania, vol. VIII., page 254, *note*.

possession of the entire people of the United States. It was from no exceptional lack of foresight, peculiar to Pennsylvania only, that the State became involved as it did, nor was it, in fact, any good ground of censure that when the panic of 1837, which destroyed commercial credit throughout the country, had fully developed, there should have been a temporary default in the payment of interest on the State debt. In no State was the calamity so overwhelming and so complete as in Pennsylvania, not only because of the larger expenditures of capital by the State and by individuals in enterprises which were, for the time, absolutely unproductive, but because the failure of the Bank of the United States affected Philadelphia more severely than any other community. That bank having failed for the second time in 1839, and it having become obvious that no further loans could be negotiated, Governor Porter, in his message of 1840, pressed upon the Legislature the necessity of taxation, saying :

"It must be obvious to every citizen of the Commonwealth that his house, his farm, and his property are all pledged beyond the possibility of release to the ultimate payment of the State debt, and the interest thereon accruing, agreeably to the stipulation of the loan-holders. . . . The private individual would tax his industry and his property to the utmost to pay off a debt and the interest upon it that was consuming the avails of his industry and his substance. So also, it seems to me, should the representatives of a wise and judicious people."

It is not to be wondered at that the taxing Acts first passed proved inadequate, or that the people, overwhelmed with their disasters, should have been slow to respond; and when it was found impossible to meet the interest falling due August 1, 1842, interest-bearing certificates were issued, and in April, 1843, in order to raise funds, the Legislature authorized the sale of all shares of stock held by the State in any incorporated company. At the prices that could then be obtained the loss was enormous, but it was bravely faced, and by the Act of April 29, 1844, a system of taxation, as searching and severe as any ever adopted by the representatives of a free people, was put in force. The stoppage of business and the disappearance of values, which followed the panic of 1837, swept away private fortunes and reduced thousands, who had been

prosperous and affluent, to penure, and for several years destroyed the earning power of every industry; but, under the pressure of a visitation, as destructive as the Irish famine or a war of invasion, the people of Pennsylvania, without a hint of repudiation, adjusted themselves to the load which their representatives had placed upon them, and, by the end of 1845, the credit of the State was restored.

If the full truth had always been known, the manner in which they faced adversity would have been regarded as greatly to their credit; but until the publication of the *Historical Sketch of the Finances of Pennsylvania* of Mr. T. K. Worthington in 1887 (Publications of the American Economic Association, Vol. II., No. 2), the facts could only be found in official reports and in the pamphlet laws and notes added to the edition of the *Laws of Pennsylvania*, published by Kay & Bros.

It is not likely, however, that there would have been so general a misapprehension upon the subject, had it not so happened that Sydney Smith had made a small investment in the State loan, which he described in his letter to Congress* as "a saving from a life income, made with difficulty and privation." Considering that he had just inherited from his brother a large fortune, which, as he said in a letter to Mr. Murray, referring to his letter to Congress, had made him a rich man,† his allusion to his privations was not quite ingenuous, and as he was a singularly just and fair man, if he had been acquainted with the facts, he would doubtless have made allowance for a temporary hesitation to adopt the measures necessary to meet such an emergency; but at all events he had reason for his criticism, as his interest was undoubtedly for a time delayed,

* McCulloch's Dictionary of Commerce, page 628.

† I am become rich. My youngest brother died suddenly, leaving behind him £100,000, and no will. A third of this, therefore, fell to my share, and puts me at my ease for my few remaining years. After buying into the Consols and the Reduced, I Read Seneca on the "Contempt of Wealth." What intolerable nonsense! . . . Did you read my American petition, and did you approve of it?

Letter to John Murray, June 4th, 1843. *Life and Letters of Sidney Smith*, Vol. II., page 489.

and his jokes were so good that not only may their unfairness* be overlooked but the service rendered by him may be now gratefully recognized. His ridicule, as Governor Porter was in the habit of saying, was more potent than solid argument, and helped greatly to secure the passage of the onerous tax law of 1844.

