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THE INITIATIVE REFERENDUM AND RECALL

NATIONAL MUNICIPAL LEAGUE SERIES

THE INITIATIVE REFERENDUM AND RECALL

EDITED BY

WILLIAM BENNETT MUNRO

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PREFACE

THIS volume represents a substantial contribution to the further careful and thoughtful discussion of a widely considered plan of reform. Professor Munro brings to his task as editor not only a comprehensive knowledge of the subject treated—direct legislation as it is popularly known—and a deep sympathy with the movement to correct the undoubtedly and undisputed evil results of representative government, but, what is of prime importance, a sound perspective and without local prejudice.

Some of the chapters in the volume are new, having been specially prepared for it. Others have been taken from the substantial list of papers which have been presented to the National Municipal League during the past decade of years. Still others, like those of Colonel Roosevelt and Congressman McCall, have been selected from the current periodical discussion of the problem. All have been brought together by Mr. Munro in furtherance of the League's function as an open forum, to give both sides fairly, and to recount results fairly, so that the publicist and student may form an enlightened and sound opinion.

Chosen for this purpose, the articles are not the

hasty words of agitators or demagogues, but the thoughtful utterances of public men of experience, who appreciate the problem and its difficulties and their own responsibilities as leaders.

The Initiative, Referendum and Recall are here, and we are destined to hear more, rather than less, of them. Whether they are to become permanent features of our governmental (federal, state and municipal) machinery, or merely to afford the means of correcting the abuses of the present-day operation of representative government, is a question which only time will determine. This volume is put forth with the expectation that it will afford definite, dispassionate information and careful, disinterested argument, so that the most may be made of the democratizing influence of the reform and the greatest possible good developed from the movement.

To all who have coöperated in the making of the book the appreciative thanks of the Publication Committee of the National Municipal League (William B. Howland, Chairman, New York; John Ihlder, New York; Clinton Rogers Woodruff, Philadelphia; Prof. L. S. Rowe, Philadelphia; Richard S. Childs, New York) are herewith cordially tendered.

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THE INITIATIVE, REFERENDUM AND RECALL

CHAPTER I

INTRODUCTORY

THERE has been no more striking phenomenon in the development of American political institutions during the last ten years than the rise to prominence in public discussion, and consequently to recognition upon the statute-book, of those so-termed newer weapons of democracy—the initiative, referendum and recall. By the *initiative* is meant the right of a stated percentage of the voters, in any state or municipality, to propose both constitutional and ordinary laws, and to require that, if these be not enacted forthwith by the state or municipal legislature, they shall be submitted for ratification to the whole body of voters. By the *referendum* is meant the right of a stated percentage of the voters to demand that measures passed by the ordinary lawmaking bodies of the state or municipality shall be submitted to the whole body of voters for acceptance or rejection. By the *recall* is meant the right of the electors in any state or municipality to end by an adverse vote the term of any elective officer before the

expiration of the period for which he was elected. However opinions may differ concerning the inherent merits and defects of these agencies of popular government, or concerning their compatibility with a sound representative system, it is at all events not to be denied that they have gained, during recent years, a remarkable hold upon the confidence of a large and apparently growing portion of the American electorate.

For this growth in popularity a twofold reason may be assigned. On the one hand it is a logical by-product of a declining popular trust in the judgment and integrity of elective legislators. The calibre of the representative body, whether in state or city, is not what it used to be, and of this deterioration public opinion has taken due cognizance. Whatever the reasons therefor, and they are probably too complex to warrant easy generalization, the symptoms of legislative degeneracy have grown too plain to be disregarded. Resort has accordingly been had to the most superficial of prudential measures, which is to take away from the wicked and slothful servant even that which he hath. For maladministration in a democracy the electorate never regards itself to blame; the demos postulates its own infallibility. Hence it has sought to remedy the evils which seem to result from an unsatisfactory representative personnel, not by the adoption of measures designed to secure an improved grade of officeholders, but by reducing the final powers which the officeholders may exercise. In other words, the

growth in popularity of direct legislation evinces a public disposition to revoke the trust rather than to change the trustees.

In the second place, the representatives of the people have themselves shown readiness to aid the movement. American legislative bodies do their work under serious handicaps arising from the lack of efficient leadership and from the division of power and responsibility which is inherent in the system under which they are expected to perform their functions. Thoughtful men, alike in the state legislatures and in the large city councils of most American cities, have come to realize that efficient legislation requires both leadership and the centralization of responsibility; American legislative bodies have possessed neither. In the absence of these features, sinister influences come into full play upon the floors of legislative chambers. Representatives find that they can take sides on many questions of policy only by placing themselves in such position that they are bound to antagonize some powerful organized interest, no matter which side they may take, so that to turn the whole matter over to the issue of a popular referendum constitutes for them the line of least resistance. The referendum in particular has thus become the Torres Vedras of the legislator whose first care is for his own political future. The practice of passing bills to enactment "with the referendum attached," has become common in many states during recent years, and measures for which the legislature is not ready to take full responsibility are being more

and more readily turned over to the electorate for acceptance or rejection. At first an exceptional procedure, this practice has shown a tendency to seek recognition as a normal method of lawmaking; the legislatures have taught the voters to expect that they shall be freely called upon, not only to select representatives, but to give a direct decision upon issues of policy. Hence appear the two outstanding reasons for the recent development of direct legislation in American state and municipal government. A declining public confidence in the efficiency and integrity of legislators, and a readiness on the part of representatives to place upon the shoulders of the voters a responsibility which ought properly to remain upon their own; these two tendencies have combined to give direct legislation its growing vogue.

Notwithstanding a current impression to the contrary, direct legislation is not new either in principle or in practice. The initiative and the referendum are new names for very old institutions. All ancient democracy was direct democracy; and so far as there was legislation in early democracies, it was direct legislation. The government of the primitive Saxons, if it may be called a government, was vested in the hands of a popular assembly, composed of all the adult tribesmen, and this assembly exercised directly, without the interposition of any representative body, the whole civil and military authority. In Switzerland, where alone among the lands of Europe the great centripetal influence of monarchical absolution did not make itself

strongly felt through the Middle Ages, systems of direct popular government came early into existence and remained until modern times. Even in America the initiative and the referendum are among the oldest of native institutions: they may properly be called indigenous, for these agencies of popular government were not borrowed by the American people from anywhere outside their own land. They were brought into being upon this side of the Atlantic to meet the special problems which a new government had to face. Massachusetts submitted her first constitution to a popular referendum in 1778, and again, this time with a favorable response, in the following year. As a means of ascertaining the will of the voters upon constitutional questions, the expedient quickly found favor in other states, and the use of the referendum as the ordinary method of enacting organic laws in time became general.[1] The initiative, likewise, obtained recognition in principle, at any rate, when the first constitution of Georgia in 1777 gave to the people the exclusive right of proposing changes in that document. Other eighteenth-century constitutions, notably those of Massachusetts, Pennsylvania and New Hampshire, reserved to the people, not the right to initiate legislation, but what amounted to at least a permissive initiative—the

[1] Not yet entirely so, however, for during the last twenty years four state constitutions have gone into force without popular approval namely, those of South Carolina (1895), Delaware (1897), Louisiana (1898) and Virginia (1902).

right " to give instructions to their representatives " in the legislature.

The use of the referendum in the process of ordinary, as distinguished from constitutional lawmaking, began in America a half-century later. The legislature of Maryland, in 1825, referred to the people of that state the question of establishing free primary schools, and stipulated that the law should go into effect only in such counties as might pronounce in the affirmative. Other state legislatures followed the same procedure in cases where the issue did not seem to be readily determinable otherwise, and in due course provisions began to be inserted in state constitutions requiring that all ordinary laws affecting certain matters should be submitted, before final enactment, to the people of the entire state or the voters of the counties or municipalities affected. Typical examples of matters upon which some constitutions have made the referendum an essential preliminary to enactment are changes in the suffrage laws, alterations in the state boundaries, changes in the location of the state capital or of the various state institutions, measures pledging the credit of the state or giving state aid to private enterprises, and modifications in the laws relating to state taxation.

But the practice of referring matters to a popular referendum has made its most steady progress in the realm of local government. The wide variety of interests which often appeared to be affected by general legislative measures relating to local administration,

and the seeming impossibility of providing state-wide rules which would serve the needs and desires of all the municipalities, large and small, soon led the state legislatures to the practice of entrusting such matters to the decision of the localities themselves. The regulation or prohibition of the traffic of intoxicants was perhaps the most prominent of the matters within this category, and it is a question upon which there have been more popular referenda in American municipalities than can easily be counted. Indeed it has come to pass that, in some states of the Union, the cities and towns look upon the privilege of deciding this question at an annual referendum as a sort of inalienable right of the community. So, likewise, such matters as the adoption of a new city charter, or the adoption of amendments to an existing charter, the alteration of municipal boundaries, the issue of municipal bonds, and the granting of long-term franchises to public service corporations, are all matters upon which the voters of cities and towns have frequently been called upon to pass judgment at the polls. Sometimes the constitution of the state requires submission of such matters; at other times the requirement is statutory only; and in still other instances the referendum is ordered by the authorities of the municipality itself. To the practice of submitting matters to the voters of a municipality, or to any portion of the whole body of state voters, there is no serious constitutional objection. But the state-wide referendum, that is to say, the submission by the legislature of a measure to the voters

of the entire state for final adoption or rejection by them, meets the objection that such reference constitutes a delegation of legislative power. And in the absence of specific constitutional permission, such delegation has usually been held by the courts to be *ultra vires* of the legislature. It has been urged also that states which adopt the mandatory initiative and referendum thereby contravene that provision of the United States constitution which guarantees to every state in the Union "a republican form of government." But this idea has not as yet found support in any judicial decision.

While the two agencies of direct legislation—the initiative and the referendum—are logically related and supplement each other, the latter can exist and serve many of its professed ends without the former. And as a matter of fact the referendum moved along during the greater part of the nineteenth century under its own steam. The principle of the initiative, which is that a stated percentage of the voters of a state or municipality shall have the right to propose a measure and to require that such measure be submitted to the people for their adoption, was given recognition at a very early date in American political history. But its progress for a full century was slow, much slower than that of the referendum. Where it did appear in the constitution or the laws, it was rarely brought into operation unless it happened to be the only way in which legislation relating to certain matters could be brought forward. Not infrequently the initiative did

provide the only way. When, for example, a state constitution inhibited the legislature from enacting any special legislation for individual cities, how could the special needs of a particular city be provided for? The natural way is, of course, to let the citizens of a particular municipality set forth their own demands by a petition, which is, in other words, to exercise the initiative in legislation. Constitutional provisions which forbid the legislature from enacting laws of this, that, or the other sort, have become steadily more numerous during the last quarter of a century, and their increase in number has given a powerful impetus to the spread of direct legislation. South Dakota was the first state to adopt the initiative and referendum as normal agencies wherewith the electors of the state might directly control the making of all ordinary laws, for an amendment to the South Dakota constitution, made in 1898, permitted the initiative to be exercised and the referendum to be invoked by five per cent. of the voters. Other states which have incorporated similar provisions in their constitutions during the last ten years are: Utah, in 1900; Oregon, in 1902; Nevada, in 1904;[1] Montana, in 1906; Oklahoma, in 1907; Maine, in 1908; Missouri, in 1909; Arkansas and Colorado, in 1910; Arizona and California, in 1911; and New Mexico (referendum only), in the same year.

The provisions relating to direct legislation in these

[1] Nevada in 1904 made provision for the referendum only; but an amendment providing both for the initiative and the recall is now being submitted to the voters.

various states are alike in fundamentals, but differ in many important details. In all of them the referendum is obligatory as a method of adopting constitutional amendments, but in two of them, Montana and Maine, constitutional amendments are excluded from the scope of the initiative; that is to say, the voters of these two states are allowed to pass upon all proposed changes in the organic laws, but are not permitted to do the proposing. In the matter of ordinary laws, moreover, there are various limitations upon the scope of direct legislation. A common proviso is that which excludes from the operations of the initiative and referendum all measures which carry appropriations for the current expenses of state government, or for the maintenance of state institutions. The constitutions of Maine, Missouri, Montana and South Dakota contain this restriction. Another limitation, which exists in practically all the states which have adopted the initiative and referendum, is that which exempts from their scope all emergency measures, that is, laws which seem urgently necessary in the interest of the public peace or for the preservation of the public health. As a precaution against the abuse of this right of the legislature to act freely and finally in emergencies, it is usually provided that measures passed under this proviso must have obtained a two-thirds majority in each branch of the legislature. But lest this safeguard should not prove adequate, the constitutional provisions in some cases go further and expressly declare that certain classes of measures may not in any case be

deemed emergency laws. Among measures so enumerated, are statutes granting franchises for a longer term than a single year, legislation authorizing the purchase or sale of lands, and laws changing the charters of municipalities without a local referendum.

In the machinery of direct legislation there are also some marked variations. The percentage of voters required for putting the initiative into operation is eight per cent. in some states and five per cent. in others.[1] Oklahoma requires fifteen per cent. in the case of constitutional amendments, but only eight per cent. in the case of ordinary statutes. Generally speaking, the same quota of voters may demand a referendum upon any measure passed by the legislature. Likewise the procedure differs from state to state in such matters as the basis upon which this percentage is calculated, the methods of verifying signatures to petitions, the time and place of filing petitions, and the arrangements for giving due publicity to measures proposed. In the last-named matter, most of the states which have adopted the system of direct legislation arrange for printing and distributing, at the public expense, full texts of all measures which go before the people. Some of them have the additional provision that arguments *pro* and *con* shall, under suitable limitations, be published and sent broadcast at the cost of the state exchequer. In South Dakota referenda may take place only at a regular election, but in the other

[1] In Maine the requirement is not a percentage but 12,000 voters.

states special elections may be ordered. Ordinarily a measure may be re-submitted as often as the required number of petitioners can be found to demand it; the Oklahoma constitution is the only one which affords any adequate safeguard against abuses arising from the frequent re-submission of defeated proposals. A measure rejected by the voters of that state may not be again referred to them within three years, save on petition of twenty-five per cent. of the voters—a practical impossibility.

The state of Illinois has adopted a system which is intended to secure the advantages of direct legislation while preserving the actual lawmaking functions of the legislature. Measures may be initiated by popular petition, and when so originated, go to the voters at the polls. But acceptance at the polls does not, as in the other states, enact the measures into law. The action of the voters is merely advisory in effect, and operates as an instruction to the legislature, which alone retains the power of actual enactment. The laws of Texas, again, provide for initiative and referendum as agencies for framing party policy. A specified number of voters (ten per cent.) in any political party may propose planks for the party platform and may secure a party vote thereon. The opinion of the party adherents, as thus expressed, becomes an instruction to all party conventions, committees and officials.

But, as has been already stated, the greatest development of direct legislation has taken place in the field of municipal government. Here it has gone hand in

hand with the movement for simplifying municipal machinery and for ousting party organizations from that dominating place in city government which they have long maintained. The spread of the commission type of municipal administration has given the initiative and referendum much of their present-day vogue in new city charters. To be more accurate, one should say that each movement has supplemented and helped the other. A system of city government by a single commission of five men would doubtless have appeared to possess great possibilities of danger and would hardly have reached its present degree of popularity had not the sponsors of the plan put forward schemes of direct legislation as a means of replacing the old checks and balances which the adoption of the commission system eliminates. It is true that the cities which first adopted the commission plan, Galveston, Houston and other Texan municipalities, did not give the initiative, the referendum, or even the recall a place in their new charters. They placed their full faith and credit in the representative type of local democracy. That is one reason why northern cities first looked askance at the Texas experiment. The Des Moines plan, which is the Texas system plus provisions for direct legislation and non-partisan nominations, appealed more readily to public confidence. Government by commission has secured adoption in over two hundred American cities. Of this number the great majority (that is to say, in nearly all except some of the cities of Texas) have incorporated in their

new commission charters some sort of provision for the initiative or referendum.

As in the state constitutions, the city charter provisions relating to direct legislation are alike in principle and varying as to details. Speaking broadly, the voters of the city have the right, by presenting petitions bearing a prescribed number of signatures, to propose any municipal ordinance or other local measure. The percentage of signatures required is, of course, higher than that demanded in state affairs: it ranges from fifteen to twenty-five per cent.[1] Such proposals go before the whole city electorate at the next regular polling, provided the date of such polling be not more than a few months away; otherwise special elections may be held. Similarly the charters usually provide that no ordinance or order of the municipal council (or commission) shall go into force for a certain number of days, during which interval petitions asking that the ordinance be referred to the voters may be presented. If such petitions bear the required number of signatures, the ordinance can go into effect only on acceptance at the polls; if valid petitions be not presented within the interval, the ordinance goes into effect.

Both in state and city governments the machinery of direct legislation has been frequently set in motion during the last half-dozen years. In Oregon the sys-

[1] A table showing the exact percentages in all commission-governed cities may be found in E. S. Bradford's "Commission Government in American Cities" (New York, 1911), 223–233.

tem has been put to an extensive and increasing use at every state election since its incorporation in the constitution ten years ago. At the election of 1910 no fewer than thirty-two projects of legislation were submitted to the voters of the state,[1] and there are indications that the ballots of 1912 will have also made free use of the system or quite enough, at any rate, to demonstrate that where provisions for direct legislation go on the statute-book they are not at all likely to remain inactive.

No question of present-day political discussion affords grounds for wider, yet thoroughly sincere, differences of opinion than the relative merits and defects of direct as contrasted with representative legislation. Men differ honestly, not only as to the soundness of the principles upon which the initiative and referendum are based, but also as to the immediate and ultimate effects of their actual use. One reason for this can be found, perhaps, in the fact that the propaganda for direct legislation embodies not only a policy but a protest, and upon the necessity for any protest of such violence against the existing system there is an added opportunity for divergence in opinion. Proposals for the establishment of the mandatory initiative and referendum have derived much of their impetus and support, not from a popular conviction that they promise a wholly satisfactory

[1] These are printed in C. A. Beard and B. E. Schultz's "Documents on the Initiative, Referendum and Recall" (New York, 1912), 385–389.

method of lawmaking, but from a widespread impression that only through these agencies can some present-day legislative abuses be eradicated. American public opinion has grown more vigorous, more active, and more intelligent during the last decade. At no time in our history, indeed, has it been more adequately informed upon great political, economic and social questions, for in no previous period have the agencies of popular information been so ample. Being informed, public opinion has become eager to assert itself in legislative policy, and it would doubtless be content to do this through the orthodox channels of representative government if this seemed wholly feasible. But a large section of the electorate has come to the conclusion that these channels do not afford adequate facilities for the assertion of popular sovereignty. Nor is this conviction confined to any loose-thinking element among the voters. When one of the most observant among contemporary students of American political currents can express the conclusion that "public opinion was never more helpless to obtain its purposes by ordinary and stated means,"[1] it can scarcely be urged that the old machinery of democracy is fulfilling its professed ends to the satisfaction of all.

Popular distrust of the present system of lawmaking is undeniably widespread and deep. But it is not based upon the idea that the representatives of

[1] See below p. 74.

the people are incompetent to do their duty. Rather it arises from the notion that they are prevented from doing it. And these preventing influences, in the popular mind, are various organized interests—political machines and economic corporations—whose wishes do not usually run parallel to those of the electorate. To be logical the protest ought to be directed against the practice of sending to the legislature and to the municipal councils men of insufficient integrity who allow themselves to be controlled by sinister influences. But public opinion is not inclined to be logical in the protests which it makes. Whatever the flaws of representative democracy, the people are loth to put the blame therefor upon their own shoulders. The voters will change the system, but not their own ways.

Grounds for popular protest against the control of representative bodies by self-seeking interests there are, of course, in plenty. Conditions that have long existed and still exist in at least a dozen states and in scores of municipalities afford abundant proof that whether or not the voters get what is advisable for them to have in the matter of legislation, they certainly do not always get what the majority of them want. And under the representative system, as it has been administered in most parts of the country, it would be strange to find things otherwise. When representatives are nominated in party conventions dominated by political bosses and elected by a ballot which embodies every feature that ingenuity could devise for befogging the voter; when these representatives are set to

perform their functions of legislation under a system which eliminates all possibility of firm leadership and presents every facility for shifting responsibilities, it is idle to expect that the statute-book will be a mirror of public opinion.

Somewhat curiously, however, it is only within very recent years that any serious attempts have been made to clear the representative system of these impediments to its proper working by the introduction of such features as direct nominations, the short ballot, and improved methods of procedure in legislative bodies. For a long time remedial measures took lines which were not, and could not be productive of marked improvement. Popular distrust of representatives manifested itself first of all, for example, in the practice of curbing legislative freedom. Whenever state constitutions were revised, new limitations upon legislative discretion were inserted until one could almost say that in some states the constitutional convention (with its work subject to popular ratification) has become the medium of all fundamental legislation, while the state legislature is relegated to the function of providing for odds and ends during the years intervening between periodical revisions of the constitution.[1] Whenever, through rise of new conditions, a state legislature develops a new field of discretionary action, the next constitutional convention is quite apt to put a hamper upon such legislative freedom by defining

[1] J. Q. Dealey, "General Tendencies in State Constitutions" in *American Political Science Review*, February, 1907, pp. 200–212.

the principles upon which the new conditions shall be met. Some state constitutions prescribe that the legislature shall meet only in alternate years, and some place a limit upon the number of days it may continue in session—constitutional provisions which seem to take for granted that the activity of legislatures is a somewhat necessary evil that ought not to be borne beyond a certain point. None of these measures is in the direction of improving the calibre of legislators—none of them aims to facilitate the work of legislatures. All of them are based upon the strange notion that the work of a representative body can be improved by curtailing its freedom, and, *pari passu,* its responsibility. The most effective way to degrade any official chamber and to make service in it unworthy of substantial men in the community is to take away its capacity for becoming a public nuisance if it chooses to be such. A body which can do no harm can, by the same token, do little good, and public opinion will not be long in discovering the fact. Constitutional hampers upon legislative discretion have availed, for the most part, only to lower the calibre of men elected to lawmaking bodies.

Following abortive attempts to secure any marked improvement in the quality of legislation by reducing legislatures to the plane of ordinance-making bodies and by giving the real legislative power to periodic constitutional conventions, there have been efforts, rather half-hearted, however, to improve the methods under which representatives are selected. The direct

primary laws adopted in a dozen or more of the states and applied to scores of cities during the last few years, the removal of party designations from the ballot, preferential voting, corrupt practices laws, the reduction of the municipal council in size and the increase of its powers—all these are measures which aim directly at securing better representatives, and which, if given adequate opportunity, will almost certainly accomplish much in that direction. The recent experience of states and municipalities seems to warrant the hope that most of the existing political ailments can be eradicated by specific remedies directed straight against the local seat of trouble. But this process takes time and requires a patience which public opinion does not seem ready to exercise. The direct legislation propaganda is an evidence of popular impatience with the slow, but reasonably sure working of specific reforms.

The first argument in favor of direct legislation rests, accordingly, upon the allegation that existing legislative methods and results are unsatisfactory to the majority of the electorate; that representatives do not properly represent; and that the reforms undertaken hitherto have not changed and are not likely to change that situation. But the sponsors of the initiative and referendum do not rest their whole case, or even a large part of it, upon this point. They claim for their proposals many positive merits which do not connect themselves directly with the faults of the existing representative system. Emphasis is laid, for ex-

ample, upon the educative value of direct legislation. By means of the initiative, a spirit of legislative enterprise is promoted among the voters; men are encouraged to formulate political ideas of their own and to press these upon public attention with the assurance that they shall have a fair hearing. If public welfare often suffers from public apathy; if the mass of the voters manifest little interest in the contents of the statute-book, this is due in large measure, it is claimed, to the feeling of electoral helplessness which in some states amounts to a popular conviction. In California, during the decade preceding the adoption of the direct legislation amendments to the constitution, it would be a gross perversion of obvious facts to allege that the voters of the state got what they wanted in the way of legislation. They obtained, for the most part, what a great and influential railroad corporation was willing that they should have. In a state like Pennsylvania, or in a city like Chicago, at the present moment it would be idle to argue that the statute-book represents the embodiment of popular ideas in legislation. The voters of that state and that city have endeavored on many occasions to crystallize their wishes into legislative action; they have demonstrated that on many matters public sentiment is pronounced and readily ascertainable by legislators; yet they have almost invariably found legislation unresponsive. To be really representative, a government must be responsive to public opinion, and to be responsive, it must have the machinery of close contact. Between

even a strong popular sentiment and the passage of a measure to enactment, there is, under what is termed representative government in many states and cities of the Union, a long and difficult route, well strewn with pitfalls. The growth in vigor of popular ideas upon matters of state or civic policy is stunted by the mere knowledge that this is so. Men develop ideas only when there is at least a fighting chance that these ideas may be borne to fruition, and the electorate is no more than the individual writ large. Political thought and discussion can be best stimulated, it is suggested, by popular knowledge that these lead straight to action. The way to get voters interested in measures is to ask for their opinion upon measures, not for their opinion upon men. The way to educate the voter upon matters of public policy is to submit measures to him in person and not to some one who holds his proxy. The educative value of the ordinary ballot has long since been demonstrated; and the friends of direct legislation now urge that this be enhanced by making the ballot a more elaborate political catechism. John Stuart Mill once remarked that the "magic of property turns sand into gold." It may be that the magic of responsibility can turn popular listlessness into public enthusiasm. At any rate the system of direct legislation freely promises, through its advocates, to make the voter realize that he is a sovereign in fact as well as in name and to increase his serious interest in public affairs by giving him something more to decide than the party label of officeholders.

In keeping with this emphasis upon the educative value of the initiative and referendum is the provision made by most of the states and municipalities which have adopted these features, for distribution, either in whole or in part, at public expense, of printed information bearing upon the different questions which go upon the ballot. These pamphlets, which are usually in the form of a symposium presenting the arguments advanced by the proponents and opposers of each proposition to be voted upon, are mailed to every citizen whose name is on the voters' list. He is expected to read his pamphlet before he goes to the polls and to form his own judgment as to the merits of each proposal. In addition to this, it has become customary for various organizations to show their interest in some of the items by holding discussions prior to an election, passing resolutions of advice to their own members, and even issuing literature telling the voters which questions upon the ballot ought, in the opinion of these organizations, to be answered in the affirmative and which in the negative. Through all these various channels information concerning mooted measures is literally forced upon the attention of voters. It may be urged that, despite it all, a great many voters will remain uninformed and, through their lack of information, will register unwise decisions at the polls. Yet it will scarcely be denied that the mass of the electorate is apt to be better informed upon public questions when all this literature is cast amongst it than when it is confronted merely with candidates and given

only such printed matter as bears on the qualifications of these men. There ought to be no doubt in the minds of those who have watched the workings of direct legislation during the past few years, that this system does promote popular discussions of public measures. And all such discussions have their educative value. Whether they actually lodge sure information in the voter's mind, and whether he accordingly can hope to become as sane and judicious an agent in passing upon these measures as his elected representative is likely to be—that is a matter upon which one cannot yet speak with any such decision.

In the realm of local government the task of educating the voter to a popular knowledge of the questions laid before him can hardly be called insuperable The basis, indeed, of the New England town system of government is the principle that even matters of very minor importance shall be decided by referenda to the citizens, and taking the history of New England towns as a whole, it does not appear that the voters have shown themselves less capable in determining these things than a body of representatives would have been. Most of those towns are small, it is true, but others, like Brookline, Mass., are, in point of population, larger than half the so-termed "cities" of the United States, and it does not appear that town government in any way loses its satisfactoriness as the towns grow in population.

Among the objections urged against the system of direct legislation three or four stand out most promi-

nently. One is the allegation that it runs contrary to the principle of representative government; that its adoption will deprive representatives of power and responsibility, and that the calibre of men in legislative office will deteriorate in consequence. This is an objection which cannot be lightly brushed aside, for the institutional history of this country during the last fifty years is full of things which tend to afford it support. Indeed, if there be any principle which American political experience seems to establish, it is the one stated in a preceding paragraph, namely, that the surest way to impair the personnel of any representative body is to reduce its powers. The expansion of constitutional limitations, with the consequent narrowing of legislative authority, has unquestionably operated to reduce the dangers arising from the election of incapable legislators. When the choice of inferior representatives does not bring serious penalties upon the electorate, inferior representatives are apt to be chosen. Public vigilance is the price of efficient government only so long as the legislature holds broad and final powers. The decline in the calibre of American legislatures, both state and municipal, has gone hand in hand with the shearing of their legislative powers. And the process runs in a vicious circle. When a legislature or council shows itself not up to the mark in the integrity or efficiency of its work, the usual remedy has been not to increase but to diminish its powers and responsibilities. With narrowed powers it attracts a less capable set of men

and these exercise even their smaller responsibilities less satisfactorily. So again the pruning knife comes forth, and with the same results. This, in a word, has been the history of city councils in most American cities, until in the end the municipal legislature in cities like New York has ceased to be a coördinate branch of municipal government, and has become little more than the arena for an ill-tempered and almost wholly uninfluential discussion of public affairs. In many cities it has been eliminated altogether by telescoping it with the executive.

The policy of direct legislation proposes a more ruthless shearing. The elaboration of constitutional and charter limitations served to destroy the finality of legislative powers in many matters; direct legislation would destroy this in all things. If this further mowing down of the final powers of representative bodies would not conduce to a further decline in the calibre of their personnel, then five or six decades of American political experience have taught us nothing. The sponsors of the direct legislation propaganda assure us that, under the new legislative régime, public attention will be focused upon measures rather than upon men, which seems to carry the implication that an unalloyed system of representative legislation possesses the vice of concentrating too much public attention upon the claims of rival candidates. That, however, is least among the failings of representative democracy. Its shortcomings arise rather from a failure of the voters to exercise adequate care in ascer-

taining the qualifications of those who seek office and from a general disposition to place too much reliance upon those guarantees which a party label is supposed to carry. It may well be doubted whether an electorate which cannot be brought to discriminate with care as among candidates can be easily brought to exercise much discrimination as among measures. The voters like to associate public policies with personalities, and anything that tends to weaken the prominence of the latter is not unlikely to react in a lessened interest toward the former. From the assertion that resort to direct legislation on any broad scale is almost certain to lower the plane of popular representation and consequently to result in a poorer quality of representative legislation, there seems to be no getting away. Political experience supports it too strongly to leave ground for much hope that the result would be otherwise.

But it is urged that the direct merits of the new system, in the way of positive legislation, far outweigh this objection, even though it be given all the emphasis that may be put upon it. The real test of legislation in a democracy is its popularity. It matters not how patiently and carefully a statute may be framed by legislators; if it be not in spirit what a majority of the voters desire, it is not a good statute when judged by democratic standards. Now the chief deficiency of laws and ordinances made in the orthodox way has been, it is alleged, a failure to recognize popular demands. And this, again, has come about in

part at least, because the men who have been elected to state legislatures and city councils have too frequently failed to realize the true function of a representative. If representative government means what its name implies, the real and indeed the only function of a representative, we are told, is to represent. In defiance of this doctrine, one naturally recalls the famous apology of Edmund Burke to the voters of his constituency more than a century ago, when this great parliamentarian urged that the true function of a representative is to do his constituents' political thinking for them. He maintained the *interests* of his people, Burke claimed, against their *opinions*. As a principle upon which to base a system of efficient government, there is much to be said in support of Burke's doctrine, but if every representative were to act on the maxim that his own judgment is a better guide of public interest than the plainly expressed opinions of those whom he represents, government would be no longer representative or popular. That laws would be, under the influence of such conceptions of a representative's function, more uniform in spirit, more consistent with one another and more dispassionate in tone, there can be little doubt. But the relation of law to public opinion would be less intimate, and any marked hiatus between these two is inconsistent with the American theory of democratic government.

It has been urged, again, that the presumable readiness of voters to put their names upon initiative petitions without due scrutiny of the proposals contained

in the latter will force upon the electorate the necessity of winnowing a few grains of wheat from the chaff which will be set before them at every election. And it is true that in those cities which have already adopted the initiative the new process of starting measures upon their march to a place upon the municipal statute-book has not been used very sparingly. Every element in the community has its own particular legislative privilege in quest and is apt to overestimate the importance of such claims from the standpoint of the general interest. The gathering of signatures has accordingly the momentum of an interested propaganda behind it, and if the percentage of necessary signatures be not set fairly high, the initiative is in danger of becoming a facile agency of hobby-riding at the expense and inconvenience of the public. It ought to be said, however, that the collection of any large number of signatures, under the restrictions commonly imposed by the direct legislation laws, is not such a simple and inexpensive undertaking as many imagine. If the proposal directly concerns the interests of any organized element of the community—the labor unions, the great business corporations, a political machine, or a religious body—the required signatures for an effective petition are not ordinarily difficult to secure. These bodies have the machinery for name gathering at hand. But where the proposal directly touches the privileges and pockets of none of these, but merely the welfare of the everyday citizen who has no particular organization to champion his inter-

ests, the quest for initiative signatures is likely to make heavier demands, in the way both of time and of money, than can be met without coöperation. The promotion of laws in the interest of the unaffiliated citizen is likely to become nobody's business.

An interesting sidelight has been thrown upon this matter by the working of those provisions relating to nomination by petition which are contained in the present Boston charter. Candidates for election to the city council must be placed in nomination by petitions bearing the names of at least five thousand qualified voters—less than five per cent. of the total electorate. It was predicted, when the adoption of this charter provision was under discussion, that the requirement was too lenient and that it would be too easy for a man to get his name upon the ballot. Subsequent events have proved that where candidates have the support of a political machine the requirement is easily complied with. A nomination paper, passed around among city employees, can be filled in a day or two. Similarly it has been found that aspirants who are willing to hire workers can secure the required names at five or ten cents per head. But when a candidate is able to command neither the backing of a political organization nor the funds necessary to pay for signatures, the prospect set before him is sufficient to deter all except the political beachcomber who has nothing else to do.

It is urged that the initiative will transfer to the unorganized and independent elements of the elector-

ate the advantages now held almost everywhere by organized interests, both economic and political. But does American political experience warrant the hope that it will do anything of the kind? It is true that in the first flush of their newly-gained prerogatives the independent, unorganized electors, in some states and cities where direct legislation has been a while in vogue, have pounded through legislation hostile to the special interests. But these spasms of popular independence have not been uncommon under the representative system of lawmaking, neither have they been wholly ineffective. The trouble with unorganized action lies in the fact that it is inevitably spasmodic and intermittent. The sponsors of the mandatory initiative have asked us to believe that, by rendering its course of action more direct, an unorganized majority actuated by unselfish motives can permanently thwart the will of a well-organized minority of the electorate acting with all the zeal and resources that self-seeking aims can supply. If our municipal history teaches us anything, it is that changes in the framework of government, in the electoral system, and in the methods of ordinance-making do not alone suffice to block the pathway of any measure which can command organized support and ample funds.

Objections of an allied sort are often raised against the referendum as an agency of lawmaking. The political history of Switzerland, where the popular referendum has long been in operation under circumstances favorable to its success, shows that the people

in general grow tired of their legislative duties after the novelty of their experience has worn off, and that a decision which passes for the will of a majority of the voters often represents in reality the judgment of that minority among them which happens to be immediately interested in the question. In Berne, for example, a majority of the registered voters have recorded themselves on only nine out of sixty-eight questions submitted, and in only a very few instances has any question received an affirmative vote equal to a majority of the registered voters. Even in the case of national referenda scarcely more than one-half of all the registered electors pass upon the questions submitted to them at the polls. The more one studies the statistics of Swiss referenda, the more strongly is one forced to the conclusion that decisions which are popular in name are not necessarily popular in fact. In Switzerland, as in all other democracies, the laws represent the will, not of the whole electorate, but of that part of it which, impelled either by public or private motives, takes an active interest in affairs of state. In one of the cantons a serious attempt was made, some years ago, to ameliorate the force of this objection to the referendum by imposing a fine upon every voter who failed to appear at the polls. The polled vote increased as a result; but the real aim of the law was not achieved, for many of the voters who came to the polls under the spur of this compulsion rendered perfunctory conformance by dropping blank ballots into the box.

In America the showing upon this point has been somewhat better. From 1780 to 1911 the voters of Massachusetts passed upon sixty questions, of which they answered forty-one in the affirmative. All were submitted at regular elections. In only a few cases has the total vote on these referenda approached the entire vote polled for candidates, and in ten cases the number of votes recorded upon the measure was less than one-fifth of the total vote cast. In Boston, during the last twenty years, there have been thirty-three questions of local interest submitted to the voters. Twenty of these (one each year) dealt with the question of liquor licenses. On these referenda the average vote was 63.3 per cent. of the entire registered vote, an excellent record as indicative of interest in this question. On the other questions the average was only 59.3 per cent. It is interesting to notice, moreover, that the largest percentage was recorded upon questions which prominently involved some special interest. The request of a street railway corporation to put its tracks upon a certain street, the demand of city laborers for fewer hours of labor, the attempt of certain sections of the city to eliminate the liquor trade from their neighborhood—these were the issues which got the most attention, and they are all matters affecting organized interests and not things that touched the position or the purse of the whole body of citizens. On the other hand, matters which did vitally affect the interests of every citizen in the community —such as the question of adopting what virtually con-

stituted a new charter for Boston—elicited a much less comprehensive expression of opinion.[1]

It is to be borne in mind, moreover, that our use of the referendum in the United States has been, up to the present time, under favorable conditions. Questions have been submitted, for the most part, at the regular elections when most voters come to the polls anyway. As a rule, moreover, only a few questions have hitherto been put upon the ballot at any one time. But the use of the referendum on a scale so broad as is frequently proposed would greatly enhance the difficulty of getting a reliable expression of the public will. The submission of questions at special elections held for the purpose, particularly if these special elections should be held frequently, would certainly mitigate against the polling of a large vote. It may well be doubted, in the light of such experience as we have had, whether more than fifty per cent. of the registered voters would, on the average, appear at these special elections. We should have, in such event, government by half the people for the whole people, which is scarcely our orthodox definition of democracy. The submission of many questions, moreover, means inevitably that none will get very much scrutiny or study. The average voter gives just about so much time and thought to political questions on the eve of

[1] For further details see the paper by Dr. E. M. Hartwell on "Referenda in Massachusetts" in *Proceedings of the National Municipal League*, 1909, 334–353.

an election. If thirty questions be submitted to him instead of three, they are likely to have, in sum, no more of his thought or consideration. Two or three questions he may and sometimes does inquire about and form his own opinion upon. But for guidance upon a score or more of matters, if these are to come upon his ballot, he will be inclined to take the advice of some party, organization or interest with which he may be affiliated. In those western states and cities where, under newly adopted systems of direct legislation the ballot has been loaded with dozens of questions often of minor importance, that is exactly what has happened. The real voting is done, not by the voter, but by the political committee, the taxpayers' league, the labor union, or some other organization whose advice on political matters he regards as coincident with his own interest and whose printed pamphlet of instructions he takes with him to the polls. In one western city the politicians provided their followers with a sheet of limp cardboard the exact size of the ballot. Holes had been cut in this at appropriate places; the voter was instructed to lay the cardboard on his ballot, and, by marking his cross in each hole, he voted on all the referenda just as the politicians desired him to vote. Those who hope, therefore, that the system of direct legislation will cause every voter to inform himself concerning the merits of each proposed measure, or that it will break the power of political machines by making the voters do something which the politicians cannot influence them

in doing, have as usual underestimated the ingenuity of the latter.

It may be suggested, moreover, that not only does the referendum fail in many cases to arouse that degree of public interest and discussion which is necessary to a large vote, but that large numbers of those who do vote upon submitted measures are guided by nothing more substantial than prejudice or caprice. It is well known to politicians, for example, that other things being equal, the affirmative side of any question on the ballot has a great advantage. Only a few months ago there was a local illustration of this feature in electoral psychology when the opponents of a proposal which went before the voters of a Massachusetts city had the question so framed that they would get that advantage of being in the affirmative.[1] The affirmative seems, in fact, to have a bonus equivalent to that of the candidate whose name comes first on the ballot. Just how great such advantages are, cannot be determined by any safe method of computation; but if one accepts the opinions of active political workers, they are sufficient in many cases to turn the scale.

Other electoral tendencies, more or less capricious, are disclosed by a study of the action of the electorate upon questions that have been submitted to them. It

[1] As originally drawn the question was as to whether a certain public undertaking should be defrayed by the issue of bonds "outside the city's debt limit." The wording was changed to "within the city's debt limit."

is clear, for example, that the average voter carries with him into the polling booth a considerable prejudice against corporate interests, and is prone to record his voice against anything that looks like a concession to them. When city charters provide, therefore, that no franchise extensions or other rights may be granted to public service corporations except with the approval of a majority of the voters at the polls, a serious obstacle is placed in the way of granting such privileges, however much it may be in the city's interest to do so. The cry against privilege in any of its forms is easy to raise, and when raised always has effectiveness, as do the various race and religious cries which mischief-makers raise from time to time. Doubtless this anti-corporation prejudice among the voters is, to a considerable extent, not without reason: corporate interests, by their reckless disregard of public policy and popular opinion, have often brought it upon themselves. But prejudice exists, and government by prejudice, warranted or unwarranted, is not safe government. When the public mind is inflamed against an offender, though justifiably so, no one with a clear sense of justice would urge that the offender should have his right to life, liberty or property adjudged by a jury which reflects the prejudice of the community rather than by a body of men qualified to act dispassionately. When popular passions are aroused, it is not easy to get a jury which will deal fairly on the merits of an issue, nor yet a legislature or council which will do the same. But all three of

those bodies will probably manifest a greater inclination to fairness than the whole electorate from which their members are drawn. Where vested interests are concerned, measures that are legislative in form are very often adjudicative in effect. To hinge their acceptance or rejection upon the issue of an election is accordingly to establish, in many cases, a system of administrative adjudication by popular caprice.

On the other hand, voters show a partiality toward certain interests and principles which may not be, and frequently are not, in accord with the general interest. They are unduly lenient, as a rule, toward the claims of all who hold places on the city payroll. For securing higher pay, fewer hours and favorable terms of service, the city employee can scarcely find a more useful expedient than the referendum. The public feels kindly toward the man who works for the municipality at a small daily wage; the older and less competent he is, the more sympathetic it seems to feel. When the employees ask for something they are apt to get it without much scrutiny from the mass of the voters. That is why policemen, firemen and others who go to the legislature for measures in their own interest are always willing to have these passed with a proviso for a local referendum attached. Experience seems to show that legislatures comply much more readily with requests for permissive than for mandatory legislation, since they are naturally inclined to feel that legislation of the former sort puts no final responsibility upon them. So also the voters show a

pronounced partiality to measures which propose to pay for public improvements out of the proceeds of loans rather than from current taxes. It is but natural that men should desire to have present conveniences at the expense of future generations; hence when a voter is asked whether he will pay for a costly public improvement or let his grandchildren pay for it, his answer is not difficult to forecast. For a time it was thought that since municipal councils are inclined to be prodigal of the city's credit, the necessity of submitting proposed loans to the voters would afford a salutary check. As such it has proved, however, of little or no service. On the contrary, it has rather favored undue borrowing by reducing the council's sense of responsibility for its share in the matter.

Other lines along which the electorate is apt, as experience shows, to be guided by its prejudices or partialities might be indicated; but enough has been said to suggest that the expressed wish of the people does not necessarily represent their deliberate judgment. When voters are called upon with frequency and are asked to express themselves upon all sorts of matters the consideration which they give to each question must be of the most superficial sort and, being superficial, erratic. Public sentiment is proverbially fickle as to men; it is not likely to be any less so as to measures. As men have gone into high office on the crest of a wave and have been dropped out on its subsidence, so measures and policies of all sorts catch the popular fancy for one season and are discarded

the next. It is scarcely to be expected that an increased participation of the electorate in the normal work of lawmaking will give public sentiment any greater stability; on the contrary, the statute-book would in all probability reflect to an even greater extent than now the fleeting opinions of people whose political ideals are seldom very firmly anchored. All this is reinforced by the fact that the voters, upon questions set before them, must record categorical answers. They must either accept or reject a submitted measure. There is no room for compromise. Yet compromise has played a large part in the making of laws under the representative system. Without it progressive legislation would often have proved impossible. To ask voters for an unqualified yea or nay is to disregard the fact that many of them do not hold unqualified opinions and cannot fairly express their views in categorical terms.

An objection to direct legislation, well stated in a later chapter, is based upon the lack of harmony between that system and the traditional American distinction between constitutional and ordinary laws. Constitutions, and particularly those clauses in constitutions which make up a bill of rights, have been regarded in America as bulwarks of personal liberty. A certain sanctity has attached to these organic laws because they have been adopted in a particularly formal way which has included popular approval at the polls. Ordinary laws, on the other hand, have been the much less formal work of legislatures. But

with a broad use of direct legislation this distinction would entirely disappear. Constitutions and ordinary laws would be made and unmade by the same procedure; the people would initiate both by their petitions and adopt both by their votes. There would be no more security for personal and property rights in one than in the other. Of course it is not at all certain that this outcome would be very undesirable in America. In England there has never been any distinction between constitutional and ordinary laws, yet the liberty of the individual has not suffered serious impairment on that account. It may be suggested, moreover, that constitutional limitations designed to guard private rights have in America often overreached themselves and by so doing have offset much of the merit they possess. The provision which forbids the deprivation of property without "due process of law" enunciates a wholesome canon of government; but it has too often been pressed into service as a means of thwarting some much-needed social and economic reforms. Yet whether the objection thereto be valid or not, it remains true that a general use of the initiative and referendum would sweep away a basic principle in the American legal system.

