UNIVERSAL
LIBRARY
OU_152305
UNIVERSAL
LIBRARY

OSMANIA UNIVERSITY LIBRARY

Call No. 321.4/L 91 P Accession No. 7839

Author Lowell, A, Lawrence

Title Public opinion & popular govern

This book should be returned on or before the date last marked below.

AMERICAN CITIZEN SERIES

EDITED BY

ALBERT BUSHNELL HART, LL.D.

PUBLIC OPINION AND POPULAR GOVERNMENT

A. LAWRENCE LOWELL

AMERICAN CITIZEN SERIES

EDITED BY ALBERT BUSHNELL HART, LL.D.

Outline of Practical Sociology; with Special Reference to American Conditions.

By CARROLL D. WRIGHT, President of Clark College. With Maps and Diagrams. [*New Edition preparing.*]

Actual Government as Applied under American Conditions.

By ALBERT BUSHNELL HART, LL.D., Eaton Professor of the Science of Government in Harvard University. With 6 Colored Maps and 11 other Illustrations and Diagrams. Crown 8vo.

Financial History of the United States.

By DAVIS R. DEWEY, PH.D., LL.D., Professor of Economics and Statistics in the Massachusetts Institute of Technology. With Diagrams. Crown 8vo.

Constitutional Law in the United States.

By EMLIN MCCLAIN, LL.D., sometime Lecturer on Constitutional Law at the State University of Iowa. Crown 8vo.

Principles of Economics; with Special Reference to American Conditions.

By EDWIN R. A. SELIGMAN, PH.D., LL.D., McVickar Professor of Political Economy in Columbia University. With 6 Colored and 22 other Diagrams. Crown 8vo.

Organized Democracy; An Introduction to the Study of American Politics.

By FREDERICK A. CLEVELAND, PH.D., LL.D. Crown 8vo.

Public Opinion and Popular Government.

By A. LAWRENCE LOWELL. President of Harvard University. Crown 8vo.

LONGMANS, GREEN, & CO.: NEW YORK

American Citizen Series

Public Opinion and Popular Government

BY

A. LAWRENCE LOWELL

PRESIDENT OF HARVARD UNIVERSITY

LONGMANS, GREEN AND CO.

FOURTH AVENUE & 30TH STREET, NEW YORK

LONDON, BOMBAY, CALCUTTA AND MADRAS

1919

COPYRIGHT, 1913, BY
LONGMANS, GREEN, AND CO.

First Edition, October, 1913
Reprinted with revision, March, 1914
Reprinted, August, 1919

Preface

THE substance of this volume was delivered in the spring of 1909 as the James Schouler lectures of that year at Johns Hopkins University, but the pressure of other duties has delayed the preparation of the book for publication until the present time. The contents speak for themselves.

For the collection of the data relating to the actual use of the referendum and the initiative, as well as some other matters, I am indebted to Prof. Thomas M. Hoover, formerly of Harvard, now of the Ohio State University, to Mr. Henry W. Cleary, formerly of Harvard College and the Harvard Law School, to M. Emil Hügli of Bern, and to my colleague Prof. W. E. Rappard of Harvard. I want also to acknowledge with gratitude the courtesy of the chancelleries of the Swiss cantons for their care in verifying the lists and figures sent to them, and of the recording officers of the several American states for the information they have kindly sent me about the voting in their states.

A. LAWRENCE LOWELL

CAMBRIDGE, June 5, 1913

Introductory Note

THIS volume of the American Citizen Series needs no editorial exposition, except to make clear its place in the series, and its relation to the other volumes. The intent of the various writers is to lay hold of those aspects and applications of American life which affect the organization of society and government. Therefore, economics, finance, social organization, guiding principles of government, constitutional forms, the nature of democracy, have been discussed in one or another of the volumes that have already appeared. President Lowell deals with the most difficult and the most momentous question of government,—how to transmit the force of individual opinion and preference into public action. This is the *crux* of popular institutions.

As throughout the series the effort of the author is to throw aside the husk and find the kernel; to penetrate through the current political phrases and show the psychological forces which lead to states of mind which are finally translated into laws and decisions.