A Harvard law professor, however, who has undertaken to deal with the subject, has no such excuse for his blunders. In his essay upon restraints on the Alienation of Property, Professor Gray offers this fantastic explanation of the doctrine of spendthrift trusts:—

Among the causes which have produced the frame of mind in which the doctrine of spendthrift trusts has found a congenial home there must be placed the attempts to avoid payment of the money borrowed by the Nation, or by States or municipalities, either through repudiation, or through technical objections, or through debasement of the coin or currency, which have at times been too successful, and which have exercised so great an influence on political parties. Such things cannot be without a weakening of the moral sense of the feeling of imperative duty to use all the money that a man can control for the payment of his debts.

It is worth observing that the Pennsylvania courts were inaugurating the doctrine of spendthrift trusts at the time when the epidemic of repudiation which Sydney Smith has immortalized was for the time discrediting that Commonwealth.

Now the decision in *Fisher v. Taylor*, 2 Rawle, 33, was made in 1829, and there was no default in the payment of interest until 1842, and the State's continued to sell at a premium for nearly ten years after the decision in *Fisher v. Taylor*, and sold at par as late as 1839. (Historical Sketch, &c., page 70.) According to Professor Gray, however, the Supreme Court of Massachusetts had not the excuse which tended to exculpate the Supreme Courts of the United States and of Pennsylvania. After offering his explanation of the Pennsylvania doctrine, he goes on:—

An effect, and at the same time a cause, of the state of mind which favors spendthrift trusts appears in the statutes by which large amounts of property are exempted from execution. Judge Miller, with his accus-

*The State of Pennsylvania cheats me this year out of £ 50. There is nothing in the crimes of kings worse than the villainy of democracy. The mob positively refuse all taxation for the payment of State debts!

Letter to Lady Grey, September 19th, 1842, Vol. II., page 475.

tomed acuteness, has observed this. In several of the States property, real and personal, to the amount of thousands of dollars, is exempt, and the exemption laws are gloried in as calculated "to cherish and support in the bosoms of individuals those feelings of sublime independence which are so essential to the maintenance of free institutions." A community which has accustomed itself to look with complacency on a man nolding ten or twelve thousand dollars worth of his own property, and leaving his debts unpaid, is not likely to be troubled by a man's having a life interest under a trust which his creditors cannot reach.

These have been powerful factors in the introduction of spendturift trusts, but they do not account for everything. Take, for instance, the case of *Broadway Bank v. Adams*, in Massachusetts. The repudiation of National, or State, or personal obligations has never, since Shay's rebellion, found favor in that State, and the exemption laws are moderate and reasonable.

It may be thought that this last remark does not evince much familiarity with the history of Massachusetts during the war of 1812, but the story of a late controversy, now mostly buried in the law reports, and in the reports of legislative committees of Massachusetts, may serve to indicate that the standard of integrity in Boston is not much higher than that of Harrisburg, and though somewhat irrelevant it may be worth the telling.

Prior to 1862 the State of Massachusetts had agreed to lend \$2,000,000 to the Troy and Greenfield Railroad Company, to aid in the construction of the Hoosac Tunnel, but as the management was unsatisfactory an Act was passed under date of April 25th, 1862, entitled "An Act to provide for the more speedy completion of the Troy and Greenfield Railroad and Hoosac Tunnel," by the second section of which the Railroad Company was authorized to surrender to the State the property then mortgaged upon this condition: "But the right of redemption shall not be barred until ten years have elapsed after the said road and tunnel are completed and the same opened for use." It is needless here to say that the phrase "right of redemption" is a technical one, and *ex vi termini* involves the right of a judicial procedure. By the Act of 1804, the Legislature of Massachusetts had passed an Act authorizing any mortgagor, who had mortgaged property to the Commonwealth, to file a bill in equity for the redemption thereof in the Supreme Judicial

Court; and it was indisputable that it was believed by the representatives of the State of Massachusetts, including its then Attorney-General, as well as by those of the company, that this Act gave to the company the right to maintain a bill to redeem in case of controversy. After the tunnel was opened, the company offered payment, but the State Treasurer declined to state an account, and thereupon a bill was filed for an account and to redeem, to which the Attorney-General interposed a demurrer. After argument, the demurrer was sustained and the bill dismissed. The opinion of the court, reported in 127 Mass. 43, contains a full and elaborate discussion of the questions involved, and must be accepted as a correct exposition of the law of the State. The company then found it necessary to apply to the Legislature for an Act giving the court the jurisdiction to hear and determine the case, which both parties believed it to possess, when the bargain was made. Such an application was presented at several successive sessions of the Legislature, and upon one occasion counsel amused himself by alluding, with as much particularity as was consistent with politeness, to the letter of Mr. Ticknor to the *Boston Advertiser*, a copy of which was sent by Mr. Everett to Sydney Smith, and which is printed in his "Life and Letters," vol. I., page 350. In the course of that letter Mr. Ticknor observes:

