TENDENCIES OF FACTORY LEGISLATION AND INSPECTION IN THE UNITED STATES.

BY SARAH S. WHITTELSEY.

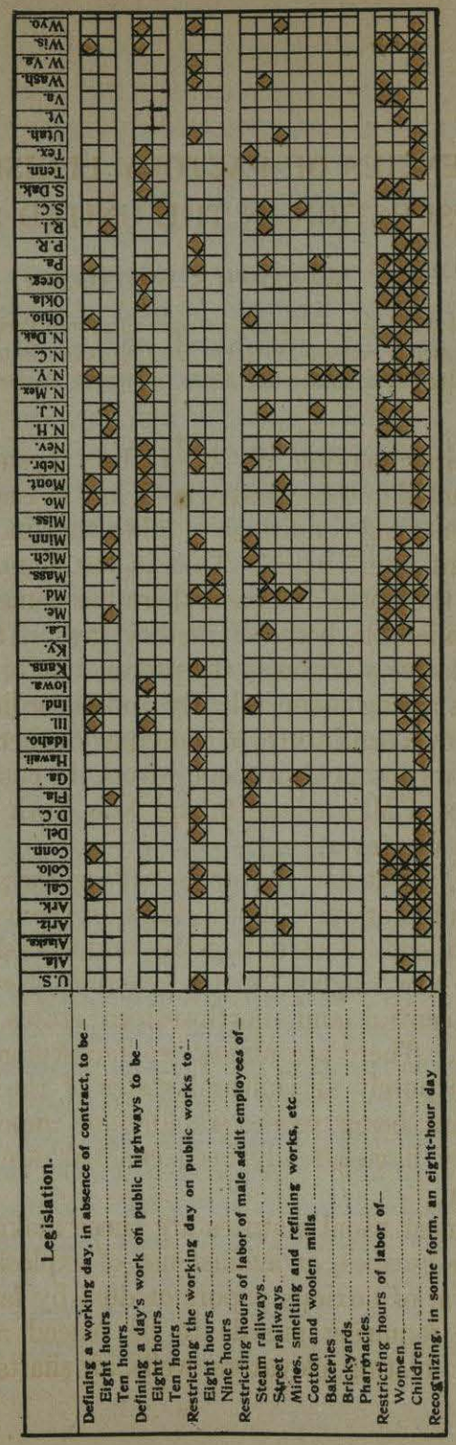
[Sarah Scovill Whittelsey, educator and economist; born Paris, France, 1872; graduated from Radcliffe college, 1894; Ph. D. Yale, 1898; instructor in economics at Wellesley college since September, 1902; author of Massachusetts Labor legislation, etc.]

The introduction of the factory system in American industry acted in this country, as it had in England, to develop certain abnormal conditions of labor that in the end required government interference. Thus in the manufacturing states, chiefly in the north and east, there has come into existence a very considerable body of factory law. The enactment of such regulative statutes is the prerogative of each of the several states acting independently and according to the discretion of its own legislature; in consequence there is great variety in these laws and in their scope—from the comparatively complete codes of Massachusetts and New York to absolutely no regulation whatever.

In all, about half the states have so far passed what may be called a factory act; that is, laws for the regulation, mainly sanitary, of conditions in factories and workshops. These include the New England states generally, New York and the northern central and northwestern states following their legislation. There are almost no factory acts in the south nor in the purely agricultural states of the west, but these statutes are being passed rapidly and moreover, in states where they have already been enacted, are being amended every year.

The most usual statutes are those making provision for proper fire escapes, or against use of explosive oils, etc., for the removal of noxious vapors or dust by fans or other contrivances; requiring guards to be placed about dangerous machinery, belting, elevators, wells, air shafts, crucibles, vats,

LEGISLATION RELATING TO HOURS OF LABOR



etc.; providing that doors shall open outward; prohibiting the machinery from being cleaned while in motion; laws to prevent overcrowding and to secure sanitary conditions generally. Building laws also re-enforce these measures.