This process inevitably leads to a study both of representative action and of the various forms of direct legislation. The deductions are backed up by two appendices which embody the most complete statement of the practice of the initiative and refer-

endum which has so far been made. The predictions, guesses and criticisms which are being made by the press and by experts can be tested up to and through 1912 by the recorded experience of sixteen Swiss cantons and thirteen American states.

The arrangement and subdivision of the work make it possible for high school and college classes to study the important topics treated in this volume; it carries with it a body of facts which illustrate the text; and it opens up the whole subject.

ALBERT BUSHNELL HART

Table of Contents

Part I

THE NATURE OF PUBLIC OPINION

CHAPTER PAGE

I. Public Opinion Must be Public

1. Opinion of a Majority not Always Public 4
2. Unanimity not Necessary 7
3. Rousseau's Common Will 8
4. Public Opinion and Universal Consent 9
5. Consent and Force 10
6. Numbers and Intensity in Opinion 12
7. Conclusion 14

II. Public Opinion Must be Opinion

8. Opinions are Only in Part Rational 16
9. Opinions Adopted from Others may be Real Opinions . 18
10. If an Integral Part of the Believer's Philosophy . . . 19
11. Otherwise an Opinion Must Involve a Personal Judgment of Facts 22
12. Importance of Distinguishing the Real Subject of Public Opinion 24
13. Opinion and Desire 26

III. Conditions Essential for Public Opinion

14. Doctrine of the Harmony of Interests 28
15. Growth of Race Feeling 31
16. Irreconcilables in Politics 32
17. Homogeneity of Population a Condition of Public Opinion 34
18. Another Condition is Freedom of Expressing Dissent . 36

IV. Questions to which Public Opinion Can Apply

19. Limits Imposed by the Necessity that the Opinion be Public 41
20. Benefit of a Written Constitution 44

CHAPTER PAGE

IV. Questions to which Public Opinion Can Apply (*continued*)

21. Limits Imposed by the Nature of Opinion 45
22. Knowledge of Facts Increasingly Difficult 46
23. Examples 50
24. Difficulty in Foretelling whether a Public Opinion will be Formed 53

Part II

THE FUNCTION OF PARTIES

V. Advertisement and Brokerage

25. Mobility of Modern Life 57
26. The Age of Advertisement 58
27. The Age of Brokers 60
28. Politicians as Brokers 61
29. Parties the Means by which Brokerage is Conducted . 64
30. Parties Enable the Voters to Act in Masses 67
31. Parties Frame the Issues for Popular Decision 69

VI. The Confusion of Issues

32. The Motives that Determine an Election are Often Obscure 72
33. But the Confusion is Less than if Parties did not Exist 75
34. In England the People Pass Judgment More on Measures, in the United States More on Men 76
35. Multiplicity of Parties in Continental Europe 79
36. Two Parties a Result of Political Maturity 81

VII. The Falsification of Public Opinion

37. Parties Cause a Bias 86
38. Parties Produce Unnatural Divisions 88
39. People can Say Only "Yes" or "No" 91
40. Influence of Moderate Elements. 92
41. Influence of Extreme Elements 95
42. Parties Prevent Distortion by Popular Vagaries . . . 96
43. Parties an Obstacle to Despotism 97

VIII. The Abuse of Party

44. Need of Scientific Study of Party Government 100
45. The Professional Politician 102
46. The People Attempt too Much 105
47. Frontier Conditions 109

Part III

METHODS OF EXPRESSING PUBLIC OPINION

CHAPTER PAGE

IX. Representation

48. An Election does not Always Express Public Opinion . 113
49. Representation of the Whole Nation and of Constituencies 115
50. Comparison of England and the United States 117
51. Remedies Proposed 120
52. Proportional Representation 122
53. The Theories of Delegation and of Personal Judgment 124
54. Comparison of England and the United States 125