The claims of a creditor are not always welcome to his debtor, and, when other means have failed, they are not always set forth by the injured party in the most civil and gracious words; writs and executions, for instance, are not drawn up in terms chosen for the sake of pleasing "ears polite." Mr. Smith would, no doubt, have much preferred to use the good set terms of these instruments of established authority; and nobody would then have fancied he was doing anything unreasonable, since he would be doing just what everybody else does who cannot in other ways get his rights. But the great and rich State of Pennsylvania, like other States of our Union, has taken some pains to place herself above the reach of such vulgar processes for coercing her to be honest. She *cannot* be sued; her creditor, therefore, is compelled to use his own words instead of the more stringent words of the law.

Following a precedent, in the way of self-gratulation, set more than eighteen centuries ago, Mr. Ticknor adds:

The people of Massachusetts and New England, and, indeed, the people of the majority of these States, are not called upon to take to

themselves any more of the censures of Mr. Smith than a man is obliged to take of the censures that fall on a disgraced community with which he is intimately associated. We may, therefore, well be thankful, and in some degree proud, that these States have committed no injustice towards their creditors; but while we are thankful for this we must also be careful not to countenance the dishonest States in their dishonesty, nor to seem eager to rebuke a foreign creditor who comes among us boldly demanding his dues.

The application would seem to have been reasonably easy, but the Legislature of Massachusetts could never be induced to confer upon their Supreme Court, in that case, the power which their State officials had asserted it possessed, and which it already had in other like cases, and to permit their own Supreme Court to decide the questions involved; and the company was obliged finally to accept a small amount named by the committee of the Legislature. The result was that in that case, at least, which is hardly yet barred by the Statute of Limitations, the State of Massachusetts was guilty not merely of repudiation, but of confiscation, and the appropriation of other people's property to its own use and emolument. In view of that record, it is not the part of wisdom for any Harvard professor to institute comparisons between his own State and the State of Pennsylvania.

To return from this digression, it is worthy of note that, notwithstanding the fact that the results of the mistaken policy of attempting to construct internal improvements, beyond the ability of the State to pay for them, were becoming apparent in 1838, when the Convention met to revise the Constitution, the only additional restrictions placed upon the Legislature were those relating to the chartering of banks of discount, the making and securing of compensation before private property was taken for public use, and the granting of legislative divorces. The subjects which aroused interest were the insertion of the word "white" in the suffrage qualification, the power of appointment by the Governor, and the substitution for the life tenure of the judges of the Supreme Court of a term of ten years, and of ten years for the judges of Common Pleas.

Neither the Constitution of 1776 nor that of 1790 had been

adopted by popular vote, and the amendments of 1838 were only carried by a majority of a little over twelve hundred. The lesson taught by the history of the State improvements, however, had been effectually learned, and no further attempt was made to involve the State in the construction of public works. On the contrary, the results of the operation of those already built were so unsatisfactory that in 1857-8 the railroads and remaining canals, which had cost the State over \$60,000,000, were sold for \$11,000,000. But in different sections of the State its municipalities were anxious to promote the building of railroads, and the right to do so, when authorized by the Legislature, was finally established in 1853, by the Supreme Court in the case of *Sharpless v. The Mayor of Philadelphia*, 9 Harris, 147, in which Chief Justice Black delivered one of his ablest opinions. The full mischiefs of such legislation were soon made manifest when the payment of county bonds, fraudulently issued, without any corresponding benefit having been received, was disputed.

In the *Lawrence County* case, 1 Wright, 358, decided in 1860, where the Supreme Court of this State proposed to "stand alone," and refused to treat coupons bonds as negotiable, Judge Woodward justified their course by saying:

We know the history of these municipal and county bonds—how the Legislature, yielding to popular excitements about railroads, authorized their issue; how grand juries, and county commissioners, and city officers were moulded to the purposes of speculators; how recklessly railroad officers abused the overwrought confidence of the public, and what burdens of debt and taxation have resulted to the people. A moneyed security was created and thrown upon the market by this paroxysm of the public mind, and the question is now, how shall the judicial mind regard it?