In weighing the various merits and faults of the initiative and referendum as set forth in the foregoing pages much depends upon an individual's point of view. Men hold widely divergent opinions, for example, concerning the degree to which present institutions and methods have failed, in the United States,

to measure up to reasonable expectations. Yet each man's attitude upon that question determines the spirit in which he approaches the new proposals. Much depends, moreover, upon our individual notions concerning what the populace is apt to do under different circumstances and these notions are not usually built upon sure information. The psychology of the crowd, despite all that has been written on that subject by a brilliant French author, is even yet a *terra incognita* to students of political science. It is a fact, however, that those who best know the political propensities and caprices of the voters are the least ready to turn over to them the decision of every-day questions. Whether the electorate, with due education and practice, can do better than past experience has led us to expect, is something which the next few years will probably disclose.

The Recall.

Unlike the initiative and referendum, the recall is not an agency of legislation but of administration. It is the power to remove, before the end of his term, any official elected by the voters. Although existing for a long while in some Swiss cantons,[1] it made its first American appearance under the title of the "imperative mandate" in the Populist propaganda of two decades ago, and was first given practical recognition in the Los Angeles charter of 1903.[2] Since that time

[1] For example, in Berne, Argau, and Schaffhausen.

[2] Laws of California, 1903, pp. 574–575.

it has found its way into the constitutions and general laws of several states, notably those of Oregon, Iowa, South Dakota, Washington, Oklahoma and California. It has also been provided for in the special charters of more than a hundred cities, most of them municipalities which have adopted the commission type of government.

In all the cities which have adopted the recall, with the exception of Boston, the provisions relating to it are substantially the same. Ordinarily its operation applies only to elective officers; but in one or two cases it extends to appointive officials as well. The movement to recall an officeholder before the expiry of his term is invariably begun by a petition which sets forth the reasons for the proposal. This petition, when it has received the signatures of a stated percentage of the qualified voters, is presented to some designated municipal authority.[1] The petition is duly examined by the appropriate officer; the signatures are verified; and if the requirements are found to have been complied with, a recall or removal election is ordered, usually by the city council. In some cities it is permissible, in case the number of signatures is not sufficient, to file additional names in a supplementary petition. And although there have been no specific

[1] This stated percentage ranges ordinarily from fifteen per cent. to twenty-five per cent.; but in a few cities it is higher. Sometimes it is a percentage of the registered vote; in other cases a percentage of the vote cast at the last local election. The designated officer is usually the city clerk.

provisions in city charters covering the point, the courts decided, in a recent Seattle case, that voters whose names appeared upon a petition for the recall of an officer might withdraw their names at any time prior to the date upon which the petition was finally certified as sufficient.[1]

When a valid petition has been transmitted to it, the city council or other competent authority fixes a date for the removal election, which must be within the period fixed by law. Usually it is provided that the officer whose removal is sought shall have his name placed upon the ballot at this election unless he requests otherwise. Other candidates for the office may be placed in nomination by the usual methods. The recall election is conducted, so far as polling places and the other machinery of voting are concerned, like any regular election. Unless the incumbent receives the highest number of votes among the candidates offering themselves, he is recalled; that is, he leaves office and his place is taken by that candidate who did receive the largest number of votes. Ordinarily this successor fills out only the unexpired term. It is frequently provided, in order to prevent abuses of the recall procedure, that no removal petition may be filed until after an officer has been at least six months in his post and that thereafter a petition may not be filed more than once during his term of office. The constitutionality of the recall has invariably been upheld

[1] See below, p. 331.

by the courts. Following its adoption in city charters the recall has gained recognition in the constitutions of Oregon and California, in the latter of which it is applicable not only to the executive and legislative departments of government but to the judiciary as well.

Since its first adoption by an American city eight years ago the recall has been put into operation a number of times, notably in Los Angeles and in Seattle. In the former city a member of the city council was removed from office in 1904 and in 1906 a movement to recall the mayor was forestalled by the latter's resignation. Seattle in 1910 ousted its mayor after a violent contest and the friends of the new incumbent have since been kept employed in repelling persistent efforts to dislodge him in turn. In several other cities the expedient has been used, sometimes achieving its end and sometimes failing to do so. As yet there has been no instance of the recall of a state officer under the provisions which have been placed in state constitutions within the last four years.

In the amended Boston charter of 1909 a modified system of recall was established in connection with the mayoralty. In providing for a four-year mayoral term the framers of those amendments deemed it advisable to entrust to the voters the power of terminating a mayor's tenure at the end of his second year in office. It happens that the state elections in Massachusetts take place in November and that the Boston municipal elections are held in January following. At

the state elections, accordingly, the voters are asked (and this without the filing of any petition on their part) whether they desire an election for the post of mayor at the forthcoming January polling. If a majority of the *registered* voters pronounce in the affirmative then the incumbent of the mayoralty vacates his office and a new election for a four-year term is held. The question goes on the state ballot once every four years, that is, whenever a mayor's term is halfway run.[1]

The chief argument in favor of the recall, as advanced by friends of the expedient, is its efficacy as an agent of unremitting popular control over men in public office. It is a perpetual reminder of preëlection promises. It compels each officeholder to view his every public act in the light of what the voters will think of it. It is an application, in a wider sense, of that principle of ministerial responsibility which is a feature of English government and which enables the course of public policy to be altered at any moment by the recall of a cabinet at the hands of the House of Commons. It assumes that the relation of the voters to an elective officer is that of principal and agent—that the agent's power of attorney may be revoked at any time. It is, accordingly, a means of

[1] The question appeared on the ballot in November, 1911, but no serious effort was made to influence the popular verdict either way. As the total registered vote of Boston is about 110,000 it would have taken over 55,000 affirmative votes to recall the mayor. The result was affirmative 37,262, negative 32,501.

keeping all officials responsible and responsive to public opinion.

That the possibility of recalling officers is likely to achieve some of these things is scarcely to be denied. The deference of an office-seeker to public sentiment is proverbial; and with a provision for his recall on the statute-book the official is likely to be kept perpetually in that frame of mind. There is little question concerning the spur to official responsiveness which the recall provides. The only question—and an important question it is—concerns the effect which it will have upon an officer's judgment and hence upon his efficiency. Where the duty of an official is solely that of reflecting public sentiment—and that seems to be the only function of councillors elected from wards to large municipal bodies—the sponsors of the recall provision are able to make their strongest case. Large city councils and the ward system of election have as their only prop the strong popular feeling that all parts of the city and all elements of its population ought to be represented in the city government and particularly in that branch of it which governs public expenditure. One may defensibly take issue with this proposition; but as long as it is given recognition as a working principle of city government, as it still is in most cities of the country, it will scarcely be gainsaid that those whose chief function is to reflect varieties of local sentiment should be made to do this in the most thorough way. And the recall provision is doubtless a useful agency in that direction.

But there are many city officers upon whom is laid not only the task of reflecting local opinion, but something more. In its administrative departments the city requires men who will combine a responsive attitude with some executive skill and judgment. The emphasis, indeed, ought to go upon the latter qualities. The recall provision, however, puts the whole emphasis upon the former. It may be urged, perhaps, that there is really no difference between these two—that an official who shows skill and judgment in the interests of the city is responding to the wishes of its citizens. It does not take much political experience to teach one, however, that the *interests* of the municipality as these clearly appear to a competent administrative officer, and the *wishes* of the citizens as they are apt to express them at the polls, come far from being always the same thing. The case for the recall provision in relation to administrative officials is correspondingly weakened. With respect to judicial officers it is weakest of all unless we are prepared to accept the revolutionary doctrine that the duty of a judge is that of a supplementary lawmaker.

A point commonly urged in favor of the recall is that it permits the lengthening of official terms without thereby risking the establishment of a bureaucracy. Short terms, particularly for administrative officers, have been a vice of local government. They form one of the chief reasons why city administration in the United States has failed to develop any sound traditions of efficiency. The only ground upon

which one can pretend to justify the practice of electing comptrollers, or street commissioners, or even mayors, for terms of one or two years is the desirability of holding these officials directly accountable to the electorate. If the recall provisions, by affording a potential means of ousting an officer who proves unsatisfactory, can promote the practice of leaving in office for long terms those who prove themselves competent, it will have rendered a considerable service to the cause of good municipal management. The extent of this service must depend, however, upon the frequency with which the voters bring the recall machinery into operation and the motives which actuate them in doing so. If political or capricious motives dominate their action and if men are accordingly removed from office, not because they are inefficient but because they are politically unpopular, the service rendered by the recall machinery will be worse than worthless. We should then have no more than long terms in name and short terms in fact. One trouble with the short term is that it forces an officer to waste much of his time and energy in the task of maintaining his political fences; with the possibility of a recall election constantly on the horizon this trouble would not be eliminated by the merely formal lengthening of an official's term.

It was from this angle that the framers of Boston's amended charter approached the proposal to incorporate the recall provision in that enactment. Their decision was that the mayor's term should be length-

ened from two to four years; but that he should be removable by the voters at the end of two years. They provided, therefore, a recall arrangement which can be brought into operation at a stated point in the mayor's term, and not at any point as is commonly permitted in other cities. They stipulated, moreover, that a majority of the *registered* vote and not a mere plurality of polled votes should be necessary to effect the mayor's removal. In other words, the Boston charter provides a system whereby the voters express their opinion, when his term is half completed, upon the mayor's record in office and not upon his qualifications as compared with those of some other candidate or candidates whose names appear upon their ballot. If the pronouncement by the voters is decisively against the mayor—that is, if a majority of the registered voters declare against his continuance in office —the decision is effective. In brief, the Boston idea is that a mayor, when elected for a four-year term, should be allowed to finish it out unless the public interest clearly demands his removal.

The plan of popular election, as a means of getting competent men for municipal administrative posts, has never been crowned with much success either in America or elsewhere. Administrative skill is not to be had, apparently, by asking those who profess it to come forward as candidates for election. All this is so well recognized that the practice of seeking administrative officials by popular election might have been wholly abandoned by this time were it not for objec-

tions, which seem to be well rooted in the public mind, against the only other method, namely, executive appointment. Making offices appointive opens the way to efficiency; but when men are appointed to office for long terms they tend to forget that the public is a fastidious master. The recall, it is urged, can be used to secure the advantages of both these methods—election and appointment—without the shortcomings of either. If men be appointed to office for long terms but allowed to hold office subject to recall should occasion arise, the possibility of reconciling efficiency with accountability comes into view. The right men can be appointed, and after appointment, these can be held to the proper attitude.

The foregoing assumes, however, that the power to recall an officer will be used sparingly and for good reason only. Otherwise it would be no more than an effective instrument of intimidation and blackmail. Nothing indeed can be predicted with certainty concerning the merits and faults of the recall in operation until after it has had a trial over a considerable period and under varying degrees of political stress. If it can develop a good tradition, it may prove a highly useful addition to our machinery of local government. At its best it has great potentialities for good. But at its worst the recall contains endless possibilities of political demoralization and harm.

CHAPTER II

NATIONALISM AND POPULAR RULE[1]

IN Mr. Herbert Croly's "Promise of American Life,"[2] the most profound and illuminating study of our national conditions which has appeared for many years, especial emphasis is laid on the assertion that the whole point of our governmental experiment lies in the fact that it is a genuine effort to achieve true democracy—both political and industrial. The existence of this nation has no real significance, from the standpoint of humanity at large, unless it means the rule of the people, and the achievement of a greater measure of widely diffused popular well-being than has ever before obtained on a like scale. Unless this is in very truth a government of, by, and for the people, then both historically and in world interest our national existence loses most of its point. Nominal republics with a high aggregate of industrial prosperity, and governed normally by rich traders and manufacturers in their own real or fancied interest,

[1] This chapter by Colonel Theodore Roosevelt is reprinted by permission from *The Outlook* of January 21, 1911.

[2] New York, The Macmillan Co., 1909.

but occasionally by violent and foolish mobs, have existed in many previous ages. There is little to be gained by repeating on a bigger scale in the Western Hemisphere the careers of Tyre and Carthage on the shores of the Mediterranean.

If there is any worse form of government than that of a plutocracy, it is one which oscillates between control by a plutocracy and control by a mob. It ought not to be necessary to point out that popular rule is the antithesis of mob rule; just as the fact that the nation was in arms during the Civil War meant that there was no room in the country for armed mobs. Popular rule means not that the richest man in the country is given less than his right to a share in the work of guiding the government; on the contrary, it means that he is guaranteed just as much right as any one else, *but no more*—in other words, that each man will have his full share as a citizen, and only just so much more as his abilities entitle him to by enabling him to render to his fellow-citizens services more important than the average man can render. On the other hand, the surest way to bring about mob rule is to have a government based on privilege, the kind of government desired not only by the beneficiaries of privilege, but by many honest reactionaries of dim vision; for the exasperation caused by such a government is sure in the end to produce a violent reaction and accompanying excesses. The Progressives, in fighting for sane and steady progress, are doing all they can to safeguard the country against

this kind of unhealthy oscillation, of government by convulsion.

A number of Progressive conventions have recently enunciated the following among other principles as necessary to popular government:

Drastic laws to prevent the corrupt use of money in politics.

Election of United States senators by direct vote.

Direct primaries for the nomination of elective officials.

Direct election of delegates to national conventions, the voter to express his choice for president on the ballot for delegate.

The introduction of the initiative, referendum and recall.

In Oregon most of these principles are already law. The recent Republican state platform of Wisconsin has declared for all of these principles; and this declaration is entitled to very serious consideration, for Wisconsin has taken a leading position in Progressive legislation and has to her credit a noteworthy record of laws for social, political and industrial betterment, which laws have been proved in actual practice and have worked well.

Most Western Progressives, and many Eastern Progressives (including the present writer), will assent to these five propositions, at least in principle. I do not suppose that there can be any dissent from the need of passing thoroughgoing acts to prevent corrupt practices. The movement for direct primaries

is spreading fast. Whether it shall apply to all elective officials or to certain categories of them is a matter which must be decided by the actual experience of each state when the working of the scheme is tested in practice. There is a constantly growing feeling also in favor of the election of United States senators by direct popular vote. On this point, as indeed on most of these points, there is room for honest divergence of opinion, but I believe that the weight of conviction is on the side of those who would elect the senators by popular vote, and that the general feeling is inclining this way. The arguments made against such method of election are practically the same as the arguments originally made against the election of president by popular vote; and the electoral college was designed on precisely the same theory in accord with which it was supposed that the legislature rather than the people should be trusted to choose the best type of senator. Such change in senatorial elections would no more alter the fundamental principles of our government than they were altered by the change in presidential elections. At present, although the form of an electoral college is preserved, the vote for president is really a direct popular vote; and this absolute reversal in practice of the theory of the constitution as regards the choice of the most important public officer in the land offers a curious commentary on the attitude of those who declaim against all change by practice in the construction of the letter of a written constitution. Again, and for the same

reason, it seems to me an admirable plan that there should be a direct election of delegates to national conventions, with opportunity for the voter to express his choice for president and vice-president; although, of course, such latitude of action must be left to the delegate as to permit his exercising his own judgment if his first or second choice proves impossible. This is merely slightly to alter the present-day practice when delegates are instructed by state and district conventions to vote for a given candidate.

The proposition that will excite most misgiving and antagonism is that relating to the initiative, referendum and recall. As regards the recall, it is sometimes very useful, but it contains undoubted possibilities of mischief, and of course it is least necessary in the case of short-term elective officers. There is, however, unquestionably a very real argument to be made for it as regards officers elected or appointed for life. In the United States government practically the only body to whom this applies is the judiciary, and I shall accordingly treat the matter when I come to treat of nationalism and the judiciary.

There remain the initiative and referendum. As regards both of these, I think that the anticipations of their adherents and the fears of their opponents are equally exaggerated. The value of each depends mainly upon the way it is applied and upon the extent and complexity of the governmental unit to which it is applied. Every one is agreed that there must be a popular referendum on such a fundamental matter as

a constitutional change, and in New York State we already have what is really a referendum on various other propositions by which the state or one of its local subdivisions passes upon the propriety of action which implies the spending of money, permission to establish a trolley line system or something of the kind. Moreover, where popular interest is sufficiently keen, as it has been in the case of certain amendments to the national constitution at various times in the past, we see what is practically the initiative under another name. I believe that it would be a good thing to have the principle of the initiative and the referendum applied in most of our states, always provided that it be so safeguarded as to prevent its being used either wantonly or in a spirit of levity. In other words, if the legislature fails to act one way or the other on some bill as to which there is a genuine popular demand, then there should unquestionably be power in the people through the initiative to compel such action. Similarly, on any bill important enough to arouse genuine public interest there should be power for the people to insist upon the bill being referred to popular vote, so that the constituents may authoritatively determine whether or not their representatives have misrepresented them. But if it is rendered too easy to invoke either process, the result can be only mischievous. The same considerations which are more and more tending to make thoughtful people believe that genuine popular control is best exercised through the short ballot have weight here also. There are

plenty of cases in which, on a given issue of sufficient importance, it is better that the people should decide for themselves rather than trust the decision to a body of representatives—and our present-day acceptance of this fact is shown by our insistence upon a direct vote of the state when the state adopts a new constitution. But ordinary citizens in private life—such as the present writer and most of his readers—neither can nor ought to spend their time in following all the minutiæ of legislation. This work they ought to delegate to the legislators, who are to make it their special business; and if scores of bills are habitually presented for popular approval or disapproval at every election, it is not probable that good will come, and it is certain that the percentage of wise decisions by the people will be less than if only a few propositions of really great importance are presented. It is necessary to guard not only against the cranks and well-meaning busybodies with fads, but also against the extreme laxity with which men are accustomed to sign petitions. There was a curious instance of this trait at the recent elections in Cincinnati. Aside from the regular nominees, there was in one district a man nominated on petition. He had enough names put on the petition to insure his running, but at the election he got only about one-seventh as many votes as there were names on the petition. A much larger proportion of men should be required to petition for an initiative than for a referendum, but in each case the regulations both as to the number of names required and as to addi-

tional guarantees where necessary should be such as to forbid the invocation of this method of securing popular action unless the measure is one of real importance, as to which there is a deep-rooted popular interest. Oregon has already tried the principle of the initiative and the referendum, and it seems to have produced good results—certainly in the case of the referendum, and probably in the case of the initiative. This, of course, does not necessarily mean that the principle would work well in all other communities, and under our system it is difficult to see at present how it could normally have more than a state-wide application. In Switzerland it has been applied both in the cantons, or states, and in the federal or national government, and it seems on the whole to have worked fairly well. Those who anticipate too much from the new system, however, would do well to study its workings in Switzerland. There have now and then been odd results. Recently by the use of the initiative a certain bill was proposed to the federal legislature. There was such a strong demand for its passage, as shown by the vote on the initiative and by the general popular agitation, that the legislature passed it with but one dissenting vote. At the ensuing election the representative who had cast the dissenting vote was, because of having done so, beaten; but on the referendum the people defeated the measure itself! They demanded it on the initiative, all their representatives in the legislature with one exception voted for it on its passage, they beat the one man who had voted

against it, and then on the referendum they defeated the bill itself.

Unquestionably an ideal representative body is the best imaginable legislative body. Such a body, if composed of men of unusual courage, intelligence, sympathy and high-mindedness, anxious to represent the people, and at the same time conscientious in their determination to do nothing that is wrong, would so act that there would never come the slightest demand for any change in the methods of enacting laws. Unfortunately, however, in actual practice, too many of our legislative bodies have not really been representative; and not a few of the ablest and most prominent men in public life have prided themselves on their ability to use parliamentary forms to defeat measures for which there was a great popular demand. Special interests which would be powerless in a general election may be all-powerful in a legislature if they enlist the services of a few skilled tacticians; and the result is the same whether these tacticians are unscrupulous and are hired by the special interests, or whether they are sincere men who honestly believe that the people desire what is wrong and should not be allowed to have it. Normally a representative should represent his constituents. If on any point of real importance he finds that he conscientiously differs with them, he must, as a matter of course, follow his conscience, and thereby he may not only perform his highest duty, but also render the highest possible service to his constituents themselves. But in such case

he should not try to achieve his purpose by tricking his constituents or by adroitly seeking at the same time to thwart their wishes in secret and yet apparently to act so as to retain their good will. He should never put holding his office above keeping straight with his conscience, and if the measure as to which he differs with his constituents is of sufficient importance, he should be prepared to go out of office rather than surrender on a matter of vital principle. Normally, however, he must remember that the very meaning of the word representative is that the constituents shall be represented. It is his duty to try to lead them to accept his views, and it is their duty to give him as large a latitude as possible in matters of conscience, realizing that the more conscientious the representative is the better he will in general represent them; but if a real and vital split on a matter of principle occurs, as in the case of a man who believes in the gold standard but finds that his constituents believe in free silver, the representative's duty is neither to abandon his own belief nor to try to beat his constituents by a trick, but to fight fairly for his convictions and cheerfully accept defeat if he cannot convert his constituents to his way of thinking—exactly the attitude that the late Senator Lamar, of Mississippi, once took on this very question and triumphed, and exactly the attitude that the late Congressman Dargan, of North Carolina, took at the price of his political life.

Incidentally the referendum is certain to be of

great use in a particular class of cases which very much puzzle the average legislator—where a minority of his constituents, but a large and influential minority, may demand something concerning which there is grave doubt whether the majority does or does not sympathize with the demand. In such a case the minority is active and determined; the majority can be roused only if the question is directly before it. In other words, the majority does not count it for righteousness in a representative if he refuses to yield to a minority; while a minority, on the other hand, will not tolerate adverse action. In such cases the temptation to the ordinary legislator is very great to yield to the demand of the minority, as he fears its concrete and interested wrath much more than the tepid disapproval of the majority. In all such questions the referendum would offer much the wisest and most efficient and satisfactory solution.

The opponents of the referendum and initiative, therefore, would do well to remember that the movement in favor of the two is largely due to the failure of the representative bodies really to represent the people. There has been a growing feeling that there should be more direct popular action as an alternative, not to the action of an ideal legislative body, but to the actions of legislative bodies as they are now too often found in very fact to act. The movement for direct popular government in Oregon, for instance, was in part the inevitable consequence of the gross betrayal of their trust by various representatives of

Oregon in the national and state legislatures, and by the men put in appointive office through the exertions of these representatives. Moreover, the opponents, and, for the matter of that, the adherents likewise, of the proposed change, when they speak, whether in praise or in blame of its radicalism, would do well to remember that in one of the oldest and most conservative sections of the country there has existed throughout our national life, and now exists, a form of local self-government much more radical where it applies than even the initiative and referendum. I refer to the New England town meeting, at which all purely town matters are decided without appeal by the vote of the townspeople in meeting assembled. In no other part of the world, save in two or three cantons of Switzerland, and perhaps in certain districts of Norway, is there any form of government so absolutely democratic, so absolutely popular, as the New England town meeting. The initiative and referendum represent merely the next stage. The town meeting has been proved to work admirably as regards certain governmental units where the citizens are of a certain type. The initiative and referendum have been shown to work well as regards certain larger constituencies of a different type. The men living in states where the town meeting has flourished for centuries should be the last to feel that the initiative and referendum are in and of themselves revolutionary propositions.

On the other hand, the advocates of the initiative

and referendum should, in their turn, remember that those measures are in themselves merely means and not ends; that their success or failure is to be determined not on *a priori* reasoning but by actually testing how they work under varying conditions; and, above all, that it is foolish to treat these or any other devices for obtaining good government and popular rule as justifying sweeping condemnation of all men and communities where other governmental methods are preferred. There is probably no class of men who ought to study history as carefully as reformers—except reactionaries, for whom the need is even greater. A careful study of eighteenth-century France ought to show the reactionary that the rejection, by the beneficiaries of special privilege, of wise and moderate progressiveness, like that of Turgot, inevitably tends to produce the most calamitous explosion; and, on the other hand, the ultra-reformers will do well to ponder the harm done in their turn by the Jacobins, the inevitable reaction produced by their excesses, and especially by the queer attitude they assumed when they first defied the people and demanded the absolute rule of the people and then declined to submit to the judgment of the very people they had just defied because that judgment was not sufficiently favorable.

The initiative and the referendum are devices for giving better and more immediate effect to the popular will. If in any given state—Vermont, for instance, or Massachusetts, or New Hampshire, or New Jersey, or New York—the people are not now ready to adopt

either, or even if they never become ready—why, that is their affair, and the genuinely Progressive leader will no more ostracize and read out of the company of Progressives a New England state which thinks it can achieve popular government without the referendum than he would read out some state in another part of the country because it has never adopted the town meeting. Personally I should like to see the initiative and referendum, with proper safeguards, adopted generally in the states of the Union, and personally I am sorry that the New England town meeting has not spread throughout the Union. But I certainly do not intend to part company from other Progressives who fail to sympathize with me in either view, and I do intend to insist with all the strength I have that each device is a device and nothing more is a means and not an end. The end is good government, obtained through genuine popular rule. Any device that under given conditions achieves this end is good for those conditions, and the value of each device must be tested purely by the answer to the question, does it or does it not secure the end in view? One of the worst faults that can be committed by practical men engaged in the difficult work of self-government is to make a fetish of a name, or to confound the means with the end. The end is to secure justice, equality of opportunity in industrial as well as in political matters, to safeguard the interests of all the people, and to work for a system which shall promote the general diffusion of well-being and yet

give ample rewards to those who in any walk of life and in any kind of work render exceptional service to the community as a whole. We do not want to produce a dead level of achievement and reward; we want to give the exceptional rewards, in the way of approbation or in whatever other fashion may be necessary, to the exceptional men, the Lincolns, Grants, Marshalls, Emersons, Longfellows, Edisons, Pearys, who each in his own line does some special service; but we wish so far as possible to prevent a reward being given that is altogether disproportionate to the services, and especially to prevent huge rewards coming where there is no service or indeed where the action rewarded is detrimental instead of beneficial to the public interest.

Ours is a government of laws, but every one should keep always before him the fact that no law is worth anything unless there is the right kind of man behind it. In tropical America there are many republics whose constitutions and laws are practically identical with ours, yet some of these republics have, throughout their governmental career, alternated between despotism and anarchy, and have failed in striking fashion at every point where in equally striking fashion we have succeeded. The difference was not in the laws or the institutions, for they were the same. The difference was in the men who made up the community, in the men who administered the laws, and in the men who put in power the administrators.

If we choose senators by popular vote instead of

through the legislatures, we shall not thereby have secured good representatives; we shall merely have given the people a better chance to get good representatives. If they choose bad men, unworthy men, whether their unworthiness take the form of corruption or demagogy, of truckling to special interests or of truckling to the mob, we shall have worked no improvement. There have been in the past plenty of unworthy governors and congressmen elected, just as there have been plenty of bad senators elected. Similarly, if the direct primary merely means additional expense without compensating advantage in wise and just action, the gain will be *nil*. At present there are cities where the direct primary obtains, in which, so far as I can see, the boss system is about as firmly rooted as in those cities where the direct primary has not been introduced. So with the initiative and the referendum. Vermont has neither; Oregon has both. In whichever state there is the less corruption and greater justice, in whichever state the elected representatives of the people are more upright, clean and able, in whichever state the people are themselves wiser in action, more prompt to recognize and reward good service and fearlessness and independence in judge, governor, senator, or congressman, why, in that state we shall find the best government, wholly without regard to the particular device by which the government is obtained. If both states show equally well in these matters, why, it means that each has devised the instrument best suited for its own needs. It is

folly not to adopt the new instrument if experience shows it to be an instrument which usually produces better results; and if we are convinced that it is a better instrument, then we should endeavor by reason and argument to get our neighbors to adopt it; but it is also folly to refuse to work with good men who are striving for the same progressive ends as we are, merely because these good men prefer older instruments than those which we believe to be best fitted for the purpose.

I believe in adopting every device for popular government which is in theory good and when the practice bears out the theory. It is of course true that each is only a device, and that its worth must be shown in actual practice; and it is also true that where, as with us, the people are masters, the most vital need is that they shall show self-mastery as well as the power to master their servants. But it is often impossible to establish genuine popular rule and get rid of privilege, without the use of new devices to meet new needs. I think that this is the situation which now confronts us in the United States, and that the adoption in principle of the programme on which the Progressives, especially in the West, are tending to unite, offers us the best chance to achieve the desired result.

CHAPTER III

THE ISSUES OF REFORM [1]

THE political discussions of recent years concerning the reform of our political methods have carried us back to where we began. We set out upon our political adventures as a nation with one distinct object, namely, to put the control of government in the hands of the people, to set up a government by public opinion thoroughly democratic in its structure and motive. We were more interested in that than in making it efficient. Efficiency meant strength; strength might mean tyranny; and we were minded to have liberty at any cost. And now, behold, when our experiment is a hundred and thirty odd years old, we discover that we have neither efficiency nor control. It is stated and conceded on every side that our whole representative system is in the hands of the "machine"; that the people do not in reality choose their representatives any longer, and that their repre-

[1] By Governor Woodrow Wilson. Reprinted by permission, in part from the *North American Review*, May, 1910, and in part from an address on "The Issues of Reform," delivered in Kansas City on May 5, 1911.

sentatives do not serve the general interest unless dragooned into doing so by extraordinary forces of agitation, but are controlled by personal and private influences; that there is no one anywhere whom we can hold publicly responsible, and that it is hide-and-seek who shall be punished, who rewarded, who preferred, who rejected; that the processes of government amongst us, in short, are haphazard, the processes of control obscure and ineffectual. And so we are at the beginning again. We must, if any part of this be true, at once devote ourselves again to finding means to make our governments, whether in our cities, in our states, or in the nation, representative, responsible and efficient.

Efficiency, of course, depends largely upon organization. There must be definite authority, centered in somebody in particular whom we can observe and control, and an organization built upon obedience and coöperation, an organization which acts together, with system, intelligence and energy. We were afraid of such an organization at the outset. It seemed to mean the concentration of authority in too few hands and the setting up of a government which might be too strong for the people. Our chief thought was of control. We concluded that the best means of obtaining it was to make practically every office elective, whether great or small, superior or subordinate; to bring the structure of the government at every point into direct contact with the people. The derivation of every part of it we desired should be directly from the people.

We were very shy of appointments to office. We wished only elections, frequent and direct.

As part of the system—we supposed an indispensable part—we defined the duties of every office, great or small, by statute, and gave to every officer a definite legal independence. We wished him to take his orders only from the law—not from any superior, but from the people themselves, whose will the law was intended to embody. No officer appointed him and no officer could remove him. The people had given him his term, short enough to keep him in mind of his responsibility to them, and would not suffer any one but themselves to displace him, unless he became himself an actual breaker of the law. In that case, he might be indicted like any other lawbreaker. But his indictment would be a family affair; no discipline imposed upon him by his superiors in office but a trial and judgment by his neighbors. A district attorney, elected on the same "ticket" with himself, would bring the matter to the attention of a grand jury of their neighbors, men who had in all likelihood voted for them both, and a petit jury of the same neighborhood would hear and decide the case if a true bill were found against him. He stood or fell by their judgment of the law, not by his character or efficiency.

A sheriff in one of the states suffered a prisoner to be taken from him by a mob and hanged. He made no show or pretence even of resistance. The governor of the state wrote him a sharp letter or rebuke for his criminal neglect of his duty. He replied

in an open letter in which he bluntly requested the governor to mind his own business. The interesting feature of the reply was not its impudence, but the fact that it could be written with perfect impunity. The fact was as he had stated it. He was not responsible to the governor or to any other officer whatever, but only to the voters of his neighborhood, many of whom had composed the mob which took his prisoner from him and hanged him at their leisure. He was never called to account for what he had done.

This is a sample of our direct responsibility to the people as a legal system. It was very serviceable and natural so long as our communities were themselves simple and homogeneous. The old New England town meeting, for example, was an admirable instrument of actual self-government. Where neighborhoods are small, and neighbors know one another, they can make actual selection of the men they wish to put into office. Every candidate is known by everybody, and the officers of government when elected serve a constituency of whose interests and opinions they are keenly and intimately aware. Any community whose elements are homogeneous and whose interests are simple can govern itself very well in this informal fashion. The people in such a case, rather than the government, are the organism. But those simple days have gone by. The people of our present communities, from one end of the country to the other, are not homogeneous but composite, their interests

varied and extended, their life complex and intricate. The voters who make them up are largely strangers to each other. Town meetings are out of the question, except for the most formal purposes, perfunctorily served; life sweeps around a thousand centers, and the old processes of selection, the old bases of responsibility, are impossible. Officers of government used to be responsible because they were known and closely observed by neighbors of whose opinions and preferences they were familiarly aware; but now they are unknown, the servants of a political organization, not of their neighbors, irresponsible because obscure, or because defended by the very complexity of the system of which they form a part. The elective items on every voter's programme of duty have become too numerous to be dealt with separately and are, consequently, dealt with in the mass and by a new system, the system of political machinery against which we futilely cry out.

I say "futilely cry out" because the machine is both natural and indispensable in the circumstances and cannot be abolished unless the circumstances are changed, and very radically changed at that. We have given the people something so vast and complicated to do in asking them to select all the officers of government that they cannot do it. It must be done for them by professionals. There are so many men to be named for office; it is futile to name one or two unless you name a whole ticket; the offices that fill a ticket are so many and so obscure that it is impossible the thing

should be done informally and offhand by direct, unassisted popular choice. There must be a preliminary process of selection, of nomination, of preparing the ticket as a whole, unless there is to be hopeless confusion, names put up at haphazard and nobody elected by a clear majority at the end. The machine is as yet an indispensable instrumentality of our politics.

Public opinion in the United States was never better informed, never more intelligent, never more eager to make itself felt in the control of government for the betterment of the nation than it is now; and yet, I venture to say, it was never more helpless to obtain its purposes by ordinary and stated means. It has to resort to convulsive, agitated, almost revolutionary means to have its way. It knows what it wants. It wants good men in office, sensible laws adjusted to existing conditions, conscience in affairs and intelligence in their direction. But it is at a loss how to get these. It flings itself this way and that, frightens this group of politicians, pets that, hopes, protests, demands, but cannot govern.

In its impatience it exaggerates the inefficiency and bad morals of its governments very grossly and is very unfair to men who would serve it if they could, who do serve it when they can, but who are caught in the same net of complicated circumstances in which opinion finds itself involved. There is no just ground for believing that our legislative and administrative bodies are generally corrupt. They are not. They are made up for the most part of honest men who are without

leadership and without free opportunity; who try to understand the public interest and to devise measures to advance it, but who are subordinate to a political system which they cannot dominate or ignore. The machinery of the bodies to which they belong is inorganic, as decentralized as our elective processes would lead one to expect. No one person or group of persons amongst them has been authorized by the circumstances of their election to lead them or to assume responsibility for their programme of action. They therefore parcel out initiative and responsibility in conformity with the obvious dictates of the system. They put their business in the hands of committees—a committee for each subject they have to handle—and give each of their members a place upon some committee. The measures proposed to them, therefore, come from the four quarters of heaven, from members big and little, known and unknown, but never from any responsible source. There can be neither consistency nor continuity in the policies they attempt. What they do cannot be watched, and it cannot be itself organized and made a whole of. There is so much of it and it is so miscellaneous that it cannot be debated. The individual member must do the best he can amidst the confusion. He has only an occasional part and opportunity.

He is controlled, as a matter of fact, from out-of-doors—not by the views of his constituents, but by a party organization which is intended to hold the hetero-

geneous elements of our extraordinary political system together.

When public opinion grows particularly restless and impatient of our present party organization, it is common to hear it defended by the argument that parties are necessary in the conduct of a popular government; and the argument can be sustained by very sound and eloquent passages out of Burke and many another public man of the English-speaking peoples, who has been below the surface of affairs and convinced us of the real philosophy of our form of government; but the argument is quite aside from the point. Of course parties are necessary. They are not only necessary but desirable, in order that conviction upon great public questions may be organized and bodies of men of like opinion and purpose brought together in effective and habitual coöperation. Successful, orderly popular government is impossible without them. But the argument for our own particular organization of parties is quite another matter. That organization is undoubtedly necessary in the circumstances, but you cannot prove its necessity out of Burke or any other man who made permanent analysis of liberty. We could have parties without organizing them in this particular way. There have been parties in free governments time out of mind and in many parts of the world, but never anywhere else an organization of parties like our own.

And yet that organization is for the time being necessary. It centers, as everybody knows, in the nom-

inating machinery. There could be no party organization if our elective system were literally carried out as it was intended to be, by the actual direct and informal selection of every officer of government, not by party agents or leaders, but by the scattered voters of the thousand neighborhoods of a vast country. It was necessary to devise some machinery by which these innumerable choices should be coördinated and squared with party lines. It was a huge business and called for a compact and efficient organization.

Moreover, there was more than the process of selection to be overseen and directed. Students of our political methods have not often enough brought into their reckoning the great diversity of social and economic interest and development that has existed among the different sections and regions of this various country, which even yet shows every stage and variety of growth and make-up and an extraordinary mixture of races and elements of population. It has been necessary to keep this miscellaneous body together by continual exterior pressure, to give it a common direction and consciousness of purpose by sheer force and organization, if political action were not to become hopelessly confused and disordered. It was not conscious of any immediate solidarity of interest or object. It might have broken up into a score of groups and coteries. We might have had more parties than France, as many sections of political opinion as there were distinctly marked regions of population and development. Party interest has been kept alive, party

energy stimulated, by entrusting to local agents and leaders the duty of seeing to it that systematic party nominations were regularly made and urged upon the voters by organized campaigns, whether there were any natural reason or not why, in any given locality, this party or that should be preferred; and national parties have been pieced together out of these local fragments. The creation of the parts was necessary to the creation of the whole. I do not know how else coördinated parties could have been made out of such heterogeneous materials and such diversified interests.

The result has been that the nominating machinery has become the backbone of party organization. By it local leaders are rewarded with influence or office, are kept loyal, watchful and energetic. By it national majorities are pieced together. If one goes back to the source of this matter, therefore, it is easy to see that the nominating machine was no barnacle, but a natural growth, the natural fruit of a system which made it necessary to elect every officer of government. The voter has not the leisure and, therefore, has not the knowledge for the difficult and intricate business. He cannot organize a government every year or two, make up its whole personnel, apply its punishments and rewards, effect its dismissals and promotions. Neither is there any officer or any group of officers of the government itself who can organize it for him, for no officer has the legal authority. The structure of the government is disintegrated by the law itself, so far as its personnel is concerned. The constitutions and

statutes by which the officers are created endeavor, of course, to integrate their functions; but they disintegrate their personnel by making each officer the direct choice of the voters. The only possible means of integration lies outside governments, therefore, and is extra-legal. It is the nominating machine. The machine applies the necessary discipline of administration and keeps the separately elected officers of one mind in the performance of their duties—loyal to an exterior organization.

The punishment it inflicts is definitely and clearly understood. It will not renominate any man who when in office has been disobedient to party commands. It can in effect dismiss from office. Any one who wishes to remain in public life, at any rate in the smaller and less conspicuous offices within the gift of the managers, must keep in their good graces. Independence offends the machine deeply, disobedience it will not tolerate at all. Its watchfulness never flags; its discipline is continuous and effective. It is the chief instrument of party government under our system of elections.

Thus have we necessitated the setting-up outside the government of what we were afraid ourselves to set up inside of it: concentrated power, administrative discipline, the authority to appoint and dismiss. For the power to nominate is virtually the power to appoint and to dismiss, as Professor Ford has pointed out in his lucid and convincing "Rise and Growth of American Politics." It is exercised by the bosses, in-

stead of by responsible officers of the government—by the men who have charge of the nominating machinery; men who are themselves often entirely outside the government as legally constituted, hold no office, do not ask the people for their suffrage, and are picked out for their function by private processes over which the people have no control whatever. They are private citizens and exercise their powers of oversight and management without any public invitation of any kind. Just because there are innumerable offices to be filled by election, just because there are long and elaborate tickets to be made up, just because it needs close and constant attention to the matter to perform the duty of selection successfully—as careful and constant attention as the superintendent of a great business or the head of a great government bureau factory, his office, or his bureau—it cannot possibly be done by the voters as a body. It requires too much knowledge and too much judgment, bestowed upon little offices without number as well as upon great. No officer of the government is authorized to appoint or select. Party managers must undertake it, therefore, who are not officers of the government; and their nominations are virtual appointments if they belong to the successful party. The voters only choose as between the selections, the appointees, of the one party boss or the other. It is out of the question for them to make independent selections of their own.

If this machine, thus bossed and administered, is an outside power over which the voter has no con-

trol—which he can defeat only occasionally, when, in a fervor of reform, he prefers the candidates of some temporary amateur machine (that is, nominating apparatus) set up by some volunteer "committee of one hundred" which has undertaken a rescue—it is the system which is to blame, not the politicians. Somebody, amateurs or professionals, must supply what they supply. We have created the situation and must either change it or abide by its results with such patience and philosophy as we can command.

There can be no mistaking the fact that we are now face to face with political changes which may have a very profound effect upon our political life. Those who do not understand the impending change are afraid of it. Those who do understand it know that it is not a process of revolution, but a process of restoration rather, in which there is as much healing as hurt. There are strain and peril, no doubt, in every process of change, but the chief peril comes from undertaking it in the wrong temper. It lies not in the change itself so much as in the method of some of those who promote it. It is a noteworthy circumstance that in proportion as the people of the country come to recognize what it is that renders them uneasy and what it is that is proposed by way of reformation they lose their fear and take on a certain irresistible enthusiasm.

The American people are naturally a conservative people. They do not wish to touch the stable foundations of their life; they have a reverence for the rights

of property and the rights of contract which is based upon a long experience in a free life, in which they have been at liberty to acquire property as they pleased and bind themselves by such contracts as suited them. No other people have ever had such freedom in the establishment of personal relationships or property rights. They do not mean to lose this freedom or to impair any rights at all, but they do feel that a great many things in their economic life and in their political action are out of gear. They have been cheated by their own political machinery. They have been dominated by the very instrumentalities which they themselves created in the field of industrial action. The liberty of the individual is hampered and impaired. They desire, therefore, not a revolution, not a cutting loose from any part of their past, but a readjustment of the elements of their life, a reconsideration of what it is just to do and equitable to arrange in order that they may be indeed free, may indeed make their own choices and live their own life undominated, unafraid, unsuspicious, confident that they will be served by their public men and that the open processes of their government will bring to them justice and timely reform.

What we are witnessing now is not so much a conflict of parties as a contest of ideals, a struggle between those who, because they do not understand what is happening, blindly hold on to what is and those who, because they do see the real questions of the present and of the future in a clear, revealing light, know that there must be sober change; know that progress,

none the less active and determined because it is sober and just, is necessary for the maintenance of our institutions and the rectification of our life. In both the great national parties there are men who feel this ardor of progress and of reform, and in both parties there are men who hold back, who struggle to restrain change, who do not understand it or who have reason to fear it. Undoubtedly the present moment offers a greater and larger opportunity to the Democratic party than to the Republican party; but this is not because there are not men in the Republican party who have devoted their whole intelligence and energy to necessary reform, but because the Democratic party as a whole is freer to move and to act than the Republican is and is held back by a smaller and weaker body of representatives of the things that are and have been.

We generally sum up what we mean by the reactionary forces by speaking of them as embodied in the interests. By that we do not mean the legitimate but the illegitimate interests, those which have not adjusted themselves to the public interest, those which are clinging to their vested rights as a bulwark against the adjustment which is absolutely necessary if they are to be servants and not masters of the public. The chief political fact of the day is that the Republican party is more closely allied with these interests than the Democratic party. This circumstance constitutes the opportunity of the Democrats. They are free to act and to move in the right direction if they will but accept the responsibility and the leadership. The

Democratic party is more in sympathy with the new tendencies than the Republican. Its free forces are the forces of progress and of popular reform.

Both parties are of necessity breaking away from the past, whether they will or not, because our life has broken away from the past. The life of America is not the life it was twenty years ago. It is not the life it was ten years ago. We have changed our economic conditions from top to bottom, and with our economic conditions has changed also the organization of our life. The old party formulas do not fit the present problems. The old cries of the stump sound as if they belonged to a past age which men have almost forgotten. The things which used to be put into the party platforms of ten years ago would sound antiquated now. You will note, moreover, that the political audiences which nowadays gather together are not partisan audiences. They are made up of all elements and come together, not to hear parties denounced or praised, but to hear the interests of the nation discussed in new terms—the terms of the present moment. We have so complicated our machinery of government, we have made it so difficult, so full of ambushes and hiding-places, so indirect, that instead of having true representative government we have a great inextricable jungle of organization intervening between the people and the processes of their government; so that by stages, without intending it, without being aware of it, we have lost the purity and directness of representative government. What we must devote ourselves to now

is, not to upsetting our institutions, but to restoring them.

Undoubtedly we should avoid excitement and should silence the demagogue. The man with power, but without conscience, could, with an eloquent tongue, if he cared for nothing but his own power, put this whole country into a flame, because the whole country believes that something is wrong and is eager to follow those who profess to be able to lead it away from its difficulties. But it is all the more necessary that we should be careful who are our guides. The processes we are engaged in are fundamentally conservative processes. If your tree is diseased it is no revolution to restore to it the purity of its sap, to renew the soil that sustains it, to re-establish the conditions of its health. That is a process of life, of renewal, of redemption. There is no ground for alarm, therefore. We are bent upon a perfectly definite programme, which is one of health and renewal.