X. Loss of Confidence in Representative Bodies

55. The Rise of Modern Legislatures 129
56. Recent Distrust of Legislatures 130
57. Causes of Loss of Confidence 131
58. The Pressure of Local Interests 133
59. The Pressure of Private Interests 134
60. The Lobby 135
61. Private Influences on Elections 137
62. Defects of Legislatures Exaggerated 139
63. Results of the Confusion of Thought 142
64. Remedies Devised for Legislative Defects 144
65. The Recall 147
66. The Direct Primary 149

XI. Direct Popular Action

67. The Referendum 152
68. The Town Meeting 152
69. The Referendum 154
70. Reasons for the Referendum 155
(*a*) Distrust of the Legislature 155
(*b*) Desire to Separate Issues 157
71. The Sphere of Efficiency 159
72. Negative and Positive Forms of Popular Votes . . . 162

XII. The Referendum in Switzerland

73. Compulsory and Optional 164
74. The Results 165

CHAPTER PAGE

XIII. The Referendum in America

75. Referendum on Constitutional Amendments 169
76. Referendum on Special Legislative Acts 171
77. The General Referendum 173
78. Actual Use of the General Referendum 174
(a) The Emergency Clause 174
(b) Number of Laws Rejected 176
(c) Character of Laws Rejected 180
79. Size of the Vote Cast 184
80. The Vote Cast in Switzerland 185
81. The Vote Cast in America 187
82. Attempts to Stimulate Opinion 191
83. The Local Referendum 193
84. Advantages of the Local Referendum 195

XIV. The Initiative

85. The Nature of the Initiative 198
86. Results in the Swiss Confederation 199
87. Results in the Cantons 200
88. Tendencies in Switzerland 201
89. Results of the Initiative in America 203
90. Nature of the Laws Enacted by Initiative 205
91. Nature of Proposals Rejected 207
92. The Initiative and Public Opinion 209
93. Complex Subjects Presented by Initiative 211
94. Close Votes and Public Opinion 214
95. Stability as Evidence of Opinion 216
96. Defects of the Initiative 217
97. Impossibility of Amendment 219
98. Does the Public Initiate 220

XV. Reflections on Direct Legislation

99. Trustworthiness of the Result 224
100. Delay of Legislation by Popular Votes 226
101. Indirect Effects of Direct Legislation 228
102. Measures Suited for Popular Votes 231
103. Direct Legislation will not Bring the Millennium . . . 233

Part IV

THE REGULATION OF MATTERS TO WHICH PUBLIC OPINION CANNOT DIRECTLY APPLY

CHAPTER PAGE

XVI. Representation by Sample

104. Three Methods of Delegating Authority 240
105. The Jury a Sample of the Public 242
106. The Object of Rotation in Office 243
107. The Use of the Lot 244
108. Selected Samples of the Public 246
109. Private Bill Committees in Parliament 248
110. Committee Hearings in America 249
111. Public Hearings in Massachusetts 250
112. Public Hearings in Other States 254
113. The Three Objects that Public Officers Serve are Often Combined 256
114. Selection of Different Kinds of Officers 258

XVII. Expert Administrators in Popular Government

115. Lack of Experts in Athens 264
116. Expert Administrators in Rome 265
117. Experts in Monarchies and Democracies 268
118. The Need of Experts To-day 271
119. Limited Use of Experts in American Government . . 274

XVIII. Experts in Municipal Government

120. Cities in America are of Recent Growth 278
121. The Lesson of European Cities 280
122. The Model Charter Discourages Experts 282
123. City Government by Commission 285

XIX. Control and Recruiting of Experts

124. Cause of the Distrust of Experts 289
125. Ignorance of the Relation of Experts and Laymen . . 291
126. Examples of the Proper Relation 293
127. The True Relation between Experts and Representatives of the Public 295