To this Judge Grier replied, in *Mercer County v. Hackett*, 1 Wallace, 96:

Although we doubt not the facts stated as to the atrocious frauds which have been practiced in some counties, in issuing and obtaining these bonds, we cannot agree to overrule our own decisions and change the law to suit hard cases. The epidemic insanity of the people, the folly of county officers, the knavery of railroad "speculators," are pleas which might have just weight in an application to restrain the issue or negotiation of these bonds, but cannot prevail to authorize their repudiation,

after they have been negotiated and have come into the possession of *bona fide* holders.

So far as this State was concerned the question had lost its interest, for in 1856 the Legislature submitted amendments, which were adopted in 1867, limiting the amount of indebtedness to be contracted by the State, and prohibiting the Commonwealth from promoting by loan or subscription any private or corporate enterprise, or from authorizing any municipal loan or subscription of a like character. These amendments, and that reserving the right to alter or revoke any charter of incorporation, were of inestimable value when the spirit of speculation shortly afterwards revived by the developments in the oil regions and the expenditures of the war.

The possibilities of private and special legislation were not, however, fully proven till after the war had stimulated the industries of the State into unprecedented activity. The annual volume of the pamphlet laws rapidly increased in size, and from 1864 to 1873, each is large enough to contain many pamphlets. The demand for the coal and iron of Pennsylvania, begun during the war, was kept up until 1873 by the growth of the railroad system of the country. Every mine and furnace and mill was kept running to its full capacity, but no department of manufacture was more active than the Pennsylvania Legislature. It turned out the *Credit Mobilier*, P. L., 1859, page 896; 1864, page 97, which contributed so much to the railroads, the politics, and the jurisprudence of the country. It granted hundreds of charters by simply giving to three favored names the powers enumerated in some other Act incorporated merely by reference. It even furnished charters upon condition that no organization should be effected or business done within the confines of the State,* and such was the pressure upon its

* The New York and Colorado Vineyard Company was incorporated by an Act of February 16, 1866, and its supplement of February 17, 1870. Its character sufficiently appears in the opinion of the the Supreme Court of Kansas, in the case of the *Land Grant Railway Co. v. The Commissioners of Coffee County*, 6 Kan. 245, where the court said :

"No rule of comity will allow one State to spawn corporations and send them forth into other States to be nurtured and do business there,

members that it became the habit to prepare laws for the signature of the Governor, which had never passed either branch of the Legislature. Some of them are still on the statute book, and one of them was the subject of much debate in the courts. The Catawissa Railroad Company had obtained an injunction restraining a grade crossing, and thereupon a bill was introduced making such crossing unlawful. It was defeated in both houses, but became, and still is, a law. P. L., 1871, 136. A like case of so-called legislation being under discussion, Senator Buckalew said:

Take the case of the bill of last Winter in relation to the crossing of railroads, deliberately voted down, strongly voted down in both Houses; and yet, after we adjourned, there lay the bill in the executive chamber, passed by a clerk whose false and fraudulent hand had usurped the business of legislation. The Executive was informed by several persons that no such bill had ever passed. However, after a little while, the pressure was so great and the explanations were so admirable that he put his hand to the bill, and it is recorded among our laws.

Well, you have a committee of investigation on that subject; they are considering it; after a little they will make a report, possibly in favor of repealing the bill; possibly, you may pass it through this chamber; but if any of those interests in the Commonwealth that have an illegitimate and pernicious control over your legislation choose to say "no" to it, you cannot pass your repeal through the House of Representatives.

(Legislative Journal for the session of 1872, page 242.)