Let us ask ourselves very frankly what it is that needs to be corrected. To sum it all up in one sentence, it is the control of politics and of our life by great combinations of wealth. Men sometimes talk as if it were wealth we were afraid of, as if we were jealous of the accumulation of great fortunes. Nothing of the kind is true. America has not the slightest jealousy of the legitimate accumulation of wealth. Everybody knows that there are hundreds and thousands of men of large means and large economic power who have come by it all not only perfectly legitimately,

but in a way that deserves the thanks and admiration of the communities they have served and developed. But everybody knows also that some of the men who control the wealth and have built up the industry of the country seek to control politics and also to dominate the life of common men in a way in which no man should be permitted to dominate.

In the first place, there is the notorious operation of the bi-partisan political machine: I mean the machine which does not represent party principle of any kind, but which is willing to enter into any combination, with whatever group of persons or of politicians, to control the offices of localities and of states and of the nation itself in order to maintain the power of those who direct it. This machine is supplied with its funds by the men who use it in order to protect themselves against legislation which they do not desire and in order to obtain the legislation which is necessary for the prosecution of their purposes.

The methods of our legislatures make the operations of such machines easy and convenient. For very little of our legislation is formed and effected by open debate upon the floor. Almost all of it is framed in lawyers' offices, discussed in committee rooms, passed without debate. Bills that the machine and its backers do not desire are smothered in committee; measures which they do desire are brought out and hurried through their passage. It happens again and again that great groups of such bills are rushed through in the hurried hours that mark the close of the legis-

lative sessions, when every one is withheld from vigilance by fatigue and when it is possible to do secret things.

When we stand in the presence of these things and see how complete and sinister their operation has been we cry out with no little truth that we no longer have representative government.

Among the remedies proposed in recent years have been the initiative and referendum in the field of legislation and the recall in the field of administration. These measures are supposed to be characteristic of the most radical programmes, and they are supposed to be meant to change the very character of our government. They have no such purpose. Their intention is to restore, not to destroy, representative government. It must be remembered by every candid man who discusses these matters that we are contrasting the operation of the initiative and the referendum, not with the representative government which we possess in theory and which we have long persuaded ourselves that we possessed in fact, but with the actual state of affairs, with legislative processes which are carried on in secret, responding to the impulse of subsidized machines and carried through by men whose unhappiness it is to realize that they are not their own masters, but puppets in a game.

If we felt that we had genuine representative government in our state legislatures no one would propose the initiative or referendum in America. They are being proposed now as a means of bringing our repre-

sentatives back to the consciousness that what they are bound in duty and in mere policy to do is to represent the sovereign people whom they profess to serve and not the private interests which creep into their counsels by way of machine orders and committee conferences. The most ardent and successful advocates of the initiative and referendum regard them as a sobering means of obtaining genuine representative action on the part of legislative bodies. They do not mean to set anything aside. They mean to restore and re-invigorate, rather.

The recall is a means of administrative control. If properly regulated and devised it is a means of restoring to administrative officials what the initiative and referendum restore to legislators—namely, a sense of direct responsibility to the people who chose them.

The recall of judges is another matter. Judges are not lawmakers. They are not administrators. Their duty is not to determine what the law shall be, but to determine what the law is. Their independence, their sense of dignity and of freedom, is of the first consequence to the stability of the state. To apply to them the principle of the recall is to set up the idea that determinations of what the law is must respond to popular impulse and to popular judgment. It is sufficient that the people should have the power to change the law when they will. It is not necessary that they should directly influence by threat of recall those who merely interpret the law already established. The importance and desirability of the recall as a means of

administrative control ought not to be obscured by drawing it into this other and very different field.

The second power we fear is the control of our life through the vast privileges of corporations which use the wealth of masses of men to sustain their enterprise. It is in connection with this danger that it is necessary to do some of our clearest and frankest thinking. It is a fundamental mistake to speak of the privileges of these great corporations as if they fell within the class of private right and of private property. Those who administer the affairs of great joint-stock companies are really administering the property of communities, the property of the whole mass and miscellany of men who have bought the stock or the bonds that sustain the enterprise. The stocks and the bonds are constantly changing hands. There is no fixed partnership. Moreover, managers of such corporations are the trustees of moneys which they themselves never accumulated, but which have been drawn together out of private savings here, there, and everywhere.

What is necessary in order to rectify the whole mass of business of this kind is that those who control it should entirely change their point of view. They are trustees, not masters, of private property, not only because their power is derived from a multitude of men, but also because in its investments it affects a multitude of men. It determines the development or decay of communities. It is the means of lifting or depressing the life of the whole country.

They must regard themselves as representatives of a public power. There can be no reasonable jealousy of public regulation in such matters, because the opportunities of all men are affected. Their property is everywhere touched, their savings are everywhere absorbed, their employment is everywhere determined, by these great agencies. What we need, therefore, is to come to a common view which will not bring antagonisms, but accommodations. The programmes of parties must now be programmes of enlightenment and readjustment, not revolutionary but restorative. The processes of change are largely processes of thought, but unhappily they cannot be effected without becoming political processes also, and that is the deep responsibility of public men. What we need, therefore, in our politics is an instant alignment of all men free and willing to think and to act without fear upon their thought.

This is just as much a constructive age in politics, therefore, as was the great age in which our federal government was set up, and the man who does not awake to the opportunity, the man who does not sacrifice private and exceptional interests in order to serve the common and public interest, is declining to take part in the business of an heroic age. I am sorry for the man who is so blind that he does not see the opportunity, and I am happy in the confidence that in this era men of strength and of principle will see their opportunity of immortal service.

I am not one of those who wish to break connec-

tions with the past, nor am I one of those who wish change for the mere sake of variety. The only men who do that are the men who want to forget something, the men who filled yesterday with something they would rather not recall to-day. Change is not interesting unless it is constructive, and it is an age of construction that must put fire into the blood of any man worthy of the name.

CHAPTER IV

THE DEVELOPMENT OF DIRECT LEGISLATION IN AMERICA [1]

THE referendum is an established principle in American political life. It is not a new-fangled device, as it is characterized by opponents. Apart from its state use in the adoption or amendment of state constitutions and on other important subjects, the number and variety of questions thus referred in cities is so large that one who examines into the history of his own and of neighboring cities will probably be somewhat amazed as to their frequency and importance. Aside from its best-known use to decide vexatious topics like local option and prohibition, the referendum is used on financial questions like issuing bonds, and on undertaking new enterprises, like schools, hospitals, public buildings, parks, boulevards, sewers, waterworks, lighting plants, as well as on the most fundamental questions like the incorporation of cities and the acceptance of their charters. The constitution of Massachusetts, by amendment adopted as early as

[1] By Robert Treat Paine. Reprinted from the *Proceedings of the National Municipal League* (1908).

1821, forbids the legislature to incorporate any town as a city except with the consent of a majority vote of the citizens of that town.

The direct legislation, however, to which we are directing our attention, introduces the distinction or differentiation in that the people themselves determine, and not the legislature or the municipal legislative authorities, whether or not questions shall be referred through the referendum to a popular decision. The referendum is not compulsory: it need not be used unless there is a positive demand for it—a petition signed by a fixed number or percentage of the voters asking for it. Its use is optional. It becomes therefore a true people's veto to be used when occasion requires in the judgment of the people whether the municipal legislative authorities so wish or not. The people thus become directly sovereign in regard to the acts of their own agents or representatives. Similarly the initiative takes its rise from an initial action by the people in those cases where their representatives appear unwilling to act in accordance with the supposed will of the community. The authority of James Bryce is not necessary to convince Americans that the government of their cities is the conspicuous failure in American political institutions.

The federal system, with its two chambers based on the theory of checks and balances, has been found wanting. Whether or not it sufficed for earlier days of simpler requirements when the non-interference idea of government prevailed is immaterial. Our

cities to-day face problems of utmost gravity, arising not only out of the great increase in population, but also out of the far greater demands from this congested urban population which asks for and should be granted a higher standard of comforts and necessities. Modern civilization therefore requires that city governments be aggressive, positive forces that can grapple with and solve the problems as they arise or are foreseen.

Unfortunately, in rather marked contrast with modern Europe and England, our cities have been mere creatures of the legislature with enumerated powers limited to known requirements. Therefore every new task has involved resort to the legislature. Results have been disastrous both in enfeebling the city's self-reliance and civic character, and in leading to an undue, injudicious and unjustifiable interference by the state authorities. So well recognized has been this evil that a majority of the state constitutions now forbid the legislatures to interfere by special legislation. Owing however to the legislative device of classification this effort has been but partially successful. In the West a remedy has been sought in a different direction, through the constitutional assertion of the independence, more or less complete, of the cities from the legislature, by the adoption of the home-rule charter system.

In 1875 the constitution of Missouri was the first thus to be amended to give cities of over 100,000 population, that is St. Louis and later Kansas City,

power to decide upon their charters by a vote of their own citizens.

California followed with a constitutional amendment in 1879, but provided that these charters after adoption by the voters must be submitted to the legislature for ratification or rejection as a whole. The popularity of this move is evidenced by the vote in its favor of 114,617 to 42,076, in 1892, when the minimum limit of population, after a previous reduction in 1887 to 10,000, was still further reduced to 3,400. California further extended the power of cities over their charters by amending article XI, section 8, of the constitution, in November, 1906, so as to provide that an initiative petition of fifteen per cent. can compel the submission to a popular vote at a regular municipal election of any proposed charter amendment.

In Oregon the constitutional amendment granting the voters of every city and town power to enact and amend their municipal charters was adopted on an initiative petition from the people, by a vote of 52,567 to 19,852 on June 4, 1906.

Washington, Minnesota, Colorado and Oklahoma have carried on this home-rule movement. In Michigan the constitutional convention inserted a home rule section in the new constitution which was voted on and carried November 3, 1908.

But far more widespread or at least far more successful over a wider stretch of territory is the movement we are now to consider for more direct and

popular control by the citizens themselves of their municipal affairs. Both theoretically and practically this movement appears justified in its aims. It gives the best promise of helping the ultimate solution of our municipal problems. This movement is either advisory or mandatory in its operation. The advisory system was perhaps the easier to enact, but the tendency of late has been strongly towards the mandatory initiative and referendum.

The advisory system aims to secure action by city authorities in conformity with the popular judgment through milder methods than direct legislation. The voters are allowed to suggest or to express their opinion on a course of action without however thereby enacting such legislation or ordinance. Such a vote is merely advisory in character and leaves the city fathers with full power to act as they think best, whether it be in accordance with or against the wishes of the people. Winnetka, Illinois, is generally given the credit for devising the method of securing a popular decision of important questions through pledging candidates before their election to permit the reference to the people of such questions when petitioned for. The council was thus induced to pass an ordinance providing for the submission to the voters before their passage of all ordinances for franchises or for bond issues and also all ordinances for which fifty voters may have petitioned within five days after public posting before their passage. Geneva, Illinois, extended this system to include, in addition to the referendum,

the advisory initiative on any public question when petitioned for by ten per cent. of the voters. Candidates are questioned and pledged before election to follow these rules.

This method has been followed by several cities. Detroit, on June 17, 1902, unanimously adopted rules of procedure by which a petition of five per cent. of the voters may force all ordinances granting or renewing public utility franchises, which have passed their third reading in the council, to a popular vote at the next election, and also any other measure instructing the officials. A home-rule charter had been declared unconstitutional by the supreme court, thus depriving the city of the right granted therein for a referendum on street railway franchises. A long-term extension of such franchise was favored by a majority of the council, but having pledged themselves to a referendum while candidates for office a spirited demonstration of the citizens induced them to pass the above rule. The proposal to extend the franchise was thereupon dropped in view of the threatened veto. The first use in Detroit of the referendum on franchises was made November 6, 1906, when the Detroit United Railway franchise was rejected decisively—and wisely according to the *Civic News*, a good government publication of Detroit.

Such self-denying council rules are not, however, either permanent or self-enforcing. A two-thirds vote may suspend them at any time, perhaps when needed most. To secure their continued annual adoption may

require an annual pledging campaign. This year's manual of Detroit [1908] does not contain the rule for instructing officials through the initiative. To guarantee action by a representative government in harmony with the popular will presupposes not a voluntarily assumed obligation of a temporary and optional character, but an obligation of superior and controlling force embodied in the fundamental law or charter.

Grand Rapids, Michigan, petitioned the legislature for a new charter, which was approved June 6, 1905, granting a twelve per cent. referendum on any ordinance and a twelve per cent. initiative for an advisory vote on charter amendments. This referendum has been used twice, once to approve of the franchise granted to the Muskegon Power Company, and again November 6, 1906, to reject an ordinance prohibiting Sunday shows, 6,895 to 6,281. Under the advisory initiative the voters have twice asked for amendments to their charter; on April 2, 1906, voting for an advisory initiative on ordinances by 6,196 to 1,736 and for the recall by 7,142 to 1,976; and on November 6, 1906, voting for the establishment of non-partisan municipal elections by 8,865 to 3,350. Though this question carried every precinct in a Republican city and the total vote, 12,215, was within 729 of the total cast for governor, yet the Republican legislature refused to grant the request; as it also refused the other requests. It is stated that the above charter provisions are generally considered beneficial, though it

is felt that the enactment of charter amendments should be compulsory after submission to and approval by the electors.

Buffalo, under the general welfare clause of its charter, adopted, July 13, 1904, a provision (chapter 45, of the city ordinances), which is still in force and which authorizes the submission at a general election of any questions of public policy to obtain the opinion of the electors thereon, either on the petition of five per cent. of the voters or upon resolution of the council. On November 7, 1905, such an advisory initiative resulted in a vote of 7,767 to 1,979 in favor of a municipal electric lighting and power plant. The council took no action to carry out this vote, but used it to obtain somewhat more favorable prices from the existing private company. On November 3, 1908, the advisory initiative asking for a new charter with the largest possible measure of home rule obtained the endorsement of 13,286 for, to 4,346 against.

In Illinois a public-opinion law was enacted May 4, 1901, allowing questions to be referred to the voters of cities for an expression of opinion on the petition of twenty-five per cent. Chicago has made effective use of this authority, voting in April, 1902, for direct primary nominations of city officers by 140,860 to 17,654, and on April 5, 1904, for the popular election of the school board by 115,553 to 58,432. Both at these elections and on April 4, 1905, April 3, 1906, and April 2, 1907, there were referenda on the burning street-railway issue. The question has been too promi-

nent throughout the country during all these years to need extended comment. The first votes were overwhelmingly in favor of municipal ownership of gas and electric lighting plants, as well as of the street railways, 139,999 to 21,364, and 142,826 to 27,998, respectively; but finally, after a six years' struggle, the people, by 165,846 to 132,720, accepted on April 2, 1907, the council ordinances whereby great reforms were promised in the service under the private management of the companies, and fifty-five per cent. of the net profits was to go to the city treasury.

In Canada this advisory system has been authorized for cities by general provincial law in British Columbia June 21, 1902, and in Ontario June 27, 1903. In Victoria the referendum by-law was adopted by the council December 15, 1902. Either the council or a petition of ten per cent. of the voters may send questions to the annual municipal election in January for obtaining the opinion of the electors upon any question affecting the public welfare or any proposed innovation or alteration of by-laws. In 1903, 1907 and 1908 the eight-hour day for city employees, the sale of liquors by retail in stores, and an increased water supply, were voted on. The opinion thus expressed by the electors has been regarded by the council as a mandate for legislation in accordance therewith.

In Toronto this advisory referendum has been used for questions like reducing the number of liquor licenses, paying salaries to the aldermen, and exempt-

ing dwellings from assessment to the amount of seven hundred dollars.

Augusta, Maine, has held special elections from time to time to secure the opinion of the people whenever the importance of the issue has seemed sufficient to warrant such an election. The city clerk states that the authority is found in the clause of the city charter, section 34, which provides that general meetings of the citizens may be held to consult upon the general good and to instruct their representatives according to the right secured to the people by the state constitution —to be summoned by the mayor and aldermen upon the requisition of thirty voters.

The constitution of Massachusetts, the parent state, contains a similar provision inserted in the original document of 1780 and repeated in the city charters. In the smaller cities, where the capacity of a hall bears a reasonable relation to the probable number of voters expected to attend, there have been numerous meetings to decide upon various important matters, but it is not known that any city has yet adopted Maine's sensible expedient for changing a huge mass meeting into the modern method of booths and ballots.

The constitutions of thirteen other states contain in their bill of rights declarations more or less similar in support of the right of the voters to give instructions: Pennsylvania, North Carolina, New Hampshire, Vermont, Tennessee, Ohio, Indiana, Michigan, Arkansas, California, Oregon, Kansas and Nevada.

In Delaware under the terms of the law, the peo-

ple voted, on November 6, 1906, on the question, "Shall the general assembly provide a system of advisory initiative and referendum?" Though the vote in the entire state was more than eight to one in its favor, the system was not authorized by the following legislature, which, however, with but a single dissenting vote in the senate, did establish for the city of Wilmington, which had favored the proposition by 10,548 to 747, a local initiative without the referendum. A petition of ten per cent. carries to the next election any question relating to the affairs of the city for an expression of opinion thereon. If it receives a majority vote and is within the corporate powers of the city government, it must be put into effect without unreasonable delay. Any member of the council, or of a commission, who neglects or refuses to perform the duty therein imposed commits a misdemeanor punishable by fine, removal from office, and ineligibility to hold office for five years. This last provision should lessen the danger of representatives refusing to carry out the people's will; but as far as it renders the action by the council merely an obligatory and perfecting formality, it would seem to approximate practically to the system of direct legislation.

On June 1, 1907, at the city election, five questions were submitted to the people: Shall the legislature be memorialized for a home rule government for Wilmington with the initiative and the referendum (8,786 to 813) and for the New York system of assessing real estate (9,037 to 757)? Shall ordinances

be passed to require the publication of a complete financial statement (8,324 to 569), and the bonding of assessors and collectors (8,346 to 663), and the observance by the railroad companies using the streets of their franchise requirements for the repairs of the streets and improvements of their cars (8,302 to 504)?

The memorial for direct legislation will be presented to the legislature when it convenes in December, but the vote emphasizes the desire of the community for local autonomy. The council has adopted ordinances for financial statements and for bonding, though the court has declared the latter at variance with the state law. The mayor's office states that the requirements of the last vote are those which the city has always endeavored to enforce, and it is compulsory for the street railways to live up to the provisions prescribed in their franchises.

The grants by municipal councils of franchises for public-service utilities have been the cause of much anxious thought. How can they be wisely safeguarded? The law has been asked to limit the maximum term and to create other restrictions. There is a more or less general movement to require that such grants be referred to a popular vote for ratification or for rejection through a people's veto.

Iowa, which as early as 1872 had provided for a referendum on franchises for waterworks, to be followed by a similar regulation in 1888 on municipal lighting plants, established in 1899 an optional referendum and initiative with reference to all similar

quasi-public services. Either the council may submit the question at a general or special election or the mayor must do so on the petition of twenty-five property-owners from each ward. Indiana,[1] in 1899, established an optional referendum along somewhat similar lines.

In Ohio, by an act approved by Governor Harris April 15, 1908, no ordinances granting or extending a franchise to any street railway can become operative if within thirty days after its passage by the council there is a petition of fifteen per cent. of the voters, until it has been submitted to either a general or special election and has received a majority of the votes cast.

In Cleveland, at a special election October 22, 1908, a referendum invoked against the "security" franchise to the new railway company resulted in an enormous vote being cast, defeating the traction compromise by 38,249 to 37,644. A fuller discussion of the long struggle in Cleveland will undoubtedly be found in the secretary's annual review of important events of the year.

An amendment to the charter of Memphis, Tennessee, passed March 10, 1905, chapter 54, section 29, enacts that no quasi-public franchise shall be granted unless approved by the voters at a general or special election if such submission has been demanded, within thirty days of its passage, by five hundred freeholders.

[1] Shibley: "Municipal Affairs" Vol. VI, p. 785.

Nebraska carried the system of its fuller recognition of the people's right to originate or to veto ordinances of any kind when by chapter 32 of 1897, in effect on July 10, fifteen per cent. of the voters in any municipal subdivision of Nebraska are authorized to propose any ordinance which, unless adopted by the council, goes to the next municipal election. If amended by the council, both propositions go, and that one prevails which receives the larger vote, provided that between them they receive a majority of all the votes cast. A petition of twenty per cent. sends the question to a special election within thirty to sixty days after filing. This act is not operative till accepted by invoked against any ordinance within thirty days after being passed by the council unless declared to be urgent for the immediate preservation of the public peace or health, or unless items of the modern city appropriations and passed by a unanimous yea and nay vote. The same percentages, fifteen and twenty, determine with reference to the next regular municipal election occurring fifteen days after filing the petition or to a special election within fifteen to twenty days after filing the petition. The referendum may be the voters of the particular town or city. Lincoln adopted the provisions of this statute at the city election May 7, 1907, by 2,754 to 679, Mr. F. W. Brown being elected mayor by 2,632 to 2,590. Omaha accepted this initiative and referendum statute November 6, 1906, by 6,373 to 1,437, but no questions under it have since been brought to a popular vote.

South Dakota was the first state to embody in her constitution the provisions for the initiative and referendum, adopting the amendment November 8, 1898, by 23,816 to 16,483, whereby not more than five per cent. of the voters is to be required for either the initiative or the referendum. This applies to cities as well as to the state, and the legislature the following year made provisions, chapter 94, for carrying into effect the initiative and referendum in municipalities, fixing the requirement at five per cent. of the vote cast at the last election.

Oregon adopted a state system of the initiative and referendum June 2, 1902, by a vote of 62,204 to 5,668. The people took advantage of its provision for the initiative and amended the constitution at the biennial election June 4, 1906, by 47,678 to 16,735, and established local direct legislation, with not more than ten per cent. required to order the referendum or fifteen per cent. to propose any measure by the initiative in any city or town.

Montana followed Oregon in a constitutional amendment for direct legislation November 6, 1906, with a vote of 36,374 to 6,616, and the legislature the next winter, by chapter 62, provided for the application in cities and towns of the referendum on the petition of five per cent. and of the initiative on eight per cent., with fifteen per cent. required in either case to demand a special election.

Oklahoma in her new constitution adopted September 17, 1907, which President Roosevelt in his procla-

mation on November 16, 1907, declared to be "republican in form," provides for a local referendum and initiative as well as a state system, and fixes the percentage for cities at twenty-five. In the constitutional amendment establishing a state system of direct legislation, which Maine adopted September 14, 1908, by a vote of 51,991 to 23,743, section 21 provides that any city may establish the initiative and referendum through an ordinance ratified by a popular vote.

In Illinois, under the public opinion law, a vote was taken at the state election in November, 1902, upon the popular petition for a local referendum law and resulted in a favorable vote of 390,972 to 83,377. This expression of opinion was ignored by the legislature. A second vote was taken November 8, 1904, on a similar question of establishing a local five per cent. people's veto, and resulted in an even more overwhelming vote in its endorsement—535,501 to 95,420. The people's representatives, however, have paid no attention to these and other similar expressions of the people's wishes.

The greatest local development of direct legislation has been witnessed in the Pacific states. San Francisco, under the home-rule provisions of the California constitution, elected a board of freeholders December 27, 1897, to propose a new charter which was ratified at a special election May 26, 1898, by 14,386 to 12,025, and having been approved by the legislature in 1899, chapter 2, went into effect January 8, 1900. It provided for an initiative on the petition of fifteen

per cent. of the voters to apply either to ordinances or to charter amendments; and franchises for waterworks or lighting plants, or ordinances for the purchase of land, must be referred to the next election. The same system was copied by Vallejo through a special election December 8, 1898 (chapter 5, 1899) and by Fresno, October 19, 1899 (chapter 9, 1901).

The initiative and referendum system which is generally thought of when reference is made to it is that of Los Angeles, adopted at a special election December 1, 1902, by a vote of 12,105 to 1,955. The legislature ratified it in 1903, chapter 6. The system is elaborated in much more detail and has generally served as the basis or model for other cities which have since adopted direct legislation.

Under the initiative any proposed ordinance may be presented to the council. If five per cent. petition, it goes without alteration to the next municipal election. If fifteen per cent. petition and request a special election, it must be passed without alteration by the council within twenty days, and if vetoed by the mayor, repassed by the council or the council must call a special election at which it shall be submitted to a vote of the people. If the council passes it, the referendum may still be invoked against it.

The basis for the percentage is the entire vote cast for mayor at the last preceding general election. The city clerk has ten days in which to examine the petition and ascertain whether it has been signed by the requisite number of qualified electors. If found insufficient,

the petition may be amended within ten days, after which the clerk has a further period of ten days to renew his verification as to its sufficiency and then present it to the council, or if again deficient to return it without prejudice to the person filing it.

Any number of proposed ordinances may be voted upon at the same election, but not more than one special election shall be held in any period of six months. Any ordinance proposed by petition or adopted by popular vote can be amended or repealed only by vote of the people, though the council may submit at any succeeding city election propositions for repeal or amendment.

The referendum applies practically to all ordinances except those declared to be urgent for the immediate preservation of the public peace, health or safety, and passed by a two-thirds vote of the council. No franchise grants can be construed as urgency measures. If a seven per cent. petition is presented to the council within thirty days from its final passage and approved by the mayor, the ordinance shall be suspended from going into operation and the council shall reconsider and entirely repeal the ordinance, or it shall be submitted to a vote of the electors at the next general election or at a special election called for the purpose, and shall not go into effect unless approved by a majority of voters voting on the same. Ten days prior to the election at which any ordinance is submitted to the voters the city clerk mails to each voter a printed copy of the ordinance with a sample

ballot unless the council has ordered, in place of this, its publication in the official newspaper of the city in the same manner as ordinances adopted by the council are required to be published.

The movement thus started made rapid progress. Sacramento, San Bernardino, San Diego and Pasadena held special elections on November 3, 1903, January 6, 1905, January 27, 1905, and February 28, 1905, and adopted amendments to their charters, except in the case of San Bernardino, which proposed an entirely new charter, and the legislature gave its approval in 1905, in chapters 12, 15, 11 and 20 of the current resolutions.

Eureka, Santa Monica, Alameda, Santa Cruz, Long Beach and Riverside held elections on June 19, 1905, March 28, 1906, July 18, 1906, January 22, 1907, February 5, 1907, and March 1, 1907, to adopt new charters, which were approved by the legislature in its session of 1907, in chapters 14, 6, 7, 9, 15 and 25.

In general these later charters followed pretty closely the model of Los Angeles. San Diego adopted the same percentages; five and fifteen per cent. for the initiative for general and special elections respectively, and seven per cent. for the referendum. Sacramento and Riverside require ten per cent. for either the initiative at a general election or for the referendum. Eureka, Alameda and Santa Cruz raise the percentage for a special election for the initiative to twenty and vary the referendum slightly by having fifteen per cent.

to keep an ordinance from going into effect before the election, while ten per cent. allows it to become operative subject to its repeal ten days after an adverse popular vote.

Long Beach, Santa Monica, Pasadena and San Bernardino raise the percentage still higher, to thirty, for the initiative at a special election, and in general have high percentages for the other requirements, ranging from ten to thirty.

The following table may illustrate more graphically the various percentages required in the different cities:

	Initiative to General or Special Elections		Referendum
San Francisco	15		
Vallejo	15		
Fresno	15		
Los Angeles	5	15	7
San Diego	5	15	7
Sacramento	10	15	10
Riverside	10	15	10
Eureka	10	20	10–15
Alameda	10	20	10–15
Santa Cruz	10	20	10–15
Long Beach	10	30	25
Santa Monica	25	30	25–30
Pasadena	30		10
San Bernardino	30		30

In view of the fact that the initiative and referendum have been put to comparatively rare use, it would seem distinctly unwise to raise the percentages so high as to make the system almost unworkable when for good reason there should be resort to it. The ten,

twenty and ten formula may be a conservative and moderate one, though friends of the system in Los Angeles advise against increasing the percentages which prevail there of five, fifteen and seven.

There are several variations on the general model. Pasadena allows the council to submit to the voters an alternative to the measure suggested by the initiative. Eureka, Alameda and Santa Cruz make twenty-five per cent. obligatory for an initiative petition against measures adopted by the electorate. Santa Monica does not allow a measure enacted by the people to be amended by the council before two years and forbids a measure to be submitted a second time except by the council or on a thirty per cent. petition. Santa Cruz allows a referendum on the same measure twice within a year only on a forty per cent. petition. Alameda permits a special election if the expenses are paid in advance by the applicant for a franchise or by other persons. Alameda, Santa Monica, Riverside and Sacramento provide that if the provisions of two or more measures, which are adopted at the same election, conflict, then the measure receiving the highest affirmative vote shall control.

The experience of Los Angeles throws light upon the value of direct legislation. There has been only one special election called under a fifteen per cent. initiative petition obtained by the prohibitionists, who tried to close all saloons; but in this they were defeated.

At the general election December 6, 1904, four

ordinances were presented under the initiative to fix the limits of slaughter-house districts. Though confusing and conflicting, a local authority states that with keen intelligence and good judgment the people carried the best one by a handsome majority. About a year ago an additional franchise of great financial and strategic value, estimated to be worth a million dollars, was given by the council to the street railway corporation. Though rushed through to catch the people napping, under the threatened use of the referendum and the recall, the ordinance was revoked by the council. In the spring of 1908 the council granted for five hundred dollars another very valuable franchise to this same street railway company, and passed it over the veto of the mayor. A referendum petition was presented May 18, and the council having refused to repeal the ordinance, it was held up and referred to the next municipal election. Since the same city council had refused to pass an ordinance compelling the street railways to properly equip their cars with efficient fenders and run at a moderate rate of speed within the heart of the city, although the accidents and mortality were said to be greater proportionately than in any other city, the Voters' League secured over four thousand signatures to a petition calling for a special election, but before presenting it persuaded the council to adopt a satisfactory ordinance, which has since been the cause of saving many lives. Los Angeles claims a population of over three hundred thousand, which would perhaps rank it as the seven-

teenth largest city in the United States, approximating the size of Washington.

As the city in which the modern system of direct legislation was established first and has therefore been given the longest trial, it is interesting and instructive to see what testimony is offered as to its value. The first act of a committee lately sitting on charter revision was to resolve that the direct legislation provisions be retained intact without any increase of percentages.

Municipal Affairs, the organ of the Municipal League of Los Angeles, says that "nothing better has happened to Los Angeles than making the initiative, referendum and recall a part of its organic law. Large as was the vote in their favor, it would be many times larger should any attempt be made to eliminate them," and points out "that to a very large extent the value of the initiative, referendum and recall lies not in the fact that they are used, but that they may be used. They are the most powerful deterrent we have against bad officials and corrupt and incompetent lawmaking."

Two years ago a circular letter addressed to the Christian people of California says that "civic reform and a revival of practical righteousness cannot be secured by individual or religious efforts alone, without regard to environment and practical means of working. Our duty and responsibility as voters also require us to secure a simple method by which Christian influence can be made most effective in promoting the

public welfare. The best method yet proposed for non-partisan political action is direct legislation—the initiative and referendum." This circular was signed by ten leading ministers of the Methodist, Baptist, Presbyterian, Congregational and other denominations, by Bishop T. J. Conaty of Monterey and Los Angeles, and by the president of Pomona College.

The Republican mayor of Riverside, which adopted direct legislation last year but as yet has not brought any questions under it to a popular vote, writes that as an abstract proposition he thinks there is no room for adverse argument, but adds: "In my judgment if the lawmakers could be elected or appointed free from any obligation to either corporations, individuals, or parties and could then make the laws plain and do away with technicalities and give a quick service of the law to all alike, there would be very little agitation for what the strictly political persons call these insane and anarchistic provisions." As no American city has yet been able to accomplish the aforesaid "if," it is probable that these "insane and anarchistic provisions"—the best method yet proposed for non-partisan political action—will continue to be resorted to by those who desire to make Christian influences effective in promoting the public welfare.

In Alameda the council voted to spend the one hundred and fifteen thousand dollars, authorized by popular vote for playgrounds, upon one tract only, at a very high price. The mayor, favoring three play-

grounds in different parts of the city, vetoed the ordinance, and in the ensuing deadlock secured an initiative petition of twenty per cent. of the voters, by which this question was referred to popular decision at a special election May 2, 1908, when the mayor's position was sustained by a vote of 1,078 to 626, which carried every precinct.

Inasmuch as the recall has been adopted very generally as a part of the new system of direct legislation and is often referred to, as above, as one of the bulwarks of the people against misrepresentative government, it may be well to consider briefly its present status in the above cities. Papers in the 1905 and 1906 volumes of *Proceedings* of the League have described the principles of the recall as first devised for Los Angeles and later adopted in Pasadena, Fresno, San Bernardino and San Diego, and also the first use of it in Los Angeles in the removal of a councilman. Since then Santa Monica, Alameda, Santa Cruz, Long Beach and Riverside, as well as San Francisco and Vallejo, whose charters were adopted prior to this new movement by Los Angeles, have all inserted in their charters provisions for the recall. In four instances the required percentage has been raised from twenty-five to thirty or forty. The popular votes on its adoption have been strongly in its favor; the latest one being 22,945 to 5,597, in San Francisco in November, 1907, where it was proposed by an initiative petition. The recall was invoked June 30, 1907, in two wards of San Bernardino against two councilmen. A petition

for the recall was held by the court as valid in San Diego, but the term of the councilmen expired before the legal proceedings had been brought to a close.

Oregon adopted on June 1, 1908, by 58,381 to 31,002, under an initiative petition, an amendment to her constitution whereby she became the first state to render every public officer subject to the recall by the voters of the state or of the electoral district from which he is chosen, not more than twenty-five per cent. of those voting for the justices of the supreme court at the preceding election to be necessary for filing the petition. The recall thus becomes available for all cities in the state.

Portland, Oregon, by its charter adopted June, 1902, provides for a fifteen per cent. initiative to the general election and a fifteen per cent. referendum against all ordinances for franchises or for the municipal ownership of public utilities. At the election June 3, 1907, twenty-one questions were submitted to the voters, but of this seemingly excessive number sixteen were referred by a vote of the city council and only five were due to initiative petitions.

In Washington, under a law passed March 21, 1903, a petition of fifteen per cent. of the voters asking the adoption of a specified charter amendment, within the realm of local affairs, causes it to be submitted at the next municipal election. A charter amendment was thus initiated in Seattle and adopted March 3, 1908, by 11,493 to 6,063, providing for the referendum on ten per cent. and for the initiative on

twenty-five per cent. to go to the next regular election. Three petitions have since been presented but were found insufficient. The recall was adopted at the city election March 5, 1906, by 9,312 to 1,265. Everett adopted a city charter November 26, 1907, containing the initiative, referendum and recall by a vote of 2,287 to 389. The percentages are twenty, ten and twenty-five respectively. Spokane has a provision for a fifteen per cent. referendum.

Denver, under the home-rule provisions of the Colorado constitution, elected its board of freeholders and ratified the proposed charter March 29, 1904. A twenty-five per cent. petition is required for either the initiative or the referendum and all franchises must be submitted to the vote of the qualified taxpaying voters and the expense of such submission paid in advance by the applicant. At the general election May 15, 1906, under a petition with twenty thousand signatures an initiative ordinance was voted on which had been drafted by the Municipal Ownership League fixing maximum charges for gas, electricity and water, and providing for children's half-fare tickets on the street railways.

The initiative and referendum have been given a great impetus through another movement which has aimed by establishing a commission form of government to lessen inefficiency, waste and corruption through concentrating power and responsibility upon a small body of men. The commission system was first authorized for Galveston in a charter granted

by the Texas legislature in 1901. A full account of this plan in its operation there may be found in the 1906 and 1907 volumes of the League's *Proceedings*. The referendum is obligatory on proposed issues of bonds which must be approved by a majority of qualified taxpaying voters. The example of Galveston was followed by other cities in Texas. Houston in 1905, and El Paso, Fort Worth and Dallas in 1907, obtained charters for a commission government, and Waco voted for it this spring. San Antonio in a new charter of 1903 provided for a ten per cent. referendum to apply only to franchises and suspending the operation of the ordinance until it has been ratified by a majority of all voters. Houston introduces a variation in that the referendum, on all franchises, is available on the petition of the definite number of five hundred voters, while El Paso introduces a further variation in making the referendum depend on four hundred voters who are taxpayers, or on the volition of the council itself. Fort Worth provides a twenty per cent. referendum and also a twenty per cent. recall. Greenville and Denison in their 1907 charters for a council of mayor and two aldermen provide, the one for a referendum on franchises on the petition of one hundred voters, and the other for a twenty per cent. recall. Dallas follows the California model more closely in allowing an initiative to the general election on five per cent. with fifteen per cent. for a special election, and a referendum on franchises on a petition either of fifteen per cent. or of five hundred voters, and doubles

the time within which to petition by making this period sixty days; and also has a thirty-five per cent. recall.

The final form by which the commission plan of government is at the present time being generally combined with direct legislation, and often with the recall of the Los Angeles type, has been made prominent by Des Moines. By a law passed March, 29, 1907, Iowa permits all cities in the state with a population exceeding twenty-five thousand to adopt by popular vote, on a petition of twenty-five per cent. of the number voting at the preceding city election, a charter which is set forth in the act. Des Moines adopted this charter June 20, 1907, by 6,044 to 4,143, and it went into effect the following March. The initiative requires a ten per cent. petition for the general election and twenty-five per cent. for a special election. The referendum may be demanded by a twenty-five per cent. petition presented within ten days after the passage of the ordinance objected to. Twenty-five per cent. is likewise required to bring the recall into operation. At the election November 3, 1908, there were three referenda voted on and carried by decisive majorities. An interesting incident was the voting of the women on these questions in accordance with the terms of the charter. Cedar Rapids is the second city in the state to adopt a similar charter which went into effect April 8, 1908, and according to the mayor has been universally satisfactory. Sioux City voted against the acceptance of a commission charter 567 to 533. South Dakota passed an act, chapter 86, in 1907, that is very

similar to the one in Iowa, but the percentages are considerably lower. Cities are allowed to adopt the commission form charter at special elections held under an initiative petition of fifteen per cent. Both the initiative and the referendum are brought into use on a five per cent. petition, and a period of twenty days is allowed; while the recall requires fifteen per cent. Sioux Falls voted September 29, 1908, by 857 to 353, to incorporate under this charter. Lewiston was given a new charter by the Idaho legislature, March 13, 1907, providing for a mayor and six councilors elected at large. The initiative petitions of five and fifteen per cent. call for action at general and special elections respectively. The referendum may be invoked within thirty days against franchises and real estate ordinances on petition of three hundred voters. The recall requires twenty-five per cent. Under the initiative a special election was held November 5, 1908, on the petition for an ordinance designed to secure prohibition throughout the city. The ordinance was defeated.

Kansas passed an act March 2, 1907, setting forth a commission form of government and permitting all cities of the first class to adopt it by a majority vote at a special election. A ten per cent. referendum is authorized on all franchise ordinances within sixty days after their passage and the entire expense of the city election must be paid in advance by the franchise applicant. Leavenworth adopted the act February 11, 1908, by 1,932 to 1,585, but Wichita rejected it, December 3, 1907, by 3,266 to 1,218.

In conservative Massachusetts two cities have blazed the way to direct legislation in the charters which they have just adopted. Haverhill was the first to accept the new law, chapter 574, by a vote of 3,066 to 2,242, at a special election October 6, 1908, following the model of Des Moines exactly in the various percentages required for the initiative, the referendum and the recall. Gloucester accepted chapter 611 on November 3, 1908, by 1,762 to 1,400. Twenty-five per cent. is required for either the referendum or the initiative, and the recall is not authorized.

Kansas City elected a board of freeholders under the home rule provisions of the Missouri constitution and adopted the charter prepared by them at a special election August 4, 1908, by a vote of 14,069 to 5,219. The recall which was submitted as a separate proposition was lost, not receiving the necessary four-sevenths of the total vote, the figures being 4,099 to 2,724. All franchises are subject to a twenty per cent. referendum within sixty days and if a special election is called, the expenses must be borne by the person or corporation in whose favor the ordinance is enacted. A ten per cent. initiative petition can cause amendments to the charter to be submitted to a general or special election at which they must be accepted by a three-fifths majority of those voting. North Dakota and Mississippi are other states that in 1907 (see chapters 45 and 108) provided for a popular initiative of ten per cent. to call for special elections to act on the question of adopting commission government charters in cities.

Wisconsin, in chapter 670, authorizes in 1907 the same popular initiative of ten per cent. to bring before the voters of any city the question of accepting that act which forbids party designations on nomination papers or official ballots.

At the other extreme from the commission form of government is the plan adopted at Newport, Rhode Island, June 6, 1907, by a vote of 1,804 to 1,161, where the representative council consists of the unusual number of one hundred and ninety-five members elected from the five wards, with a mayor and five aldermen. One hundred electors may initiate a petition for any ordinance or expenditure of money exceeding ten thousand dollars and if the council refuses to pass it, a second petition of three hundred electors, or roughly six per cent., causes the proposition to be referred to special ward meetings of the qualified electors. All votes of the council requiring the expenditure of a similar sum, in addition to the regular appropriations, are subject within seven days to a referendum petition of one hundred and fifty electors and must then be referred within thirty days to special ward meetings.

Other cities are now considering the adoption of direct legislation under new charters, among them being Milwaukee, Wisconsin, Berkeley, California, and St. Joseph, Missouri. No instance is recorded of any city rejecting direct legislation after having once adopted it and tried it.

Special elections should not be held except when

the questions to be presented are of extreme importance and such as to arouse the community to exhibit its interest by a large vote. Under such conditions special elections are justifiable because they further tend to keep the questions out of politics and allow them to be settled on their merits. Therefore the percentages requisite for summoning special elections should be comparatively high, while in other cases they should be reasonably moderate, and the time within which a referendum petition may be presented of sufficient length so as not to make the burden unreasonably arduous or impracticable. Experience shows that neither the initiative nor the referendum is abused by an excessive number of petitions.

Nearly every form or combination of forms in municipal government has been tried and hitherto has been more or less of a failure. Two fundamental difficulties have been experienced. The masses of the voters have been unfortunately divided by allegiance to and consideration of national or state partisan organizations. The influential and property classes have too often had financial interests at stake in the quasi-public service corporations which have prevented them from considering municipal questions with an eye solely to the general welfare of a community.

Direct legislation is of immense gain in concentrating the attention of the voters upon measures and not men. Partisan consideration can no longer dominate. Instances are numerous where party candidates have won, but the measures they advocated or had

passed have been defeated. Not only is the interference of national partisanship in municipal affairs very largely reduced and neutralized by the initiative and the referendum, but there is a simultaneous movement for its elimination by legislative enactment. The charters of the Des Moines character expressly forbid partisan designations upon the ballots.

CHAPTER V

THE REFERENDUM IN THE UNITED STATES [1]

KNOWLEDGE can be made useful as a basis for public action only by the general acceptance of principles which become thereby commonplace; and in politics one of the most trite among these is the doctrine that the value of an institution depends upon its harmony with its environment. The referendum, or submission of laws to direct popular vote, has grown up in communities whose other institutions have differed in many respects from those of England. To point out those differences and explain their effects would require more space than the pages of a review will allow. In fact, to compress so large a matter into so small a room it is necessary to limit one's horizon still farther by excluding all subjects not strictly germane to the present discussion in England, such as the local referendum, that is, the popular vote of the people of a city or district upon a question of purely municipal character or upon the application of a general act to that district alone.

The referendum, in the restricted sense of a sub-

[1] By President A. Lawrence Lowell. Reprinted by permission from *The Quarterly Review*, June, 1911.

mission to a vote by the whole electorate of measures passed by the representative body, has been introduced in three different forms at three different periods of American history. The periods have to some extent overlapped, yet the movements have been so far distinct that it is convenient to describe them separately; and, in fact, we can recognize three notable waves of the movement for direct popular legislation, each rising higher than the last.

In New England, before the Revolution, the members of colonial assemblies were often treated as delegates appointed to confer together and report to their constituents; and after the end of the colonial period there lingered a kindred practice of instructing the representatives in town meeting. But leaving aside these early types of democracy, the modern referendum first appears in America in the form of submitting state constitutions to the people for ratification. This was done in Massachusetts in 1778, when the proposed "Frame of Government" was rejected by the voters; and again in 1780, when the constitution that is still in force in the state was adopted. New Hampshire followed her example immediately afterwards, submitting to the people one constitution which was rejected in 1779, and another which was ratified in 1783. It was nearly forty years before the procedure was copied elsewhere, but the custom then spread rapidly; and after 1820 almost all new state constitutions were submitted to popular vote. The uniformity of practice has been seriously interrupted only on two occasions,

each the result of wholly exceptional conditions. The first occurred when the southern states, during the stress of secession and reconstruction, dispensed with the practice; the second, when several of these states followed this precedent in their recent effort to disfranchise the negroes. The situation in the last of these cases was anomalous. To submit to the old electorate the question whether it would withdraw the suffrage from a large part of its members was clearly to imperil the result; and hence in several of the states a convention framed and adopted a new constitution without a popular vote. The action showed no distrust of the general principle; and it is safe to regard the doctrine that a state constitution must be ratified by a vote of the people as a firmly established tradition in American public life.

The practice has been applied not only to the revision of the instrument as a whole by the adoption of a new constitution, but also to what the Swiss call a partial revision—that is, the adoption of a particular amendment; a provision empowering the legislature to enact amendments subject to ratification by popular vote being embodied in the constitution itself. Such a provision first appeared in Connecticut in 1818, and was copied by other states until it became almost universal. When we remember that the constitutions, especially among the newer states, have been growing more and more elaborate, including many subjects normally within the range of current legislation, it is evident that the constitutional referendum covers a very

wide field. Still it is a different thing from a general referendum on ordinary laws, especially in America, where the stream of statutes is swollen to such a torrent that the arts of statesmanship have been largely applied to the construction of dykes to prevent it from flooding the country. Since the matters comprised in the constitutions have been those that were deemed relatively permanent, the popular vote on constitutional questions furnished by itself imperfect evidence of the way in which a general referendum would work; and yet it is only in this form that the referendum in the United States has endured sufficiently long, and has prevailed widely enough to justify conclusions drawn from experience.