CHAPTER PAGE

XIX. Control and Recruiting of Experts (*continued*).

128. Methods of Creating the True Relation 298
129. Recruiting Experts for the Public Service 300

APPENDIX A. Results of the Referendum and Initiative in Switzerland

The Swiss Confederation, 1874–1912 306
Canton of Aargau, 1893–1912 311
Canton of Basle City, 1895–1912 315
Canton of Basle Rural, 1893–1912 318
Canton of Bern, 1893–1912 322
Canton of Geneva, 1882–1912 328
Canton of the Grisons, 1893–1910 330
Canton of Lucerne, 1893–1909 333
Canton of St. Gall, 1893–1912 334
Canton of Schaffhausen, 1895–1912 336
Canton of Schwyz, 1895–1910 338
Canton of Solothurn, 1893–1909 341
Canton of Thurgau, 1893–1910 347
Canton of the Valais, 1895–1913 350
Canton of Vaud, 1902–1910 353
Canton of Zurich, 1893–1908 353

APPENDIX B. Results of the Referendum and Initiative in America

Arizona, 1912 368
Arkansas, 1912 370
California, 1912 371
Colorado, 1912 372
Maine, 1910–1912 376
Missouri, 1910–1912 377
Montana, 1912 379
Nevada, 1908–1912 379
New Mexico, 1912 380
Oklahoma, 1908–1912 381
Oregon, 1904–1912 384
South Dakota, 1908– 1912 395
Utah, 1912 398

INDEX 401

Part I

The Nature of Public Opinion

Public Opinion and Popular Government

Part I

The Nature of Public Opinion

CHAPTER I

PUBLIC OPINION MUST BE PUBLIC

"Vox Populi may be Vox Dei, but very little attention shows that there has never been any agreement as to what Vox means or as to what Populus means." [1] In spite of endless discussions about democracy, this remark of Sir Henry Maine is still so far true that no other excuse is needed for studying the conceptions which lie at the very base of popular government. In doing so one must distinguish the form from the substance; for the world of politics is full of forms in which the spirit is dead — mere shams, but sometimes not recognized as such even by the chief actors, sometimes deceiving the outside multitude, sometimes no longer misleading anyone. Shams are, indeed, not without value. Political shams have done for English government what fictions have done for English law. They have promoted growth without revolutionary change. But while shams play an important part

[1] Maine, *Popular Government*, pp. 184, 185.

in political evolution, they are snares for the political philosopher who fails to see through them, who ascribes to the forms a meaning that they do not really possess. Popular government may in substance exist under the form of a monarchy, and an autocratic despotism can be set up without destroying the forms of democracy. If we look through the forms to observe the vital forces behind them; if we fix our attention, not on the procedure, the extent of the franchise, the machinery of elections, and such outward things, but on the essence of the matter, popular government, in one important aspect at least, may be said to consist of the control of political affairs by public opinion. In this book, therefore, an attempt is made to analyze public opinion in order to determine its nature, the conditions under which it can exist, the subjects to which it can apply, the methods by which it can be faithfully expressed, and the regulation under a popular government of affairs to which it is not directly applicable.

Each of the two words that make up the expression "public opinion" is significant, and each of them may be examined by itself. To fulfil the requirement an opinion must be public, and it must be really an opinion. Let us begin with the first of these qualities.

1. Opinion of a Majority not always Public

If two highwaymen meet a belated traveller on a dark road and propose to relieve him of his watch and wallet, it would clearly be an abuse of terms to

say that in the assemblage on that lonely spot there was a public opinion in favor of a redistribution of property. Nor would it make any difference, for this purpose, whether there were two highwaymen and one traveller, or one robber and two victims. The absurdity in such a case of speaking about the duty of the minority to submit to the verdict of public opinion is self-evident; and it is not due to the fact that the three men on the road form part of a larger community, or that they are subject to the jurisdiction of a common government. The expression would be quite as inappropriate if no organized state existed; on a savage island, for example, where two cannibals were greedy to devour one shipwrecked mariner. In short the three men in each of the cases supposed do not form a community that is capable of a public opinion on the question involved. May this not be equally true under an organized government, among people that are for certain purposes a community?