In a brief filed about that time, in a litigation where it was

when said first mentioned State will not allow them to do business within its own boundaries. . . . From the only territory in the whole world over which the State of Pennsylvania has any jurisdiction or control, and in which it could authorize a corporation to have an office or do business, it excludes this corporation, and the attempt on the part of the State of Pennsylvania to authorize this corporation to have an office or to do business anywhere else except in the State of Pennsylvania is *ultra vires*, illegal and void. The truth is that while the supposed corporation was originally organized for the whole United States except the State of Pennsylvania, and afterwards, by its amended charter of February 17th, 1870, for the whole world except the State of Pennsylvania, it had no legal or valid existence anywhere upon the face of the earth. At the very creation of this supposed corporation its creator spurned it from the land of its birth as illegitimate and unworthy of a home among its kindred, and sent it forth a wanderer on foreign soil. Is the State of Kansas bound by any kind of courtesy or comity or friendship or kindness to Pennsylvania, to treat this corporation better than its creator, the State of Pennsylvania, has done?"

objected that a certain section had been fraudulently interpolated in a New Jersey Act, it was urged in reply that the parties then offering the objection had themselves profited by similar legislation, and had induced the court to rule that it was impossible to go back of the seal of the Secretary of State, and it was added that—

Judging from the reports in the Legislative Record, it would seem to have become quite a common thing at Harrisburg to have laws signed and recorded with provisions inserted, after having been emphatically rejected by the two Houses, or expunged after having been introduced ; and what is curious is that a charge of this sort is made (see Legislative Record, 1872, pages 218, 241, 481, 500, 608, 672, 860, 1014, 1131) without producing any more show of surprise than would have been manifested by the "minions of the Moon" (as Falstaff proposed that he and his fellow-thieves should be called when the prince became king) at the story of a highway robbery on Gadshill.

A more pertinent illustration might have been found in the diary of Mr. Pepys, who relates, under date of May 13th, 1664, that—

There was also in the Commons' House a great quarrel about Mr. Prin, and it was believed that he should have been sent to the Towre for adding something to a bill (after it was ordered to be engrossed) of his own head—a bill for measures of wine, and other things of that sort, and a bill of his owne bringing in ; but it appeared that he could not mean any hurt in it. But, however, the king was fain to write in his behalf, and all was passed over.

Pepys' Diary, vol. IV., page 124.*

It will be remembered, by all who were then old enough to be admitted to practice, that it had come to be generally believed that the lobby had as much to do with legislation as the members of the Senate and House, and charges of fraud

MAY 13th, 1664.

* Mr. Prynne having taken the liberty to alter the draught of a bill relating to public houses, having urged in his excuse "That he did not do it out of any evil intent, but to rectify some matters mistaken in it, and make the bill accord with the sense of the House," the House ordered him to withdraw, and after debate, being again called in, the Speaker acquainted him "That the House was very sensible of this great mistake in so ancient and knowing a member as he was, to break so material and essential order of the House as to alter, amend, or interline a bill after commitment, but the House had considered of his answer and submission, and were content at this time in respect thereof, to remit the offense."

Cobbett's Parliamentary History, vol. IV., col. 293.

were frequently circulated. So great was the dissatisfaction that finally the passage of an Act was secured, under date of April 11th, 1872, submitting the question of calling a Constitutional Convention to a vote of the people, and a majority having been cast in its favor, the Convention assembled on the twelfth day of November, 1872. The members came together in a curious temper. With few exceptions they were animated with a spirit of bitter hostility to the Legislature, and one after another declared that they had only been sent there to put an end, if possible, to the frauds prevailing at Harrisburg. In order to recall the state of feeling, in which the Convention assembled and undertook the work of preparing the new Constitution, it will be well to quote the words of some of the representative members.

Mr. Wayne MacVeagh said :—

“ We have never doubted that in all the days of our history honorable, honest, good men have adorned the sessions of the State Legislature in abundance, and such men adorn it to-day. It is not, therefore, with any desire to wound the susceptibilities of any person, but from the earnest conviction that what we say is the truth, that we declare, notwithstanding the good men who have been there and are there now, the legislation of this State, for private advantage, has been and is often matter of bargain and sale. Unfortunately this is true of the Legislature of almost every American State, and even, as is being daily proven, of the National Legislature also. Gentlemen, this is the crying evil, the menacing peril of free institutions in America. This is the deadly cancer which is eating into the very heart of the body politic, and we will not help ourselves by crying that we are not sick ; we will do no good to anybody by robing ourselves in the robes of an unrighteous indignation and declaring that we are as healthy, as sound and as pure as in the early days of the Republic. It is not so. The whole heart is sick and the whole head faint with a vile disease, which is not new, indeed, but grows more cynical and therefore more hateful each day that the world lives in the light of a Christian civilization.