Antedating such factory acts proper, the same states have very generally passed statutes regulating child labor and forbidding employment to those under a stated age. In eleven states this age limit is fourteen years, in nine over twelve, and in four—New Hampshire, Vermont, Nebraska, and California—ten years; eleven also make educational provision for older children and illiterate minors.

The majority of states have further legislated upon the hours of labor of minors, while fifteen limit the working time of women as well, generally to sixty hours per week, but in Massachusetts to fifty eight hours, in New Jersey to fifty five, and in Wisconsin to forty eight. Eight also provides for time for meals, and five prohibit night work. This limitation of hours for women and children, considered wards of the state, very generally necessitates a similar working day for the adult male laborer in the factory, while it in a measure avoids the serious question of constitutionality that a broader statute could not fail to raise.

There is absolutely no limitation for persons of any age or sex only in Iowa, Kansas, Oregon, Nevada, Washington, Idaho, Montana, Wyoming, Utah, Kentucky, Arkansas, Texas, North Carolina, Alabama, Florida, Mississippi, New Mexico, Arizona, Oklahoma, and the District of Columbia.

Besides these statutes, other laws that must be mentioned, as immediately affecting the interests of factory labor, are those which regulate wage payment and fines, also the employers' liability acts which allow recovery of damages for bodily injury sustained in service. Thirteen states have passed laws regulating the period of payment by individuals and corporations, and nine others stipulate weekly or fortnightly payments by corporations. Only Massachusetts, Indiana and Ohio have attempted to prevent the withholding of wages or the imposition of a fine by factory employers for imperfect work.

Outside of the New England states anti-truck acts, similar to the English statute and stipulating a money payment, have been passed in sixteen states, five of which, however, limit its application to corporations. It may be noted in passing that several of these wage regulating laws have already fallen under the ban of the courts.

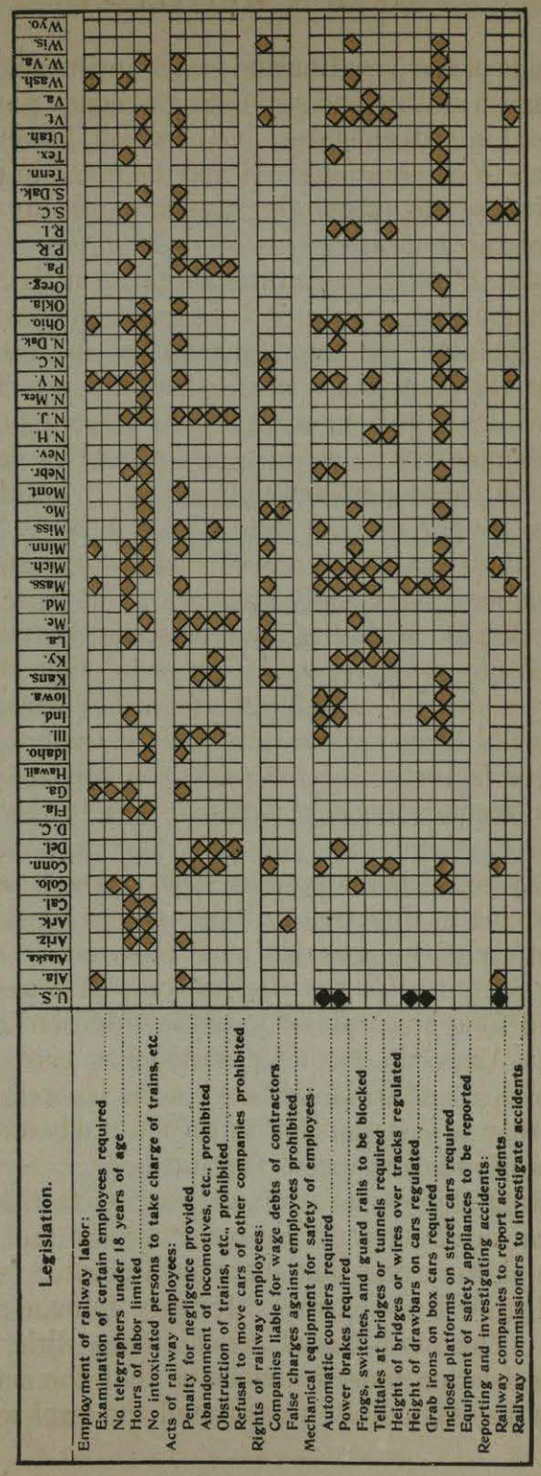
Employers' liability statutes supplement the factory acts by affording additional reason for care on the part of the employer in guarding dangerous machinery and otherwise providing for the safety of those in his employ. Twenty two states have legislated upon the fellow servant question, and ten make employers liable for injury caused by defective machinery. Of these, however, only six apply in full to factory labor.