To take an illustration nearer home. At the time of the Reconstruction that followed the American Civil War the question whether public opinion in a southern state was, or was not, in favor of extending the suffrage to the negroes could not in any true sense be said to depend on which of the two races had a slight numerical majority. One opinion may have been public or general in regard to the whites, the other public or general in regard to the negroes, but neither opinion was public or general in regard to the whole population. Examples of this kind could be multiplied indefinitely. They

can be found in Ireland, in Austria-Hungary, in Turkey, in India, in any country where the cleavage of race, religion, or politics is sharp and deep enough to cut the community into fragments too far apart for an accord on fundamental matters. When the Mohammedans spread the faith of Islam by the sword, could the question whether public opinion in a conquered country favored Christianity or Mohammedanism be said to depend on a small preponderance in numbers of the Christians or the followers of the Prophet; and were the minority under any obligation to surrender their creed? The government was entirely in the hands of the Mussulmans, but would it be rational to assert that if they numbered ninety-nine thousand against one hundred thousand Christians public opinion in the country was against them, whereas if they were to massacre two thousand of the Christians public opinion would then be on their side? Likewise in Bohemia at the present day, where the Germans and the Czechs are struggling for supremacy, would there not be an obvious fallacy in claiming that whichever race could show a bare majority would have the support of public opinion in requiring its own language to be taught to all the children in the schools.

In all these instances an opinion cannot be public or general with respect to both elements in the state. For that purpose they are as distinct as if they belonged to different commonwealths. You may count heads, you may break heads, you may impose uniformity by force; but on the matters at stake the two elements do not form a community capable

of an opinion that is in any rational sense public or general. As Mr. Bryce points out, a great deal of confusion arises from using the term sometimes to mean everybody's views, that is, the aggregate of all that is thought, and sometimes the views of the majority.[1] If we are to employ the term in a sense that is significant for government, that imports any obligation moral or political on the part of the minority, surely enough has been said to show that the opinion of a mere majority does not by itself always suffice. Something more is clearly needed.

2. Unanimity not Necessary

But if the opinion of a majority does not of itself constitute a public opinion, it is equally certain that unanimity is not required. To confine the term to cases where there is no dissent would deprive it of all value and would be equivalent to saying that it rarely, if ever, exists. Moreover, unanimous opinion is of no importance for our purpose, because it is perfectly sure to be effective in any form of government, however despotic, and it is, therefore, of no particular interest in the study of democracy. Legislation by unanimity was actually tried in the kingdom of Poland, where each member of the assembly had the right of *liberum veto* on any measure, and it prevented progress, fostered violence, and spelled failure. The Polish system has been lauded as the acme of liberty, but in fact it was directly opposed to the fundamental principle of modern popular government; that is, the conduct of public

[1] *American Commonwealth*, Ed. of 1910, vol ii, p. 251.

affairs in accord with a public opinion which is general, although not universal, and which implies under certain conditions a duty on the part of the minority to submit.

3. Rousseau's Common Will

If then unanimity is not necessary to public opinion and a majority is not enough, where shall we seek the essential elements of its existence? A suggestion much in point may be found in the speculations of the most ingenious political philosopher of the eighteenth century. In his *Contrat Social* Rousseau attempts to prove that in becoming a member of a state the natural man may remain perfectly free and continue to obey only his own will. He tells us that in forming a state men desire to enforce the common will of all the members; and he takes as the basis of all political action this common will, which is nearly akin to our idea of public opinion. Now, in order to reconcile the absolute freedom of every citizen to obey only his own volition, with the passing of laws in every civilized state against opposition, he says that when the assembled people are consulted on any measure, their votes express, not their personal wishes upon the subject, but their opinions in regard to the common will, and thus the defeated minority have not had their desires thwarted, but have simply been mistaken in their views about the common will. All men, he insists, want to give effect to this common will, which becomes, therefore, the universal will of everyone and is always carried out.

4. Public Opinion and Universal Consent

Though stated in a somewhat fanciful way, the theory contains a highly important truth, which may be clothed in a more modern dress. A body of men are politically capable of a public opinion only so far as they are agreed upon the ends and aims of government and upon the principles by which those ends shall be attained. They must be united, also, about the means whereby the action of the government is to be determined, in a conviction, for example, that the views of a majority — or it may be some other portion of their numbers — ought to prevail; and a political community as a whole is capable of public opinion only when this is true of the great bulk of the citizens. Such an assumption was implied, though usually not expressed in all theories of the Social Compact; and, indeed, it is involved in all theories that base rightful government upon the consent of the governed, for the consent required is not a universal approval by all the people of every measure enacted, but a consensus in regard to the legitimate character of the ruling authority and its right to decide the questions that arise.