In measuring the value of any popular institution which is intended to bring public opinion to bear upon political affairs, we may properly ask ourselves four questions: whether it has really any substantial effect or is an empty form; whether it fairly expresses public opinion; whether the opinion so expressed is wise; and whether after long experience it retains general respect.

That the constitutional referendum has a substantial effect there can be no doubt, for amendments referred to the people are often rejected. It has been asserted that legislators sometimes pass on to the popular tribunal amendments in which they have little faith, in order to rid themselves of uncomfortable political questions; but such cases can form only a small part of the measures rejected by the people. A few figures quoted by Dr. Oberholtzer are conclusive upon the free-

dom with which the voters refuse their assent to measures they do not like. He tells us that the *Legislative Bulletin* of the New York State Library for the years 1895 to 1897 gives, for all the states, one hundred and ten constitutional amendments submitted to popular vote, of which fifty were ratified and sixty rejected. In an earlier periodical, covering the six years from 1886 to 1891, he finds one hundred and sixteen amendments so submitted, fifty-four of them being accepted and sixty-two rejected. Whether complete statistics for a century would show that more or less than one-half of the amendments to state constitutions had survived the ordeal of a popular vote, it is certain that the proportion rejected would prove the ballot to be no empty form, but a highly effective instrument for defeating proposed changes in the fundamental law.

How far the result of the popular vote on legislative proposals fairly expresses public opinion is a much more difficult question, on account of the smallness of the vote cast. The vote on measures is always less than that for the principal public officers to be elected at the same time. As Dr. Oberholtzer remarks, only "about a half of all those who know their own minds respecting candidates seem to care anything about measures." Legally those who do not vote are neglected, and that is the only way in which the referendum can practically be used; but when twenty-six per cent. of the people vote for a measure and twenty-four per cent. against it, one would be rash in making any

positive assertion about public opinion on the matter.

The experience of Massachusetts—a conservative commonwealth with a good legislature, whose people have practised the art of popular voting on constitutional questions longer than any other community too large to meet in a general assembly—may be of interest on the two questions already discussed. Since the adoption of the constitution of 1780 there have been submitted to the people fifty-eight questions, of which thirty-nine were answered in the affirmative and nineteen in the negative.[1] The rejection of one-third of the proposals shows that the people had a mind of their own; but the variation in the interest they appeared to take in the different measures is surprising. The votes cast at the referenda have varied from a number slightly in excess of those polled for the candidate for governor in the same year down to one-thirtieth part thereof, two measures being actually carried by less than 4,500 affirmative votes, although nearly 170,000 were cast in the election of the governor. On ten measures the number of votes polled was less than one-fifth of the number cast in the election; on forty-two measures it was less than two-thirds; and it must be remembered that only seventy-five per cent. of the registered voters cast their ballots even for governor. In this connection it may be observed that the vote is almost always larger on measures which have been

[1] One of those rejected relating to the introduction of woman suffrage was merely of an advisory nature.

rejected than on those which have been adopted. In only two instances of acceptance, indeed, has the total vote exceeded two-thirds of that cast in the election for governor; and no constitutional amendment has been ratified by a majority of the electorate. In cases of rejection, however, the vote has usually been close, whereas in cases of adoption the margin has commonly been considerable; so that a small total vote may have signified not only apathy but in part also confidence in the result.

The third question—whether the popular opinions expressed by the constitutional referendum have been wise or not—is not a simple one. The answer will depend very much on the prepossessions of the person who makes it; but a survey of the fifty-eight popular votes which have taken place in Massachusetts since 1780 leaves the impression that almost all those of doubtful wisdom were either in accord with the best thought of the time or were afterwards reversed.

On the final question—whether the referendum on constitutional matters in the United States retains general respect or not—there can be no doubt; for the institution is as deeply rooted in public esteem as ever, and no one would seriously propose its abolition.

The constitutional referendum, of which I have been speaking, was a natural result of the attempt to place the fundamental law on a different basis from ordinary legislation. The next development of direct popular action in lawmaking, not very different from

the first in principle or in its effects, arose from a practical demand for a check upon the legislature when dealing with matters that involve peculiar temptations or the pressure of local or other interests. With this object a clause was inserted in the constitutions of several states providing that the action of the legislature upon certain specific subjects should not be valid unless ratified by popular vote, although the other formalities of constitutional amendment were not required. The practice began about the middle of the last century, and has been applied to the selection of sites for state capitals and public establishments, to the contracting of state debts, to taxation in excess of a fixed amount, to the creation of banks, to the extension of the suffrage, and to a few other matters. It has been used mainly, although not exclusively, by the newer states, and was devised to meet difficulties keenly felt, rather than as an expression of any general political principle. While it has been retained in those communities where it arose, it may be regarded as the product of immature conditions, for it has shown no marked tendency to spread to other parts of the country or to expand over new subjects.

In connection with these constitutional provisions for the reference of particular matters to popular vote we must speak of the attempt occasionally made by legislatures, in the absence of any such provision, to refer some perplexing question to the people. The procedure might perhaps have become common had it not been checked by the courts, which have held that

without constitutional authority a legislature cannot divest itself of responsibility for legislation by shifting it on to the shoulders of the electors. It can, of course, consult them by means of an informal vote, and this is sometimes done; but it cannot make that vote decisive upon the enactment of a statute. No such obstacle would, of course, arise in the case of the British Parliament.

The third and most comprehensive movement for a referendum is very recent. It takes the form of a general provision in the constitutions that, upon the petition of a certain number of citizens, any law, not declared urgent by the legislature, shall be submitted to popular vote. Unlike the two earlier phases which were native in origin, growing out of purely indigenous ideas and conditions, this last is a conscious imitation of Swiss institutions; and it has usually been coupled with the Swiss initiative, whereby a fixed number of citizens can propose a law and require a popular vote thereon. The movement has had a strongly theoretical tinge, and has been pushed by associations formed to advocate it on abstract principles. Nevertheless, the real force that has given it momentum with the public and won its victory in a number of states has been not so much faith in a democratic creed as a dissatisfaction with the existing legislatures, a conviction that they are too largely under the control of party machines allied with moneyed interests.

The referendum in this general form was adopted first by South Dakota in 1898, and in the dozen years

that have passed since that date by Utah, Oregon, Nevada, Montana, Oklahoma, Maine, Missouri, Arizona, Arkansas, Colorado and New Mexico—twelve states most of which lie in the newer and less populous parts of the country and have limited the sessions of their legislatures to very brief periods. As yet it is too early to say what the effect of the institution will be. A generation must pass before that can be determined; but the use that has actually been made of the general referendum in the few years during which it has been in operation is not the less interesting.

Although direct popular legislation was established in South Dakota a dozen years ago, it was used first, and has been used far more freely, in Oregon. No other state, indeed, made any use of it until 1908; and in Oregon the popular votes under the new provisions have been three times as numerous as those in all the other states combined. But in making this statement it is necessary to discriminate between the different kinds of direct legislation. In Switzerland the initiative has been used little, and rarely with success; and, save in Oregon, that has been the case in the American states. As yet they have put it in operation only half a dozen times; and the measures proposed have always been rejected. But in Oregon it has been used in the last eight years for no less than forty-eight measures, including constitutional amendments; and twenty-five of them have been adopted. The referendum, on the other hand, has been hitherto less of an Oregonian monopoly. That state has referred to popular vote,

either by petition or by the action of the legislature itself in accordance with a power conferred upon it, nine statutes, whereof four have been ratified and five rejected; while in the other states thirteen acts have been so referred, of which four have been ratified and nine rejected.

With the enormous mass of legislation in America one feels impelled to ask to what lengths direct legislation will ultimately grow, and whether a people that has any other occupation in life will be able to carry it on intelligently. More than half of these popular votes occurred last autumn, with the result that in Oregon the people voted upon thirty-two different measures, besides voting on candidates for office; and in South Dakota, where the measures, although less in number, were printed in full, the ballot was six feet long in small type. Perhaps for this reason the people, except in Oregon, rejected almost everything presented to them. In Oregon, however, to their credit be it said, they were discriminating, accepting nine and rejecting twenty-three of the measures submitted. These ranged over the whole ground of legislation—liquor laws, taxation, employers' liability, woman suffrage, state railroads, good roads, nominations for office, proportional representation, reform of juries and judicial procedure, fishing in Rogue River, the salary of a judge, eight separate bills for creating as many new counties, and sundry other matters—a programme that might overtax Parliament for a decade. The average vote on all these measures was nearly three-quarters

of that cast for governor at the same time. *Equity*, the periodical devoted to the cause of direct legislation, asks: "Now do you not think that Oregon, with her thirty-two measures, stands vindicated?" Truly the citizens of Oregon are a remarkable people, and the institution they have brought forth is an infant Hercules; but whether or not he has shown wisdom in his cradle, and whether his presence has had a salutary influence upon the state economy, are questions on which the doctors disagree.

An effort is now being made to extend direct legislation to national affairs. This has not hitherto been done even in the case of amendments to the federal constitution, because that instrument was originally framed by delegates from the several states, was adopted by the states, and provided for the ratification of amendments by three-quarters of the states. Whatever theory may be held of the national sovereignty, there can be no doubt that historically the federal constitution was based upon the assent of the states; and the practice has never been changed. This can readily be understood if one considers the improbability that any plan for a closer federation of the British Empire or any future modification thereof, would be submitted for ratification to a popular majority of the Empire as a whole, without regard to the opinion of the component parts. Before a referendum, either on constitutional amendments or on ordinary legislation, can be applied to national questions in the United States, the principle must make a great advance in public favor.

Much has been said in England about the expense of a referendum; but on this point American experience is of little value, both because the total cost of a poll differs in different countries, and because in the United States a referendum is habitually combined with an election of public officers. American elections are periodic, public officers of some kind being chosen throughout a state as a rule every year; and the popular vote upon a legislative measure is usually taken at the same time. In such a case the expense of the referendum is merely that which is entailed by bringing the matter before the people; but this varies greatly.

As to the bearing of American experience of the referendum upon the solution of English problems it is difficult to speak. There is in England no sharp distinction between constitutional and other measures, and hence no clearly defined class of laws which would be regularly submitted to popular vote; and yet it is on this condition that the results of the American constitutional referendum are based. Those results have already been described, while the optional or occasional referendum on ordinary laws has not endured long enough in America to justify any conclusive verdict, even if such a verdict would be decisive in England. The importance of a referendum there must depend chiefly on its indirect effects, its influence upon the responsibility of the cabinet, upon the relation of ministers to the majority in the House of Commons, upon the stability of the party system; in short, upon the whole structure of English parliamentary government.

CHAPTER VI

DIRECT LEGISLATION AS AN ALLY OF REPRESENTATIVE GOVERNMENT [1]

OUR fathers founded this government in order to secure for the people—all the people—the blessings of life, liberty and happiness. They devised institutions and machinery to that end.

To-day, after the lapse of a century and a quarter, combinations of power have grown up under these institutions in the face of which, for multitudes of our population, life is precarious, liberty practically despaired of, and happiness, except of a kind enjoyed by the Roman proletariat or the plantation slave, unknown. We know that no one would be more impatient of such conditions than our revolutionary forefathers, and no one more resolute in seeking a remedy. Honor to their memory requires us to scrutinize their work, and to modernize it if necessary, just as they modernized their inherited institutions.

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[1] By Professor Lewis Jerome Johnson, based upon an article in the *New England Magazine*, June, 1909, and the Chicago *Public* of July 30, 1909, and later reprinted by the Massachusetts Direct Legislation League.

Accordingly we turn first to the spirit and purposes underlying our institutions. We find nothing to criticise, even after all this time. We can suggest no improvements in this quarter. Even now we are inspired with a new enthusiasm by the ideals expressed by our fathers in founding this republic, the ideals so impressively reaffirmed by Lincoln at Gettysburg.

We turn next to the details of their governmental machinery. Little is left of their industrial methods and institutions, and perhaps their political devices too are out of date. If they are, possibly it is not too late to supplement them or replace them with better. The legislative machinery underlies all else. We observe that our lawmaking is entrusted to representative bodies. The make-up of these bodies is, nominally at least, under public control, but the output (except amendments to state constitutions) is not even nominally under public control, except as such control may be exerted through pressure upon individual representatives. When we consider the extent to which such pressure is exerted to-day by the greedy and highly organized few, rather than by the merely normally interested and unorganized many, a legislative system which may have been safe once comes to look decidedly defective.

Further reflection convinces us that this lack of adequate popular control of results is not only a defect but is the *fundamental* defect in our legislative mechanism. Its correction is therefore essential, and is logically the first step in the modernization of our politi-

cal machinery. This done, improved legislation is assured as fast as the majority can agree upon it. This done, all unnecessary and undesirable obstacles to progress will have been minimized. Until this is done, we have little reason to hope for permanently better conditions, except at an utterly unreasonable cost in effort and delay. The importance of concentrating attention upon this issue is manifest.

The next question is, how shall the public get adequate control of results? The answer is, we must assert our natural right to revise the work of our representatives. We must do this revising ourselves. There is no one else to do it. To do it we must supplement the existing legislative machinery with a workable, orderly, and properly guarded contrivance to enable us to enact laws, to veto them, to amend them or to repeal them by direct popular vote over the head of legislatures and city councils, in the instances when these bodies fail to meet the public will. In other words, we must considerably extend the practice of direct legislation by the people, already familiar to us in the New England town meeting, and in the popular ratification of amendments to state constitutions.

Fortunately the way to do this has been devised and tested and has met expectations on a city-wide and state-wide scale. It involves two devices developed in the last few decades, the initiative and the referendum, now included under the single term direct legislation.

The initiative enables the people to enact desirable

measures by direct popular vote, when such measures have been or are likely to be ignored, pigeon-holed, amended out of shape, or defeated by the legislature. Measures passed in this way may be entirely new laws, or they may, of course, amend or repeal existing laws.

The referendum enables the people, by direct popular vote, to veto recent enactments of their representatives.

The initiative corrects sins of omission.

The referendum corrects sins of commission.

The initiative is set in operation by volunteer groups of citizens—civic, labor, or mercantile organizations—who draw up laws which they think good for themselves, or the public, or perhaps both. If they can get a certain moderate percentage [1] of the voters of the city or state to sign the requisite petition the measure goes to the council or legislature, and if this body refuses to adopt it within a specified time without amendment, the measure must be transmitted unchanged to the people for their decision. If the legislative body thinks it can produce a better enactment to the same effect, it may draw it up and send it to the people, with the other, as a competing measure. The voters then choose between them, or reject both. In some jurisdictions, notably Oregon, initiative meas-

[1] The number of signatures required in these petitions ranges, in different states from five to eight per cent. of the voters for initiative petitions for ordinary laws; from eight to fifteen per cent. for initiative petitions for constitutional amendments; and from five to ten per cent. for referendum petitions. The usual percentages are eight for initiative, and five for referendum petitions.

ures go directly to the people without previous submission to the legislature. Other modifications in detail may be expected as time goes on.

The referendum, likewise upon petition, brings newly passed legislation to the popular tribunal for veto or confirmation.

The need of interference with the work of the representatives is greatly reduced by the mere existence of the system, and the number of laws actually coming to popular vote is a small fraction of the whole.

Direct legislation is likely to result, before being long in operation, in the establishment of the recall, which is the properly guarded power of removal of unsatisfactory officeholders before the expiration of their terms. Thus the people gain the power of removal, the logical supplement to their already existing power of election.

The recall, though obviously a device indispensable for popular control and usually, in city charters, established simultaneously with direct legislation, will not be discussed further here. It should be looked upon as one of the numerous desirable but subordinate measures, like preferential voting, direct nominations, and the short ballot, which may safely be left to be gained by subsequent enactment in the larger jurisdictions like our states. This is strikingly true in Massachusetts where the recall has been suggested, if not actually authorized by the constitution since its adoption in 1780, as will be seen from article VIII of that constitution; and could, possibly, unlike the initiative

and referendum, be made operative without constitutional amendment.

The initiative and referendum, as now advocated, carry with them, of course, adequate and systematic means, independent of the newspapers, of furnishing each voter the full text of the measures to be voted on; the condensed form in which they will be printed on the ballot; statement of the reasons for and against each measure; and the names of those behind each proposition.

In Oregon, the secretary of state edits this information and mails it in pamphlet form to each voter in the state fifty-five days before election. At least eight weeks have elapsed by that time since the circulation and filing of the petitions. This is found to afford ample time for deliberation and discussion, and the pamphlet provides an adequate basis for decisions. Those who wish to insert arguments in this pamphlet pay the cost of paper and printing—some eighty dollars per page—and the state bears the rest of the cost of the pamphlet and its distribution. In initiative cases, supporting arguments are accepted from none but duly accredited representatives of the friends of the measure; any one who will pay the cost, however, may insert arguments against such a measure. In referendum cases arguments upon either side may be inserted by any one willing to pay the cost. In the election of June, 1910, when thirty-two measures were acted upon by the electorate, the state pamphlet was a document of two hundred octavo pages. Oregon voters

protect themselves still further from false or misleading campaign literature by a provision of their admirable Corrupt Practices Act—a comprehensive measure based on English practice, which came from the people by the initiative—which prescribes a heavy penalty for circulating political literature without the names of its authors and publishers.

In Oklahoma, there is a state pamphlet for informing voters as in Oregon, but with some interesting differences in detail. In Oklahoma, as is proposed in Massachusetts, initiative measures go first to the legislature. Hence all popular voting is upon measures which have had recent legislative action. A joint committee of house and senate is therefore naturally called upon to prepare the arguments supporting the legislature's position. The opposing argument is drawn up by a committee representing the petitioners. The arguments for each side of each measure is restricted by the Oklahoma law to two thousand words, one-fourth of which may be in answer to opponents' arguments. The direct argument on each side is prepared and submitted to the secretary of state, who transmits it to the opposing side to serve as the basis for the rebuttal just mentioned and thus complete the argument. These arguments on all the questions are then assembled in the state pamphlet and distributed to all the voters of the state a suitable number of weeks before the election. The cost of printing and distribution is borne by the public treasury. The Oklahoma plan has some striking merits. It requires the legisla-

ture to state the reason for the action which it has taken. Doubtless this reason is often good and sufficient, but perhaps more certainly so when the lawmakers know in advance that they may have to defend their position. The legislature's views on the measure should be of great value to the voters.

More important still, it ensures the presentation of a negative argument. Experience in Oregon has already shown that a negative argument is not always forthcoming when left to be supplied by volunteers. A campaign of silence is sometimes wisely preferred by interests at whom an initiative measure is aimed to the revelation of weakness which would result from a formal attempt at defence. They well know that voters are likely, from sheer force of habit, thoughtlessly to concede more in the defence of a long-established wrong than its beneficiaries would dare claim for it. The Oklahoma plan of informing voters requires each side to show its hand. Bluffing is eliminated. Privilege has to come out in the open and state such case as it has. Silent contempt is not permitted to do duty as argument. Both the Oregon and the Oklahoma systems of disseminating information do much to forestall the misleading of voters through the newspapers. Some expense is involved, but this point is not apt to be pressed except by those opposed to the whole system on other grounds. The body of voters well understand that one bad law or one carelessly granted franchise may cost the public in actual dollars and cents many times the cost of the state pamphlet.

Supplemented by the initiative and referendum, to serve as a permanent background and for application when called for, the representative system will gradually but surely enter upon a period of honor and usefulness hitherto never surpassed and probably never equaled. Relieved of the unnatural excess of power under which they now stagger and sometimes fall, legislative bodies will cease to be attractive objects for bribery and secret influence. Log-rolling will greatly diminish. The power of bosses and rings will be undermined. Seats in the legislatures will then begin to be unattractive to grafters. At the same time they will become more attractive to high-minded, public-spirited citizens. There will be a fairer chance that a man clean when elected will stay clean. It will make it safe to reduce the size of legislatures and to diminish greatly the number of elective officers. The party machines and bosses once permanently out of control, we may reach the point of competing successfully with the corporations in attracting the best young talent to the public service.

With direct legislation in vogue, it is not necessary to retire a faithful legislator to express disapproval of some of his measures. The electorate, while returning the man to office, can overrule the measures with no more reflection on his honor or usefulness than is involved in the overruling of a lower court by a higher. Honest and able representatives are hence likely to be repeatedly reëlected. Long tenure is as valuable to public as to private business. Where the

people have been in control long enough for this result to show, as in Switzerland and in the New England towns, they are seen to act upon this principle. In Switzerland it is rare that a new member appears in a legislative body except to fill a vacancy due to death or voluntary retirement. In New England towns it is common for faithful officials to be retained in office practically for life, their annual reëlections being frequently uncontested. With a seat in the legislature thus robbed of its charms for all but the public-spirited, and with reëlection practically assured to men of proved merit, real legislative experts in good number may gradually be developed, and may yield good service.

In view of such untested possibilities, it is beside the mark to wonder whether representative government is a failure. We begin to realize that it has not yet been fairly tried, at least not in recent years. We realize that our legislators have been working under almost intolerable conditions. They have been continually exposed to temptations that no ordinary man ought to be asked to face, and it is a tribute to human nature that so many of our legislators have stayed straight. With the initiative and referendum in force legislators will have all the power that is ever accorded to representatives and agents in business, which is all that is wholesome or attractive to worthy citizens of a democratic republic. That final enacting power is far from essential to the dignity of a legislative body is shown by the universal respect in which

our American constitutional conventions have always been held.

While a sufficiency of power is thus left with the representatives, a salutary increase of responsibility is thrown upon the voter. It brings him, to some purpose, into closer touch with great affairs. It enables him to vote for measures apart from men, and for men apart from measures. He can begin to assume the stature of a man, to become a sovereign in fact as well as in fancy. It will enable him to settle something at an election besides the party label of office-holders, which in turn settles little except which faction shall dispense the spoils of office. For we know only too well that platforms are "merely to get in on, not to ride on." Even if they were expected to be observed, platforms are composites which rarely represent, except in the roughest way, the views of any one thoughtful voter.

The new task proposed for the voter, though inspiring, is relatively simple. It differs widely from legislation in the ordinary sense. The originating and drafting of bills can manifestly never fall as a burden on the mass of the voters. For this service the community can always command ability as wise, as disinterested and as practiced in legislation as any who now do such work. The average voter's part in the work is deliberation, discussion and the registry of his decision. This is no new task for him; the only novelty is in having a chance to do it intelligently, and to see his decision go into effect.

The voter, going into the booth, has known for months just what is coming up and in just what form it is coming up. There is no thought of possible amendment. With regard to each measure he has simply to approve or reject. He has had plenty of time to make up his mind. If a measure is objectionable in purpose or form, or is lacking in clearness, he will of course reject it and await—or cause—its reappearance in a more acceptable form at a subsequent election. The voter is thus more like a juror than like a legislator. His capacity for intelligent, discriminating work at a single election is therefore large—much larger, as experience shows, than at first thought might seem possible.

In 1909, for example, the voters of Portland, Oregon, in a city election, besides voting for mayor and other officers, voted discriminatingly and with sustained interest on thirty-five measures, thirteen of which they passed. The average vote on each of the thirty-five measures was slightly over eighty-one per cent. of the total vote for mayor, with a range from seventy-five per cent. to ninety per cent. The majorities, both yes and no, were sometimes heavy, sometimes light. There is every evidence that the voting in each case reflected the calm judgment of the voters. In Denver, in the election of May, 1910, the voters, besides electing city officers, dealt discriminatingly with a list of twenty-one measures, some of them trickily worded. Moreover, in this case, they had to face an enormous corruption fund and all that the

combined party machines and selfish interests could do to mislead. The result was a triumph for the people at every significant point. The people's capacity for direct legislation is not likely to be subjected to severer tests than it has already stood with signal success.

Through direct legislation, the state will offer an attractive field of usefulness for such of her citizens as do not care to give up their whole time to public life. Public-spirited citizens, without dislocation of business or profession, may and will devote a much larger share of their time than now to the consideration of public questions. If they conceive of a desirable step in legislation, they will not have to contrive to get into office and to stay there long enough to accomplish their ends. They have a dignified and honorable method of presenting to the final authority, for adoption or rejection, the best fruits of their labors, free from the risk of mutilation or distortion by ill-informed, overworked, or corrupt legislatures. This alone would be a powerful means of bringing spontaneously to the public service, and at no expense, a large amount of talent of the best possible sort for which there is now little encouragement in public life. This is the talent on which we should depend for the most serious lawmaking, and which we now have little chance to utilize. The legislature will thus be facing a reasonable and wholesome competition and the public cannot fail to profit from it.

Sometimes officeholders or party machine men

profess a great fear that direct legislation will result in "mob rule." This must be taken to mean that they fear, probably with reason, that the people, after weeks of deliberation and with adequate information, would not support their pet schemes. Prospective abundance of popular majorities in their favor would neither excite their alarm nor be called by them "mob rule." No; mob action finds a more promising field in nominating conventions and even town meetings, than in the long process of gathering signatures, weeks of discussion and deliberation, and the quiet vote on an Australian ballot in isolated, individual booths.

Direct legislation is not only a safeguard against mob rule, but against the only thing likely with us to lead to violent revolution, namely, machine rule for the benefit of the privileged few. Majority rule precludes both mob rule and machine rule, for majority rule brings into play the great patient mass of honest, hard-working citizens, ordinarily silent and little felt. They abhor alike the violent methods of the mob and the intriguing of "politics." No less do they shrink from making themselves individually conspicuous in hopelessly protesting against powerful wrongs which they can, though they ought not, endure. They are likely to suffer in silence until driven to extremes, rather than seek relief through the distasteful and inadequate means now at their disposal. To provide the people with orderly and regular means of expressing themselves on equal terms with all their neighbors, with the certainty that their will thus expressed will take effect,

is the logical way to ensure the healthy and natural progress which in the long run is the only preventive of violent upheaval.

An additional advantage in direct legislation is the education which it affords the average voter. One cannot help believing that the consequent toning-up of the public standard of thought and morals would be in the long run the most important feature of the system. Direct legislation tends thus automatically to produce a highly trained and self-respecting electorate, and to lay the deepest and most promising foundation for permanent good government. Direct legislation is the only orderly means known for accurately and unmistakably expressing the public will as to legislation, and for making it prevail. It gives at last a fair approach to a proper and worthy means of registering public sentiment, well defined by some one as "the deliberate and reasoned judgment" of the people. It is as effective a balance wheel against mere popular clamor as it is a safeguard against the silent scheming of the crafty few. Direct legislation thus opens for the first time a fair prospect for the early realization of the cherished American ideal—a government by as well as of and for the people.

The direct legislation idea is no novelty among free peoples. It may be seen in the institutions of the Plymouth Colony. It appears in our time-honored New England town meeting and the even more ancient Swiss *Landesgemeinde,* and German *folk-moot,* all of them perfect exemplifications of the direct legislation

principle on a small scale. It appears in our popular ratification of state constitutions and their amendments, usually insisted upon from the first, in spite of the pitifully inadequate facilities of our early days.

More recently, we note the steady extension of direct legislation through the initiative and referendum from canton to canton in Switzerland, its application to Swiss federal legislation—the referendum in 1874 and the initiative for constitutional amendments in 1891—and its adoption in the last decade by city after city and state after state in this country. Direct legislation (usually accompanied from the start by the recall) is an essential feature of nearly all modern city charters, and those without it will doubtless have to add it sooner or later to get satisfactory results. Notable among the direct legislation cities stand Los Angeles, Des Moines, Haverhill and Gloucester, and the newest recruits, Berkeley, California, Colorado Springs, Grand Junction, Colorado, and Burlington, Iowa. Similar examples among the states are South Dakota since 1898, Oregon since 1902, Montana since 1906, Oklahoma since 1907, Maine and Missouri since 1908, Arkansas and Colorado since 1910, and Arizona and California in 1911.

For examples of the effect of direct legislation, we naturally turn first to Switzerland, where it has been in operation on what may be called a large scale for fifty to eighty years. With the aid of direct legislation as a result of its moral influence as well as by its direct application, Switzerland has, *wherever she has*

applied it, rid herself of the misrule and exploitation which were previously rampant, as they had been for centuries, in all except the minute but ultra-democratic cantons.[1] Thanks to sound democratic idealism, supported by suitable machinery for its expression, she has now come to be an admirably governed country. Mr. James Bryce, the present British ambassador to the United States, declared to a Cambridge audience in 1904 that Switzerland is the most successful democracy that the world has ever seen.

Further expert testimony to what is generally known and admitted by the well-informed and disinterested is hardly needed, but the New International Encyclopedia, in its article on Switzerland, expresses it so naïvely that it may be worth citing. After a lengthy account of the civil wars and political turmoil in the early part of the nineteenth century, it disposes of the rest of the century with the single remark that "the history of Switzerland for the past quarter of a century has been very uneventful, though marked by a steady material, intellectual and political growth."

All this does not mean that Switzerland is an unalloyed paradise. Some of the great human problems seem as far from solution in Switzerland as elsewhere. It does mean that the government promptly reflects public sentiment, and at the same time is free from

[1] It is to these little cantons including less then ten per cent. of the area and less than seven per cent. of the population of the present whole country that Switzerland owes her otherwise quite undeserved reputation for century-old free political institutions.

violent fluctuations of policy. It means that the government is administered efficiently and in the interest of the public good. It means that Switzerland, with a form of government modeled largely upon our own, by a modification which might have been suggested by our Declaration of Independence, has secured good government in a democratic republic.

The excellent results in Switzerland are to be seen not only in her federal affairs, but also in the affairs of an overwhelming majority of her cantons. We must not, however, overlook Canton Fribourg, the only one of the twenty-two Swiss cantons as yet unable to equip herself with the initiative and referendum. She has still the unperfected or " pure " representative system characteristic of our American states and cities and of the old times in the rest of Switzerland. This brings with it, there as here, boss rule and all that boss rule implies. The legislative body is nominated by the boss, elected by the people and managed by the boss. Prominent citizens are skillfully kept in line by a share in the plunder for themselves or for their churches or philanthropies, or by fear of loss of favor with the two chief banks, both creatures of the boss. There is bribery, extravagance, subordination of the general interest to private business, the heaviest per capita cantonal debt in Switzerland, and the public apathy which naturally follows widespread hopelessness. The agitation for the initiative and referendum is still kept up by Fribourg patriots as their only hope, but all orderly means of success are in the control of

the boss who, of course, fights them and will fight them for his political life.[1]

As a contrast to Fribourg, it should be observed that the chief cantons of Switzerland, Berne and Zurich, the former a farming, the latter a manufacturing canton, both far in the lead of their neighbors in population and importance, are among the cantons having the initiative and referendum in their most radical and readily workable form. Zurich is clearly the most advanced of the cantons in this respect, and Berne is surpassed, and at that only slightly, by few besides Zurich. In short, where the initiative and referendum are most readily set in motion, there have developed clean government and leadership in civic and industrial growth. In the only canton where there is neither the initiative and referendum nor pure democracy, there is misrule and political apathy of the familiar American type.

The Swiss success under perfected representative government may reasonably be expected to be repeated in this country, for the strength of the system lies in giving common human nature a fair chance to do itself justice. Human nature in Switzerland is very much like that elsewhere. That it is like that in this country is to be seen from the fact that representative gov-

[1] This bit of evidence from Fribourg is drawn from an article entitled "The Only Political Boss in Switzerland," by George Judson King, Secretary of the Ohio Direct Legislation League, in the *Twentieth Century Magazine* for July, 1910. The article is based on recent personal observations in Canton Fribourg.

ernment without direct popular control results in demoralization and bad government there just as it does here, and in just the same way there as it does here.

It is sometimes suggested, however, that little Switzerland, good as her results are conceded to be, is not an adequate precedent for an immense nation like the United States. But a small nation may exemplify a principle essential to the success of a large nation. A sound fundamental principle holds regardless of the scale of the enterprise. That a self-governing people must have effective control over the laws under which they live would seem to be a principle of this kind. Details may require adjustment, but the principle will hold. But all that aside, the important comparison is not so much with our nation as with our cities and states. Switzerland, unhomogeneous in population, preëminently a manufacturing nation, larger than Massachusetts, Rhode Island and Connecticut combined, with a population slightly larger than that of Massachusetts, is plainly an excellent precedent for the adoption of direct legislation by individual American cities and states.

Moreover, there may never be need for a federal initiative and referendum system for this country. With the rings once permanently ousted from our cities and states, the federal government should automatically run clear. For the rings that do the plundering at Washington could manifestly not long survive without their intrenchments in the cities and states. At any rate, it is obviously correct tactics now

to go right ahead for the initiative and referendum in states and cities. Our only disappointments with it, judging by experience elsewhere, are likely to arise from excessive restrictions which the legislatures may impose upon it.

New England, the home of the town meeting, enjoying the inspiration of the Massachusetts and other New England states constitutions, with Maine already in the direct legislation ranks, may be expected to take especially kindly to this new and long step toward the realization of her ancient ideals.

The real questions for us in New England to answer are:

1. Are we *now* as fit for this forward step as the Swiss *were* when they were putting the system in operation *thirty to fifty years ago?*

2. Is not even a complicated law, properly explained and vouched for, as suitable a thing for a popular vote as a choice between complicated candidates whose actions no one can foresee?

3. Is not an occasional vote on an ordinary law a natural and reasonable addition to our time-honored system of popular votes on state constitutions and their amendments?

4. Is it not worth while to disentangle measures from men and submit to popular vote definite and distinct propositions instead of mixtures of candidates, parties and platforms?

To ask these questions in America is to answer them in the affirmative. All parts of the country are

coming to see the point. Oregon, nearly half as large again as all New England combined, is setting us a most encouraging example. Seven years ago she adopted direct legislation. She was then deep in political corruption. Thanks to the initiative, and measures secured with it which legislatures had refused to pass, she has made great progress toward better government and the house-cleaning is going right on.[1] The outcries of the local plunderers show that they feel their power slipping away. Their intrigues for the destruction of the initiative and referendum show that they know the cause.

We shall be interested to see how direct legislation fits in with the ideas of our wonderfully far-sighted and successful constitution framers. It will be worth while to quote a few passages from the constitution of the commonwealth of Massachusetts—the oldest of their works—the spirit of which is no stranger in other parts of the country. Articles V, VII, and VIII of that honored document will give the ideas of the fathers on the relation of the people to their representatives.

"Article V. All power residing originally in the

[1] See the speech of Senator Bourne of Oregon in the United States Senate, May 5, 1910 (obtainable from the Massachusetts Direct Legislation League), for an extended description of this remarkable work. Senator Bourne, a Republican and by birth a Massachusetts man, and his colleague, Senator Chamberlain, a Democrat, born in Mississippi, are alike active advocates of the initiative and referendum after observing its eight years of operation in their home state.

people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

"Art. VII. Government is instituted for the common good; for the protection, safety, prosperity, and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter or totally change the same, when their protection, safety, prosperity and happiness require it.

"Art. VIII. In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments."

On reading these sturdy New England doctrines one must conclude that the only reason why the fathers did not then and there establish direct legislation for the state and for cities as they might develop, was that it was at that time physically impossible. Mechanical invention had not advanced far enough to permit it even if they had conceived the idea. We must not forget that their facilities for disseminating information and gathering returns were little superior to those

of Julius Cæsar. They knew no more of railways than Cæsar did, such highways as they had were not so good as Cæsar's. But they resolutely did all that was practicable under the mechanical conditions of their time. They provided an obligatory referendum on the adoption and amendment of the constitution of the commonwealth, even though it might and did take weeks to put the matter to vote and get the returns. And it is clear that nothing was further from their minds than that the will of representatives should prevail over the will of the people, some modern office-holders to the contrary notwithstanding.

Now that direct legislation, as a working institution on a large scale, has become a possibility through the introduction of the modern means of spreading news and ideas by the telegraph, high-speed printing press, and the railway, we can proceed from the point where the fathers were forced to stop and can vindicate more clearly than ever the soundness of their noble idealism.

In closing it may be said that the initiative and referendum appeal particularly to progressive Americans in whom still lives the spirit of the liberty-loving men who founded this nation. Such citizens readily comprehend the necessity of controlling the important *results,* and of not limiting themselves to toying at government while privilege does the governing. They take great satisfaction, moreover, in a remedial measure so thoroughly in harmony with the old ideals and institutions. It involves, after all, only a bit of addi-

tional machinery, and depends for its success only upon our fitness for self-government.

Of course direct legislation is only a piece of mechanism. It will not suffice merely to set it up. It must be made to work promptly and with vigor when required. This will take real citizens. Oregon shows that such citizens still exist—some of them of New England or other American stock, some of them born in old-world monarchies.

The success in Switzerland; the steady progress and gratifying results in America; the strenuous opposition by favorites or managers of political machines; the misrepresentations by professional lobbyists and conspicuous officeholders, echoed in ready-made "editorials," all indicate that the initiative and referendum are measures justly destined to receive an increasing amount of public attention and regard.

With the initiative and referendum in force, we shall be equipped as never before to resist enemies from within, enemies far more dangerous to our freedom than any foreign foe.

The initiative and referendum may well be the means of instituting on a permanent basis the responsible kind of representative government which our fathers lived and died to secure.

The initiative and referendum may well prove to be the salvation of the momentous experiment led by Jefferson, Hancock, Franklin, the Adamses and Washington.

CHAPTER VII

REPRESENTATIVE AS AGAINST DIRECT LEGISLATION [1]

IT is not always that there is a direct relation between the sound and fury of language and its real meaning, but such imposing words as the initiative, the referendum, and the recall do not indicate innovations of a light and trifling kind in the character of our institutions. As the doctrines which they convey are practiced in some of the states of the Union, and as they are proposed for adoption in other states, they involve no less than a radical change in our method of government. In effect, they propose the substitution of direct for representative government, the establishment of the direct action of the people, not merely in selecting their agents, but in framing and executing their laws.

To most of us the proposals are full of novelty, and it is not too much to say that, as a people, we have given them no consideration worthy of the name. Have we explored the past to learn whether similar experiments have been tried; and, if tried, what has

[1] By Congressman Samuel W. McCall. Reprinted by permission from the *Atlantic Monthly*, October, 1911.

been the effect? Have we reflected upon the obvious limitations, upon the utterance by great masses of men of final and definite regulations for the conduct of a complex society? Have we considered to what extent the most doubtful results under our present structure of government are due to the overzeal of representatives to respond to the transient and noisy, and often misleading, manifestations of popular opinion, and to their failure to act bravely as the instruments, not of the people's passions, but of their interests, and to require them to select other agents, if they shall insist upon the doing of wrong?

At the threshold of the discussion we encounter the usual epithets. The advocates of change are apt to seek popular favor by decorating themselves and their proposed innovation with some lofty adjective, and in a similar fashion to cover their opponents with obloquy. The quality assumed by the proponents of one or all of this trinity of reforms they express in the word "progressive." They are advocating "progressive" methods of government, while those who disagree with them stand for reactionary methods. "Progressive" is an alluring word. Everybody believes in progress if it be of the proper kind, and a due amount of vociferation on the part of those claiming a monopoly of the virtue may serve to banish skepticism as to the kind. But if the question were to be settled by epithets, there is some ground at least for asserting that they should be transposed in their application. Representative government is comparatively modern;

direct government of the democratic kind is ancient; and the latter was deliberately discarded for the former by the founders of our government. I will not cite such a statesman as Madison, not because the heavy debt which the cause of free and regulated popular government owes him can ever be discharged, but because in the passionate rhetoric of the self-styled Progressives, he is set down as a reactionary. I will choose an authority who still remains above suspicion, and will take the author of the Declaration of Independence, which even to-day is considered radical in its democracy. In speaking of "the equal rights of man," Thomas Jefferson declared that:

"Modern times have the signal advantage, too, of having discovered the only device by which these rights can be secured, to wit,—government by the people, acting not in person, but by representatives chosen by themselves."

The framers of the constitution were entirely familiar with the failure of direct democracy in the government of numerous populations, and they were influenced by their knowledge of that failure in devising our own structure of republican government. It is now proposed to abandon the discovery of modern times, to which Jefferson referred and which he declared to be the only method by which rights can be secured, and to put in its stead the discarded device of the ancients. Who, then, are the reactionaries: those who are opposed to the substitution of direct for representative government and are in favor of the pro-

gressive principles of the American constitution, or the supporters of direct government who advocate the return to the reactionary policies which thousands of years ago demonstrated their destructive effect upon the government of any considerable populations? It does not follow that to be a reactionary is to be wrong. The wise reactionary may sometimes preserve the government of a state, and even its civilization. Whether the initiative, referendum and recall embody sound political principles must be determined by other tests. But their advocates should not masquerade. If they choose to attach to themselves any label, they should frankly spread upon their banner the word "reactionary."

The framers of our constitution were endeavoring to establish a government which should have sway over a great territory and a population already large and which they knew would rapidly increase. They were about to consummate the most democratic movement that had ever occurred on a grand scale in the history of the world. They well knew from the experiments of the past the inevitable limitations upon direct democratic government, and, being statesmen as well as democrats, they sought to make their government enduring by guarding against the excesses which had so often brought popular governments to destruction. They established a government which Lincoln called "of the people, by the people, for the people," and in order effectively to create it they adopted limitations which would make its continued existence possible.

They knew that, if the governmental energy became too much diluted and dissolved, the evils of anarchy would result, and that there would follow a reaction to the other extreme, with the resulting overthrow of popular rights. They saw clearly the line over which they might not pass in pretended devotion to the democratic idea without establishing government of the demagogue, by the demagogue, and for the demagogue, with the recoil in favor of autocracy sure speedily to follow; for they knew that the men of the race from which they sprang would not long permit themselves to be the conscious victims of misgovernment, and that they would prefer even autocracy to a system under which the great ends of government in the nation should not be secured, or should be even perverted.

We are in danger of forgetting the essential purpose of government: that it is not an end but a means, that the people do not exist for the government but that government exists for the people. The idolatry of government, or of its institutions, has been as debasing and injurious as any idolatry that has ever afflicted mankind. It has frequently been the agent of gross and wholesale oppression; it has frequently been the means by which the many have been kept in servitude and subjection; and, until the establishment of our own system, the governments have been few which have had for their chief purpose to safeguard and protect the individual, and to hold over him the shield of law, so that he might be secure in his life, his liberty,

the fruits of his labor, and in his right as an equal member of the state.

And when I speak of the individual, I mean the chief thing that is essential in the meaning of the term "the people." I do not accept the latter term in the sense in which it is so often sweetly used by those who desire our votes. I am unable to see how any good, coming to a mass of men, can be felt in any other way than by the individuals in the mass. And until somebody shall point out a higher consciousness than that of the individual man or woman or child, he can hardly be heard to deny that the individual man or woman or child is, after all, the ultimate concern of the state.

The notion that there is a collective personality called "the people," separated from the individuals who compose it, and which may be used to oppress each one and all of its component parts in turn, may well have been a conception of the Greek demagogues by whom it was so fittingly illustrated in practice. I cannot understand how there can be any freedom that is not in the last analysis individual freedom. However great a mass of men you may have in a nation, however powerful physically it may be, if each individual is the victim of oppression, if he is denied rights, if there is no forum open to him, where he can be heard to say against the majority, "This is mine,"— then "the people" have no such thing as liberty, they have no such thing as popular rights. As to the "composite citizen," he obviously is nobody who ever has

existed or ever will exist. When the advocates of a reform, ignoring the man of flesh and blood in the street, are conducting their operations with reference to this mythical person, they should emigrate to Utopia.

Is it for the interest of the individual members of our society to have the great mass of us pass upon the intricate details of legislation, to execute our laws and to administer justice between man and man? That I believe to be in substance the question raised by the initiative, the referendum and the recall, as they are now practically applied in at least one of the states of the Union, the example of which is held up as a model to the other states. With an infinitesimal responsibility, with only one vote in a million, how seriously would each one of us feel called upon to withdraw from his own private pursuits and to explore in all their details the complicated questions of government? It would be imposing an impossible task, scattered as we are and unable to take common counsel, to require us in the mass to direct the work of government.

First, with regard to the initiative. In our legislation the work of investigation and of perfecting details is of such great difficulty that proposed laws are distributed among various committees, which are charged with the duty of considering their exact terms. The legislative body as a whole, although its members are paid for doing the work, cannot safely assume to pass upon the intricate questions of legislation without investigation by committees selected with reference to

their fitness for the task. The proposed law as perfected by a committee is brought before the representative assembly and it is there again discussed and subjected to criticism, both as to policy and form, and in this open discussion defects often appear which require amendment, and sometimes the defeat of the bill. And even with these safeguards laws often find their way upon the statute-books which are not best adapted to secure the purposes even of their authors.

But what would be the procedure under the initiative? In Oregon a law may be initiated upon a petition of eight per cent. of the voters, and it then goes to the people upon the question of its final enactment without the intervention of any legislature. Some man has a beautiful general idea for the advancement of mankind, but beautiful general ideas are exceedingly difficult to put into statutory form so that they may become the rule of conduct for a multitude of men. Another man may have some selfish project, which, like most selfish projects, may be concealed under specious words. The beautiful idea or the selfish scheme is written by its author in the form of law, and he proceeds to get the requisite number of signers to a petition. With a due amount of energy and the payment of canvassers, these signatures can be secured by the carload, and the proposed law then goes to the people for enactment, and the great mass of us, on the farm, on the hillside, and in the city, proceed to take the last step in making a law which nine out of ten of us have never read. And this is called securing

popular rights and giving the people a larger share in their government!