The states that have passed factory acts and regulated hours of labor have usually created one or more factory inspectors, charged with the duty of seeing that the statutes are carried out generally with powers to enter personally or by deputy and to inspect all factories at any time.

The child labor laws are variously entrusted for enforcement to the factory inspectors, school committee or board of education, commissioners of labor, or left to the care of the police.

It may seem, perhaps, that such a sketch fails to show the underlying or directive principle of this legislation, but a detailed study of the laws adds confusion rather than enlightenment. Studnitz considered that he had seized upon the real causal force and summed up the situation in the statement that American labor legislation has been determined by the political and social strength of the laborers demanding it, rather than in accordance with the natural needs and varied conditions of industry within the states.

Allowing this explanation, at least as to the immediate agency, we must nevertheless recognize the fact that other forces are at work and that there are traceable tendencies of a natural growth even when arbitrary human action is so apparent. The most casual acquaintance with the history of labor legislation must convince us that the action of economic law has inevitably necessitated the legal regulation of



labor; and this really in spite of human opposition and in the face of extreme doctrines of non-interference. Industrial labor unregulated has everywhere developed the same symptoms. Competition between producers tends to encourage all possible reductions of cost, to reduce wages, to increase the use of cheap child labor, to perpetuate long hours of labor, etc., and to range the interests of the employing class against those of the operative class. In the struggle which results from this antagonism the employer has the advantage of position to force his own terms of contract upon the laborer, for he has in his hands an accumulated capital which is equivalent in power to effective organization. Such conditions left to work themselves out have invariably acted to degrade the social status of labor, the heaviest pressure falling upon those who could least resist it. This was the experience of England first, then felt on the continent and in this country in the New England states and other centers of manufacture, and to-day we are becoming aware of like tendencies in the cotton goods industry of the south.

It was almost universally the evils attending child labor that evoked the first acts of regulation. But although abuses were very serious, legal remedies were most timidly applied. Even with the example of the successful issue of the English laws the New England legislatures contented themselves with the passage of most inadequate measures, measures that could hardly have been looked upon as anything more than unenforcible threats. We realize how complete a change of attitude toward this intermeddling legislation has been brought about during the course of the past sixty years when we compare a few of these old laws with those to-day in force. Contrast, for example, the detailed and exacting requirements of the present law concerning child labor in Massachusetts with the older Vermont statute, which is quite typical of the earlier order and merely requires the selectmen of towns to inquire into the treatment of minors employed in manufacturing establishments; and if a minor's education, morals, etc., are unreasonably neglected, or he is treated with improper severity or compelled to labor unreasonable hours, they may, if he has no parent or guardian, discharge him from

such employment and bind him out as apprentice with the minor's consent.

Early measures were certainly neither severe in the regulation imposed nor exact in defining the parties held to be responsible. They generally involved a question of volition, making willful transgression alone punishable, and thus unenforcible in the letter, were given into the hands of town officials who had neither the power nor the effective desire to investigate or to bring suit.

Such enactments stood for little more than a public recognition of abuses which they in no wise checked, but the increasing menace of the situation, the threat, not to be scorned, of a future sickly and illiterate labor population, forced the passage of more adequate measures and the resort to a better mechanism of enforcement than that of town officials and the general police. In such reforms Massachusetts took the lead, enacted and repealed several contradictory statutes, and finally by the slow process of continued amendment evolved the present really enforcible law.