“ The pecuniary corruption of legislative bodies, the sale of legislation for private advantage—this is the gravest evil which afflicts us. Unlike mercy, Mr. Chairman, it curses him who gives and him who takes. It is erecting an impassable barrier in the pathway of our public service which will soon be a bar to any man who will not put a money value upon the honor and the virtue of a gentleman. One day it demands pay to prevent the repeal of a law already enacted. Another day it whines for compensation for supporting some just measure of public utility, perhaps even of the sacred charity of the State. The third day it openly exposes votes for sale as at a public auction to the highest bidder. While

these facts are patent and known, it is not unkindness to anybody, it is not harsh criticism of anybody, which induces us to speak of them and to try, in some small way, to alleviate or to diminish them."

Debates of Constitutional Convention, vol. I., page 423.

Judge Black delivered a carefully-prepared speech that has been published in the volume edited by his son, and is, therefore, easily accessible. In the course of his remarks he said:

"After all that has been said upon this floor, it cannot be denied that the Legislature of the State of Pennsylvania has habitually and constantly, for the last twenty-five years or more, betrayed the trust reposed in its members; and this has gone so far that we must have reform if we would not see our institutions perish before our eyes. . . . There was a time when membership of our State Legislature was a passport to honor and admiration everywhere, from a Parisian drawing room to the cottage of a peasant. Now that same Legislature is a stench in the nostrils of the whole world. . . .

"My friend from Dauphin (Mr. MacVeagh) spoke of legislation under the figure of a stream, which, he said, ought always to flow with crystal water. It is true that the Legislature is the fountain from which the current of our social and political life must run, or we must bear no life; but as it now is, we keep it merely as 'a cistern for foul toads to knot and gender in.' He has described the tree of liberty, as his poetic fancy sees it, in the good time coming, when weary men shall rest under its shade, and singing birds shall inhabit its branches and make most agreeable music. But what is the condition of that tree now? Weary men do, indeed, rest under it, but they rest in their unrest, and the longer they remain there the more weary they become. And the birds—it is not the woodlark, nor the thrush, nor the nightingale, nor any of the musical tribe that inhabit the branches of our tree. The foulest birds that wing the air have made it their roosting place, and their obscene droppings cover all the plains about them;—the kite, with his beak always sharpened for some cruel repast; the vulture, ever ready to swoop upon his prey; the buzzard, digesting his filthy meal and watching for the moment when he can gorge himself again upon the prostrate carcass of the Commonwealth. And the raven is hoarse that sits there croaking despair to all who approach for any clean or honest purpose."

Debates of Constitutional Convention, vol. II., page 489.

Speaking of the practices which then prevailed at Harrisburg, Senator Buckalew said:

Suppose a bill is carried into the transcribing room on the last night of the session, and some transcribing clerk or assistant, or the clerk to the committee to compare bills, is paid fifty or one hundred dollars by a party to add a section to the bill. That section is simply added to or interjected into the transcribed copy, and goes to the office of the Secretary of the Commonwealth, and, inadvertently, the Governor signs the bill.

That, sir, has happened over and over again. It is the common, the accepted mode, in which frauds in legislation are committed, and yet an inspection of the journals of both Houses will not detect the fraud, and a provision that they shall be inspected is of no value whatever in a case of this kind.

Now, sir, I know the cases of two or three bills in which fraud was detected, not by the Journals of the two Houses, but by going to the original manuscript bill as introduced originally into one of the Houses, and to the proper bill which was sent from one House to the other, because thus you are able to find the original marks made by the clerks of the respective Houses upon all amendments when they are offered, and when action upon them is had. In that manner, in the cases to which I have referred, we were able to ascertain that certain amendments had not gone at all through the hands of the principal clerks of the Senate and House, and yet they were foisted into those bills, which, being sent to the Governor and signed by him, became laws of the Commonwealth, and no power of this State was able to touch them, except the Legislature, at a subsequent session by repealing them, should strike them from the statute book. I remember my experience in one case where a fraud was detected. The repealing bill was passed through the Senate upon the showing of the original records of the two Houses, not the Journals, and the bill was sent to the House of Representative, and there there was a grave and earnest debate, and the repealing bill was manfully voted down. The law stands there yet upon the statute book ; a law passed by a transcribing clerk of the House, and by no other authority whatever.