The people, at the election in Oregon held in 1910, passed upon proposed laws which filled a volume of two hundred pages, and they passed upon them all in a single day, each voter recording his verdict at the polling booth upon both the candidates and the proposed laws. In the ordinary legislative body, made up of no different material from that of which the people are composed, an important question may be considered for a day, or even for a week; and then, with the arguments fresh in their minds, the legislators record their votes upon the single measure. What a delightful jumble we should have if forty different statutes were voted upon in the space of a half-hour by the members of a humdrum legislature!

Of course, one must be cautious about expressing a doubt that the people in their collective capacity can accomplish impossibilities. You may say of an individual that he should have some special preparation before he attempts to set a broken arm or perform a delicate operation upon the eye. But if you say that of all of us in a lump, some popular tribune will denounce you. And yet there is ground for the heretical suspicion, admitting that each one of the people may have in him the making of a great legislator, that there should be one simple prerequisite which he should observe in order to be any sort of a legislator at all. He should first read or attempt to understand the provisions of a bill before solemnly enacting it into law.

One can scarcely be accused of begging the question to say that the voters would not read a whole volume of laws before voting upon them. The slightest knowledge of human nature would warrant that assertion.

How many even of the most intelligent of our people, of college professors, of ministers, read the statutes that have already been passed and that are to govern their conduct? Even lawyers are not apt to read them generally, but in connection with particular cases. But if some proof were necessary, one has only to cite some of the Oregon laws. For example, there are two methods of pursuing the salmon fisheries in the Columbia River: in the lower and sluggish waters of the stream, fishing is done by the net; and in the upper waters by the wheel. The net fishermen desired to prohibit fishing by the wheel, and they procured sufficient signatures and initiated a law having that object in view. On the other hand, the wheel fishermen at the same time wished to restrict fishing by the net, and they initiated a law for that purpose. Both laws went before the people at the same election and they generously passed them both, and thus, so far as the action of the people was concerned, the great salmon fisheries of the Columbia were practically stopped.

A law was "initiated" by signatures and was enacted by the people at the election in November, 1910, providing for the election of delegates to the national political conventions by popular vote. The law for-

bade each voter to vote for more than one candidate. But upon the usual basis of apportionment Oregon is entitled to ten delegates in a national convention. If some candidate should be preëminently fitted above all others for the place and should receive all the votes, the state would have only a single delegate in the convention. If the voter has the right to vote for all the candidates for the whole representation of his state in the electoral college, what semblance of a reason can there be why he should not have the same participation in the preliminary election, when the candidate, who may finally be elected president, is to be chosen? The same law forbids a voter from voting for the nomination of more than one candidate for presidential elector. Thus a minority of a party in the state may nominate candidates for electors hostile to its presidential candidate. If the vote of the presidential electors of Oregon shall not some time be divided, even though the popular vote may have been strongly in favor of a given candidate, it will not be the fault of this law.

It seems rather superfluous to cite instances to prove that, where the final legislative body is denied the power of meeting and discussing the provisions of a proposed law, there will be loose and freakish legislation of the worst kind. Mr. Woodrow Wilson, before he essayed the exacting rôle of the practical politician, declared before the students of Columbia University that a government cannot act inorganically by masses, it must have a law-making body. It can no more make laws through its voters than it can make

laws through its newspapers. And in the same course of lectures he declared that:

"We sometimes allow ourselves to assume that the 'initiative' and the 'referendum,' now so much talked of and so imperfectly understood, are a more thorough means of getting at public opinion than the process of our legislative assemblies. Many a radical programme may get what will seem to be almost general approval if you listen only to those who know they will not have to handle the perilous matter of action, and to those who have merely formed an independent, that is, an isolated opinion, and have not entered into common counsel; but you will seldom find a deliberative assembly acting half so radically as its several members have professed themselves ready to act before they came together into one place and talked the matter over and contrived statutes."

After Mr. Wilson entered upon his political career, he changed his mind, but his recantation in no degree affects the weight of the argument to which I have referred. The "common counsel," of which he speaks is an indispensable process in the making of laws, and whenever our legislative bodies impose serious limitations upon the process, it is usually to the detriment of the character of the laws passed; and the more grave and statesmanlike the deliberations of those charged with the responsibility, the better it will be for the state. For this vital process there would be substituted the enthusiasm of somebody who believes he has devised some statutory cure-all for the ills that

afflict the body politic, and embodies his enthusiasm in a bill. He seconds himself, as any one may, with the necessary signatures to a petition; and then without coming together and taking common counsel, and often without reading what has been written, the great mass of us solemnly proceed to vote. Such a procedure would put a test upon the people under which no nation could long endure.

The referendum is somewhat better than the initiative, but as a settled policy in the making of ordinary statutes it is indefensible. It can be used upon concrete propositions that are not complex in character, and especially upon constitutional propositions which ordinarily enunciate general principles. In the case of constitutional changes, however, they should never take effect without the support of a clear majority of the voters, and in advance of their action they should have the support of a large majority of the legislative body, such as is provided in Massachusetts, so that our constitutions should have more stability than mere statutes, and should not be subject to change with every passing breeze.

I may illustrate again from the example of Oregon—which is pointed out by the friends of these reforms as a model, and whose people are heroically subjecting themselves to political vivisection in the testing of governmental experiments. An amendment may be made to the constitution of that state by a majority of those who vote upon the proposition in question. An amendment was passed in one election,

by barely one-third of the legal voters, which provided that in civil cases three-fourths of a jury might render a verdict, that no new trial should be had where there was any evidence at all to sustain the verdict, and making other important changes in the method of administering justice. Constitutional changes should not be made, except in deference to a pronounced and settled public opinion, which cannot better be determined under our system than to require the action of successive legislatures and afterwards a direct vote of the people.

The referendum may sometimes profitably be used in connection with questions affecting municipalities where each voter has an appreciable interest in the solution of the question and is familiar with the conditions upon which the solution depends; but as a step in the process of passing statutes of the usual character, statutes which create crimes and provide penalties for their violation, or which have complicated regulations of a business character, the use of the referendum would be vicious. We are not in the mass adapted to pass upon questions of detail, just as the thousands of stockholders of a great corporation are not in a position directly to manage its business affairs. The function that we can best exercise is that of selecting agents for that purpose and of holding them responsible for results. Upon the questions relating to the character of representatives, who are usually known personally to the people, they have excellent means for forming a judgment. But if they so often make a

mistake in their judgments of the men they select, as we must infer from the arguments put forward in favor of direct legislation, how much more would they be apt to make mistakes in dealing with the complicated questions involved in practical legislation?

The referendum takes away from the legislature the responsibility for the final passage of laws and permits it to shift the burden upon the people. Legislators will be asked: "Are you not willing to trust the people to say in their wisdom whether a given bill should be enacted?" The prevailing vice of members of law-making bodies in our country is not venality, it is political cowardice; and they will be ready to take refuge in that invitation to trust the people. A witty member of Congress from Mississippi once said that he usually found it easier to do wrong than to explain why he did right. There will be no such difficulty under the referendum. The legislator may dodge the responsibility of voting upon some bad but specious law where his political interests would lead him to vote one way and his sense of duty another way. He would only need to say that he believed in the people, and would vote to refer it to that supreme court of appeal. Even under the present system a legislator is quite too much influenced by the noisy demonstrations that may be made in favor of one side or the other of a pending proposition, and some of the worst laws that find their way upon the statute-books get there, not because they are approved by the judgment of the legislator, but in response to what he thinks may be the

wishes of the people. And instead of voting for what he honestly believes to be just and for the public interests, even against what may appear at the moment to be popular sentiment, and then bravely going before his constituents and attempting to educate them upon the question, he quite too often tacks and goes before the wind.

While the prevailing fault of legislative bodies is, as I have said, political cowardice, the fault of the voter is political indifference. There are far too few of us who carefully study public questions and try to secure exact information about them. We are attracted by sensational charges, by lurid headlines in the newspapers, and by generalities. We too often complacently accept the estimate that is placed upon our profound and exact political knowledge by the men who are asking us to vote for them, and we are far from giving that serious attention to the political issues which we bestow upon our own private affairs.

There is a lawyer of very high standing at the bar of his state who was astonished to be told that the House of Representatives had an established order of business which consumed the greater part of its time. He imagined that the Speaker had practically unlimited discretion in recognition. Another intelligent man who was president of a great railroad could not give the name of his member of Congress, although he had probably voted for him for ten years, if he had voted at all. Such instances are by no means rare, and intelligent people of that sort who neglect their

public duties often become the easy victims of every *ism* and *dum*.

We are so engrossed in our private business that many of us give no attention to public questions, or we too frequently bestow upon the latter such superficial study that our action becomes the dangerous thing that is based upon little knowledge. This condition of indifference, even under our present system, produces nothing but an evil effect upon the character of laws; and this evil effect would be greatly intensified under the initiative and referendum. Legislation may be expected to represent in the long run the fair average of the information and the study of the body which enacts it, whether that body be composed of four hundred legislators or one hundred millions of people.

A reform that is most needed is one that will make difficult the passage of laws, unless they repeal existing statutes. The mania of the time is too much legislation and the tendency to regulate everybody and everything by artificial enactments. The referendum would not be likely to furnish the cure for this evil, but would tend to increase the number of questionable statutes that would be referred to the people; and some of them would doubtless be enacted. If those who are chosen and paid to do the work, and upon whom the responsibility is placed, are sometimes found to enact vicious laws, what would be the result if legislation were enacted by all of us when we had made no special investigation of details, when we should be quite too prone to accept the declamatory recommendations of

the advocates of legislative schemes and submissively swallow the quack nostrums that might be offered for the diseases afflicting the body politic?

The most dangerous statutes are those which deal with admitted evils, and, in order to repress them, are so broadly drawn as to include great numbers of cases which should not fairly come within their scope or to create a borderland of doubt where the great mass of us may not clearly know how to regulate our conduct in order that we may comply with their prohibitions. Just such statutes, with a basis of justice but with imperfectly constructed details, would be most likely to prevail upon a popular vote. If the forty-six states of the Union, and the national government which is the aggregate of them all, should have this system of direct legislation, our statute-books would very probably soon become a medley of ill-considered reforms, of aspirations sought to be expressed in the cold prose of statutes, of emotional enactments perpetuating some passing popular whim and making it a rule of conduct for the future; and the strict enforcement of our laws would mean the destruction of our civilization.

And then, in order to perfect this scheme of popular government and to safeguard the rights of a helpless people, in addition to all this, they offer us the recall. Not merely are the laws to be directly enacted by the people, but the execution of the laws is to be conducted in the same way. There would be temporary agents for the purpose of governing, but the

people would have ropes about their necks and at any moment they would be subject to political extinction. This power involves the supposition that the people are omniscent and ever-watchful.

The constitution of Arizona seems to be in line with the most advanced thought upon this subject. That constitution provides that twenty-five per cent. of the voters may institute a proceeding for the recall; and when it is invoked the man whom they have elected to an office is permitted either to resign in five days or to defend himself in two hundred words, upon a proceeding to throw him out in disgrace.

In Oregon, it very rarely happens that there is an election in which the defeated candidate does not receive twenty-five per cent. of the vote, and not infrequently he receives nearly one-half of it. It would be a matter of no difficulty for him to initiate a recall and practically to have the election over again; and so we should have perpetual warfare over the holding of office. That result has already clearly developed where the recall is in force.

A public officer could not take the long view; he could not patiently study the problems that confronted him and carefully look into the conditions with which his office had placed him in close contact, but of which as a private citizen he could have only the most general knowledge. But he would need to be careful to do only those things which might be justified, not by close inspection, but upon the most superficial view. The office to which he has been elected gives him an

elevated point of view which he did not have before, but he cannot avail himself of his wider range because if he is no sooner in office than he must justify himself or retire in disgrace, he will be likely to do the thing most pleasing to the prevailing fancy and which will adapt itself most easily to the momentary condition of the public mind. His political interests will lead him to do the plausible and easily advertised thing, and it may be the thing that will really injure the people.

Whether such a government may be called popular or not, we should be likely always to have under it government of the politician rather than government of the statesman. I have been criticised for using an expression similar to this, as if I had implied the converse: that we now always have government by the statesman; but such an inference can be drawn only by a careless or an unscrupulous thinker. That we sometimes have government by the statesman is undeniable; but that our government is perfect, nobody would pretend. Edmund Burke asserted in effect the same thing at a time in his career when he was the most liberal, as he was always the most philosophical, of British statesmen. In appealing to his constituents for the right of a representative "to act upon a *very* enlarged view of things," and not to look merely to "the flash of the day," he declared: "When the popular member is narrowed in his ideas, and rendered timid in his proceedings, the service of the Crown will be the sole nursery of statesmen." According to Burke's view,

the constant response to the popular mood would at least banish statesmen from the service of the people, if it did not limit it to the politicians.

It is not difficult to turn back to the supreme crises in American history, when its greatest figures were heroically struggling for what they saw to be for the interests of their country, and, if the policy of the recall had been in force, to see how the whole course of history might have been changed, and how ambition and envy might have utilized a temporary unpopularity to terminate some splendid career.

As an illustration, take Lincoln in the earlier days of his administration. The disastrous defeats that the Union arms had suffered had been relieved only by slight successes. Lincoln scarcely had a friend even in his own cabinet. Seward was willing to take him under guardianship and run the country for him; Stanton had written of the "imbecility" of the administration; Chase was quite ready to be a candidate for the presidency himself; the abolitionists were unsparing in their criticism; the great organs of public opinion were hostile to him; and there can be little doubt that, if a proceeding for recall could have been had against him at the moment when he was enveloped in the clouds of unpopularity, the career of the greatest of Americans would have been brought to a disgraceful ending, with results to civilization which it is melancholy to contemplate.

And then we are to have the recall of judges. The enforcement of laws by judges subject to popular

recall would be likely to be quite in keeping with the character of the laws, if they had been enacted under the initiative and referendum. If we are to have all the other things, the initiative, the referendum, and the recall of political officers, there would be this reason for having the judicial recall. It would complete and make exquisite the harmony of this destructive system. The two fundamental things in the development of English liberty were the free parliament chosen by the people and independent of the crown, and the independence of the judiciary, which had held its tenure only at the royal pleasure. The first great step for the independence of Parliament was won at Runnymede, and the most signal result of the Revolution of 1688 was the establishment of the independence of the judiciary.

Every schoolboy knows the story of the bloody assizes, the black judicial murders, the gross travesties of justice which were seen under the old system, when the judges held their office subject to the favor of the crown. It was only after the revolution that English courts became the real theatres of justice, and the weight of the law and the evidence, and not the fear of a master, determined the decree. But the recall of judges would make them on the instant subject to another master. The judge, in order to feel secure in his office, would have to consult the popular omens rather than the sources of the law. Instead of looking to the drift of the authorities, he would be likely to study the direction of the popular winds. If in some

judicial district a strong labor union or a great corporation should hold the balance of political power, the courts in that district would be likely to become mere instruments of oppression.

But if we, the people, are so perfect that we can do no wrong, even though we are guilty of no investigation, and can with wisdom assume directly to enact and enforce our laws, what reason is there why there should be any constitutional restraint upon our action, and why should we be hampered with statutes or constitutions even of our own making? Why not have the present entirely free from restraints imposed by the past? Why not permit us in our omnipotent wisdom to decide each case upon its own merits, considering only the inherent principles of abstract justice, which in our collective capacity, according to our flatterers, we must of course thoroughly understand?

The democracy of Athens at last attained to this altitude, where the sublimated "composite citizen" stood forth unfettered and showed what he could really do. In the latter days of that city the action of her people became so direct that in a single abhorrent decree, disregarding what was left of their constitution, they ordered six of their generals, among them the son of Pericles, to be executed, because, although victorious over their enemies in the days when Athenian victories were few, the success had not been achieved without cost.

Those who advocate the direct action of our great democracy might study with a good deal of profit the

history of the little state to which I have just been referring. No more brilliant people ever existed than the Athenian people. They had a genius for government. The common man was able to "think imperially." Their great philosopher, Aristotle, could well speak of the Athenian as a political animal. They achieved a development in literature and art which probably has never since been reached. They could boast of orators and philosophers to which those of no other nation can be compared. We marvel when we consider the surviving proofs of their civilization. But when they did away with all restraints upon their direct action in the making and enforcement of laws, in administering justice and in regulating foreign affairs, their greatness was soon brought to an end, and they became the victims of the most odious tyranny to which any people can be subjected, the tyranny that results from their own unrestrained and unbridled action.

It is said that the history of those distant times can present no useful precedent for our own guidance; but in what respect is human nature different to-day? Whatever new stars our telescopes may have discovered, whatever new inventions may have been brought to light, and whatever advances may have been made in scientific knowledge, the mainsprings of human action are substantially the same to-day that they were in the time of the Greeks. We should be rash, indeed, to assume that we shall succeed where they failed, and that we can disregard their experience with impunity.

But we are told that the crime of our age is the inordinate love of wealth, and that to protect ourselves from its evils we must set aside our existing institutions. But is the love of wealth any new thing? The greatest of ancient statesmen were accused of the grossest forms of bribery. Thousands of years ago the love of money was declared to be the root of all evil. It is not the fault of an age to be satisfied with itself. Poets have always been singing of a golden age, and they have placed it sometimes in the past, sometimes in the future, but never in the present. We may go back almost to the oldest of poets, Hesiod, and we shall find him placing the golden age far back of his own day, while his own time he pictured as one stained with plundering, with envy, brawling, and perjury. Horace in a lively ode sought a poet's escape, and called upon the Roman citizens to abandon their wicked country and set sail for the mythical islands which Jupiter had set aside when he stained the golden age with brass and hardened the brazen ages into iron. And those islands were no more mythical than the refuge from our own crimes which the inventors of the initiative, the referendum and the recall have pointed out to us.

In what respect should we have been better if, during the amazing physical development of the last two generations, we had had direct democratic government? It cannot be contended that our legislators did not represent the people. If they had attempted by their votes to repress the universal sentiment for indus-

trial expansion, they could not have remained in office. The people of the towns, even of New England, were found voting bonds as bonuses for the building of railroads and exemptions from taxation in order to secure manufacturing plants. And in the growing West the sentiment for empire and expansion was so strong that cities and towns were bidding against each other in the offer of gratuities, and if it had not been for the occasional conservatism of legislatures and for the issuing of injunctions by judges, who under the recall would quite likely have been thrown out of office, our western country would have been covered with communities which had made themselves bankrupt by the gratuitous issue of bonds in aid of factories and railroads; and we should probably not have attained anything approaching our present development because of the check that would inevitably have come through the gross corruption of the system.

The advocates of direct government cite the examples of Oregon and Switzerland, where they point to results with an eloquence nowhere else to be found outside of a mining prospectus. Perhaps I have already referred sufficiently to Oregon. One must be easily satisfied who can be convinced by a careful scrutiny of results in that state, even though the experiment has been tried among her intelligent people. Switzerland is a small country, scarcely equal in area to some of our American counties, and a large proportion even of that small area is covered by uninhabitable mountains. The population is thrifty and con-

servative and largely devoted to the work of caring for the vast numbers of tourists who annually visit the country. The conditions as to complexity of industry are radically different from those existing in America. But while Switzerland is one of the countries best adapted, as we certainly are one of the least adapted, to the operation of the initiative and the referendum, the results there are not such as to justify their adoption in any other country, if we may credit the report made to the State Department by our vice consul at Berne, and presented to the Senate by Mr. LaFollette on July 13, 1909. The report says:

"The great questions of centralization, civil status, laws of marriage and divorce, bankruptcy laws, the customs tariffs, the railroad purchase, employers' liability, factory laws, unity of the conflicting cantonal civil and criminal laws into a federal code, the military organization, the pure-food law, etc., all of which are things of the past, were congressional measures. It may safely be said that the initiative can be of decided and positive value only in districts small enough to enable the average citizen to form a conscientious opinion upon projects of such local significance as to be well within his practical knowledge, but, in addition, he must exercise his duty as he sees it at the polls. With a comparatively small number of signatures requisite for an initiative measure, its danger lies in the fact that it may easily be prostituted by factions, cliques, malcontents, and dem-

agogues, to force upon the people projects of partisan, freak, or unnecessary legislation."

As to the referendum, there is no other veto power in Switzerland. While it is not so intelligently exercised as it would be by an upright executive, yet it has occasionally proved an important check. The most striking general result is seen in the relatively small number of voters who will vote upon laws; and while statutes have been passed to compel voting, their provisions have simply increased the great number of blank votes.

The most serious tendency under our present system is seen in the multiplication of statutes, which threatens to destroy liberty and even to engulf our civilization. But much of this legislative rubbish is the product of those who are given to exploiting themselves as the especial champions of the people or is the result of the readiness of the legislator to respond to what he thinks is the popular demand. The member who is most disposed to cast a negative vote is stigmatized as a reactionary. It is not difficult to place the most immature, visionary, and apparently popular schemes upon the statute-books of some of the oldest and, until recently, most conservative states of the Union. In one historic commonwealth the principal avocation of the people soon promises to be politics, assuming that they shall pay due attention to their political duties, and the next "reform" will not unnaturally be the passage of a law to pay the voter out

of the public treasury for the demand made upon him in listening, through each recurring summer, to the wooing of self-constituted candidates—and there can well be no other candidates; in voting upon their claims; and finally, in following the campaign conducted by the parties, and in voting in the chief election. The essential remedy for checking legislation would seem to be the education of the people so that they will present a body of sound and definite opinion to which the representative may respond. This work must be done by the people themselves, and it can be aided greatly by the newspapers if they will pander less to sensationalism, indulge less in defamation of the agencies of government, and seek to become the veracious chroniclers of their times.

We should not experiment lightly with the fundamental principles of our government and trust to our good fortune to escape danger. It is well to be an optimist, at least so far as faith is concerned, in the final triumph of good in the universe; but we should be careful not to follow too willingly those professional optimists and political Micawbers who are always sure, in whatever condition of danger we put ourselves, that something will turn up to our advantage. One of the most radical mistakes our nation has ever made was contributed to in large measure by well-meaning people who employed eulogiums upon their own optimism instead of arguments, and denounced as pessimists those who did not cheerily agree with them. Faith that things will ultimately come out

well does not mean that we may recklessly take the next step.

It should be remembered that civilization has sometimes moved backward for a time, that liberty has been submerged, and that great and powerful nations have been brought to naught. Instead of changing our system of government because of the existence of evils which have existed since the beginning of time, and instead of attempting to seek refuge in a demagogue's paradise, our people should be incited to study closely the problems of government, to set higher standards for their own conduct, with the result that higher standards will be followed by their chosen agents; and there is no evil for which the initiative, the referendum, and the recall are proposed as a remedy that cannot effectively be dealt with under our republican institutions without the disintegration, demoralization, and ultimate destruction of regulated liberty and of individual rights likely to follow from the application of those reactionary policies, just as they have followed them when applied upon a large scale in history.

CHAPTER VIII

A DEFENCE OF DIRECT LEGISLATION [1]

INTELLIGENT and profitable discussion of practical problems of social or governmental improvement must include full recognition and due consideration of the forces controlling human action. Society and government are purely organizations of human beings, and their limitations and possibilities are measured by the average of individual development. The desideratum is to give the greatest freedom to beneficial influences, and to restrain all tendencies toward evil influences. Successful and permanent government must rest primarily on recognition of the rights of men and the absolute sovereignty of the people. Upon these principles is built the superstructure of our republic. Their maintenance and perpetuation measure the life of the republic. These policies, therefore, stand for the rights and liberties of the people, and for the power and majesty of the government as against the enemies of both.

Delegated government exists where the public

[1] By Senator Jonathan Bourne, Jr. Reprinted, by permission, from the *Atlantic Monthly*, January, 1912.

servant owes his nomination and election to known individuals—political bosses, caucus, convention and legislative managers, or campaign contributors—thus establishing personal obligations and accountability, resulting in service for selfish interests. Popular government exists where the public servant is under obligation to and solely accountable to the composite citizen, individual unknown. This necessarily results in public service for the general welfare, and not for any selfish interest, the public servant realizing that otherwise he must be recalled, or will certainly fail of reëlection.

Because society and government should be based upon a full recognition of the elemental forces controlling human action, I urge the reader's careful attention to my analysis of these forces. I assert that either impulse or deduction, followed by conviction, controls all human action. If the individual be confronted with the necessity for immediate action, then impulse arising from emotion, such as love, hatred, anger, sympathy, sentiment, or appetite, is the determining force. But when the individual has days, weeks, or months to consider his course, then deduction, followed by conviction, is the determining force. Without conviction, there will be no action.

Individual action should be guided by reason, but is frequently emotional. Community action, as in an election, must be based upon conviction resulting from analysis and deduction.

I assert that self-interest is the force controlling

every future or postponed action of the individual—not necessarily always selfish interest, for sometimes the individual is satisfied with his participation in the improved general welfare incident to the action. Generally, however, the individual's action, when unrestrained, is governed by his own selfish and personal interest.

No two people in the world are exactly alike; consequently each individual has a different point of view or idea as to what constitutes his own particuar personal or selfish interest. Where individuals act collectively or as a community—as they must under the initiative, referendum and recall—an infinite number of different forces are set in motion, most of them selfish, each struggling for supremacy, but all different because of the difference in the personal equations of the different individuals constituting the community. Because of their difference, friction is created—each different selfish interest attacks the others because of its difference. No one selfish interest is powerful enough to overcome all the others; they must wear each other away until general warfare, according to the views of the majority acting, is substituted for the individual selfish interest.

If all the individual units of society were alike, then selfishness would dominate not only the individual but the community action as well. But so long as no two people are alike, just so long will selfishness dominate the individual if permitted to act independently, while general welfare must control all com-

munity action; for if the individual cannot secure the gratification of his own selfish desire, then he must rest satisfied with the improved general welfare in which he, as one of the units of the community, is a proportional participant.

This logic applies to a community or a class. Under the initiative, referendum and recall there can be no class or community action against the general welfare of the citizens constituting the zone of action. The individual, through realization of the impossibility of securing special legislation for himself and against the general welfare of the community, soon ceases his efforts for special privilege and contents himself with efforts for improved general welfare. Thus the individual, class and community develop along lines of general welfare rather than along lines of selfish interest.

In further refutation of the unwarranted fear of hasty or unwise community action, I assert that no individual will ever vote for or willingly assent to a change, unless satisfied that the change will directly benefit him individually, or that the action will bring improved general welfare to the community, in which event he is satisfied with proportional participation incident to that improvement. In other words, community action determines the average of individual interests, and secures the greatest good for the greatest number, which is the desideratum of organized society.

Hence I again assert that because of the forces

controlling all human action the people cannot under the initiative enact legislation against general welfare or in favor of any selfish interest, nor will they select any public servant who, in their opinion, will be dominated by any selfish interest. Though I grant they may make a mistake in selecting public servants, I assert that they will not make the same mistake twice in the same individual; that is, under an efficient direct primary law and corrupt practices act, the people will not renominate an individual who has failed to serve faithfully the community he represents.

I have demonstrated that under the initiative and referendum the people cannot legislate against the general welfare, and by the same logic I assert that under the recall the people will never recall a public servant, judicial or otherwise, who serves the general welfare.

To elucidate the subject, I shall give a few concrete illustrations. Suppose that in a city of twenty-five thousand inhabitants, where there are four thousand voters, a private corporation owns the water system and charges exorbitant rates for the service. The self-interests of probably twenty thousand of the inhabitants would require municipal ownership of the water system as a means of improving the service and reducing the cost, but the self-interests of perhaps five thousand of the inhabitants require continuation of private ownership, because these individuals are either stockholders in the company, employees of the company, recipients of business patronage from the company, or political beneficiaries of the system of private

ownership. These few individual self-interests—under the existing system of convention, nomination, and legislation through a city council—are able, through control of the press and the manipulation of nominations and municipal legislation, to prevent or delay the efforts of the vast majority to change the system to one of public ownership.

Under the initiative, which would permit direct legislation on the subject, this question could be submitted to a vote of all the qualified electors. Applying the principle I have fully stated in the foregoing paragraphs, when this question came up for determination by the voters there would be conflict between the self-interests of the individuals, but during the campaign preliminary to the election the subject would be discussed and considered in all its bearings. Each individual would make his own deductions as to his own self-interest and the general welfare of the community, with the result that selfish interest would be worn away and the greatest good for the greatest number secured. Unless a majority of the voters were convinced that public ownership would be to their interest, the proposal for public ownership would be defeated.

I hear opponents of popular government asserting that the people might be misled and act unwisely on a question of this kind, and I reply that they are the best judges of their own self-interest and have a right as sovereign citizens to determine the policies of their government. They will, at least, act honestly, which

cannot always be said for city councils influenced by the power of a public service corporation and protected by the silence or active defence of a subsidized press.

At this place in my discussion of the practical operation of popular government I deem it appropriate to explain that this article is designed primarily as an answer to an article by Representative Samuel W. McCall. It is my endeavor, however, to make this article complete in itself, and I shall refer to Mr. McCall's article only so far as is necessary in order to correct a few errors into which he has apparently fallen.

The failure of Mr. McCall to comprehend the practical operation of the initiative and referendum is illustrated by his reference to the Columbia River fisheries legislation as a case in which the system worked unsatisfactorily. Evidently without knowing he was doing so, he cited an unquestionable instance of the elimination of selfishness and the substitution of general welfare. The case referred to was the submission of two Columbia River fishery bills to the people of Oregon in 1908. The rival fishing interests—the gill-net fishermen on the lower river and the fish-wheel operators on the upper river—had conducted their work so effectively as to threaten ruin of the industry by destruction of the fish before they could reach the natural spawning grounds. Almost every two years the rival fishing interests had carried their fight to the state legislature, and the legislature failed to enact

any adequate legislation for the protection of the natural supply of fish. The state was maintaining hatcheries for the artificial propagation of salmon, but, notwithstanding the maintenance of this work, the fish supply was steadily diminishing.

Believing that they could promote their own selfish interests and eliminate their rivals by resort to the initiative, the fish-wheel operators of the upper river proposed a bill practically prohibiting gill-net fishing on the lower river, and the gill-net fishermen proposed a bill prohibiting fish-wheel operations on the upper river. These two measures, each initiated by selfish interests, were submitted to a vote of the people. During the campaign the rival interests presented their arguments, not only through the publicity pamphlet, but through the newspapers and by circular letters. The people of the state gave the matter careful consideration, and, believing that the general welfare required that the fish themselves be protected from extermination, they adopted both bills.

The people having temporarily terminated fishing on the Columbia River, the legislature, which had heretofore failed to do its duty, responded to the popular will and enacted a law which permits fishing within reasonable regulations, but provides opportunity for the fish during closed seasons to reach their natural spawning grounds. I thank Mr. McCall for calling attention to this instance in which the composite citizen, acting under the initiative, eliminated selfish interests and substituted general welfare.

Similar results are accomplished through the referendum. Selfish interests are frequently able to influence the individual members of a legislature to such an extent as to secure enactment of laws granting special privileges. On the other hand, there have been innumerable instances in which members of legislatures introduced bills attacking the business interests of large corporations, for the purpose of compelling such corporations to pay for the abandonment or defeat of such bills. In the one case, selfish interests were able to buy legislation for their own benefit and against general welfare; while in the other case corrupt legislators had power to blackmail corporations. Such transactions are impossible where the referendum is in force, for the people have power to defeat grants of special privileges against general welfare; and if a corporation is unjustly attacked by a blackmailing bill, it can refuse to pay tribute and appeal directly to the people under the referendum, with full assurance that the people will not give their approval to legislation of that character. I believe every observer of legislative controversies involving the general welfare of state or city will agree that selfish interest frequently dominates individual action, whereas if community action had been possible, the result would have been advantageous to general welfare.

The initiative affords any citizen who has evolved a solution of a governmental problem an opportunity for demonstration of its merits. Under a system of delegated legislation only, his ideas could be, and quite

likely would be, referred to some committee where further action would be prevented through the influence of selfish interest. Where the initiative exists he can present his ideas in the definite form of a proposed bill if eight per cent. of the legal voters consider it worthy of consideration and sign a petition for its submission to a popular vote.

The system encourages every citizen, however humble his position, to study the problems of government, city and state, and to submit whatever solution he may evolve for the consideration and approval of others. The study of the measures and arguments printed in the publicity pamphlet is of immense educational value. The system not only encourages the development of each individual, but tends to elevate the entire electorate to the plane of those who are most advanced. How different from the system so generally in force, which tends to discourage and suppress the individual!

Speaking of the initiative and referendum, Mr. McCall says that, "In effect they propose the substitution of direct for representative government, the establishment of the direct action of the people, not merely in selecting their agents, but in framing and executing their laws." And again, "It is now proposed to abandon the discovery of modern times" (government by the people, acting not in person, but by representatives chosen by themselves).

In view of the clear declaration of our initiative and referendum amendment, that "the legislative au-

thority of the state shall be vested in a legislative assembly, but the people reserve to themselves power to propose laws and amendments to the constitution, and to enact or reject the same at the polls," my inclination at first was to believe that the writer did not intend to convey the idea that representative government had been "abandoned" and direct government "substituted" therefor; but this liberal construction of his language became impossible when I read the following in the same connection:

"Is it for the interest of the individual members of our society to have the great mass of us pass upon the intricate details of legislation, to execute our laws, and to administer justice between man and man? That I believe to be in substance the question raised by the initiative, the referendum and the recall, as they are now practically applied in at least one of the states of the Union, the example of which is held up as a model to the other states."

I deny unequivocally that in effect or in substance we in Oregon have abandoned representative government, or that the mass of the people pass upon the intricate details of legislation, execute the laws, or administer justice between man and man. Let us consider the facts. At the last general election the people of Oregon voted upon thirty-two measures. Of these measures, eleven were constitutional amendments, of which four were adopted and seven rejected. Of the twenty-one bills submitted to the people only five were enacted, and sixteen rejected. The result of the direct

vote was nine measures adopted. The Oregon legislature held a forty-day session last January, considered seven hundred and twenty-five bills and two hundred and thirty-five resolutions or memorials. Two hundred and seventy-five of the bills were enacted. Evidently the extent of substitution of direct legislation is indicated by the ratio of nine to two hundred and seventy-five. This is not exactly "abandonment" of the representative system. Of the relative merits of the two systems I shall say more later, but leave that subject for the present in order to continue the denial of statements quoted above.

I deny that the people of Oregon have executed the laws except through their duly chosen public servants. If the statement quoted is intended to apply to the recall, I reply by saying that there has been no exercise of the recall against any state, district, or county officer, though there was talk of recalling a circuit judge. I have no doubt that administrative officers have been influenced to some extent by the fact that they are subject to recall. That is one purpose of the recall. Experience with public officers from one ocean to the other justifies the belief that some of them will be influenced by the wishes of the men to whom they owe their positions and to whom they are accountable at the end of their terms. Under the former system of machine domination we learned that public officers were frequently influenced by the wishes of the political bosses, regardless of the interests and wishes of the people. If they were influ-

enced by the desires of men who put them into office under the old system, quite likely they are influenced by the wishes of the composite citizen, who gives them their positions under the new. The difference is that individual, selfish interest wielded the influence under the old system, while under the new system the public officer knows that the people as a whole desire only a square deal and seek no special privileges.

I deny that the mass of the people have been called upon to administer justice between man and man. Our courts have proceeded with their work as quietly and as deliberately as ever, though possibly with less delay. It would be impossible for the people of Oregon to administer justice between man and man in any case, for, though they have the power to recall a judge, they have no power to change the decision he has rendered.

Mr. McCall says that "the prevailing fault of legislative bodies is political cowardice," and that "the mania of the times is too much legislation and the tendency to regulate everybody and everything by artificial enactment."

Conclusive evidence that has been uncovered in numerous legislative investigations satisfies the people of the country that venality as well as cowardice is one of the faults of legislators. Neither venality nor cowardice can be charged against the voters of a commonwealth except in those instances in which public affairs are so dominated by political bosses that the

voter has no opportunity of exercising the right of selection of candidates.

As I have explained on previous occasions, the wholesale bartering of votes in Adams County, Ohio, and Danville, Illinois, may be accounted for by the fact that for years the voters had been accustomed to mark their ballots for one of two candidates, each chosen for them by the operators of the political machine. Having learned by experience that their votes were ineffective to overcome public evils, they decided that they might as well profit by the few dollars that they could secure for their votes, especially since the character of the public service would not be changed thereby. Whenever relieved from the domination of political machines and given opportunity to express an effective choice, the voters of any state will be guilty of neither venality nor cowardice, but will go to the polls and honestly express their opinions upon the questions submitted, and upon their preference as between candidates.

As I have already shown, the last Oregon legislature enacted two hundred and seventy-five laws, while the people under the initiative and referendum adopted nine measures. If too much legislation constitutes a mania, as Mr. McCall says, then the evil must be charged to legislatures, and not to the system of direct legislation.

On the whole, laws enacted by the people are more carefully prepared, more widely discussed, and more thoroughly considered than are the acts of a legisla-

ture. A bill or proposed constitutional amendment submitted under the initiative must be filed with the secretary of state not less than four months before the election. Prior to that time the measure secures publicity through the fact that it must be circulated for the signatures of eight per cent. of the voters. After the bills have been filed, the promoters and opponents thereof may file arguments for or against. It is made the duty of the secretary of state to have a full copy of the title and text of each measure, together with the arguments for and against, printed in a pamphlet, a copy of which must be mailed to every registered voter not less than fifty-five days prior to election. The title of a bill appears in the publicity pamphlet exactly as it will appear upon the ballot. In this way the voter secures the best possible information regarding the provisions of the bills, their merits or defects, the arguments for and against the measures, and the reason why they should or should not be enacted.

No such opportunity for the study of measures is afforded members of a legislature. The Oregon legislature, for instance, is in session only forty days, and members secure printed copies of the bills introduced no sooner than the end of the first week. Very frequently the important bills are introduced about the middle of the session and the members have copies of these before them for not more than twenty days. Amendments are frequent, and sometimes these are made as late as the day on which the bill is passed, so

that legislators frequently vote upon bills without knowing their real effect.

We had a conclusive demonstration of this in the Oregon legislature of 1903, when the legislature repealed a statute which allowed every householder a tax-exemption of household goods to the value of three hundred dollars. After the legislature adjourned, members were astonished to learn that they had repealed such a law, and, at a special session, called within a year, this statute was re-enacted by an overwhelming vote. Not even Mr. McCall will contend that legislation such as this could be ignorantly passed under the initiative and referendum. Four months of discussion will, beyond peradventure, disclose any serious fault or defect in any proposed statute submitted under the initiative.

Some honest opponents of direct legislation base their opposition partly on the fact that a measure submitted under the initiative is not susceptible of amendment after it has been filed in the office of the secretary of state. Instead of being cause for criticism, this is one of the strongest reasons for commendation, for we have learned by experience that one of the most common methods by which vicious legislation is secured is to introduce a harmless or a beneficial bill and let it secure a favorable report from a legislative committee, but with a slight amendment inserted therein which entirely changes its character or effect in some important particular and thereby serves some selfish interest. When it is known that a bill

must be enacted or rejected exactly as drawn, the framers of the measure will spend weeks and months in studying the subject and writing the bill in order to have it free from unsatisfactory features.

In actual practice in Oregon almost every proposed bill is submitted to a considerable number of men for criticism and suggestions before its final form is determined upon. The original draft undergoes many amendments, and these are more carefully considered than would be the case if the bill were before a legislature. Knowing that the bill will be subjected to the closest scrutiny of all the people for four months, the framers of the bill, desiring its passage, naturally endeavor to remove every reasonable objection, to make all its provisions perfectly clear, and especially to remove every indication of bad faith. A bill to which there are many serious objections would stand little chance of adoption by a popular vote. When thus drawn and submitted, a bill is in the best possible form, and there is no possibility of its being made the instrument for the enactment of what are commonly called " jokers."

I do not contend that a bill thus drawn will be perfect, for no human work is perfect, but I do assert that it will be much better drawn than the great majority of bills presented to a legislature; and, if adopted, it will be an improvement upon legislation theretofore in force on the same subject. The people of a state will never vote against their own interests, hence they will never vote to adopt a law unless it

proposes a change for the improvement of the general welfare. Previous to the last election, each voter had fifty-five days in which to consider thirty-two measures, which, with the arguments for and against, were laid before him in convenient printed form. This gave him an average of nearly two days for the consideration of each measure. Assuming that many of the bills introduced in one house never appear in the other, each member of the Oregon legislature was called upon to consider about five hundred bills in forty days, or over twelve each day, besides being compelled to consider many resolutions, motions, and questions of a political character. I assert that the individual voters of the state, in the quiet of their own homes in the evening, could better consider and decide upon an average of one bill in two days than the members of the legislature, amid the hurry and strife and personal feeling incident to a legislative session, could consider and decide upon an average of twelve bills a day.

It is frequently asserted that the voter in Oregon is required to pass upon thirty-two measures in the few minutes he occupies the booth on election day. Such is not the case. He has several weeks in which to determine how he will vote, and merely takes a few minutes in which to mark his ballot.

In his discussion of the recall, particularly as applied to judges, Mr. McCall has reiterated a prevailing error as to the practical operation of that feature of popular government. Evidently he has been mis-

led by accepting as true certain statements contained in the President's veto message of the Arizona statehood bill. He says, for instance, that, when the recall is invoked, the man whom the people have elected to an office is permitted either to resign in five days or to defend himself in two hundred words upon proceedings to throw him out in disgrace. This statement is incorrect in two particulars. He may neither resign nor defend himself, but may quietly continue in office until his successor has been elected. He has three alternatives: either to resign, to stand for reelection, or to continue in office and await passively the outcome of the recall proceedings. If he chooses to defend himself, he is not limited to a defense of two hundred words. The two-hundred-word limit is merely upon the length of statement he may make to be printed upon the official ballot. This is merely a summary of his defense. He is at liberty to make such other defense before the people as he may desire.

Moreover, the Arizona constitution, to which Mr. McCall refers, requires that the legislature shall provide for the payment of the campaign expenses of any officer attacked under the recall. The man or men who attack an officer under the recall must pay the expense of their campaign. The man in office has not only the advantage of his official record, the prestige of his office, the desire of the American voter to give every incumbent of an office a square deal, but he has the further very material advantage of

payment of his campaign expenses out of the public treasury. Any officer who is not able to make out a case in his own defense with all these advantages is very probably a fit subject for recall proceedings.

Mr. McCall further states that it would be a matter of no difficulty for the defeated candidate to initiate a recall and practically have the election over again. I challenge the citation of any instance in which experience has demonstrated that this criticism is justified. Experience in politics everywhere has demonstrated that the people admire a "good loser." They have contempt for the man who, after he has been beaten in a fair fight, refuses to quit.

The recall amendment provides that a recall petition shall not be circulated against any officer until he has actually held his office six months, except that a petition for recall of a member of the legislature may be filed five days after the legislature meets. Since a successful candidate takes office two months after election, and it would ordinarily require a month to circulate a recall petition, it is plain that there would be at least nine months for the subsidence of any personal feeling engendered during a campaign. Obviously a recall as to members of the legislature must be operative while the legislature is in session to be effective.

Thus assured of an opportunity to demonstrate the character of service he will render, no public servant need fear recall proceedings growing out of the campaign for his election, unless his election was se-

cured by dishonest means. Of course, in such a case, a recall might be filed immediately after the expiration of the six months. This would be brought, not so much by the defeated candidate or his friends, as by citizens in general, whose right it is to have every election conducted fairly and honestly.

The assumption that a recall proceeding is an imposition upon a public officer is not founded on good reason. An individual has no personal right to public office, though some few, who under delegated government have bought their offices, may think they have. The office belongs to the people, and they are entitled to have it filled by whomsoever they please. Every employer in private life reserves the right to discharge his employee whenever the service rendered is unsatisfactory.

The same principle should apply to the electorate in the employment of a public servant. In fact, this right would be a matter of understanding and contract where a citizen seeks and accepts a public office with the knowledge that the recall is one of the laws of his state.

Mr. McCall asserts that where the recall is in force "the judge, in order to feel secure in his office, would have to consult the popular omens rather than the sources of the law." Upon the same reasoning, where the convention system exists with a boss in control, the judge, in order to feel secure in his office, would consult the wishes of the boss rather than the sources of the law. There is this difference in favor

of the influence of the recall—popular influence would be exerted in behalf of the welfare of the majority, whereas the influence of the political boss is exerted in behalf of the interests of a very small minority, which is generally himself or a campaign contributor.

Some people express the fear that the rights of a minority will be disregarded by the tyranny of the majority. They are really most concerned for the perpetuation of special and unjust privileges for the small minority. Neither election nor appointment to a legislative, executive, or judicial office carries coincident personal or official infallibility.

There is very little weight to argument based upon allusion to the democracy of Athens, or to the experience of other ancient nations which made more or less progress toward a popular form of government. In the last two thousand years conditions have greatly changed. Electricity and steam, the telegraph, telephone, railroad, and steamboat have established media of instantaneous intercommunication of ideas, and rapid coöperation of action in the individual units of society.

In less than a decade the people of Oregon have voted upon sixty-four measures. Surely, if the initiative and referendum is a destructive system, as its enemies allege, there would be abundant evidence thereof in the recent history of that state; and it should not be difficult for any citizen to produce conclusive and absolutely convincing evidence to that effect. No one has done so or can do so.