We feel in studying the halting stages of this development not only that there was a pardonable ignorance of ways and means in attacking a new problem, but also the influence of a more or less skeptical public opinion concerning this policy of interference, which reflected itself in hedging clauses that weakened and sometimes vitiated what would otherwise have been good measures.

In spite of many drawbacks to advance, however, there was no retrograde motion, but a continued development of strictness and detail in exactions, of clearer definition and placement of responsibility and of more adequate provision for inspection. As these laws gradually demonstrated their practical usefulness and convinced the public of benefit instead of harm, the former attitude of timidity gave place to a decided peremptoriness, the former indiscriminate omnibus ad quos hae litteræ pervenerint, to placed responsibility.

Meantime the way was opened for more wide reaching regulations concerning hours of labor, workroom conditions, etc., and a broader conception of the province of such legislation and of that which might be considered proper subject

of legal interference. Whereas the first attempts to protect even little children from conditions that imperiled their health and life were bitterly opposed in England upon grounds of national policy, to-day we find statutes that regulate not only child labor, hours of labor, factory constructions and the use of machinery, but also others that stipulate times and manner of wage payment, and forbid fines in dealings with adult male employees. And this has come to pass in America, where freedom of contract is the constitutional right of every individual citizen.

Our laws have indeed very steadily progressed from measures of simple protection to detailed regulation of conditions, and even to the securing of special benefits to labor.

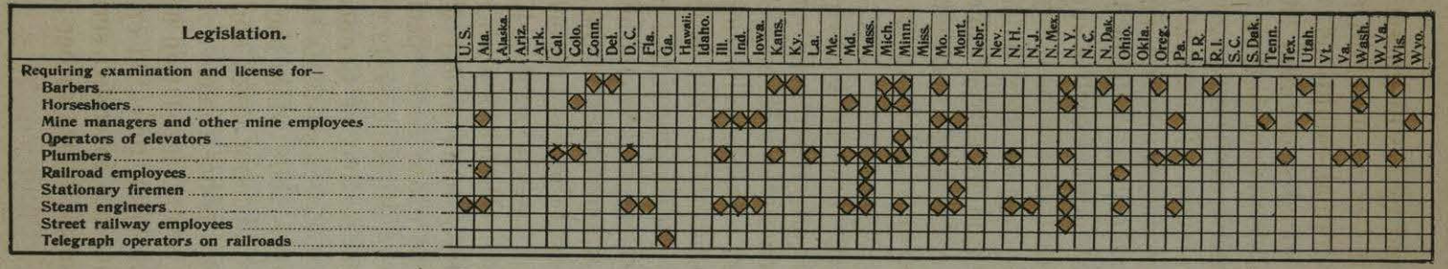
This broader application of the legal remedy has been accompanied also by marked territorial extension, following the growth and spread of manufactures. Other states have felt the necessity of adopting a labor code and have naturally, in a general way, followed the forms of New England and New York. They range, however, through all stages of incompleteness. A curious phenomenon constantly appears in this imitative legislation. When a state legislature passes a new labor law, or revises an old one, it does not necessarily adopt the latest form nor that which has proved to work most satisfactorily in another state, nor yet a combination of choice clippings from several. A state legislature is generally perfectly content with a law that is about as poor as the average and looks forward most placidly to the inevitable train of amendments that must follow in its wake. By this I do not mean to criticise in the least the enactment of less strict regulations, as a lower age limit or longer hours of labor,which may be proper under given local conditions; but alone the continued repetition of blunders and faults of construction that have elsewhere proved their character and their power to nullify the intent of the law. Fortunately experience proves in the end an effective, if dear, teacher and one of the lessons that it ultimately drives home is that even a state legislature cannot legislate the laws of nature out of the world arena. As Jevons said, The state is the least of the powers that govern us. But as the physician through his knowl-

edge of medicine and physiology, and by his diagnosis of the symptoms of disease, is able to pit law against law, and to restore health where he found abnormal conditions; so the statesman who understands the social order and the tendencies of economic forces is often able to control their action. In either case, a knowledge of the active agencies is absolutely necessary to the solution of the problem. The recent organization of bureaus of labor statistics is certainly significant in this connection. To-day, when a question of labor legislation is presented, there is, in many states, such a qualified advisory body to whom the whole matter may be referred for investigation and study, and whose regular duty it is to inquire into and report upon labor and industrial conditions within the state. This indicates a growing appreciation of the necessity of accurate information and of the exercise of due care in passing acts of regulation.