Ibid., vol. II., page 775.

These speeches are fairly typical, and unquestionably represented the views of the large majority of the members of the Convention. Instead of the confidence that the members of the General Assembly would truly represent and protect their constituents, which prevailed in 1776 and 1790 and even in 1838, the dominant thought of the Convention was that all its energies should be given to the task of guarding the people of Pennsylvania against their own Legislature. They had had the benefit of a previous experiment, in that direction, in the Constitution adopted by the State of Illinois in 1870, and many of them had served in legislative bodies. They were familiar, therefore, with the ordinary rules of legislative procedure, and knew how rules were evaded and irregular and fraudulent methods practiced. The derivation of each clause in the new Constitution is given by Senator Buckalew in his admirable volume, which thus constitutes the most satisfactory of all commentaries, and it will be observed

that many legislative rules were embodied in the Constitution and so made secure against any suspension in the closing hours of a session.

After having substantially reaffirmed the twenty-six sections of the Declaration of Rights of 1790, the amendments of 1838 and those of 1857, the Convention attempted to exclude the possibility of any motive to corrupt action, and to lessen the volume of legislation by excepting absolutely certain subjects from the general grant of the legislative power of the Commonwealth, and by denying the right to pass any local or special law relating to subjects enumerated in twenty-six clauses, or any local or special bill of any character, unless notice of the intention to apply therefor should have been published in the locality to be affected, as provided by law. Another practical innovation was the establishment of rules of procedure, intended to make each branch of the Legislature a deliberate, if not a deliberative, body. The requirements that every bill shall be read at length on three different days in each house; that all amendments shall be printed; and that the final vote shall be taken by yeas and nays,—preclude any member from asserting that he had not the opportunity to become acquainted with its provisions; and the further requirement that no bill shall become a law unless a majority of the members, elected to each House, be recorded thereon, as voting in its favor, is an effectual safeguard against legislation by a Speaker and a minority of the members of each House.

In short, they did not intend to make it easy to pass laws, and while they did not adopt the provision of the Constitution of 1776, “that except on occasions of sudden necessity bills should not be passed into laws until the next session of the Assembly”—a curious anticipation of the *referendum*, now so much talked about—they did provide that the General Assembly should meet every second year, and hold no adjourned annual session after 1878. The results of these rules of procedure, coupled with a reduction in the subjects of legislation (which has worked a change in our pamphlet laws like that which Sydney Smith pronounced the most important of

all distinctions in literature—that between the antediluvian and the postdiluvian) has been to make it possible for each member to exercise something like intelligent and discriminating judgment in respect to every bill which becomes a law; and it is, I believe, the judgment of the profession that even now the legislation since 1874 is better, both in form and in substance, than that of preceding years.

In pursuance of a resolution adopted at the last annual meeting, a bill has been prepared by the Committee on Law Reform for the appointment of Legislative Commissioners which would insure still greater accuracy of expression, and greatly improve the general character of our legislation. It is in the same line as an Act reported at the last session of the Legislature of New York by a commission appointed to recommend changes in methods of legislation. Time will not permit me to say more upon this important subject, and it will be more appropriately discussed by the committee; but, after all, the greatest advantage secured by the methods prescribed by the Constitution is not so much the improvement in the character of the bills which do become laws, as in the possibility that now exists of arresting those which ought not to pass. In these days, when there is a disposition to correct every human ill by Government interference, it is no small gain that lawmaking in Pennsylvania has been made so difficult and so dilatory; and our greatest obligation to our representatives is not so much for the laws they make as for the vastly greater number they defeat.

The great change, however, in the Constitution of 1874 was one of substance rather than of form.