Both reason and experience demonstrate the practicability and importance of the initiative and referendum. My analysis of the forces controlling all human action, as set forth in the early paragraphs of this article, proves the impossibility of a community voting against the general welfare. Any person interested in the subject will observe by a study of results in Oregon that this has been demonstrated in that state.[1]

[1] See Appendix, p. 349.

CHAPTER IX

THE PRACTICAL WORKINGS OF THE INITIATIVE AND REFERENDUM IN OREGON

At the Pittsburgh meeting of the National Municipal League, in 1909, Joseph N. Teal, Esq., of the Portland (Oregon) bar, presented the following account of the practical workings of the initiative and referendum in Oregon:

The exact date at which agitation for the initiative and referendum began in Oregon is somewhat uncertain. It has been stated that a paper published in Portland some time from 1885 to 1888, called *The Vidette,* advocated the measure. Its first introduction into the legislative assembly was in 1893 in the form of a resolution introduced by Senator Vanderburg. Very few of the members at that time knew what the terms meant. At the session of 1895 the agitation took the form of a demand for a constitutional convention and was defeated by one vote. In 1897 there was no session. At the regular session of 1899 the amendment was passed for submission to the people by a large majority, and in 1901 it was passed for the second time and was submitted almost without opposition in the legislature.

Formerly under our constitution all proposed amendments had to be passed by two successive legislatures before submission to the people. This amendment was submitted to the people June 2, 1902, and received 62,024 affirmative votes, 5,668 being cast against it. At the election held June 6, 1906, it was applied to local, special and municipal laws. However, the charter of the city of Portland, which was prepared by a charter board approved by the people at the election held in the month of June, 1902, and passed by the legislature at the session of 1903, contained provisions for the initiative. It has therefore been in operation in the state for seven years and in this city for six years. While the time it has been in operation is hardly long enough to develop all its advantages and disadvantages, yet its workings have been sufficiently observed to enable one to form some conclusion as to its merits and demerits.

Although both powers are generally linked together, they should be considered separately. One is a positive force, the other negative. The first stands for affirmative action, the second is a method devised for the veto of legislation the people do not approve. The consequence is that there is very much greater opposition to the initiative than to the referendum.

In my opinion, the causes which led to its adoption are the same that are in evidence throughout the country generally. The people felt the government was getting away from them and they desired a more di-

rect control, both in the making of laws and in their enforcement, than they enjoyed. More potent, however, than this was the failure of the legislature to respond to the demand of the people for the enactment of laws respecting the control of corporations, taxation and kindred subjects affecting public interests. Boss-ridden legislatures and councils were the rule rather than the exception, and the people were tired of coaxing and pleading to secure desired legislation. Legislatures and councils were too often more solicitous for special than for the public interests, and the people wanted to secure some effective and direct method of making their influence felt and their wishes respected.

The difficulty in securing the enactment of the Australian ballot law and the registration law are examples of laws the people wanted, and which were enacted grudgingly and after long-continued agitation. Other important measures failed repeatedly to pass. The combined effect was to create a sentiment (as shown by the vote) overwhelmingly in favor of the new procedure. After its adoption tax laws and other public measures were proposed under it and passed, the consequence being that the same influences which prevented the passage of the same character of laws by the legislature are the deadliest foes of the initiative and referendum, although this is not to say that there are not very many good citizens who are opposed to it both on principle and in practice. Like all laws or new methods in government, experience has demonstrated

that changes in some particulars are neeessary. These I shall refer to later.

While the powers reserved under the initiative and referendum have a restraining influence on the legislators and operate as a check on vicious, extravagant and special legislation, there is also a tendency to cause the legislator to feel less personal responsibility and to leave to the people matters on which he should act. It also provides what seems to some too easy and expeditious a method of submitting amendments to the constitution. Indeed, some claim that substantially we have no constitution left in the sense it is generally understood.

Formerly, it required not only a majority of those voting at an election, but a proposed amendment was required to be agreed to by a majority of all the members elected to each house in two successive legislative assemblies before submission to the people. Now an amendment may be proposed directly by the people and a majority of those voting on it at any general election is sufficient to carry the proposition. The initiative petition for the submission of an amendment must be filed with the secretary of state not less than four months before the election at which it is to be voted upon, and must be submitted at a regular election unless otherwise ordered by the legislative assembly. This direct method of amending the constitution unquestionably imposes very grave responsibilities upon the electors.

When originally adopted it was generally thought

that only measures of great importance and of limited number would be submitted under the initiative. In practice it has been found that such is not the case, although this statement is subject to some qualifications. Not unnaturally when it was first adopted quite a number of laws were proposed and nearly all carried, the enactment of which had been demanded over and over again by the people, only to be defeated by the legislature. In other words, it was but the inevitable result of the people having the power to carry out their will which had been hitherto thwarted by the failure of the legislators to act at all, or if they did act, to act adversely. It is also claimed that laws submitted under the initiative may be, and are sometimes, prepared from a biased or partisan standpoint, and thus are liable to be unfair, ill-considered, or poorly prepared, and, not being susceptible of amendment, must be adopted or rejected as presented. There is truth in this criticism. At the same time, there is considerable expense attached to submitting a law, and the people, if they understand it, will not support an unfair or one-sided measure. The chief difficulty in this respect, however, is in getting the facts before the public so that they understand them. A popular demand crystallized into the form of a law headed by a "catchy" title is too apt to receive favorable consideration, the details and imperfections being overlooked in the desire to obtain the ultimate purpose.

Another objection is, that it takes too much of the time of the people in studying proposed legislation.

On the other hand, it might be urged that to compel people generally to study and understand the conditions under which they are living could scarcely be called an objection. However, even if not necessary, it has been found advisable for organizations to issue statements to voters covering the questions to be submitted. They generally consist of a short statement of the measure with the number on the ballot and the recommendations of the organization on the particular question. The Taxpayers' League of this city has been especially active in this work, but it can be readily understood that the printing and circulating of these statements and reports costs considerable money and with two elections every year, one the city, the other the state and county, it keeps those interested pretty busy.

I think the foregoing are the chief objections to the initiative, except such as are urged by those who are opposed to it on principle, or by the conservatives who view with alarm changes in any direction, or by those who wish to limit rather than enlarge either the powers or the responsibilities of the people as a whole. On the other hand, the initiative places in the hands of the people the power to inaugurate such reforms, changes of policy or to enact such laws as they may desire or believe to be to their best interests. A number of changes have been suggested, amongst them being the following:

1. To provide that a larger number of petitioners should be required to have a measure submitted than

is now provided by law. Eight per cent. of the legal voters are now required to propose any measure by petition.

2. To have initiative measures first submitted to the legislature with the right to pass upon them or to amend them, and if amended to submit the alternative proposition to the people. Such an amendment has been prepared by friends of the initiative and is now under public consideration.

3. To limit the number of constitutional amendments or laws that may be submitted to vote at any one election.

4. To limit the subject matter to a single proposition in concrete form.

5. It has also been suggested that the initiative be confined to bills that have been introduced and failed to pass in the legislature and those that have been vetoed by the governor.

Except number 2, so far as I am aware, none of the other suggested amendments has been reduced to writing or prepared for public discussion.

The referendum is felt to be of great value in operating as preventive of special, extravagant or otherwise obnoxious legislation. This power operates as a strong deterrent against extravagant legislation or that favorable to special interests. The indiscriminate granting of franchises, the bartering away of public rights and the granting of special privileges of all kinds which have been so prolific of corruption in the past, would not have been indulged in to the extent

they have, had the people always reserved this power. There is but little criticism of the referendum. About the only change suggested is to provide for a larger number of petitioners.

It could hardly be said that the people have not voted intelligently upon measures that have been submitted for their consideration. Moreover, nearly all the laws passed by the people, though possibly differing in language or construction, have been rejected by the legislature. The following list is illustrative of measures submitted and votes cast thereon:

1906	Yes	No
Equal suffrage	36,928	46,971
To amend local option law	35,397	45,144
To purchase a private toll road	31,525	44,525
For initiative and referendum on local, special and municipal laws	47,778	16,735
Prohibiting free passes (no enacting clause)	57,281	16,779
Requiring sleeping car, refrigerator car, and oil companies to pay annual license upon gross earnings	69,635	6,440
Requiring express, telegraph and telephone companies to pay annual license upon gross earnings	70,872	6,360

It will be noted that the act prohibiting free passes had no enacting clause and in consequence failed to become a law. The act to regulate transportation and commerce, etc., was passed at the legislative session of 1907. Certain provisions of this act, in effect, prohibited the giving of free transportation.

Notwithstanding the vote of the people but recently cast upon the question, the legislature at the *same session* passed an act *requiring the railroads to grant free*

transportation to state and county officials as a consideration precedent to acquiring land for corporate purposes by the exercise of eminent domain. A referendum was called upon this act, and at the election of 1908 the law was defeated by a vote of 59,406 to 28,856. This exemplifies the use to which the referendum may be put and is an excellent illustration why it is extremely unlikely that it will be repealed.

A referendum was also called on an appropriation made for the state university. The appropriation was sustained by a vote of 44,115 to 40,535. This referendum is occasionally referred to as an illustration of its dangers. Personally, I do not view it in that way, as I think the discussion that followed, and the better understanding the people in the end had of the subject, did good rather than harm. I might add that the large negative vote does not really represent the feelings of our people toward the state university. A number of local conditions and issues swelled this vote, and I think I am safe in saying that the people of the state generally take a justifiable pride in this institution, which, I am glad to say, is growing in strength and influence all the time.

Among the measures submitted in 1908, and defeated, were the following:

Increasing the compensation of members of the legislature to $400 for a regular session, and ten dollars per day for each extra session, instead of three dollars per day and mileage;

An amendment increasing the number of judges of

the supreme court, and changing the jurisdiction of certain other courts;

An act appropriating $25,000 annually for four years for purchasing grounds and building armories for the use of the Oregon National Guard;

Equal suffrage amendment;

Giving cities and towns within their corporate limits additional and exclusive power to license and control or prohibit theatres, race tracks, and the sale of liquor, etc. This proposal was considered to be something in the nature of a trick to avoid the effect of the local option law, and received 39,442 affirmative and 52,346 negative votes;

The single tax amendment was defeated by a vote of 60,871 to 32,066.

The following measures were carried:

Permitting the location of state institutions, elsewhere than at the seat of government, by act of legislature and vote of the people;

Changing the time of holding the regular general biennial election from the first Monday in June to the Tuesday after the first Monday in November.

Two laws prohibiting fishing for salmon, etc., were both passed; one was known as the "Up River Bill," the other as the "Down River Bill." The effect of the passage of both laws was to prohibit the taking of salmon at all, although such was not the intention of the proposers. Each only wanted to restrain its rival. While on its face it would indicate that the vote cast is evidence of the confusion that may result from the

use of the initiative, yet, if the subject were understood as we understand it here, the result is not surprising. Moreover, it is not uncommon to find contradictory laws as well as acts having irreconcilable provisions passed by the legislature.

In the report of the Oregon Conservation Commission of 1908, the committee who prepared the paper on the salmon industry in connection with this vote, said:

"There is some antagonism among the operators of any kind of gear against any other. Between the gill-netters of the lower and the wheelmen of the upper river, this rises to open hostility. Opposing delegations have met before the legislature for many years and each party has succeeded in blocking legislation proposed by the others. At last election (in June, 1908), each party had its bill, proposed under the initiative, each legislating the other's method of destruction and preserving its own. The electors, in an excess of disgust, tinged with sardonic humor, passed both bills by different but decisive majorities. The laws thus passed, taken together, practically prohibit fishing by either method so far as the legislation of this state alone was competent to do so."

The recall was adopted by a decisive majority.

A law instructing the members of the legislature to vote for and elect the candidate for United States senator who receives the highest number of votes at the general election, was adopted at the polls by a vote of 69,668 to 21,162.

An act authorizing the legislature to provide for proportionate representation passed by a large vote.

The "Corrupt Practices" act also passed by a heavy majority. This act is very long, and, while its object is good, it is exceedingly complicated, and it is doubtful if some of its provisions can or should be enforced. There is no question, however, but that its operation was noticeable at elections following its adoption, and it certainly had a marked effect for the better.

A constitutional amendment was also passed providing that no person can be charged in the circuit court with a commission of a crime or misdemeanor except upon indictment found by a grand jury. Prior to the passage of this act, the district attorney could, upon his own investigation, file an information which in effect was an indictment.

An analysis of the measures submitted and the vote of the people thereon would indicate that there is nothing in the vote on these measures which would justify condemnation of the law or fear of its consequences.

At the city election held in June this year there were thirty-five measures submitted to the people. As the number of measures submitted at this election is often used as a "horrible example" of what the initiative and referendum may lead to, simple justice demands that the facts be stated. There were thirty-five questions submitted. Of these twenty-five were proposed *amendments* to the charter, which can be changed *only* by a vote of the people. Of these three

were submitted by a charter board appointed for the purpose of submitting a new charter or amendments to the existing charter; twenty-two were submitted by the council direct, or upon the advice of a committee of seven citizens appointed to propose changes; and *none* by petition through the initiative.

Nine ordinances were submitted. Of these two were submitted by the council and seven by the initiative petition. One referendum was called against an ordinance passed by the council. It will thus be seen that the people, through the initiative and referendum, were directly responsible for eight of the measures submitted. However, it is but fair to say that a number of the others should have, and probably would have, been submitted had not the council acted.

Many of the charter amendments were of slight importance, but as before stated, as the charter can only be changed by a vote of the people, they had to be submitted. Others were of great importance. A commission form of government was defeated by a vote of 10,770 to 4,903. A municipal electric light plant was proposed. It was defeated by 9,684 to 6,039. Proposed ordinances granting to a Gothenburg Association the exclusive right to sell spirituous liquors in the city of Portland and a rather stringent excise ordinance were both badly defeated. An amendment requiring franchise holders to keep accessible accounts and report to the city auditor carried by a vote of 10,302 in its favor and 4,444 against it. Twenty-seven of its recommendations were adopted, and eight were

not. Of the eight, two at least were of no particular importance.

In my opinion, a proposition in this state to repeal the initiative and referendum, notwithstanding certain defects and disadvantages, would meet with defeat. In the future defects may develop that will provoke a repeal, but this I doubt. On the contrary, I think it much more probable that the defects will be remedied, and the axe will not be laid at the root of the tree. It is true that the initiative and referendum is a radical departure from our former practices and imposes a grave responsibility upon the people. Thus far, on the whole, they have fully met this burden, and in my opinion it has worked for good; and nothing is of more importance in a government such as ours than to place responsibility directly upon the people. It is my belief that they can be trusted to act upon measures that may be submitted to them, and that as a whole they will act fairly and justly if they understand them. They may be deceived, but I do not believe any considerable number of people will knowingly be unjust or unfair, or act otherwise than as they believe to be to the interest of the community.

I do not desire to make any comparisons between laws passed by the legislature and those passed by the people direct, but the comparison, if made, would not be unfavorable to those passed through the initiative. While I favor and still favor the initiative and referendum, I am not a partisan or special pleader for it, and if I believed or was convinced that it worked for

harm rather than for good, I would say so, and urge its repeal. At times measures are suggested and action taken thereon that create some doubt as to the wisdom of the procedure, but when one thinks of what went on under the old system, and how indifferent and worse than indifferent legislatures have been and are both as to the rights and demands of the people, one feels that a mistake now and then does not justify a wholesale condemnation of the new system. It is urged that the people without this law have the power to elect only honest and qualified men to office, and therefore there is no occasion to inaugurate what appears to some people to be a revolutionary programme. This may be true, but to have a concurrent remedy can do no harm. Let the people elect honest men, let them also retain the power reserved in the initiative and referendum. Its benefits will then be not in its use, but rather in its potentiality.

I have been asked to discuss the effectiveness of the initiative and referendum as instruments for securing a democratic government; but I am sure that any academic discussion of this question would be unprofitable. There are two lines of thought: one holding that it is destructive of, the other that it is an aid of a democratic form of government. It is asserted that under it a state does not enjoy the character of government guaranteed by the constitution of the United States, and a case involving this point is now pending in the supreme court of the United States on appeal from the supreme court of Oregon. However, thus

far the courts have held, including the supreme court of this state, that the initiative and referendum as adopted in this state are not contrary to the provisions of the constitution of the United States guaranteeing a republican form of government.

It is also asserted that the only method by which our character of government can be maintained is through representatives chosen by the people. Very earnest and able men support both views, but speaking from our experience thus far, it is my opinion that the initiative and referendum tend to secure more democratic government, if by that term is meant government by the people and for the people, than does the purely representative form. A number of laws and amendments to the constitution have been approved by the people when proposed by initiative petition after the same measures had been rejected by the legislature, and are some evidence of the truth of this statement.

CHAPTER X

A YEAR OF THE PEOPLE'S RULE IN OREGON (1910)[1]

THE past year has been one of great political activity in Oregon. Observers at a distance may have entertained the notion that, with the securing of the initiative, the referendum and the recall, not to speak of the direct primary and a genuinely popular election of senators, all pressing problems had been solved, and that these devices of the new institutional democracy would now be subjected to years of quiet testing. Little did they understand the spirit of the Oregon leaders. The men who had championed direct legislation and kindred institutions in that state were by no means disposed to rest content. The triumphs they had secured had come singly, in laws neither entirely consistent with each other nor with other parts of the governmental machinery as yet untouched. Accordingly, fifteen months in advance of the general election of 1910, they set about devising a system whereby the conduct of state and county government might "be made as efficient and economical as the management

[1] By Professor George H. Haynes. Reprinted from *Political Science Quarterly*, Vol. XXVI, No. 1.

by citizens of their private business." Such was the ambitious aspiration which prefaced a series of proposals, printed in an edition of 7,500 copies and distributed in midsummer, 1909, accompanied by a letter of explanation signed by eighteen men whose names are familiar as sponsors of the direct legislation measures of the past decade. These documents were sent to thousands of representative voters of Oregon and also to interested correspondents in other and distant states, for the purpose of obtaining opinions regarding the wisdom of the scheme. The proposals thus circulated were: to submit, by initiative petition, at the election in November, 1910, a bill for the publication of an "Official Gazette," and four constitutional amendments, the first of which aimed to systematize the exercise of the legislative power within the state; the second, to centralize administrative responsibility on the models of the business corporation and of the federal executive; the third, to secure a similar centralization of responsibility in county government; and the fourth, to secure certain reforms in the state judiciary. Throughout them all, the avowed purpose was to "maintain the people's direct and supreme power, by the initiative, referendum and recall, to make laws and discharge the public officers as well as elect them"; and the intention was announced of forming a "People's Progressive Government League" of four or five hundred citizens, to present such measures as might be agreed upon.

In January, 1910, under the same auspices, a sec-

ond pamphlet was issued, in which the proposals before advanced were restated and modified in accordance with the criticisms and suggestions which they had elicited. Some clauses were cut out; some new features were stressed; and much space was devoted to argument upholding the theory and practice of "people's rule." Some months later there were circulated, for signatures, four initiative petitions, in the elaborate form prescribed by law, prepared by the "People's Power League." The two most radical projects—those designed to centralize administration in the state and in the county—were omitted, for signs of reactionary revolt were multiplying, and it was deemed wise to concentrate the campaign.

The first place was given to a bill to extend the Direct Primary Nominating Elections Law so as to include presidential campaigns and nominations.[1] This measure provided that in the year of a presidential campaign, on the forty-fifth day before the first Monday in June, there should be held the Oregon primary nominating election, at which every voter should have the opportunity to "vote his preference . . . for his choice for one person to be the candidate of his political party for president, and one person to be the candidate of his political party for vice-president of the United States," either by writing the names of such persons in blank spaces or by making a cross before the printed names of the persons of his choice.

[1] Adopted by the people, *infra*, p. 272.

At this election votes might be cast also for delegates to the national nominating convention and for presidential electors, by a method intended to secure proportional representation. The expenses of the men thus selected as delegates to the national conventions were to be paid from the state treasury, up to the limit of $200 for each delegate. The proposed law accorded to each person regularly nominated for president or vice-president of the United States by a political party recognized as such by the laws of Oregon, the use, *gratis,* of four pages in the state campaign book, wherein he, or his duly accredited representatives or supporters, might set forth the reasons why he should be elected. Equal spaces were made available to persons nominated to be delegates to a national convention or presidential electors, and to any qualified elector of a political party who might favor or oppose the nomination of any person of his own political party as its candidate for president or vice-president; but each of these unprivileged characters was to pay at the rate of $100 a page for this "leave to print"—a regulation which might with excellent effect be applied to *post-mortem* issues of the *Congressional Record.*

A second constitutional amendment put forward by the People's Power League proposed certain changes in the state judiciary.[1] It provided that the judges of all courts should be elected for a term of six years; allowed the supreme court in its discretion to

[1] Adopted by the people, *infra,* p. 273.

take original jurisdiction in *mandamus, quo warranto* and *habeas corpus* proceedings; and introduced the provision that "in civil cases three-fourths of the jury may render a verdict." It prohibited re-trial of any case, "unless the court can affirmatively say there is no evidence to support the verdict." In case of an appeal, it provided for affirmance of judgment notwithstanding any error committed during the trial, provided the supreme court was of the opinion that the judgment was such as should have been rendered; and it directed that, if the supreme court should be of the opinion that it could determine what judgment should have been entered in the court below, it should enter such judgment. As originally proposed, this measure provided that "only such opinions of the supreme court shall be printed as decide new questions of law, or the meaning and construction of the statutes and the constitution of Oregon and of the United States, or that reverse former decisions of the court." But that provision was pruned down to the following: "At the close of each term, the judges shall file with the secretary of state concise written statements of the decisions made at that term." This amendment left unchanged an unusual feature of the Oregon constitution: "Public officers shall not be impeached; but incompetency, corruption, malfeasance or delinquency in office may be tried in the same manner as criminal offenses, and judgment may be given of dismissal from office and such further punishment as may have been prescribed by law."

A project more characteristic of the "people's rule" movement was a further measure, which was proposed by initiative petition, providing for the establishment of a board of three "people's inspectors of government," [1] to be elected for a term of two years by a method intended to secure proportional representation. These censors were to devote their time exclusively to the performance of their official duties. They were "to have at least one of their number present at all times at every session of each house of the legislative assembly, and to be watchful for any defect or imperfection in the state and local systems of government." Upon demand of one member, the board was required to investigate and report on the management of any public office or any institution supported wholly or in part by public funds; and wide powers were given to the board in order to enable it to ascertain facts pertinent to its inquiry. The results of such investigation were to be published in the *Oregon Official Gazette,* a publication which was to be issued at least every two months, and was to be mailed at public expense to "every head of a family who is a registered voter, and every registered voter who is not a member of a family." To others, the subscription price was fixed at one dollar a year. The proposed law required the board to publish in the *Gazette,* without unnecessary delay, not only their own reports but a great variety of specified documents

[1] Rejected by the people, *infra*, p. 271.

relative to government, *e. g.* "all publications that may be required by law to be mailed to every registered voter."[1] Every department of the state or of any county or municipal government therein was to be subjected to the scrutiny of the inspectors. The proposed law insisted that such investigation and publication should be "solely for the information of the people without motive or desire for personal or partisan advantage," and forbade the publishing of "any malicious, libelous or personally abusive communication"; it was, however, specifically required that they should publish "any criticisms or complaints, not exceeding two hundred words each, of their own official acts." The law provided that these inspectors should be elected biennially, beginning in 1912. For service before that date, a temporary board was to be appointed by the governor. He was to call for three recommendations of nominees from each of the following bodies: the executive committee of the State Grange, the executive committee of the Oregon State Federation of Labor and an assembly of the presidents of the boards of trade and commercial organizations of the state; and he was to name as a member of this temporary board one of the three nominees submitted by each of these bodies. If the framers of the bill put this forward as a model for future boards, it is of in-

[1] If the Oregon Campaign Book could thus be brought out as an issue of an official gazette, it would be entitled to second class postal rates. On the last issue, that would have involved a saving to the state treasury of about $2,500.

terest to note the proportionate influence here allotted to different elements in the population in the forming and executing of public opinion.

By some accident no specific salary for the inspectors was mentioned, although it was expressly declared that the board "shall not apply to the legislative assembly for any appropriation. It is intended that these inspectors shall be independent of all other officers and powers, except the people of Oregon." The sum of not more than $15,000 was to be expended by them for expert accountants and other assistants in making investigations, but the total expense incurred for salaries and other charges of the board and for the publication of the official *Gazette* was not to exceed the sum of one dollar for each registered voter in Oregon. In the original proposal and in the revised proposal of January, 1910, was a provision giving the inspectors a certain discretion in determining what matter should be admitted to the *Gazette* free of charge, *viz.*: "If any citizen or officer shall offer a communication which the board does not consider of sufficient interest for publication, he may pay at reasonable column rates, to be fixed by the board, for the publication of not exceeding three columns in any issue." This provision did not appear in the measure finally submitted, in which the inspectors were apparently required to insert any communication which a citizen might submit, unless they could exclude it on the ground that it was "malicious, libelous or personally abusive," or, possibly, on the ground that, after publishing the official

material mentioned or indicated in the law, they would not be able to print the citizen's contribution without exceeding the limitation imposed upon their total expenditures.

By far the most elaborate and important, however, of the measures put forward by the People's Power League was one which contemplated a systematic reconstitution of the legislative power and which also was proposed by initiative petition.[1] By piecemeal and unrelated acts of legislation, Oregon—followed by quite a number of other American states—has patched the new cloth of the initiative and referendum upon the old garment of its constitution. Here at last was a project which, in the opinion of its advocates (who have been the successful champions of direct legislation), would establish logical and effective relations between the law-making work of the people at the polls and that of the representative legislature.

At the outset, this proposed constitutional amendment formulated the powers reserved by the people to themselves, namely, the initiative and the referendum. Initiative measures should be put before the people on demand of not more than eight per cent. or, at the most, 50,000 of the legal voters, and should be filed with the secretary of state at least four months before the election at which they were to be voted on. The referendum must be applied to any constitutional amendment, and might be ordered upon any act of

[1] Rejected by the people *infra* p. 272.

the legislature by five per cent. or, at the most, by not more than 30,000 of the legal voters. It might be applied to individual items of acts of the legislature; and any increase in appropriations for the maintenance of the state government or of the institutions supported by state funds was to be subject thereto. In order that the referendum might have full scope, it was provided that, except in cases of emergency, no act of the legislature should take effect until ninety days from the end of the session at which it was passed. Inasmuch, however, as three months' delay might at times prove disastrous, it was provided that any measure (except one creating or abolishing some office or changing the salary, term or duties of some officer) should go into effect immediately upon its passage, provided three-fourths of all the members elected to each house "shall vote, on a separate roll-call, in favor of the measure going into instant operation because it is necessary for the immediate preservation of the public peace, health and safety." Even such a measure might be annulled by a subsequent referendum, but it was to remain in force until the adverse vote should be declared. It was further provided that no measure approved by vote of the people could be repealed or amended by the legislative assembly, except by three-fourths vote of all the members elected thereto. Provision was also made for the use of the initiative and referendum under similar conditions in municipal affairs.

The make-up and powers of the representative leg-

islature were next set forth. The numbers were to remain unchanged: thirty members of the senate and sixty of the house. These were to be chosen from such districts, composed of contiguous territory, as should be provided by law; but residence within the district was not required. On the one hand, the member's position was substantially strengthened by increasing the term of senators from four to six years and that of representatives from two to six years; but this was offset by the recall, which, on demand of twenty-five per cent. of the voters, might be invoked not only against an individual member but against the senate or the house or the entire legislative assembly. Recall petitions must state in not more than two hundred words the reasons for such action. The filing of a recall petition requiring a general election—in other words, the formal initiation of a measure to "turn all the rascals out"—was to operate as "a complete suspension of all the power granted by the people of Oregon to the legislative assembly," until the returns should be determined.

The members of both houses of the legislature were to be elected by a novel system of proportional representation, the intent being that any one-sixtieth of all the voters of the state, voting for one person for representative, should elect him and that any one-thirtieth should be enabled to elect their candidate for the senate. The nomination was to be by districts, but the election by the voters of the state at large. Each candidate's name, whether for the senate or for

the house, was to be printed on the ballot only in the district in which he should be nominated; but any legal voter in any other district might vote for him by writing his name upon the ballot or by using a sticker. Each voter, however, was to vote for only one candidate for senator and one for representative. No candidate for nomination was to be permitted to circulate his petition or pay for its circulation outside of the nominating district in which he resided. At the general election, each candidate for the legislature was to be entitled to have printed on the official ballot against his name his "platformette"—a statement in not more than twelve words of his political faith or of his pledges to the people.

In counting the vote, the total number of votes cast for senators was to be divided by thirty and that cast for representatives by sixty, the resultant numbers fixing the "quota of election" for each. Then the whole number of votes received by all the candidates of each party was to be divided by this quota of election; the quotient for each party was to indicate the number of representatives' (or senators') seats to which that party was to be entitled; and that number of party candidates who should have received, each for himself, the full quota or nearest to the full quota of votes should be thereby elected. Any independent candidate who should receive for himself a quota of votes, or a number greater than the highest remainder of any party, should be thereby elected.

It is evident that the Swiss free-list system had re-

ceived careful study. It was assumed that in most districts candidates of the more prominent parties would be put forward, but that a single-taxer or socialist, if of strongly marked personality or power of leadership, might so enlist the loyalty of supporters all over the state that they would substitute his name for those of the candidates nominated in their own districts. In making state-wide the constituency from which representatives were to be chosen, proportional representation would have been subjected to a severe strain. In the writer's opinion, the chances of its satisfactory working would be greatly increased if it were applied to districts electing not more than from five to ten members.

Vacancies, except those created by the recall, were to be filled by "seating the qualified candidate from the same party as that of the retiring officer who received for himself nearer to the quota of votes than any other candidate of his party who was not elected." This procedure is open to obvious and serious objection, particularly in view of the proposed term of six years—a term longer than that accorded to a legislator in any other American state. Party complexion may undergo great changes in such a period. There is little assurance that a Democrat who narrowly escaped election in 1892 would, by virtue of that fact, have been an acceptable Democratic representative in 1897. Republicans of the vintage of 1897 or of 1907 might need to be re-certified in 1900 or in 1910. Another defect lay upon the surface: district nomination was

required although district residence was not. Doubtless, in nine cases out of ten, the representative would be a resident of his own district. But in case such a representative should die or resign during the course of his six years' term, his place would be filled automatically by the man of his party name who, possibly five years earlier and necessarily in another district, happened to have escaped election by the narrowest margin. In short, both this form of proportional representation and this method of filling vacancies are at fault in over-emphasizing party lines. In state relations national party lines have only a secondary and minor justification; and yet, under this plan, the party label was to determine who should fill a vacancy long years after the label's significance might have been utterly lost.

No distinction was made in the qualifications for membership in the two houses; the candidate must be a citizen of the United States, at least twenty-one years of age, and a resident of the state for at least five years before his election. It was proposed, however, to make a substantial increase in the compensation of the legislators. Under the present law it is not more than three dollars a day, with the further stipulation that the entire *per diem* allowance shall not exceed $120 in any one regular biennial session. Under the proposed measure each member was to receive an annual salary of $350, together with a mileage allowance. Each house was to choose its own officers and standing committees; but the presiding officers,

though elected by their respective houses, "shall not be members of the legislative assembly, nor hold any other office at the same time. They shall not appoint committees, and shall have no voice or vote on legislative business." Evidently "Cannonism" was not approved by the framers of this project. Two-thirds of each house was the exceptionally large quorum required to do business; in case either house should fail to effect an organization within five days after such quorum should be in attendance, its members were to receive no compensation from the end of the said five days until an organization should have been effected. This, however, would not prevent the recurrence of the experience of 1897, when throughout the time appointed for the session the legislature failed to effect an organization because the requisite quorum never appeared.

A majority of all the members elected to each house was to be necessary to pass any bill. The yeas and nays must be entered at the request of any two members on any question except a motion to adjourn —on which the demand must be supported by one-tenth of those present. Strangely out of date and empty of significance in this radical measure sounds the familiar restriction that bills for raising revenue should originate in the lower house. There was a formidable list of acts excluded from the competence of the legislative assembly, with no less than sixteen items, including the enactment of "any local or general law extending or granting the power of eminent do-

main to private corporations." Painstaking effort was put forth to devise checks for the abuses most prevalent in legislative assemblies. To prevent undue haste, it was provided that bills introduced after the twentieth day of any session should not be passed at that session, unless as emergency measures; and that none but an emergency measure should be passed until it had been printed and in the possession of each house, in its final form, for at least five days. Nor was any measure to be altered or amended on its passage through either house so as to change its original purpose. Issue-dodging and the shirking of legislative duties were to be discouraged by the deduction of ten dollars from the salary of a member for each failure to vote on a roll-call, unless such member were excused by a yea and nay vote of a majority of all the members of his house.[1] An attempt was made to combat the evils of secrecy by the requirement that the doors of each house and of all committees should be kept open, "except only in such cases as in the opinion of either house require secrecy, but in every such case the yeas and nays shall be entered on the journal." Committees were required to be "liberal in allowing public hearings on measures; the chairman of every committee shall notify, in writing, all persons who ad-

[1] Those who have found American patriotism personified in the Hon. William R. Hearst may be interested to compute how such a rule as this would have worked had it been applied to his recent service in Congress. It was reported that during the 71 days of the short session of the 59th Congress he was recorded as absent 69 days.

vise the committee of their desire to be heard on any measure in its charge, of the time of such hearing."

These Oregon reformers apparently regard log-rolling as the most noxious of legislative distempers, and as a specific against it they devised the following oath, to be taken by every member:

"I do further affirm and promise the voters of the state of Oregon, that during my term of office, in acting or voting as such officer upon any measure, I will always vote solely on my judgment that the bill or resolution will or will not advance the general welfare, and without reference to the vote, action or caucus of members on that or any other measure, and without any understanding (except my public pledges to the people or instructions from the people) in any form with any member or person that I will aid or be friendly to a measure in which he is interested because he will or may be inclined to aid one in which I am interested."

As a crowning safeguard, it was provided that seats and desks should be provided on the floor of each house for the "people's inspectors of government," if such officers should be created by law.

Early in the spring of 1910 it became evident that the election in November would be hotly contested. The cause of the uprising was dissatisfaction with the working of the "Oregon system"—in particular, with the fetter imposed by "statement No. 1" upon candidates for the legislature in pledging them to vote for the people's choice for United States senator. Such a requirement is of course obnoxious to the machine

politicians; but it must be confessed that the "Oregon system" has shown that it may yield anomalous results, little calculated to give satisfaction to men of quite a different type—men who are firm believers in party and in party responsibility. Under normal conditions, Oregon is rated as a Republican state by a majority of about 25,000. Yet at the present time the state is represented in the Senate by one man who is said to have shown some fickleness in his party allegiance and by another who is a Democrat. It is no aspersion upon Senator Chamberlain's character or career to say—what is freely acknowledged—that his endorsement in the general election (which bound members of the legislature who had signed statement No. 1) was made possible only because the Republican party in the state was rent by faction. Some Republicans voted for Chamberlain because they preferred him to any leader of the opposing wing of their own party. Others frankly acknowledged that they voted for the Democrat in the popular election with the expectation that he could be defeated in the legislature, thus bringing the direct primary and "statement No. 1" into such disrepute as to lead to their repeal. While the election was in progress in the legislature, one member after another announced that, bound by statement No. 1, he should vote for Chamberlain, but under grave protest that injustice was being done by a law which dictated the election of a candidate whose popular endorsement reflected with so little clearness the real will of the people. The outcome was intolerable

to many of the old-time leaders of the Republicans; and the most influential newspaper of the state came out with the declaration: "Republicans of Oregon intend to repudiate Statement No. 1. They intend to suggest in assembly or convention candidates for the primary, and will put the knife into each and all who declare for Statement No. 1." This movement made such progress that early in the summer "assemblies" convened in the several counties and in July a state "assembly" brought together some eight hundred delegates "to select and recommend" candidates for Congress and for the full list of state offices. But as a rose by any other name will smell as sweet, so the "assembly," as its opponents had confidently predicted, gave forth odors indistinguishable from those which had led the Oregon voters to banish the "convention." The *Oregonian,* which had stood sponsor for the assembly scheme, acknowledged that in the most important county in the state the county organization had been "too much in hands that did not have the general confidence or public respect"; and it became known that on the eve of the meeting of the assembly there had been held a secret conclave, at the office of a local corporation, attended by the representatives of large financial and commercial interests, who had looked over the whole field and had placed their stamp of approval upon a full slate of candidates. With the work of the assembly thus discredited in advance, it is not strange that in the primary election in September, despite the efforts of the Republican machine

workers to put forward the assembly candidates as those alone entitled to the loyal support of the Republicans, many of these candidates met with defeat. The *Oregonian* ruefully attributed much of the disaster to "the more or less unsavory and notorious hangers-on of both state and county headquarters."

There were other signs of an impending reaction. In the preceding session of the legislature there had been indications that the representatives of the people were not entirely acquiescent in the spirit of some recent "direct legislation." For example, the legislature referred to the people a bill providing that a convention be forthwith elected for the purpose of revising the constitution. The People's Power League saw in this proposition a grave menace. They insisted that the initiative and referendum already provided ample machinery for making whatever changes might be desirable in the constitution; they professed fear that the motive underlying this bill was a purpose to "get rid of the initiative, referendum, recall, direct primary and Statement No. 1"; and they reminded the voters of Oregon of alarming precedents—cases in which conventions had refused to confine themselves to the tasks imposed upon them or had promulgated a new constitution without referring it to the people, even when their instructions clearly prescribed such reference.

The preceding legislature also aroused much criticism by referring to the people a constitutional amendment providing that state senators and representatives should be elected by districts choosing only one mem-

ber each. The very object of this proposal, it was alleged by its critics, was to make proportional representation impossible. Yet the voters of Oregon had committed themselves to the principle of proportional representation only two years before by a vote of more than three to two.

With a vote on these menacing measures in prospect, and with the assembly candidates already in the field, Oregon politics early developed heat. Two months before the November election there appeared and was mailed to every registered voter in the state the official campaign book—the Oregon voter's political primer or cram-book for the coming examination in government. This year it was larger than ever, containing 208 pages. This book shows the voter, first, precisely how each measure will appear upon the ballot, thus:

Proposed by Initiative Petition,

"Women's taxpaying suffrage amendment, granting to all taxpayers, regardless of sex, the right of suffrage.

"300. Yes.

"301. No."

The "yes" and the "no" under each question are accompanied, as indicated above, by a certain assigned number by which it can be referred to; and voters are exhorted from the stump and in the press to vote "yes, on 300," etc. Next, the campaign book presents the full text of every measure which is to come before the voters. And, finally, there are appended such argu-

ments for or against any measures as interested persons may file with the state printer, such persons paying the bare cost of the additional printing and paper. Of the thirty-two measures presented in the 1910 book, only one was unaccompanied by something in the way of argument, while some called forth as many as three such contributions. Two-fifths of the volume—85 of the 208 pages—were taken up by these attempts to persuade the voters.

In regard to candidates, also, the state acts as a distributor of information. In the first place, the would-be candidate may file with the proper official a statement of his views, to the extent of one hundred words; and he may have printed against his name on the nominating ballot the quintessence of his creed, in not more than twelve words. Then, under a law of 1909, pamphlets compiled by the secretary of state are issued, containing biographical sketches and portraits of candidates for party nomination, together with the arguments filed favoring and opposing certain of them, the expense of such political advertising being paid for by the candidate or by such of his representatives as sign their names to it. Some of this material for the last election was highly interesting, running all the way from a dignified setting forth of the candidate's convictions and pledges, on the one hand, to slangy bombast and demagogy of the rankest nature, on the other.

Public speeches and debates were frequent. As the election drew near, the press from day to day published editorials on the leading issues, together with

lengthy letters from interested citizens, much as the numbers of the *Federalist*—to cite an august precedent —were published in the months while the ratification of the federal constitution was in question. Thousands of privately printed leaflets and pamphlets were distributed, and more use than ever before was made of space in the newspapers; sometimes blanket pages, plainly marked "paid political advertisement," were devoted to a single question. To the majority of voters in Oregon—as in every other state—politics is, of course, largely a game of "follow my leader"; but it would have been difficult for any Oregon voter to have remained totally ignorant of the principal points involved in the more important measures on which he was to vote. Moreover, in such a state of ferment and heated discussion the leaders are forced to come out into the open and show where they stand.

But in Oregon, with the dawn of election day, "the tumult and the shouting dies," for election proceedings are regulated by a most stringent Corrupt Practices Act—an act, it is well to recall, which was rejected by the legislature but was then forthwith put before the people by initiative petition and by them enacted. The "Oregon system" has thus supplied one of the most essential conditions for its own successful working. Election day in Oregon, since 1908, is a political Sabbath, holy unto the state. The time for argument and influence is past. The "thou shalt not" of the law applies, not only to money payments to affect votes, but to paying the expense of transportation

of voters to or from the polls and to buying, selling, giving or providing "any political badge, button or other insignia to be worn at or about the polls on the day of election, and no such political badge, button or other insignia shall be worn at or about the polls on any election day." Neither shall any person "at any place on the day of any election ask, solicit or in any manner try to induce or persuade any voter on such election day to vote for or refrain from voting for any candidate . . . or any measure submitted to the people," under penalty of a fine of not less than five dollars nor more than one hundred dollars for the first offence.

Assuredly the Oregon voter needed to be freed from all distractions, on the eighth of last November, if he were conscientiously to do his whole duty as a citizen. It may be doubted whether any voters were ever before confronted by so complicated a task as that presented by the Oregon ballot of that day. For example, the voter in precinct No. 9, Multnomah county —a Portland precinct—had to make his choice, between candidates named upon the ballot to the number of 131, for the filling of forty-five federal, state and county offices—and there were blanks where he might write in the names of yet others. And when he had recorded his choice among this host of candidates, his task was hardly begun; for in Oregon the voter is a law-maker, and it may be that more important legislation was to be enacted that day than in Salem's "halls of legislation" during the next two years.

Mr. Bryce tells us that the constitution of the United States with all its amendments may be read in twenty-three minutes. Merely to read aloud the titles of the measures upon that Oregon ballot would take the voter nine minutes. Cutting out all the explanatory headings, the mere titles require something like 1,900 words—approximately three-sevenths of the number of words in the federal constitution. Obviously the voter must not postpone his weighing of arguments and the making-up of his mind as to issues until he gets the ballot in his hands, else the election would hardly yet be over. Upon that ballot were thirty-two distinct projects of direct legislation—eleven of them involving amendment of the state constitution—placed there by three different processes. One, an act increasing the salary of a certain judgeship, was a referendum ordered by petition of the people upon an act passed by the last legislature. Six of the measures were referred to the people by vote of the representative legislature. The other twenty-five measures were proposed by initiative petition. These last-mentioned measures, of course, either had never been passed upon by the legislative assembly or—as in at least one instance—had met with defeat at its hands.

What of the results of the election? In the first place, it is to be noted that the culmination of so long and so bitter a campaign brought out a very heavy vote. The record shows that the state contains about 135,000 registered voters. The total number of ballots cast, as shown by the poll books, was 120,248.

The contest for governor resulted in the election of Oswald West, the Democratic candidate, by a vote of 54,853—a plurality of 6,102 over Jay Bowerman, the Republican whose nomination had been forced by the "assembly." The Socialist candidate polled 8,059 votes, and the Prohibitionists 6,027. The victory of the Democratic candidate is the more significant from the fact that no other Democratic nominee was elected; indeed, in almost every other instance, the vote for the Republican candidate was double that for the Democrat. For the offices of state treasurer, attorney-general and state engineer the Democrats presented no candidates of their own; the Socialists, on the other hand, made nominations for all of these offices and polled votes ranging from thirteen to sixteen per cent. of the vote cast—an exceptionally high percentage for the Socialist vote in a state election, but doubtless cast here for candidates acceptable to many outside of the Socialist ranks.

Of the thirty-two projects of legislation, the ballot-booth lawmakers enacted nine and rejected twenty-three. But that fact, of itself, is of little significance, except as indicating that direct legislation is to a degree conservative. In attempting to get at the real significance of this remarkable election, it is necessary to note how the voters dealt with the widely diverse types of projects submitted for their approval. One of the most eloquent apostles of the direct legislation movement, in a recent address, laid great emphasis upon the proposition that direct legislation is a safe and

sane method of lawmaking because, "if the voters do not understand a proposition that is placed before them, they will simply vote against it." The writer submits that psychological theory and the results in this election agree in showing that it is quite as likely that the voters who do not understand a proposition will not vote upon it at all; and their mere abstention may result in verdicts that are far from safe or sane.

In the present election, the total number of votes cast for the several measures varied from 73,321 to 105,215—from sixty to eighty-seven per cent. of the total number of votes cast in the election. No one of the measures adopted received the approval of a majority of that total. Leading by more than 10,000 all the other measures in their power to call forth votes were the three propositions which related to the liquor traffic. In recent years Oregon has had a local option law under which the sale of liquor has been prohibited in the majority of the counties. This encouraged the anti-saloon men to hope that they might capture the urban counties by the rural vote for state-wide prohibition and orators were imported, even from the Atlantic states, to wage the battle against the saloon. To oppose this project, the "Greater Oregon Home Rule Association" was formed and through its influence a constitutional amendment "giving to cities and towns exclusive power to license, regulate and control, suppress or prohibit the sale of intoxicating liquors within the municipalities" was adopted by the close vote of 53,321 to 50,779. On the other hand, a pro-

posed amendment prohibiting "the manufacture and sale of intoxicating liquors and the traffic in them within the state" was rejected, 43,540 to 61,221; and a drastic proposal to "prohibit, prevent and suppress the manufacture, sale, posession, exchange or giving away of intoxicating liquors . . . within the state" was rejected by a vote of 42,651 to 63,564. In contrast with these hotly contested liquor questions was a brief and vague tax measure, on which 32,000 fewer men expressed an opinion than on the local option amendment.