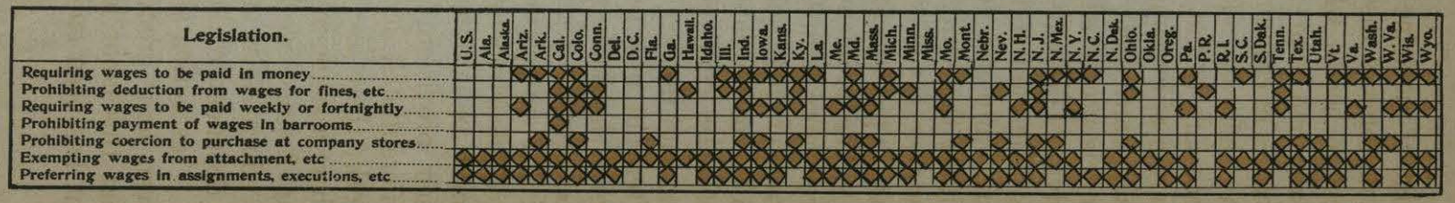
The problem of enforcement of these laws has proved even more serious than that of their enactment. Labor laws, however good, cannot enforce themselves. It may appear to be for the laborer's own interest to report violations and seek the legal remedy, but the indisputable fact is that he does not do it. Moreover, not only is the individual laborer often not in a position to do so safely, but even the labor union shrinks from the task. The whole history of the movement for the regulation of labor shows the absolute necessity of efficient inspection, a fact which has unfortunately been most clearly demonstrated in the general lack of such inspection. In nothing do the states differ more widely than in their provision for inspection. There are such specifically differentiated departments as that of Massachusetts or New York; there are such combinations as that of Connecticut, where a single inspector with two or three assistants enforces the factory, workshop and bakeshop acts, while the board of education is charged with the child labor laws; and there is dependence alone upon the general police force.

Inspection always lags too far behind legislation and has given some ground of credit to the often repeated criticism that this labor legislation is not in fact intended seriously, but has been entered upon the statute books rather to still

LEGISLATION RELATING TO THE EXAMINATION AND LICENSING OF CERTAIN EMPLOYES



LEGISLATION RELATING TO THE PAYMENT OF WAGES



the clamor of agitators for reform than to effect any real change in conditions. It is certain at least that the serious effectiveness of these laws develops in exact proportion with the inspecting power—with the organization, number and qualification of inspectors. If the charge of insincerity, however, had been true, we might expect to find that the better the laws became, the stronger the pressure that would be brought against the development of costly inspection. The legal remedy being given, is it not the privilege of the individual to avail himself of it, rather than the duty of the state to force it upon him? On the contrary, however, the history of inspection runs parallel and in the same direction with that of the legislation just reviewed. The same economic and social forces that were the raison d'être of these laws have quite as distinctly and steadily, though more slowly, created the supplementary machinery of enforcement. The unreliable and haphazard inspection of town officials has passed entirely, superseded by the inspector whose sole duty is inspection, in which duty he is aided by assistants immediately under his own command, or by members of other departments of government. The tendency towards the development of distinct inspection departments is quite unmistakable, though the exact form of their future organization is less easily predicted. There are two toward which present forms lean, one exemplified in Massachusetts, the other in New York.

In Massachusetts the inspectors are organized as a division of police, under the chief of police as chief inspector, exactly as the detective division, for instance. That of New York is a separate and distinct body under a chief appointed by the governor to hold that single office.

The question is therefore raised as to whether organic connection with the police department or separate and distinct autonomy is the more practical and advantageous form. It is conceded that Massachusetts has developed the most efficient corps of inspectors in this country, but this cannot at present be taken as conclusive proof of policy, because Massachusetts was earlier in the field, and because opposing obstacles were hardly so serious as those met in New York. Further, such connection with the police department in Massa-