The prohibition of special legislation was regarded as the most important of all the amendments, and it has had the greatest influence upon the volume and character of subsequent legislation. The power to pass a special Act precisely fitted to the special case, without disturbing the general rule, was a most valuable power, and it would never have been taken away from the Legislature of Pennsylvania had not the experience of the previous ten years demonstrated that when a legislative body had the power to grant special privileges

having a pecuniary value, such privileges would come to be bought and sold like any marketable commodity. The only way to put an end to this mischief was to lead the Legislature, if possible, out of temptation, by taking from it everything it had to sell. This is of the essence of the Constitution of 1874. It rests upon the assumption that if men have a motive to buy legislation, they will, in the long run, either succeed in corrupting the members already elected, or take care that others are chosen who can be seduced. Stated in this bald way, this seems a low, repulsive view of human nature, but it is identical with that enforced by courts of equity in all dealings with his trust by one in a fiduciary relation. The danger of abuse is so great that no inquiry into the fairness of the particular transaction will be entered upon. For the safety of beneficiaries in all cases, in none can the trustee acquire an adverse interest, or, as Mr. Justice Story expressed it: "It is to interpose a preventive check against such temptations and seductions that a positive prohibition has been found to be the soundest policy, encouraged by the purest precepts of Christianity."

Remembering the condition of things at Harrisburg prior to 1874, it must be admitted that the inconveniences which are now often made the subject of complaint would be of relatively trifling importance, if a complete reform had been effected. Upon this question others are better qualified to speak. The organized lobby, which possessed Harrisburg, disappeared when the new Constitution was adopted, and it has not yet returned. Representatives of corporate and other interests are still in attendance, and the reports which are occasionally heard, of outside interference in legislation, may be well founded. Franchises having large value are still occasionally wanted, but as they can only be conferred by general laws, they become, when once given, available for all. It seems fairly reasonable to hope, therefore, that there is no imminent danger of such demands for corporate or other legislation as will renew the baleful influence, which once prevailed in Harrisburg, but there is a danger to which attention should be called. The seventeenth section of article three provides

that "no appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth . . . except by vote of two-thirds of all the members elected to each house," and such appropriation, by the fifteenth section, must be by separate bill which embraces but one subject.

It would seem that these provisions were ample to guard against the possibility of abuse, but during the session of 1895 more than one hundred and twenty appropriation bills of this character were passed, appropriating, in the aggregate, over a million and a half of dollars. As to the policy of collecting from the taxpayers of the State this vast sum, for the purpose of distributing it among the charities of the State, this is not the place to speak; but it is relevant to the subject of this paper to point out that every one of these appropriations must have been the subject of direct appeal to committees of the Legislature, and of communication with many individual members. The mere waste of time is not a slight evil, but it is not the worst. The tendency of such appeals and of such appropriations is the same as in the case of private charters and other special legislation. Solicitation and importunity from the outside will sooner or later meet with exactions from the inside; and if these matters shall once be made the subject of chaffer and bargain, the office of lawmaker will again become one of profit.

To maintain and advance the standard of membership is the most imminent and imperative duty now pressing upon the profession. Lawyers will always constitute a majority of the Legislature, and they represent the Bar in a double sense. If the leaders from all parts of the State could be induced to serve, the duration of the session might be still further reduced, which would in turn render it possible for men in the most active practice to act, so that even Philadelphia might once more have representatives like Sharswood, Meredith, and Eli K. Price. To insure such representation is more essential now than ever, for no written constitution will work itself; and if that of 1874 does not render the Legislature unattractive to the unfit and make the worthy willing to under-

take the discharge of its duties, no hope remains—*nullam salutem sperare*. Whatever wisdom, learning, ingenuity, and experience could suggest to prevent the abuse of the discretion, necessarily confided to the Legislature of the Commonwealth, was adopted. No power was given that could safely be withheld, and no reasonable regulation of its use was omitted.

It remains with us to see to it that a system planned and framed with so much care and so much skill shall not fail through our indifference and neglect. If the members of the Bar of Pennsylvania choose to exert their combined influence in favor of the election of fit men, of the enactment of only wise and needed legislation, and of the maintenance of the good name of the Commonwealth, they will not fail. They need only to have confidence in themselves and interest in the work to be done. Let those of us who are here devote ourselves to that work, in the spirit in which Burke addressed himself to his lofty purpose: "If we are conscious of our situation, and glow with zeal to fill our places as becomes our station and ourselves, we ought to auspicate all our public proceedings on America, with the old warning of the church, *Sursum corda!* We ought to elevate our minds to the greatness of that trust to which the order of Providence has called us."

Samuel Dickson.