In considering the rest of the measures, many may be dismissed with a word. Of the eight bills for creating new counties, every one was rejected. The total votes on these questions ranged from 77,317 to 85,252. In not one of the eight cases was the adverse majority less than 35,000, and in several instances the rejection was by a vote of nearly five to one. Apparently, although these measures were debated in the campaign book, the great majority of the voters considered them as purely local issues, with the presumption against their merit. The large number of such measures upon the ballot is accounted for by the fact that the present law of Oregon does not allow counties to be created or their lines to be changed by an ordinary act of the legislative assembly; every such law must be voted upon by the people. In view of the voters' marked disposition to defeat such propositions, it would seem that some highly desirable changes may prove almost impossible of attainment. At this same election, a bill

which provided for the change of existing county lines and for the creating of new towns, counties and municipal districts by a majority vote of the legal voters of the territory affected was rejected, 37,129 to 42,327.

Each of three bills providing for the permanent support and maintenance of state normal schools called forth large votes, ranging from 87,099 to 90,235, but only one of them was passed. This result is of little significance as the issues were almost purely local. By far the heaviest adverse vote—a majority of 58,368—was cast against a proposal for the payment to the judge of a certain court of $1,000 annually by Baker county, in addition to his salary from the state. It is said that this proposal was not without precedent and merit. The enormous vote against it is to be attributed mainly to the proverbial disposition of the voters to keep salaries and other expenditures low—a tendency which may have had its influence in the defeat of the normal-school bills also. The state was here dragged into a local quarrel, inasmuch as this measure was an act of the legislature which had been held up by a referendum petition. Another issue little calculated to be effectively handled by direct legislation was the bill, proposed by initiative petition, prohibiting the taking of fish from the Rogue River except by hook and line. The interests of the up-river and down-river people were here in conflict. The initiative petition was originated by an association of up-river men, who charged that the salmon were being exterminated by commercial fishing, and that it was for the interest

of the state to preserve angling on that river. On the other hand, the representatives of a canning concern, which had made very heavy expenditures upon a plant at the mouth of the river—a plant which the proposed law would have turned into junk—petitioned the probate court (for the cannery was part of an unsettled estate) for permission to spend $10,000 to print and distribute to all voters in Oregon a circular setting forth facts as to the originating of the initiative petition and showing its errors. This request being denied, they inserted in the campaign book an argument minimizing or denying the points made by their opponents; an argument was also presented by the fishermen of the county in which the cannery is located, setting forth their interests in that industry; while the Rogue River Fish Protective Association came to the defense of their petition with a third argument. So hopelessly contradictory were these opposing statements of fact and of interest that the *Oregonian* advised citizens to vote "no" as the safer course. Nevertheless, the proposed prohibition of commercial fishing was adopted, 49,712 to 33,397. Two of the three counties most interested voted against the prohibition by large majorities, but the third and most populous—an up-river county—voted more than five to one in its favor. Whichever way the decision had turned, there would have been little presumption in favor of its justice. The question was one which required the weighing of expert testimony as to the actual effects of commercial fishing as practiced in the Rogue

River. It was impossible for the voters to form a well-grounded opinion from the interested arguments presented in the campaign book, and it was absurd that such a question should be decided by the "yes" or "no" of thousands of voters who never were within hundreds of miles of the scene of operation.

The matter of employees' indemnity for injuries sustained in the course of their employment came before the voters in two forms. By a vote of 32,224 to 51,719 they rejected a bill, proposed by initiative petition, for a commission of nine men, named in the bill, to investigate the subject and submit a draft of a bill to the legislative assembly. In the campaign book this measure was opposed by the Oregon State Federation of Labor on the ground that such an investigation was unnecessary inasmuch as the question had already been thoroughly investigated in other states, especially in New York. The federation further alleged that this project was a mere blind, instigated by the Employers' Association through whose influence an indemnity act had been blocked in the last session of the legislature. This labor organization was itself sponsor for a measure requiring protection for persons engaged in hazardous employments, defining and extending the liability of employers and providing that contributory negligence should not be a defence, although it might be taken into account by the jury in fixing the amount of the award. This was approved, 56,258 to 33,943. This measure is in line with the position often taken by Mr. Roosevelt and by such students of the labor

movement as the late Carroll D. Wright, who have insisted that under modern industrial conditions the " fellow-servant rule " is an anachronism which often must work grave injustice. But this is a complicated law, making very drastic demands of employers, subjecting them to fine or imprisonment or both in criminal proceedings for violation of the law, and giving dependents of an employee killed in the course of his employment " a right of action without any limit as to amount of damages which may be awarded." Whether it is for the best interests of Oregon industries and of the employees themselves that these specific and heavy burdens be devolved upon the employers remains to be seen. It took the voters, however, not more than one second apiece to declare by a majority of 23,000 that this shall be the law.

By substantial majorities, two measures of general interest were passed, the one providing for the location, construction and government of a branch insane asylum (50,134 to 41,504), the other authorizing counties to exceed the $5,000 debt limit for the purpose of building permanent roads within the county, provided such debts are incurred on the approval of a majority of those voting on the question (51,275 to 32,906).

One of the most radical measures submitted authorized the state or any county, municipality or railroad district to purchase or construct railroads or other highways within the state, and to lease or operate the same. It has been suggested that the real ob-

ject of this measure, which was referred to the people by the legislature, was to secure better service from the railroads by threat of state action. It was rejected, 32,844 to 46,070.

The pocket-nerve of the American voter is proverbially sensitive. Upon the ballot were three measures relating to taxation. All of them were important, yet not one of them polled a large vote; in fact, of the two which were rejected, one stood at the very bottom of the list of thirty-two and the other held thirtieth place in the voters' interest. The first of these three was a constitutional amendment, referred to the people by the legislature, "directing a uniform rate of taxation except on property specifically taxed, authorizing the levy and collection of taxes for state purposes and for county and municipal purposes upon different classes of property, and appropriating state taxes as county obligations." This was rejected, 31,629 to 41,692. The second was a proposed constitutional amendment, also referred to the people by the legislature, to omit from the constitution the words "and all taxation shall be equal and uniform" and to insert in lieu thereof the words "taxes shall be levied and collected for public purposes only, and the power to tax shall never be surrendered, suspended or contracted away." This amendment also was rejected, 37,619 to 40,172. Students of Oregon taxation methods have asserted that these two measures would open the way for much-needed reforms. Both measures had been passed by the legislature in response to pressure from

the granges, and both were supported in the campaign book by an argument submitted by the Oregon State Federation of Labor and the Central Labor Council of Portland and Vicinity. But this argument shed little light upon the precise effects to be expected from the adoption of the proposed changes. If clear-headed tax reformers believed that these measures were of merit, they should have secured for them more effective exposition and advocacy. The third tax measure called out a larger vote and was adopted by a small majority, 44,171 to 42,127; yet its merit is probably more dubious than that of either of the others. This constitutional amendment was proposed by initiative petition. It provides that the people of each county may "regulate taxation and exemptions within the county, regardless of constitutional restrictions or state statutes, and abolishing poll or head tax." This amendment was advocated in a brief argument, which covered the two preceding measures as well, by the above-mentioned labor organizations. Principal stress was laid upon its abolishing the unpopular poll tax, and it is freely asserted that the mere inclusion in the title of those words made a sufficient appeal to prejudice against that minor feature of the tax system to secure the small majority by which the amendment was adopted. The other point most emphasized by its advocates was the opportunity which this law would afford to each county to try experiments on a small scale with different systems, from which experience other counties might profit. It was further urged that

local regulation of taxation would thus secure to the people "the direct power to manage their own pocket-books." Nowhere in the measure itself nor in the argument printed in the campaign book does the ulterior object of the measure receive mention. That object, however, was well known and generally recognized; it was to make possible the adoption of the "single tax," piecemeal, by the several counties. In 1908 the single-taxers put before the people a modification of the Henry George programme; the measure was frankly and ably argued in the campaign book, and it was rejected by a vote of nearly two to one (32,066 to 60,871). This year the advocates of the "land-value tax system" pursued a shrewder but less ingenuous policy; they allowed the labor organizations to pull out of the fire some no-poll-tax chestnuts, which are found to have a strong single-tax flavor. In the press and on the stump the real object of this measure was brought out, and it was advocated in a remarkably effective campaign pamphlet, of which Mr. W. S. U'Ren was one of the joint authors. It is singular that none of the conservatives, who since the election have been deploring the adoption of this constitutional amendment, had interest enough to present their arguments in the campaign book, where they would have reached every voter. Opinions differ as to the outcome. At the previous election in Multnomah county, 1908, the single-tax proposition was defeated by only 483 votes in a total of 22,139. This would suggest that by the conversion of some three or four hundred

voters to the single-tax creed, the most populous county of the state may be made the first important laboratory for testing the Henry George theories. Naturally the single-taxers are jubilant[1]; but in the rest of the community—even among those not indisposed to shift upon land values a far heavier proportion of the tax burden—there is a grave feeling of apprehension. It is felt that no one county can safely stand aloof and by itself in financial relations in which the interests of the entire commonwealth are so closely interlinked.

The measure which called out by far the largest vote, with the exception of the liquor measures, was the "women's taxpaying suffrage amendment, granting to taxpayers, regardless of sex, the right of suffrage." So read the official title placed upon the ballot by the attorney-general. This is the fourth time within ten years that this issue has been forced to a vote, three times by initiative petition. At previous elections the majority against women's suffrage has been as follows: in 1900, 2,137; in 1906, 10,173; in 1908, 21,649. This year the suffragists took a new tack, emphasizing strongly the grievances of the many taxpaying women of the state, and closing their appeal thus: "Oregon has now the opportunity to lead the world in a safe and conservative extension of the elective franchise to every woman who is taxed to support the government, and we earnestly hope we shall

[1] Mr. Joseph Fels, the leading single-tax propagandist has already gone to Oregon, and the single-tax programme is openly announced as the chief issue for 1912.

not be compelled to repeat this appeal in 1912." But the voter who read not merely the ballot title and the appeal but also the law itself found that there was a glaring discrepancy between them; for the proposed amendment made a positive and sweeping grant of the suffrage to "every citizen of the United States of the age of twenty-one years and upwards, who shall have resided in the state during the six months immediately preceding such election," and so forth. Only after this positive grant had been fully set forth was there added: "It is expressly provided hereby that no citizen who is a taxpayer shall be denied the right to vote on account of sex." As the opponents of the measure said, in their campaign book argument: "The last clause in the proposed amendment about taxpaying women is pure buncombe. It adds nothing to and detracts nothing from the preceding provisions." The placing of the above title upon such a measure suggests some interesting questions. What is to be said of the legal acumen of an attorney-general who could either formulate or accept such a misleading title? As for the women who presented this as "a safe and conservative extension of the elective franchise to every woman who is taxed," if they were not clear-headed enough to see that the law would at the same time extend the suffrage to every woman who is *not* taxed, provided she were a citizen of the required age and residence, their addition to the electorate would not tend greatly to raise its intellectual plane; if, one the other hand, as a last resort they

were willing to win the suffrage by a shabby trick, they would bring to the polls little of that elevation of political morality which they have often claimed would be their chief contribution to political life. The voters' verdict, for the fourth time, was against woman's suffrage, 35,270 to 59,065.[1]

There remain to be considered the measures which most closely concerned the future of "people's rule" in Oregon and of the "Oregon system." By the legislature there were referred to the people two measures which were backed by much the same influences which instituted the "assembly" and forced Bowerman's candidacy as the Republican nominee. The first was

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[1] The Oregon suffragists' initiative petition for 1912 has already been filed (January, 1911).

It is singular that on the same day (November 8) in the adjoining state of Washington the voters should have adopted a woman's suffrage amendment by a considerable majority. On the eve of the election Alfred Brown, who had been on the stump in Washington for woman's suffrage, predicted its victory at the polls, adding: "The ambiguous wording of the amendment will poll many votes for suffrage since the words 'woman's suffrage' are not mentioned. We . . . often vote 'yes' when we don't know what we are voting for."—Boston *Herald*, November 5, 1910.

The suffrage was extended to women in Washington Territory by a law of 1883, entitled "An Act to amend sec. 3050 ch. 238 of the Code of Washington Territory." Under this women voted in Washington till 1887 when this law was held to be unconstitutional because its object was not expressed in its title as required by the Organic Act. "Females then are not voters in this territory." Harland *v.* Territory of Washington, 3 Washington Territorial Reports, 131. It is a singular coincidence if woman's suffrage has now been restored in Washington by means of a ballot title purposely evasive "relating to the qualifications of voters."

a measure providing for a convention for the purpose of making a general revision of the constitution. This was antagonized by the People's Power League, not only because it was needless and would occasion unnecessary expense and disturbance of business, but also on the ground that it was a scheme for getting a constitution adopted and "proclaimed" which would do away with the initiative, the referendum, the recall, the direct primary and "statement No. 1." It was defeated, 23,143 to 59,974. The second measure proposed an amendment of the constitution providing a separate district for the election of each senator and representative. This was an obvious attempt to prevent the carrying out of the principle of proportional representation, adopted by the Oregon voters by a large majority, only two years earlier; and it was rejected by a vote of 24,000 to 54,252.

The People's Power League succeeded better in defending the ground already won than in capturing the new fields toward which they had directed their campaign. Of the four measures which they formulated by the elaborate process described above, and to which they gave earnest support in the campaign book, in the press, in pamphlets and on the stump, the two more radical measures were rejected. Of these, the one which suffered the worst defeat was the proposed law creating the board of "people's inspectors of government," who were also to be charged with the duty of publishing the Oregon *Official Gazette*. This measure was loosely drawn; it sought to create an office

which was an absolute innovation; and some of its features were calculated to arouse distrust. The newspapers ridiculed and opposed the institution of any such board of recording angels for functions which the press assumes to perform, and the measure was rejected, 29,995 to 52,538. Defeat, though by a closer vote, 37,031 to 44,366, was also the fate of one of the most carefully thought out and comprehensive measures upon the ballot, namely, the proposed constitutional amendment which essayed to redistribute the legislative power in a commonwealth where the initiative and referendum have received unprecedented extension. There was no measure upon the ballot of equal political interest, and none of which the operation would have commanded, in anything approaching the same degree, the attention of the country. It would have introduced a variety of untried correctives for legislative abuses which are widespread—the gerrymander, tyrannical rules, absenteeism and log-rolling.

By a still closer vote, 43,353 to 41,624, the provisions of the direct primary law were extended to presidential nominations. On the nineteenth of April, 1912, accordingly, each voter of Oregon will have a formal opportunity to designate his personal choice of candidates for president and vice-president of the United States; later he may take part in nominating directly candidates for presidential electors, and in electing, under a system of proportional representation, delegates to the national conventions. Men of char-

acter and not merely of cash may stand a better chance of being elected delegates, since the state is to pay the expenses of each, up to $200. Space to the extent of four pages will be available in the state campaign book for setting forth the reasons why each of the several candidates for any office to be voted for by the voters of the state at large should be elected. The senatorial and congressional candidates must pay at the rate of $100 a page, but "no charges shall be made against the candidates for president and vice-president of the United States for this printed space." Four pages of free political advertising are therefore to be available for each regularly nominated presidential candidate in 1912. It may be of interest to several recently elected governors of eastern states to know at once that the Oregon campaign book runs about six hundred words to the page.

By a substantial majority, 44,538 to 39,399, the voters adopted the amendment aiming at reforms in the administration of the law. The most significant changes are the abolition of the grant of new trials on mere technicalities and the substitution of a three-fourths majority for unanimity in the rendering of a verdict by a jury in civil trials.

As the smoke of the contest clears away, it is evident that "people's rule" has strengthened its position. In a state normally Republican by 25,000, the election of a Democrat by a plurality of 6,000 over the Republican forced upon his party by the "assembly" can have no other meaning than that the rank and file

of the voters resent the attempt to emasculate the direct primary and the "Oregon system." The rejection of the proposed constitutional convention indicates that the voters are confident that needed changes can be made by the initiative and referendum, and that they do not propose to run any risk of losing those powerful agencies of public opinion. They rejected the single-district measure, because they had already committed themselves to the principle of proportional representation, although they were not yet ready to accept the application of it submitted to them at this election. In approving the reform of the judicial system and the extension of the direct primary law, they were following the same leadership which in the past ten years has made Oregon the most interesting political experiment station in the country and has conferred upon her people a greater degree of direct self-government than is to be found in any other American commonwealth.

But does this "new birth of democracy" promise permanence of the good and progress toward the better? It must be confessed that the election just past has given its notes of warning. In the first place, the ballot was a preposterous thing. "It's like voting a bed-quilt" was the comment of one of the policemen at the polls. Experience will certainly prove that the "short ballot" movement and the "people's rule" movement must go together. The voter's task must be made reasonable. Not even the allowing of two months for the conning of a campaign book can make

it reasonable to expect that the voters, at a single election, will choose with discrimination forty-five officers from a list of 131 candidates and then vote with intelligence upon thirty-two measures of every variety and grade of importance. It is generally conceded that a considerable proportion of the measures were absurdly unsuited to be voted upon by the people of the entire state. This was certainly the case with the eight county bills; the three normal-school bills probably belong in the same class; and at least two other measures were of little general interest. The men who have had most influence in introducing "people's" rule in Oregon are not blind to this defect. In the first draft of the measure for reconstituting the legislative power there was a provision that the number of direct legislation measures to be voted on at any one election should be limited to twelve, and this clause was strongly supported by argument from theory and from Oregon experience. It was found, however, that this proposed limitation upon the voter's power was unpopular, and it was accordingly thought best to cut it out lest it should imperil the entire measure. The Oregon voter has found that he can make laws, and he is little impressed by the argument that he would do this work better if he attempted less of it at one time.

The experience of this election, furthermore, has proved the need of attention both to the psychology and to the ethics of title-writing. One measure, said to have been of genuine merit, is believed to have been

defeated because its title included a doubt-raising clause which had been successfully avoided in the text of the law itself. Another measure of dubious merit was passed, probably because the title, while silent as to the main intent of the law, made a successful appeal to an exaggerated popular prejudice against a poll tax. Direct legislation is not the spontaneous registering of the individual voter's matured judgment as to the best method of dealing with a given problem; the voters simply say "yes" or "no" (or say nothing) to specific proposals originated, framed and phrased—and every step in the procedure is of consequence—for them by some one else. By whom? For what? These may at times prove disquieting questions. For example, not one of the three tax measures upon the November ballot was drawn in such language as to make its intent clear and unmistakable; nor was this lack supplied by any enlightening argument in the campaign book, the one argument there submitted, in joint advocacy of the three, being in tone and in logic little calculated to serve as the basis for forming a candid judgment. Direct legislation will presently be giving to Oregon a poor travesty of "people's rule," unless to the framing of laws and to the phrasing of their titles there is brought a keener intelligence and a more sensitive conscience than were responsible for the law intended to secure the piecemeal introduction of the single tax and for the "women's taxpaying suffrage amendment." As one of the writer's correspondents puts it: "It is quite clear that popular legislation can

be worked only by 'simplifying' issues; and the further this goes, the more important becomes the real initiative of the irresponsible persons, whether patriots or schemers, who formulate the 'simplified' issues."

On the whole, considering the immense complexity of the task which was set before them, it must be acknowledged that the Oregon voters stood the test remarkably well. They detected and repelled covert attacks upon their own power; they rejected measures so radical as to arouse doubts; they gave their approval of laws which, in the main, are consistent and develop the system already adopted.

Critics will differ as to the merit of the several measures, and they may deride "voting by the square yard." But this much the most conservative of them must concede: in Oregon the state is not shriveling up, nor have national issues there entirely submerged state issues—two valid criticisms which Mr. Bryce passed upon American state politics in general. In the past twelve months Oregon voters have had affairs of their own to think about, which have been quite as engrossing as the tariff or the new nationalism. There has been a vitality, a genuineness in Oregon politics sharply in contrast with the state campaigns in many of the eastern states. In Oregon no man has been able to read his title clear to office in the state or at Washington by merely subscribing to the creed of some leader in one of the national parties; he has had to face the question: "What do you stand for, on these

definite issues regarding the carrying on of government in Oregon?" With keen interest the voters have been grappling with the problems—political, industrial, educational, financial—of self-government within their own state. A genuine campaign of education has been in progress, which cannot fail to produce important and enlightening results, quite above and beyond the verdict rendered November 8 upon the various points which were at issue during the preceding months of debate.

CHAPTER XI

THE UNFAVORABLE RESULTS OF DIRECT LEGISLATION IN OREGON

THE other side of the question concerning the value of direct legislation has been presented by Frederick V. Holman, Esq., the President of the Oregon Bar Association. The Chicago Civic Federation, which is also opposing the initiative and referendum, has given widespread publicity to Mr. Holman's views in one of its bulletins, which is here reproduced:

I am here to tell you of some of the results under the initiative and referendum amendment of the Oregon constitution. I am a native of Oregon. It has always been my home, and, therefore, I can claim some familiarity with the economic conditions which prevail in my native state. While Oregon has an area of over 90,000 square miles and is one-third larger than the state of Washington, it has grown slowly. By reason of the lack of railroads the eastern part of Oregon—approximately 55,000 square miles—is sparsely settled. Its population is 672,765, a little less than one-third of the population of the city of Chicago. The total vote for governor in Novem-

ber, 1910, was 117,690, a little more than one-third of the vote of Chicago last November. Portland is the only city of any considerable size in Oregon. Its population is a little over 207,000. Two-thirds of Oregon's population, therefore, is in small towns and in the country at large. We must consider, too, that Oregon was settled by hardy and intelligent pioneers whose influence is still largely felt.

If you in Illinois wish to learn of the initiative and referendum by our experience, it is now a good time to begin. If the plan is unsatisfactory in Oregon, with its agricultural and village population, largely of Anglo-Saxon ancestry, keenly interested in public affairs and with environments conducive to deliberation, what will be the result in the cosmopolitan city of Chicago, with a steadily increasing proportion of its vast population accepting for the first time large responsibilities in citizenship, and with its hurry and turmoil of economic life anything but favorable to the study and deliberation presupposed by the initiative and referendum? Obviously the Oregon plan might succeed in Oregon and be a failure in Illinois. But, if the plan has failed in Oregon in times of quiet and prosperity, what may be your experience of legislation by popular vote in times of unrest, turmoil or mob violence? Has it failed in Oregon? Let us scrutinize the facts.

When the initiative and referendum amendment to the constitution of Oregon was proposed, its advocates stated (as I understand it has been alluringly stated in

Illinois) that it was to be merely a club in the hands of the people for securing good, and checking bad, legislation; that it would be invoked rarely and would be a "reserve" power and not an active nor a disturbing power. There was no scandalous conduct of our state affairs to demand this amendment. No public or quasi-public corporations sought to control the politics of the state or to meddle with public affairs as was the case in California and some other states. Our legislature was no worse than other state legislatures; probably better than some. But on the plea of agitators that its character would be improved, and after endorsement by all political parties, this amendment was adopted in 1902 by a vote of 62,024 to 5,668, with no debate and little serious consideration on the part of most voters, and with about twenty-four per cent. of all the voters at that election failing to vote on the measure at all. This amendment provided for the initiation of legislation (the placing of a law or constitutional amendment on the ballot to be voted up or down) by petition of "not more than eight per cent. of the voters," and for the submission of legislative enactments to popular vote by petition of five per cent. of the voters. These same percentages I understand are now proposed for Illinois.

We now come to the consideration of three basic questions:

1. To what extent did this amendment operate as a "reserve" power, and to what extent was it thus effective?

2. What character of legislation was proposed under this "reserve" power?

3. Did the people use this "reserve" power intelligently?

In reply to the contention that this "reserve" power would improve the character of the legislature, I will state, without fear of contradiction, that there has been no substantial change in the kind of legislators since the adoption of this amendment. As to the operation of this amendment as a "reserve" power, I shall merely call attention to the constant increase in size of our direct legislation ballots. In 1904 two measures were submitted; in 1906, eleven; in 1908, nineteen (ten constitutional amendments and nine proposed laws); in 1910, thirty-two (eleven constitutional amendments and twenty-one proposed laws, and the initiative was responsible for twenty-four of these propositions).

How many propositions shall we have placed upon our ballot for the confusion of our voters at our next state election? Signatures are easy to get. In Oregon any person may have any crank measure, proposed law or constitutional amendment alike, placed upon the ballot. All that is necessary is a petition and the signatures of not less than 10,000 voters, and professional signature-getters will get the signatures—for a consideration.

The general characteristics, particularly of initiative measures, have been careless and loose phraseology, and ambiguities leading to difficulties for the

supreme court. The very vagueness of the phrase "not more than eight per cent. of the legal voters," in the initiative amendment itself is typical of the crudity of resulting measures. The petition which "shall include the full text of the measure proposed," once filed, cannot be amended. One measure was adopted which was declared void because it had no enacting clause. The omission was discovered after the petition was filed, and the measure could neither be amended nor withdrawn from the ballot. Another fundamental objection to the Oregon plan is that it is rapidly depriving us of that stability in government which the constitution is designed to supply. A constitution is a bill of rights setting forth the basic principles under which the people commit themselves to restriction of individual privileges for the benefit of the mass. The Oregon constitution is now being changed as readily and almost as frequently as the statutes and by minorities of the voters. It is optional with the author of any initiative measure whether it shall be presented as a proposed amendment or as a proposed law. The only real distinction lies in the fact that the legislature may repeal an objectionable law, but that a bad constitutional amendment can be repealed only at the next election by a majority of those voting on the question, and therefore remains operative much longer than the law.

Having thus observed the operation of the initiative and referendum as a "reserve" power, let us see whether or not the voters use this power intelligently.

Senator Bourne of Oregon, speaking in the United States Senate, May 5, 1910, said that the people of Oregon had acted intelligently on the initiative and referendum up to and including the year 1908, the election of 1910 being subsequent to the delivery of his speech. We naturally ask what is "acting intelligently"? When is such action possible?

I have not calculated the percentage of electors voting on all the various measures, but I am informed by an ardent advocate of the Oregon plan that the greatest percentage of voters who have acted on any of these measures in Oregon is ninety per cent. and the smallest, sixty-two per cent. This is based on the number of electors voting at an election, not on the registered vote. On this basis ten per cent. do not vote at all and as many as thirty-eight per cent. do not vote on some measures. Under the Oregon plan it is a majority of those voting on a proposition, not a majority of all the voters, which determines its fate. Certainly those who do not vote on a measure do not act intelligently on it. There are many who vote "yes" on all measures, as some vote their straight party ticket without regard to fitness of the candidates, and this cannot be called intelligent voting. Then there are many men of business affairs and intelligence who have not the time to consider most of these measures and who, unless their attention is especially attracted, vote "no" without regard to the merits or demerits of amendments and laws. In my opinion, such men do not act intelligently. It is impossible to

ascertain the number of voters who act thus unintelligently, excepting, of course, those who do not vote at all. It is significant, however, that the average percentage of those voting for state officers who also have voted on initiative and referendum measures has decreased progressively from 78.5 per cent. in 1904 to 72.2 per cent. in 1910.

Comparatively few of the direct vote measures in 1910 received more than 80 per cent. of the total vote for governor. The total vote on the woman's suffrage amendment (overwhelmingly defeated) was 563 votes more than 80 per cent. Most of the measures acted upon may be grouped as follows with reference to the percentage they received of the vote for governor: three measures, between 75 and 80 per cent.; twelve, between 70 and 75; twelve, between 65 and 70; one, a fraction less than 62.04 per cent. The principal interest in these initiative measures in 1910 touched three questions affecting the sale of liquor. These received total votes of 101,375 (86.13 per cent.), 104,712 (89.81 per cent.) and 106,213 (90.24 per cent.). Thus it will be seen that (with the exception of the three liquor measures and that for woman's suffrage) 40 per cent. of the total vote might have carried twelve measures; 35 per cent. twelve, and less than 32 per cent. one. Moreover, not one of the nine measures which will carry, including the home-rule amendment, received a majority of the total vote. It is a political axiom that the majority should rule, but without prejudice to the rights of the minority. In Oregon

under the initiative the minority rules in many instances and sometimes to the prejudice of the majority, as I shall subsequently show.

I cannot go into all the measures voted upon since 1902, but I shall cite a few voted on in 1908 and 1910 to show you that if the initiative and referendum are good *per se* (and I am convinced they are not), then the Oregon form is not a good one.

In the Columbia River below the mouth of the Sandy River salmon are taken mostly by gill nets, traps and seines. Above the Sandy River they are taken mostly by fish-wheels in rapid water. Strong antagonism between the lower and upper river fishermen has resulted. In 1908 each of these interests under the initiative proposed a bill, one designed to prohibit commercial fishing below the Sandy River, and the other calculated to prohibit commercial fishing above it. Each of these bills received a favorable majority at the election; became law, and all commercial fishing on the Columbia was prohibited. It is true that when two antagonistic bills each receive a majority, the one having the largest affirmative vote is to be regarded as the law; but these two bills were not antagonistic, each applying to different parts of the Columbia River. Fortunately the legislature met before the next fishing season and the matter was adjusted. However, had those bills been amendments to the constitution there could have been no relief until the next regular election two years after, and one of the great industries of our state would have been paralyzed. Did the vote

on these fishing bills show intelligent action? Doubtless there was need for some wise conservation all along the stream, but these bills provided nothing of the kind, and the voters cannot be blamed for failure to act intelligently, because no opportunity for intelligent action was afforded. That, however, is scarcely an argument for the initiative.

The University of Oregon, of which I have been a regent for several years, has a small endowment which brings in a revenue of about $25,000 a year. Prior to 1907 it received appropriations at each biennial session of the legislature. In the session of January, 1905, the legislature appropriated for the university $62,500 a year for two years. A referendum petition was filed within ninety days after the legislature adjourned, and the vote on this referendum could not be had until June, 1906, the next regular election, nearly a year and a half after the appropriation was made. During that time the moneys of the university became exhausted and it would have been compelled to close its doors had not the professors agreed to continue their duties and to receive no pay if the referendum was successful. Fortunately there was a small majority in favor of the appropriation.

Two years later, in the session of January, 1907, the legislature gave the state university a continuing appropriation of $125,000 a year. Again a referendum petition was filed against this appropriation, with a similar result. The moneys again were exhausted and the professors again agreed to receive no pay if the

referendum was successful. The vote was taken in June, 1908, nearly a year and a half after the bill passed the legislature. Out of a total vote of 105,298 at that election there was a total vote on the referendum of 84,650, divided thus:

For the appropriation	44,115
Against the appropriation	40,535
Majority of votes cast on proposition	3,580
Percentage of voters not concerned with fate of the state university	19.6

The vote cast against the appropriations for Oregon's state university may have been intelligent but it is not educational, except as an argument against the indiscriminate use of the referendum.

In 1908 a single-tax amendment to the constitution was presented to the voters. It declared in the title for wholesale exemptions, and the opening statement in the affirmative argument filed with the secretary of state read, "the proposed amendment is a step in the direction of the single tax." This amendment was decisively rejected by the following vote:

For the amendment	32,066
Against the amendment	60,871
Majority against adoption	28,805
Percentage of total vote cast recorded against amendment	57.7

The single-tax advocates were persistent and in 1910 submitted three single-tax amendments by initiative petition. Two were barely defeated, the vote on them being so light that less than thirty-six per cent. of the vote for governor would have carried them. The third amendment was carried. It was worded

more attractively than the one rejected in 1908, the opening sentence stating that "no poll or head tax shall be levied or collected in Oregon," and not one word was said about the single tax in the affirmative argument which emphasized the injustice of the poll tax, and held out the promise that: "the approval of these amendments will give to the plain people and the taxpayers of Oregon more bread and butter profits from the government than they have ever had in the past." What did this mean? Was it an appeal to intelligence?

The vote on this amendment stood:

For the amendment	44,171
Against	42,127
Preponderance of votes for	2,044
Total vote cast for governor	117,690

Thus 37.53 per cent. of the voters of Oregon approved in 1910 a measure, which, in its true guise, had been defeated only two years before by a clear majority. Was this intelligent action?

One of the proposed constitutional amendments in 1910 provided for the purchase, condemnation or construction, and operation of railroads by the state. The idea of a state of Oregon's limited development and revenues attempting such a thing is on its face absurd, but the following vote shows how near the half-baked ideas of some crank came to receiving authority:

For the amendment	34,013
Against the amendment	46,112

In other words, if 39.25 per cent. of all voters had voted for this amendment the state would have been authorized to engage in the railroad business.

In 1908 a constitutional amendment was submitted increasing the number of supreme court judges from three to five, and simplifying procedure in the lower courts by giving circuit courts original jurisdiction of probate matters, then exercised by county courts. This excellent amendment was defeated. At the 1910 election a most remarkable amendment, embodying all and more than was contained in the defeated amendment, was proposed and adopted. It placed no limit on the number of supreme court judges but provided that lower courts and their jurisdictions might be changed by law, and stated prominently in the title that in civil cases three-fourths of a jury might render a verdict.

The most objectionable features of this amendment are in section 3, which is as follows:

" Section 3. In actions at law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reëxamined in any court of this State, unless the Court can affirmatively say there is no evidence to support the verdict. Until otherwise provided by law, upon appeal of any case to the Supreme Court, either party may have attached to the bill of exceptions the whole testimony, the instructions of the Court to the jury, and *any other matter* material to the decision of the appeal. If the Supreme Court shall be

of opinion, after consideration of all the matters thus submitted, that the judgment of the Court appealed from was such as should have been rendered in the case, such judgment shall be affirmed, notwithstanding any error committed during the trial; or if, in any respect, the judgment appealed from should be changed, and the Supreme Court shall be of opinion that it can determine what judgment should have been entered in the court below, it shall direct such judgment to be entered in the same manner and with like effect as decrees are now entered in equity cases on appeal to the Supreme Court, provided that nothing in this section shall be construed to authorize the Supreme Court to find the defendant in a criminal case guilty of an offense *for which a greater penalty is provided than that of which the accused was convicted in the lower court.*"

It will be seen that there is apparently a conflict between the provisions of the first sentence of section 3, relating to the effect of a verdict by a jury in an action at law, and the power and duty of the supreme court on an appeal when there is attached to the bill of exceptions by appellant or respondent, " the whole testimony, the instructions of the court to the jury, and any other matter material to the decision of the appeal." Under the familiar rule of construction that where, in a statute, there are apparently conflicting provisions they must be reconciled if it is possible to do so, section 3 should be construed to mean that the verdict of a jury cannot be reëxamined by any court inferior to the supreme court, and only by the latter

when the whole record is before it. Thus a circuit court cannot grant a new trial if there be a verdict of a jury with a scintilla of evidence to support it, even when such a verdict is outrageous or given under prejudice or passion; probably, not on account of newly discovered evidence. Once a verdict always a verdict until it reaches the supreme court.

The appeal provided for in section 3 applies to both civil and criminal cases. The words are: "Upon appeal of any case to the supreme court" the provisions apply, and what are the provisions? Either the appellant or respondent may (and certainly the appellant always will) "have attached to the bill of exception the whole testimony, the instructions of the court to the jury, and any other matter material to the decision of the appeal." The verdict of the jury in the court below is not necessarily even a guide to the supreme court, which must be guided by "the whole testimony, the instructions of the court to the jury," and also "any other matter" that either the appellant or respondent may deem "material to the decision of the appeal." Judgment may be entered "after a consideration of all the matters thus submitted." If the supreme court decides for the respondent, it may do so not only, "notwithstanding any error committed during the trial" in the court below, but also it must consider whether the judgment "was such as should have been rendered in the court below," after a review of the whole testimony and also after considering "other matters" in the record. There may be similar

action by the supreme court in favor of the appellant if "it shall be of the opinion that it can determine what judgment should have been entered in the court below." By this method of appeal is not trial by jury practically abolished in Oregon? And yet trial by jury has been in existence in English-speaking countries from the time of Anglo-Saxon rule in England until the present day.

This amendment makes no provision for sending the case back to the lower court for re-trial. Its apparent object is to authorize the supreme court to determine finally every law case appealed and also criminal cases, and to direct what judgment shall be entered in the court below. But also apparently it gives the supreme court power to dispense a kind of crude oriental justice according to its "opinion."

Now note this additional confusion. Section 3 permits change by law of the powers conferred by it on the supreme court, as to determination of what judgments shall be entered in civil or criminal cases, but no law can change the first sentence of section 3. Only a constitutional amendment can affect that. Take the power from the supreme court to set aside a verdict and render a judgment, and a verdict once given, however unjust or unfair, cannot be reëxamined by any court. For centuries the jury has been a check on the tyranny and corruption of judges. Upright judges have corrected the verdicts of ignorant, prejudiced and venal juries. To do away with this balance of power

is to set aside the best safeguards for justice which man has been able to devise.

The first sentence of section 3 makes it appear that this section applies to civil cases only, but the rest of the section applies to criminal cases also. There is no limitation on the "appeal of any case to the supreme court," but the limitation is "provided, that nothing in this section shall be construed to authorize the supreme court to find the defendant in a criminal case guilty of an offense for which a greater penalty is provided than that of which the accused was convicted in the lower court."

If the accused is convicted in a lower court of a crime for which he was not indicted nor tried, an appeal will lie. But the supreme court may find him guilty of an offense, without indictment, the only limitation being that it shall not find him guilty "of an offense for which a greater penalty is provided than that of which" he "was convicted in the lower court." The accused may be indicted in the circuit court for murder and convicted of rape or arson by the supreme court; indicted for burglary, and convicted on appeal of mayhem, or of some other crime against which he had no opportunity to make a defense. Take this amendment with its contradictory provisions and determine, if you can, what was in the minds of its framers. And how could the voters act intelligently thereon?

Then consider the vote by which this amendment was adopted—44,545 for, and 39,307 against. The

approximate percentages of those who voted and those who did not, as compared with the votes for governor, were:

For the amendment	37.85
Against the amendment	33.40
Not voting	28.75

And thus less than thirty-eight per cent. of the voters amended the constitution to the prejudice of the rights of the other sixty-two per cent., and of themselves, and imperil one of the safeguards of personal liberty. A leading advocate of the Oregon plan asked me lately why I let this amendment be printed in the official pamphlet without an argument against it. I admitted my delinquency and he voiced a favorite maxim of the advocates to the effect that I had no right to complain. I admit that I failed in my duty, but is that any reason why the rights of sixty-two per cent. of the voters, of women and of children yet to be born, should be imperiled, and that a minority should rule in so important a matter?

Thirty-two propositions at one election, most of them involving complex questions! It took a pamphlet of 202 pages, not including the index, to present them, together with such arguments *pro* and *con* as were filed. How many of you would have time to study such a document even though you had six months for it? And having the time how many of you would feel competent to pass on such a measure as the judiciary amendment, for example? The Oregon supreme court has experienced some difficulty in construing amend-

ments to the constitution made in the above manner, particularly those adopted under the initiative in 1906 and intended to take from the legislature the power to enact, amend or repeal municipal charters and giving this power to the voters of the municipalities. These amendments failed to define what constitutes a charter; there were practically no precedents and the supreme court found it necessary to amend these constitutional amendments by its decisions, by supplying omissions and by interpolating provisions not contained in the amendments themselves.

But what becomes of the sacred right of the initiative and the doctrine that the people are always right? Should a supreme court amend or set aside what the people in their wisdom (or unwisdom) have perpetrated? So it has come to pass that the initiative amendments of the Oregon constitution, adopted to give the people absolute power, do not really make the people supreme, but do make the acts of the people, plus the supervision of the supreme court, supreme. Certainly to this extent the initiative is not what its advocates intended it to be, although there is a large element of safety in such supervision and amendment by the supreme court. But what would be the result if the supreme court had held that the people had all the final power subject only to contrary provisions in the constitution of the United States?

Briefly to summarize, then, we find that the so-called "reserve" power is greatly abused; that measures in overwhelming numbers and many of them

loosely drawn are being put upon the ballot; that the percentage of those who do not participate in direct legislation is increasing; that lack of intelligent grasp of many measures is clearly indicated; that legislation is being enacted by minorities to the prejudice of the best interests of the majority; and that the constitution itself is being freely changed with reckless disregard of its purpose and character.

THE RECALL

CHAPTER XII

THE USE OF THE RECALL IN THE UNITED STATES.[1]

THE recall expresses the idea that a public office is so vitally affected with the public interest that when its occupant ceases to perform his duties to the interests of the community his official tenure may be terminated. The recall is based on the theory that the people must maintain a more direct and elastic control over their elective officials, or, to use a homely Oregonian phrase, that the people should be able to discharge their public servants "just as a farmer discharges his hired men." [2]

[1] Mr. Herbert S. Swan of Columbia University, the author of this chapter, is one of the committee investigators of the National League.

[2] Contrary to popular belief the recall did not have its origin in Los Angeles in 1903. It was first embodied in the Articles of Confederation which reserved to the individual states the right of recalling any or all of their delegates to Congress and of sending others in their stead. Although both Madison and Yates are silent in their reports concerning it, the recall no doubt was thoroughly discussed in the Federal Convention especially in regard to the recall of senators. Luther Martin in his "Genuine Information" to the Mary-

A man who breaks a contract or who deceives his clients by making false pretenses is severely punishable by our laws. But electorates may be wheedled and seduced, the public troth most atrociously outraged by insidious officeholders—all without redress, so long as no technical crime has been committed. Impeachment reaches only malfeasance, not misfeasance or non-feasance. There is a borderland outside of actual graft which the law of impeachment does not touch. Our statutes, as a rule, are not so framed as to cover the George Washington Plunkitt variety of "honest graft." In instances of this sort the courts are powerless.

An English cynic once suggested that since moral perversity seemed to be the legislator's only infallibility, good government might be readily achieved by inverting the laws in their administration. Though experience may give this theory more or less credence, the recall, however, is based upon the assumption that the official's interest can be conjoined with that of the people's by making his tenure dependent upon his constantly meriting the office. What has annoyed and thwarted more than anything else, might be called official aphasia. Just when the people have elected a man burning with patriotic zeal, he suffers some sort

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land legislature strongly opposed the adoption of the constitution because it omitted this feature. The principle also aroused a long and intensely interesting debate in the New York Convention. The two Livingstons, John Lansing, and Alexander Hamilton engaged in the controversy.

of an intracerebral accident. He is no longer able to interpret *vox populi.* His memory fails him. His formerly clear-cut views upon public questions become confused and incoherent. Party platform and pre-election pledges now mean nothing, or, if they do, something very different from what they appeared to mean a short time ago. The ayes and nays in the legislative journal, when read in the glow of his former zest for public service, appear unintelligible, sometimes villainous. The recall proposes to aid the officeholder in retaining a candidate's state of mind.

Nor is there any valid reason why a man honestly elected upon a platform which he honestly intends to carry out, should not, under certain circumstances, be recalled. Even though the representative's views might approximately at the time of election have reflected those held by the represented, rising contingencies might tend to disturb and unbalance the intimacy of this relation. Conditions entirely unforeseen then might develop which would render a change of policy imperative. Surely legislators and councilmen ought to be amenable to changing, as well as to existing, public sentiment. The finiteness of human foresight, not less than the fallibility of the electorate's choice and the corruptibility of the official, argues for the recall in a popular government.

In passing upon the constitutionality of the Iowa law providing for city government by commission the court said in reference to the recall: "Public officers are created in the interests of the general public, and

not for the benefit of any individual. And no one in possession of an office has a constitutional right to remain therein for the full period of the term for which he was elected. . . . As no contract right exists in favor of the incumbent of an office it does not remain for him to quarrel with the method of procedure adopted in removal from office."

The recall is perhaps most valuable as a potential club to wield over recalcitrant officials. Without it, public opinion, no matter how well it may be organized, loses one of its most potent weapons with which to inspire honest and efficient government. An indeterminate tenure of office, for such the recall may be said to conduce, places a premium upon good service. Disrespect or indifference to the public will may be punished by a summary ejectment from office. A definite term doubtlessly makes the councilman more inimical to crystallized public opinion. He may, or may not, give it speedy expression in the enactment of desired ordinances. In either case he feels tolerably secure of his seat.

Threatening the use of the recall has on several occasions caused councilmen to abandon measures objectionable to their constituents. A case in point is where the Los Angeles aldermen rescinded an immensely valuable franchise in a river bed in that city. Another instance illustrating its worth in this respect occurred in Des Moines. "When the matter of appointing police marshal came up, three of the council voted for a man who had worked to secure their elec-

tion. The appointment was opposed by two of the councilmen, one of whom had charge of the department of public safety. Unwittingly one of the three above mentioned who voted for this appointment dropped some remark which led the public to believe there had been a promise made before election. This suspicion was furthered by the fact that the councilman in charge of the department of public safety opposed the appointment. A petition for a recall of the councilman making the unfortunate remark was at once started. Before this reached the council, however, that body had had a meeting and quickly revoked the appointment and appointed a police marshal who had public favor."

The charge urged against the recall that it may be invoked to displace conscientious officials is not to be given much weight if proper precautions are taken in fixing the percentage required on the recall petition sufficiently high so as to remove the officeholder from factional spite. The malignant and wanton exercise of the recall in displacing or harassing conscientious officials would so arouse the public condemnation that the measure could not help falling through. This, moreover, has been the actual experience of the recall. In Fort Worth, Texas, an attempt was made to remove a commissioner who had enforced the law in the "red light" district. The law-abiding people unanimously rallied to his support, and his enemies failed to obtain the necessary per cent. petition to force him to stand for reëlection. When the police superintend-

ent of Des Moines, Iowa, suppressed gambling, representatives of that interest visited him at his office and told him that if he did not permit the reinstallment of slot machines a recall would be started to remove him. The superintendent immediately had the incident printed in the newspapers and the recall did not materialize.

In San Bernardino, California, two councilmen who voted for letting the public advertising to a firm not the lowest bidder were summarily ousted by their constituents. In San Diego, a councilman, whose conduct "ever since he entered upon the duties of said office had been in opposition to the will and preference of his constituents, and obstructive to the best interests of the city," came within an ace of being recalled. He was spared the disgrace only by resorting to the courts which delayed the proceedings until his term expired. The recall was exercised against a councilman in Everett, Washington, who was "using the influence of his position to revive a certain franchise to the prejudice of the city." In Los Angeles, Mayor Harper was recalled a little over a year ago for failing to enforce the law against gambling, prostitution, and the sale of liquor. In Oregon the recall has been used twice. All the elective city officials except one, the recorder, were removed a year ago last spring at Estacada. The charge made was gross mismanagement of the city business. At Junction City the mayor had a few weeks earlier been recalled by a vote of four to one. Last fall two school directors were recalled in Dallas, Texas,

on the ground of discharging teachers and appointing others in their stead because of political motives. Only recently the mayors of Seattle and Tacoma, Washington, have been recalled. In the former city, it was alleged that the executive failed to enforce the police laws "permitting the city to become a home and refuge for the criminal classes"; in the latter, the cause of recall was found in general inefficiency and gross mismanagement of public business.

There ought, perhaps, to be an initial period of some two or three months during which a newly elected commissioner should be immune from the liability of recall. This would not only give a councilman a chance to outline his policies, but would also give time for the partisan ill-feeling aroused during the campaign to cool. But the entire history of American politics precludes scoring any point for the short time exemption on the latter ground. Politically our candidates are game losers. To bolt the party ticket, no matter what the merits or demerits of the case, has universally been regarded as a cardinal sin. The mugwump has always been ostracised. No doubt custom would execrate the would-be-post-election guerilla, who has just been disappointed in his office-seeking hopes, as a most abominable enemy to the people.

In most cities a recall may be effected at any time during the officer's term. Yet in several instances it is provided that no proceedings may be brought against an incumbent during the first three or six months. In Boston, where the mayor now holds office

for four years, a recall may only be had after two years by the majority of the voters. St. Joseph allows no such election to be held "within three months after the election and qualification of any city officer, nor within three months prior to the expiration of his term of office." Instead of prohibiting proceedings against an officer near the end of the term thus, some charters permit the council discretion to refuse action if a general election occurs within sixty days. Lewiston, Idaho, is the only city that expressly denies the filing of more than one petition during an officer's term. In Oregon no petition may be circulated against any state officer "until he has actually held his office six months, save and except that it may be filed against a senator or representative in the legislative assembly at any time after five days from the beginning of the first session after his election.[1] After one such petition and special election no further recall petition shall be filed against the same officer during the term for which he was elected unless such further petitioners shall first pay into the public treasury which has paid such special election expenses, the whole amount of its expenses for the preceding special election."

To absolutely prohibit proceedings several months prior to the term's end tends to make the recall nuga-

[1] The recall in Oregon applies also to the judiciary. The Arizona constitution is modelled after that of Oregon in this respect. California will in October vote on a constitutional amendment extending the recall to every department in the state government including the judiciary.

tory in remedying the evils for which it is instituted. This objection applies still more emphatically to the Lewiston charter, which specifically limits an officer's liability to one time. The discretion resided in the council as to the warrantableness of such drastic action ought to be made so elastic as to empower that body to refuse relief if a general election is only a short time distant.

So long as the voter may not at any time recall his chosen representatives his franchise is only a remnant. The right to elect and the right to recall—each complements the other. A full and complete electoral franchise includes both. A suffrage embracing one but not the other is fragmentary and only putatively democratic. The recall will lend some purpose to political discussion. At present it is insipid, meaningless. Men regularly go in and out of office by fixed batches—their tenure, instead of bearing any relation to dynamic political conditions, is, in the words of Bagehot, "rigid, specified, dated." Nothing can be accelerated, nothing retarded. What *business* is there at present in attention to politics?

There is little danger of the recall being used too often. As Mr. Davis has indicated in the *Proceedings* of the National Municipal League for 1906, it is far easier to get a man to sign a petition for than against a person.[1] And there is need to be wary. In signing a petition making untruthful charges, the elector ren-

[1] See below p. 317.

ders himself susceptible to a criminal libel suit. The experience in Los Angeles has been that more than twice as many people are willing to vote for removal of an officer when it comes to the recall election than are willing to sign the petition. The percentage of signatures required on the petition should therefore not be too high—twenty-five per cent. being in all ordinary conditions adequate. Thirty-five, forty per cent. clearly annuls its use.

The percentage of signatures required on the petition is twenty in St. Joseph, Fort Worth, Grand Junction and Berkeley; twenty-five in Iowa, Kansas, Oregon, Austin, Texas, and Lewiston, Idaho; thirty in Colorado Springs; and thirty-five in Dallas, Texas, and Tulsa, Oklahoma. In some of the non-commission cities in California it rises as high as forty, fifty-one and even sixty per cent. The sagacious statesmen in the Illinois legislature last year fixed the percentage for that state at seventy-five. The basis on which the percentage is reckoned varies greatly in the different cities. In Los Angeles the standard taken is "the vote cast for all candidates for the office at the last general city election." In Iowa, it is "the entire vote for all candidates for the office of mayor at the last preceding general municipal election"; in Fort Worth, "the entire number of persons entitled to vote in said city at said time"; in Grand Junction, "the last preceding vote cast for all the candidates for governor of the state of Colorado by the electors of the city"; in Boston, "a majority of the qualified voters registered in

said city for state election"; in Oregon, "the electors who voted in his district at the preceding election for justice of the supreme court."

If the office which usually receives the least total vote be taken as the basis for the recall petition, the same result is arrived at as if a low percentage of signatures were required in order to effect a recall. The fairest test would probably be the total number of votes cast for the office in each particular instance. But whatever office be taken as a standard, the recall should in the election of that one incumbent encourage a very heavy poll because every "stay-at-home" vote in that one election would potentially depreciate and jeopardize the permanence of all other official tenures by just so much facilitating a possible recall in the future. If the basis for the recall petition for each office, however, be its own total vote at the last preceding election, then, theoretically, all offices ought uniformly to poll a heavy vote.

Generally, only one election is sufficient to decide whether the incumbent is to continue in office, and, if he is removed, who is to succeed him. But in some cities, of which Dallas, Texas, Tulsa, Oklahoma, and Tacoma, Washington, are instances, something similar to the French *ballotage* and identical with the German *engere Wahl* has been adopted—that is, if more than two candidates run for an office and none receives an absolute majority of all the votes cast, then this election serves only as a primary to a supplementary election in which only two candidates, the ones receiving

the highest and second highest number of votes at the primary, are the competitors.

When Tacoma, Washington, recalled her mayor, last spring, there were in addition to the officeholding mayor two other candidates for the office. Though sixty-two per cent. of the voters in this first election indicated that they desired a change in the mayoralty, they were not unanimous in their choice as to the incumbent's successor, forty-five per cent. voting for one candidate and seventeen per cent. for another. Even though Mayor Fawcett had obviously lost the public confidence, since he received only thirty-eight per cent. of the total vote polled, he was permitted through this proviso in the Tacoma recall to stand for still another election, the first being now considered merely a primary. The people, however, again repudiated him, and elected his opponent.

Aside from these few cities, the people are spared and expense of a second election since a plurality is all that is needed to elect a successor to the one recalled. To this there is but one exception, that of Austin, Texas. There a practice more peculiar than the one just described exists—a practice no doubt devised by designing politicians in order to bring the recall into great disfavor, if not to render it altogether inoperative. In Austin the bare issue of recall is first presented to the people at a special election when it has been so petitioned by the necessary percentage of voters. If they decide in favor of a recall at this election, the office is summarily declared vacant and the

incumbent is forbidden to be a candidate to succeed himself. His successor is then selected by the method used in Tacoma. The clumsiness of the Austin charter necessitates never less than two elections, and sometimes, when an absolute majority of the voters are disunited and refuse to support some one candidate, three elections are necessary in order to recall an official.

The successor to the one removed usually holds office only during the unexpired term. Boston is the sole exception to this rule. There, at the general state election in the second year of the mayor's term, the question is submitted to the voters whether they wish a new election for mayor to be held at the city election in the following January. If a majority of the registered voters answer this question in the affirmative, such an election is held. If a new election is held, it is for a four-year term, with a similar power of recall in the second year. Cases where the recalled officer is afterwards publicly discriminated against are not altogether wanting. Berkeley, California, was the first to prohibit one who has been removed, or who has resigned while such proceedings were pending against him, from being appointed to any office within one year. Other cities, such as Grand Junction and Colorado Springs, Colorado, have copied this provision into their charters word by word.

The city clerk is almost without exception allowed extra help by the council in examining the validity of the signatures. The charter of Lewiston, Idaho, some-

what differently from the Oregon law, provides, however, that such extra help, not exceeding in cost the sum of one hundred dollars is to be paid by the petitioners who shall deposit the sum necessary with the city clerk at the time of filing the petition. Any surplus in the amount deposited over and above the expense incurred shall be returned to the persons by whom the same was deposited. With this exception, and all elections held against an official in Oregon subsequent to the initial one, the cost incident to the recall election is made a public charge.

The strongest case against the recall is, perhaps, its expensiveness. In a large city the size of New York or Chicago, it probably would be prohibitory. In Los Angeles the cost incurred through its exercise is said to have been nine thousand dollars, a sum the Californians considered a mere bagatelle compared to the benefits derived from its exercise. The wisdom of having the petitioners stand the cost of certifying and verifying the signatures as in Lewiston, Idaho, is open to serious doubt. In some states it certainly would be held unconstitutional for being a new and additional qualification for the exercise of the suffrage. It virtually constitutes a property qualification upon the right to vote.

The recall is of special significance, since if it prove practicable, and this its limited experience seems to promise, it may become the means of a most salutary improvement in municipal government—the lengthening of the term for elective officials. Its in-

corporation into city charters has already shown a movement in this direction. Berkeley and San Diego, California, Colorado Springs and Grand Junction, Colorado, have extended the term of the councilmen, or commissioners, to four years. Illinois, also, provides a four-year term; South Dakota a term of five years. Where the recall has been introduced it seems to be expected that public opinion will supersede the need of actual voting. There can be no doubt that all superfluous elections, and hence all needlessly short terms of office, complicate politics and weary the elector.

CHAPTER XIII

THE RECALL AS A MEASURE OF POPULAR CONTROL

In an address at the Atlantic City meeting (1906) of the National Municipal League Thomas A. Davis contributed this discussion.

Before election candidates as a usual thing are profuse with promises, but it is remarkable how quickly after being elected these promises are forgotten and how the wishes of the people are thrown to the winds. Instead of conducting municipal, county and state governments for the people, in many cases we are forced to the conclusion that the members of these public bodies elected by the people even sit there as the paid representatives of private interests, while the public treasury is looked upon as the proper thing to be robbed and plundered.

As a usual thing candidates are elected or appointed to public office for terms ranging from one to five years. After they have been inducted into the office, no matter how shameful or degrading their conduct may be, there is not at the present time any adequate manner in which the public can call to account an erring public servant. The public servant becomes the

public master for the balance of his term, and in many cases we have seen these acts of a man committed during his term forgotten when his term is about to expire, and the person reëlected to the office with perhaps an increased majority. Of course, such an occurrence as this is due to apathy and indifference of the electors, and so long as they are willing to remain in that state, they probably get about as good government as they deserve.

If a man employs an agent for a term of years by contract, and that agent betrays his principal, the principal may terminate the contract and get rid of the faithless one. Officeholders stand in the same position to the public as the agent does to the principal. They are simply the instruments for carrying on the business of the public, and if they are faithless in performing their duties the law should provide adequate means for getting rid of them and putting others in their places. This thought no doubt has been in the minds of people for a long time, but it was not until such a method of procedure, which has been designated the recall, was put into effect in Los Angeles, California,[1] that this section of the country came to the conclusion that their theories had materialized in the Far West, and an agitation has been accordingly started to consider the advisability of such a law in New Jersey.

The recall is a method by which it is possible for

[1] See the paper of Charles D. Willard on Los Angeles in the New York volume of *Proceedings* of the National Municipal League for further references to the recall.

the public to free itself from incompetent and objectionable officials. As outlined in the Los Angeles statute the law applies to elective officers. If the public wishes to vacate the office of an objectionable official, a petition must be signed by twenty-five per cent. of the entire vote for all candidates for that office, demanding the election of a successor to the officer sought to be removed. The petition must state the grounds upon which the removal is sought. The signers must put their addresses after their names and the whole petition shall be verified by the oath of at least one person who saw all of the others sign. The petition, thus verified, is filed with the city clerk, who within ten days after filing examines it for the purpose of ascertaining if the necessary number have signed, and issues a certificate as to his finding. If he finds the petition insufficient, it may be amended in ten days after the issuance of his certificate. If still insufficient after such amendment, it is returned to the petitioners without prejudice against the filing of another petition. If the petition is found by the clerk to be sufficient, he issues his certificate to the municipal governing body to that effect. The governing body shall then order an election to be held within not less than thirty days and not more than forty days from the date of the certificate. The election shall be conducted as other elections are conducted. The Los Angeles statute provides that the person sought to be removed may be a candidate to succeed himself, unless he requests otherwise in writing, and unless he so

requests the clerk puts his name on the ticket as a candidate. If some candidate other than the incumbent receives the highest number of votes he shall be elected and serve for the unexpired time of the person complained against, who shall be removed. If the incumbent receives the highest number of votes he shall continue in his office. These, briefly, are the provisions of what is designated as the recall, and are a part of the statute law governing the city of Los Angeles.

In the consideration of it here the first question naturally would be, do we need it? It would appear to me to be unnecessary to go into any extended argument to convince all present and all who are not present that if the recall will do what the provisions that I have stated allege, then we undoubtedly need it and need it very badly, and have needed it for a great many years. Probably there are very few here present who have followed municipal, county and state affairs in New Jersey who do not now conclude that had we the recall in New Jersey in years gone by, and if things then happened that have happened, the law would certainly have had to work overtime. Without particularizing instances, we can recall to our minds cases within our knowledge where the people of our own neighborhoods would have welcomed it, in order to rid themselves of officials not only incompetent, but whom we believe to have yielded to the corrupting influence of money.

The next question that might be asked is, is recall fair to official and to people? In Los Angeles twenty-

five per cent. of the entire vote for an office is required to be signed to a petition before the machinery of recall can be set in operation. Considering the fact that for an ordinary office there may be from three to six candidates, this percentage would certainly seem to be large enough to remove the suspicion of unfairness, because it is far easier to get a man to sign a petition for a person than it is to sign one against a person. Were the recall adopted in New Jersey the percentage might not be fixed at twenty-five per cent.; it might be more or it might be less. So far as the incumbent is concerned, after the petition is filed against him he still has the opportunity under the method of procedure to vindicate himself, and if he makes no move at all the law orders him put upon the ticket as a candidate for reëlection. It seems, therefore, that the provisions are equitable in attempting to take care of both accused and accuser.

Query might be made, is it not likely that the right to petition might be abused and petitions filed without just cause? I think we can safely say there would be no danger of abuse of the right to petition. The experience of those familiar with municipal bodies is that even now the people of a neighborhood may tolerate an abuse of their rights for a considerable time before petitioning their local governing bodies for a correction of the abuse. Again, if the percentage of the electors required to sign is made, for example, twenty-five per cent., it would be impossible to procure such a number of signers unless the petition was

based upon justice. Publicity and public opinion are the great influences in our country to-day, and when the movement to put into operation the machinery of recall is begun, it must receive the approval of the people or it will absolutely fail.

We have in the state of New Jersey to-day a law which permits a small number of taxpayers (twenty-five) to petition a supreme court justice for the appointment of a commissioner to investigate municipal and county affairs. The number of signers required is so small that it might be easily abused, yet all we have to do is read the newspaper accounts of such investigations to be convinced that in every case where application was made and a commissioner appointed, the investigation should have been carried on.

There is one provision of the Los Angeles plan which, to my mind, should be enlarged upon if the state of New Jersey is to adopt the plan of recall. The Los Angeles plan apparently applies only to elective municipal officials. I can see no good reason, if we should ask for the enactment of a statute, why it should not be embodied in a general law and why officials affected should not be municipal, county and state officials, both elective and appointive.

In the municipalities to-day there are very few officials elected outside of the mayor, the governing body, and the board of education. Practically all the other officials, such as assessors, tax commissioners, fire commissioners, police commissioners, boards of health, boards of assessment, and city officials are ap-

pointed either by the mayor or the governing body, while in the counties and state there are innumerable boards and officers that are not elected at all, but are appointed by an officer or a body, which is itself elected. It seems to me that the recall should not stop as in Los Angeles at elective officers, but all officers, boards or bodies, whether elective or appointive, should be amenable to the public and it should be within the power of the people to call them to task whenever their conduct justifies it. The method of procedure outlined in the Los Angeles statute covers the point as to elective municipal officers. Of course, if we go beyond this and embrace municipal, county and state officials, elective and appointive, the *modus operandi* would have to be framed to suit the case.

It is rather difficult to say, without discussion and consideration, what method of procedure should be adopted to bring the provisions of recall to bear upon an appointive officer. The Los Angeles provisions will not apply. This is a question that might well be discussed until a proper plan is adopted, if the suggestion appears to be a proper one. It seems to me that in the case of an appointive officer the petition to be signed by a certain percentage or number of taxpayers should be presented to the appointing power in the shape of charges, and the appointing power should either place the accused on trial before itself upon the charges, or appoint a commission, outside of its own number, to hear the charges and conduct the trial. If the accused is found guilty that should terminate his right to hold

the office, and if not guilty he should be allowed to continue therein.

In the last session of the New Jersey legislature, two bills prepared by a committee of the New Jersey Civic Federation were introduced, attempting to put the recall into effect in the state of New Jersey. The bills were known as Senate Bills Nos. 169 and 170. They were referred to a committee but were not enacted into laws. It was hardly expected that the bills would be enacted into laws at the session at which they were introduced, but the purpose of having them prepared and introduced was to attract the attention of the public, and induce discussion on the recall principle. Several societies have already discussed the subject, and it is hoped that it will be widely discussed before another legislature shall meet, at which time the passage of a recall law will be urged with the expectation that such a law will find its way into the statute books of the state of New Jersey.

CHAPTER XIV

THE RECALL IN LOS ANGELES [1]

In the autumn of 1899 the citizens of Los Angeles, believing that their charter (adopted in 1889 when the municipality had scarcely reached the proportions of a good-sized town) had become inadequate to meet the newer conditions, elected a board of freeholders for the purpose of drafting a new charter. When this body had nearly completed its draft, however, the supreme court of California decided, upon a technical point, that the board was not legally constituted, and its draft could not be submitted to the people. When a new board was chosen, however, much of the work done by its predecessor was utilized, and in 1902 the voters were given the opportunity of passing upon a new charter which contained, among other novel provisions, an arrangement for the recall of elective officers. After the adoption of the charter at the polls it went before the state legis-

[1] A summary of an article by Charles Dwight Willard, secretary of the Los Angeles Municipal League, in *La Follette's Magazine*, August 7, 1909.

lature for ratification, and there a vigorous opposition to the recall feature was encountered. For a time it appeared as though this provision might be eliminated. The precedent, however, was for the unconditional acceptance of all charters which had been endorsed by the voters of a city and the legislature did not, in the end, venture to depart from this.

After the final adoption of the new charter in 1903 it was not long before the recall provision was put into active use. The city council of Los Angeles was at this time made up mainly of machine politicians, who derived much of their strength from the aggressive support of a Republican newspaper. When the contract for the city's printing was about to be awarded it was found that the proposal made by this newspaper was about $15,000 above that made by the lowest bidder,—an independent journal. Nevertheless, the council awarded the contract at the higher figure.

It happened, however, that the newspaper which secured the contract was an aggressive antagonist of the local labor unions. It was conducted on the principle of the open shop. The labor leaders, accordingly, opened a campaign of protest against the award, and in due course took steps to secure the recall of a councilman from the sixth ward of the city. This councilman had voted for the award, although a large number of workmen voters were enrolled in his ward. The necessary signatures for a recall petition (twenty-

five per cent. of the votes polled at the last election) were secured and a recall election ordered. An opposing candidate was secured and at the election won by a very large majority.

The second use of the recall in Los Angeles brought the voters of the whole city and not merely those of a single ward into action. At the municipal elections of 1906 there was a strong sentiment in Los Angeles that the government of the city should be entirely non-partisan, and an organization was created to help bring this to pass. A slate of candidates was put in the field, and in addition to this there were, of course, tickets put forward by the Republican and Democratic party organizations. It happened that all three candidates for mayor were well known and the result of the election would have been very close had not the Republican machine, in the closing days of the campaign, thrown its strength to the Democratic candidate, thereby electing the latter. The mayor-elect was Mr. A. C. Harper, an officer in one of the largest Los Angeles banks and a business man of excellent standing. He was duly installed in office and began with the advantage of a general popular impression that he would conduct a highly successful administration, notwithstanding the methods used by party leaders to secure his election.

But events soon dispelled this illusion. The appointments which Mayor Harper made during his first year in office were of a poor type, and rumors that the mayor was shielding wrong-doers from the enforce-

ment of the laws were soon in currency. Matters came to a head when the city prosecutor, Mr. T. L. Woolwine, made newspaper attacks upon the mayor and several of his officials, charging them with the protection of vice. Newspapers printing the charges were at once sued for libel. But before the matter could be threshed out in the courts the Municipal League of Los Angeles held a meeting and, after full discussion, instructed its executive committee to undertake the circulation of a petition for the mayor's recall. Eight thousand certified signatures were necessary; but within a fortnight eleven thousand had been secured, and an election was ordered.

Some difficulty was experienced in securing a candidate to take the field against Mayor Harper, but Mr. George Alexander, who had been for a number of years county supervisor, was prevailed upon to undertake the leadership of the anti-Harper forces. Before the election came on there were some additional disclosures concerning Mayor Harper's connection with wrong-doing, and upon the publication of these he decided to resign. This action was taken two weeks before the day set for polling. The council which, under the charter, had the right to fill vacancies, chose a mayor *pro tempore,* and the election was allowed to proceed.

The only remaining name upon the official ballot, in addition to that of Mr. Alexander, was the name of Mr. Fred C. Wheeler, a candidate put forward by the Socialists. The Harper supporters now threw their

strength to Mr. Wheeler, and made a vigorous attempt to secure his election. They were not successful, however, and Mr. Alexander won by a majority of about 1,600 votes. The consensus of opinion is that he made a successful mayor; he was renominated and reelected at the two succeeding elections.

CHAPTER XV

THE RECALL IN SEATTLE[1]

ON March 6, 1906, the voters of Seattle by a majority of 8,047 out of a total vote of 10,577 wrote into the city charter the provision for the recall of all elective officers of the municipality.

The process is simple. "A petition signed by voters entitled to vote for a successor to the incumbent, equal in number to at least twenty-five per centum of the entire vote for all candidates for the office, the incumbent of which is sought to be removed, cast at the last preceding general municipal election, demanding an election of a successor of the person to be removed" must be filed with the city clerk. This petition must bear "a general statement of the grounds for which removal is sought." "The signatures need not be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number." "Any person competent to make affidavit may circulate" the petition and "shall make oath before an officer competent to administer oaths that the statements therein made are true, and that

[1] By Fred Wayne Catlett, secretary to the mayor of Seattle.

each signature to the paper appended is the genuine signature of the person whose name purports to be thereunto subscribed." Ten days are allowed the city clerk to check the signatures with the poll books. In any case he must attach a certificate "showing the result of the examination." If this certificate shows the petition insufficient, ten days are allowed for the filing of a supplementary petition. Ten days more are given the clerk to check this petition. If insufficient, the whole petition is returned to the person filing it "without prejudice to the filing of a new petition." If a petition is found "sufficient," the clerk must so certify to the city council at once, and it must set the date for the election "not less than thirty days nor more than forty days from the date of the clerk's certificate." All the ordinary steps to hold an election are taken. The incumbent's name is placed on the ballot "unless he requests otherwise in writing." The candidate receiving the highest number of votes is chosen to serve out the remainder of the incumbent's term.

That is the whole of the "recall" charter provision. At its first trial it was discovered that it provided no method of nominating opponents of the incumbent. Fortunately the state legislature was in session at Olympia, and an act known as chapter 2 of the Session Laws of 1911 was rushed through as an emergency measure, providing for nomination by petition signed by electors equal in number to not less than five per cent. of the total vote cast for the incumbent

against whom the recall is directed. Each elector signs his place of residence, his business, and his address by street and number. This petition must be filed with the city clerk ten days before the election.

A short time thereafter, to cure another defect, chapter 6 of the Session Laws of 1911 was enacted, granting each candidate the privilege of appointing challengers at each polling place, one of whom is entitled to be within the polling place during the whole time the polls are open.

In practice the recall has been operated as follows: Those favoring a recall of an officer have organized an association, collected funds, formulated certain very general charges of inefficiency, and maladministration, printed many hundreds of petitions, and placed them in the hands of anyone willing to take them.

At the top of each petition is the general statement of the charges, which may or may not have any foundation in fact. In the attempted recall of Mayor Dilling, precisely the same set of charges was used as in the recall of Mayor Gill, though some of them seemed inapplicable. Below the charges is the statement that the signer is a voter entitled to vote for a successor to the incumbent, and space for from ten to fifty names. At the bottom is the oath required by the law of the person taking the signatures. It is an "impossible" oath, for it requires the passer of the petition to swear that the statements therein made, *i. e.*, that the signer is a voter, qualified to vote for a suc-

cessor to the incumbent, that his residence is such and such a street and number, are true, and that each signature to the petition is the "genuine signature of the person whose name purports to be thereunto subscribed." In a city of two hundred and fifty thousand people, as a practical matter, no person passing a petition can honestly take such an oath to one name in ten. As it is actually worked, petitions are placed in the hands of many irresponsible people who indiscriminately solicit signatures on the streets and in the office buildings, ignorant in the great majority of cases not only of the voting qualifications of the signer, but also of the genuineness of the name and signature.

Some of this passing of petitions is done gratuitously, but much of it is also undertaken by paid solicitors—though sometimes paid by the day, more often it is at so much per name, generally ten cents. This is a great incentive to careless work on the part of the solicitor and a cause of some irresponsible and thoughtless signing by voters. Any name which sounded like the name of a real person counted for the ten cents, and payment was necessarily made before the checking by the city clerk. Solicitors, when asked why the voter should sign, often replied, "Oh, I don't know; all I know is, that I get ten cents a name." If the voter had no settled convictions, he signed to be a "good fellow and help along."

As soon as the association having the matter in charge thinks it has a safe margin of signatures above the required number, it calls in the petitions and car-

ries them to the clerk's office, where they are counted, numbered and receipted for. The names on each petition are also counted and the total number of signatures determined. If the total number is less than twenty-five per cent. of the total vote cast for the office at the "last preceding general election," the petition —for all the separate sheets are regarded as one petition—is not filed but returned to the association. The presentation of a petition *prima facie* sufficient is jurisdictional.

But if it is *prima facie* sufficient, the checking begins. In practice in this city two or three checks are made. On the first check all questionable signatures are thrown out. On the second and third check, those thrown out are reëxamined and many of them are restored. The causes for the rejection of names are no registration, illegible or forged signatures, improper addresses, and, in the case of the women, signatures with the initials of the husband. The parties interested always keep paid or voluntary workers to guard the checking. Disputed names are referred to the comptroller or his deputy for decision. If the dispute turns on a question of law, the opinion of the corporation counsel is asked and followed. If the number of genuine signatures exceeds the required twenty-five per cent. the comptroller certifies it to the city council as " sufficient."

If the number is found insufficient, the person filing the petition is notified and has ten days to make up the deficiency. As only two filings are contemplated

under our law, he and his association make haste to collect all the signatures possible and file them before the expiration of the time limit. This supplementary petition is checked in the same manner as the original petition. If it contains enough genuine signatures to make up the deficiency, the comptroller certifies it as "sufficient" unless before his certificate is made out enough of the genuine signatures are withdrawn to render it insufficient.

The recall law is silent about withdrawals, but a decision of our state supreme court had affirmed the right to withdraw names from an initiative petition, and the corporation counsel advised the comptroller to accept them in the case of the recall. Then the question arose over the form of the withdrawal. Must the request to withdraw a name be verified before a notary as was the original signature? Where the withdrawal was secured by personal solicitation, there was no difficulty, but where the withdrawals came in by mail, verification was a practical impossibility in many cases. Our city comptroller agreed to count the postal withdrawals if all were verified by the oath of the person in charge of their collection that each card had been received in due course of mail through the United States Post Office, and that he believed the signatures to be genuine. It is quite apparent that this oath, also, furnishes no adequate safeguard against fraud.

Seattle has given the recall two trials—very different in character and result, thus serving to test the

law in many different respects. For the sake of clearness, we may call the two trials, the Gill recall, and the Dilling recall. The former was successful; the latter unsuccessful.

The Gill petitions contained 11,418 names, of which 9,626 were termed genuine by the comptroller, a shrinkage of sixteen per cent. Most of these petitions were passed by responsible persons, and all were carefully checked by the Public Welfare League before filing. As 8,671 names were enough, the petition was certified "sufficient."

Just before the filing of the Gill petitions, the women of Washington were enfranchised. Neither this occurrence nor a second recall within the one term of two years had been contemplated by the framers of the recall law. The basis for determining the number of names necessary to institute it was "the total number of votes cast for the incumbent at the last general municipal election." A recall election is in its very nature special; therefore, in the Dilling recall, the vote at the Gill election became the basis for ousting Dilling. The evident intent had been to require twenty-five per cent. of the number cast at the time the person to be recalled was elected, not the number cast at the time his predecessor was chosen. But in Mr. Dilling's case the strict letter of the law permitted the institution of the recall with 8,671 votes as before, although at his election 62,322 votes were cast, of which 15,581 is twenty-five per cent.

In the Dilling recall, the original petition contained

10,254 names, of which 7,295 were declared genuine. As this was insufficient, a supplementary petition of 2,617 names was filed, checking 1,753 as genuine. This would have been sufficient by 377, had not 931 withdrawals been filed before the certificate was prepared. Only 527 were checked because it was then perfectly apparent that the petition was insufficient. Had 15,581 names been necessary, the petition would never have been dangerous. These figures show the rejection of sixteen per cent. of the names on the Gill petition, and thirty per cent. on the Dilling petition—in spite of the stringent oath required from the solicitors of names.

The increase in the percentage of rejected names in the Dilling petitions over the Gill petitions is due largely to the careful checking of the latter by the Public Welfare League before filing them with the comptroller. The large number of names thrown out has led some people to contend that the signing of the petitions is not sufficiently safeguarded. The causes for the rejection, however, hardly sustain this position, for although a few fraudulent and forged signatures were found, most of those thrown out were names of women who had signed the initials of their husbands, thus making it impossible to identify them, and the names of men, not registered, or who had given incorrect addresses which could not be corrected from the records. When we consider how very careless the majority of people are, even in the most serious business affairs such as the signing of deeds, we need

not be surprised at the large percentage of rejected signatures.

It has also been the idea of some people that there was too much irresponsible signing. It is said that "you can get people to sign any sort of a petition, provided you don't ask them for money." This is supported by the fact that upon solicitation 1,100 names were withdrawn from the Dilling petition after it was filed. To my own mind this is not a serious evil. The recall is a new political contrivance. Petitions hertofore have in the main been harmless. The people have to learn that now, in the case of the initiative and the recall, petitions are serious. They mean increased expense and, perhaps, all the disquiet of a municipal campaign. For myself, I believe that this evil will be less and less apparent as our voters become more accustomed to the workings of these democratic institutions.

Mention has already been made of the fact that petitions were frequently passed by paid solicitors with every incentive to careless work. But the task of collecting the signatures of twenty-five per cent. of the voters is so big that it could seldom be accomplished without paid assistance. Others object to the passing of the petitions on the streets and in public places on the ground that it parades our civic contention before all our visitors. But where one person observes our discord in that way, a thousand may read of it in our newspapers.

So far we have been examining the various parts

of the recall machinery separately. Let us now consider how the recall law as a whole has worked in Seattle.

For over four years the recall remained an unused part of our charter. Then arose just such a situation as, in my opinion, the recall was designed to meet. It is not my purpose to portray in all its disgusting details the alliance between our police department and the "vice syndicate." To be sure, Mayor Gill was elected on the platform of a restricted district, and good citizens cannot escape all blame for his success. But the circumstances surrounding his election afford some excuse. His opponent at the primary, though an able and worthy man, was of foreign extraction, a poor talker, and a man who had the reputation, whether deserved or not, of being unable to work with other men. He had been dismissed from office by Mayor Niller largely for that cause. For these reasons he was not the man around whom all the opponents of Gill could rally with enthusiasm. At the election Mr Gill was opposed by ex-Mayor William Hickman Moore, a Democrat, and although Judge Moore ran way ahead of his ticket, partisan politics carried Mr Gill into office. In accordance with his ante-election promises, he established a "restricted district," but it proved to be "restricted" only in name. All kinds of vice and crime flourished there under the protection of the police. And the whole institution was in direct violation of the criminal laws of the state. Gill had also promised that there should be no open gambling

It was not long, however, until gambling joints were operating within a few blocks of the city hall—also under the protection of the police.

One of Gill's appointees was Richard M. Arms, a former employee of the Seattle Electric Company, the corporation which owns and operates most of our street-car lines, and furnishes a large part of our light. In the latter service it competes directly with our municipal lighting plant. It was charged that Arms was operating the municipal plant in the interest of the Seattle Electric Company. While this was one of the issues in the recall campaign, it was not the main issue. The recall would never have been invoked except for the alliance between the administration and organized vice.

Our charter also provides a method of impeachment of the mayor by a vote of two-thirds of the members of the city council, but the council, as is likely to be the case, would not act. It never has impeached an officer in the history of the city. Impeachment being impossible, resort was made, therefore, to the recall for the first time.

The movement was started by an organization known as the Public Welfare League. With great energy the work of collecting the signatures was pushed. Many thought the recall unfair and un-American: that the voters had put Gill in and that he was entitled to stay; that those who had not voted for him, and those who did not vote at all should "take their medicine." A great deal of excitement

and argument was necessary before the petitions were finally filed, but filed they were.

A very bitter campaign followed. Behind Mr. Gill lined up all the old politicians, all the saloon and gambling element, the breweries, the pool-rooms, the cigar stands, the habitués of the restricted district, the liberal element, the men opposed to the recall "on principle," and a good many of the so-called "business men." On the other side were the Public Welfare League, the Municipal League, all the Protestant churches, the various women's clubs, and also a large part of the influential business and professional men. So great was the interest in the coming election that with the aid of the women the registration leaped from 47,000 to over 72,000.

On election day 62,322 votes were cast (about one-third being the votes of women), of which Dilling received 31,919, Gill 25,705, and Brown, the Socialist, 4,698.

The new mayor adopted the policy of strict law enforcement. The restricted district had been closed by an injunction, and remained closed. Open gambling was stopped. Wappenstein, chief of police, and Arms, superintendent of lighting, resigned. A month later every one of the Gill element in the council was defeated. The alliance between the city government and the vicious element had been most rudely shattered.

Another important result of the election of Mr. Dilling was that the recall was shown to be "work-

able." In the future its very existence should be a deterrent to the dishonest elective official. But to make it an effective deterrent, it had to be worked once. Gill and his friends at first scouted the idea of a successful recall; now the most hardened politician will feel unsafe.

Some of the people of Seattle failed to realize that the recall was an emergency measure, and another lesson in its use was necessary to teach them that fact.

The direct cause of the attempt to recall Mayor Dilling was his refusal to accede to the written demand of a "Citizens' Recall Association" to remove from office the head jailer, John Corbett. Charges of cruel and inhuman conduct were made against him, practically all of them antedating the administration of Mayor Dilling. The chief of police sustained Corbett, and the mayor declared that no credible evidence had been produced sufficient to justify him in requiring the chief of police to dismiss him. If dismissed, Corbett, as a civil-service employee, could have appealed to the civil-service commission and would have been entitled to a trial by that body.

Certain reformers were also displeased by the mayor's veto of the anti-smoking bill, prohibiting smoking on the street cars, and the anti-strap-hanging bill, limiting the number of standing passengers in a street car to fifty or sixty per cent. of the seating capacity and placing a penalty upon the company if it failed to furnish an intending passenger with transportation within the regular "headway" time.

In these circumstances, the old Gill crowd saw its chance, and proceeded to lend its strength to the recall movement. The whole vicious element, together with a number of well-intentioned men and women, signed the petitions, which were duly filed some six or seven weeks after the fight began.

Before going further, I should say that the Association had also attempted the recall of four of the city councilmen—Blaine, Wardall, Kellogg and Steiner. The Steiner petition was never filed. The other petitions were filed, but not having the required twenty-five per cent., even if all the signatures were genuine, the filing marks were cancelled, and the petitions returned to the Association.

The petition directed at Mayor Dilling contained 10,254 names. This total shrank to 7,295 on the third check. The Association tried to make good the deficiency within the ten days allowed by the charter. Owing to peculiar circumstances this time was stretched to twelve days including Labor Day and election day, but with the advantage of these extra and extraordinary days, the supplementary petition contained but 2,617 names, reduced to 1,753 by the check. As stated before, this was 377 more than enough. The corporation counsel had ruled, however, that names could be withdrawn, and on the faith of this, Mayor Dilling's friends had organized and secured about 1,100 withdrawals. Of these 931 were filed. As the check of 527 showed clearly that the recall had failed, the comptroller went no further with the count.

This second experience with the recall demonstrated that although the recall is "workable," it cannot be worked successfully except when there is serious cause for it. Save for the peculiar wording of the charter and the enfranchisement of the women after Gill's election, the Association would never have succeeded in collecting anything like enough names. The failure of the second attempt put the necessary damper upon those persons who thought they had only to start a recall to make it a success.

Naturally public opinion in Seattle is divided over both the principle of the recall and our own particular recall law. I believe the majority favor the recall principle and think it has fully justified its existence in our city charter. Many friends of the recall principle desire to see our law amended in various ways. The daily press has informed us that the charter revision commission has approved the proposal of the former corporation counsel by which the signatures on the petition must equal five per cent. of the total vote cast at the election at which the incumbent was chosen before it is presented to the city comptroller. The petition is then left in his office until ten per cent. more have come in and signed. This plan reduces the percentage required but makes it much more difficult to sign. It throws much more security about the signing and does away with a great deal of the solicitation of signatures. To make it more difficult will destroy its value and relegate it along with the impeachment to a shelf in the political garret. Without the recall, the

people are helpless between elections; with it, and its efficiency unimpaired, they always have in their hands a power which can be exerted to bring to time an unfaithful or incompetent public official. Seattle's experience has amply demonstrated the utility of the recall.

CHAPTER XVI

SOURCES AND LITERATURE

THE appended list includes references to only a small part of the literature relating to direct legislation and the recall. An endeavor has been made to list only such discussions as have contributed substantial arguments or trustworthy information bearing upon either side of the question. Those which the general reader would probably find most useful have been indicated by an asterisk.

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APPENDIX

A LIST OF THE MEASURES SUBMITTED TO THE PEOPLE OF OREGON IN THE LAST FOUR ELECTIONS.

	YES.	NO.
1904.		
Direct primary law with direct selection of United States senator[1]	56,205	16,354
Local-option liquor law[1]	43,316	40,198
1906.		
Omnibus appropriation bill, state institutions[2]	43,918	26,758
Equal-suffrage constitutional amendment[1]	36,902	47,075
Local-option bill proposed by liquor people[1]	35,297	45,144
Bill for purchase by state of Barlow toll road[1]	31,525	44,527
Amendment requiring referendum on any act calling constitutional convention[1]	47,661	18,751
Amendment giving cities sole power to amend their charters[1]	52,567	19,852
Legislature authorized to fix pay of state printer[1]	63,749	9,571
Initiative and referendum to apply to all local, special and municipal laws[1]	47,678	16,735
Bill prohibiting free passes on railroads[1]	57,281	16,779
Gross-earnings tax on sleeping, refrigerator and oil-car companies[1]	69,635	6,441
Gross-earnings tax on express, telephone and telegraph companies[1]	70,872	6,360
1908.		
Amendment increasing pay of legislators from $120 to $400 per session[3]	19,691	68,892
Amendment permitting location of state institutions at places other than the capital[3]	41,971	40,868
Amendment reorganizing system of courts and increasing supreme judges from three to five[3]	30,243	50,591
Amendment changing general election from June to November[3]	65,728	18,590
Bill giving sheriffs control of county prisoners[3]	60,443	30,033
Railroads required to give public officials free passes[3]	28,856	59,406
Bill appropriating $100,000 for armories[2]	33,507	54,848
Bill increasing fixed appropriation for State University from $47,500 to $125,000 annually[2]	44,115	40,535
Equal-suffrage amendment[1]	36,858	58,670
Fishery bill proposed by fish-wheel operators[1]	46,582	40,720
Fishery bill proposed by gill-net operators[1]	56,130	30,280
Amendment giving cities control of liquor selling, pool rooms, theaters, etc., subject to local-option law[1]	39,442	52,346
Modified form of single-tax amendment[1]	32,066	60,871
Recall power on public officials[1]	58,381	31,002
Bill instructing legislators to vote for people's choice for United States senators[1]	69,668	21,162
Amendment authorizing proportional-representation law[1]	48,868	34,128
Corrupt-practices act governing elections[1]	54,042	31,301
Amendment requiring indictment to be by grand jury[1]	52,214	28,487
Bill creating Hood River County[1]	43,948	26,778
1910.		
Amendment permitting female taxpayers to vote[1]	35,270	59,065
Act establishing branch insane asylum in eastern Oregon[3]	50,134	41,504

[1] Submitted under the initiative.
[2] Submitted under the referendum upon legislative act.
[3] Submitted to the people by the legislature.

	YES.	NO.
1910—Continued.		
Act calling convention to revise state constitution[2]	23,143	59,974
Amendment providing separate district for election of each state senator and representative[2]	24,000	54,252
Amendment repealing requirement that all taxes shall be equal and uniform[3]	37,619	40,172
Amendment permitting organized districts to vote bonds for construction of railroads by such districts[3]	32,844	46,070
Amendment authorizing collection of state and county taxes on separate classes of property[2]	31,629	41,692
Act requiring Baker County to pay $1,000 a year to circuit judge in addition to his state salary[2]	13,161	71,503
Bill creating Nesmith County from parts of Lane and Douglas[1]	22,866	60,951
Bill to establish a state normal school at Monmouth[1]	50,191	40,044
Bill creating Otis County from parts of Harney, Malheur, and Grant[1]	17,426	62,016
Bill annexing part of Clackamas County to Multnomah[1]	16,250	69,002
Bill creating Williams County from parts of Lane and Douglas[1]	14,508	64,090
Amendment permitting people of each county to regulate taxation for county purposes and abolishing poll taxes[1]	44,171	42,127
Amendment giving cities and towns exclusive power to regulate liquor traffic within their limits[1]	53,321	50,779
Bill for protection of laborers in hazardous employment, fixing employers' liability, etc.[1]	56,258	33,943
Bill creating Orchard County from part of Umatilla[1]	15,664	62,712
Bill creating Clark County from part of Grant[1]	15,613	61,704
Bill to establish state normal school at Weston[1]	40,898	46,201
Bill to annex part of Washington County to Multnomah[1]	14,047	68,221
Bill to establish state normal school at Ashland[1]	38,473	48,655
Amendment prohibiting liquor traffic[1]	43,540	61,221
Bill prohibiting sale of liquor, providing for search for liquors, and regulating shipments of same[1]	42,651	63,564
Bill creating board to draft employers' liability law for submission to legislature[1]	32,224	51,719
Bill prohibiting taking of fish in Rogue River except with hook and line[1]	49,712	33,397
Bill creating Deschutes County out of part of Crook[1]	17,592	60,486
Bill for general law under which new counties may be created or boundaries changed[1]	37,129	42,327
Amendment permitting counties to vote bonds for permanent road improvement[1]	51,275	32,906
Bill permitting voters in direct primaries to express choice for president and vice-president, to select delegates to national conventions, and nominate candidates for presidential electors[1]	43,353	41,624
Bill creating board of people's inspectors of government, providing for reports of board in official state gazette to be mailed to all registered voters bi-monthly[1]	29,955	52,538
Amendment extending initiative and referendum, making terms of members of legislature six years, increasing salaries, requiring proportional representation in legislature, election of speaker of house and president of senate outside of members, etc.[1]	37,031	44,366
Amendment permitting three-fourths verdict in civil cases[1]	44,538	39,399

[1] Submitted under the initiative.
[2] Submitted under the referendum upon legislative act.
[3] Submitted to the people by the legislature.

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