The power of the courts in America to hold statutes unconstitutional furnishes an illustration of this doctrine. It rests upon a distinction between those things that may be done by ordinary legislative procedure and those that may not; the theory being that in the case of the former the people have consented to abide by the decision of the majority

as expressed by their representatives, whereas in the case of matters not placed by the constitution within the competence of the legislature, the people as a whole have given no such consent. With regard to these they have agreed to abide only by a decree uttered in more solemn forms, or by the determination of something greater than a mere majority. The court, therefore, in holding a statute unconstitutional, is in effect deciding that it is not within the range of acts to which the whole people have given their consent; so that while the opinion in favor of the act may be an opinion of the majority of the voters, it is not a public opinion of the community, because it is not one where the people as a whole are united in a conviction that the views of the majority, at least as expressed through the ordinary channels, ought to prevail.

5. Consent and Force

We have seen that in some countries the population has contained, and for that matter still contains, distinct elements which are sharply at odds upon the vital political questions of the day. In such a case the discordant forces may be violent enough to preclude a general consent that the opinion of the majority ought to prevail; but this is not always true. If they are not, the assumption which lies at the foundation of popular government remains unimpaired. If they are, the forms of democracy may still be in operation, although their meaning is essentially altered. It may be worth while to dwell on this contrast a moment because it makes

clear the difference between true public opinion and the opinion of a majority.

Leaving out of account those doctrines whereby political authority is traced to a direct supernatural origin, government among men is commonly based in theory either on consent or on force, and in fact each of these factors plays a larger or smaller part in every civilized country. So far as the preponderating opinion is one which the minority does not share, but which it feels ought, as the opinion of the majority, to be carried out, the government is conducted by a true public opinion or by consent. So far as the preponderating opinion is one the execution of which the minority would resist by force if it could do so successfully, the government is based upon force. At times it may be necessary to give effect to an opinion of the majority against the violent resistance, or through the reluctant submission, of the minority. A violent resistance may involve the suppression of an armed insurrection or civil war. But even when there is no resort to actual force it remains true that in any case where the minority does not concede the right of the majority to decide, submission is yielded only to obviously superior strength; and obedience is the result of compulsion, not of public opinion. The power to carry out its will under such conditions must to some extent be inherent in every government. Habitual criminals are held in check by force everywhere. But in many nations at the present day there are great masses of well-intentioned citizens who do not admit the right of the majority

to rule. These persons and the political parties in which they group themselves are termed irreconcilable, and when we speak of public opinion in that country we cannot include them. So far as they are concerned there can be no general or public opinion.

Let us be perfectly clear upon this point. The presence of irreconcilables does not mean that the government is illegitimate, or that it is not justified in enforcing its will upon the reluctant minority. That will depend upon other considerations. The use of force may be unavoidable if any settled government is to be upheld, if civic order is to be maintained. But it does mean that the fundamental assumption of popular government, the control of political affairs by an opinion which is truly public, is set aside. Florence may, or may not, have been justified in disfranchising her noble families, but Freeman was certainly right in his opinion that by so doing she lost her right to be called a democracy,[1] — that is, a government by all the people, — and it makes little difference for this purpose whether a part of the body politic is formally excluded from any share in public affairs or overawed by force into submission.

6. Numbers and Intensity in Opinion

One more remark must be made before quitting the subject of the relation of public opinion to the opinion of the majority. The late Gabriel Tarde, with his habitual keen insight, insisted on the

[1] *Growth of the English Constitution*, chap. i, note 14.

importance of the intensity of belief as a factor in the spread of opinions.[1] There is a common impression that public opinion depends upon and is measured by the mere number of persons to be found on each side of a question; but this is far from accurate. If forty-nine per cent. of a community feel very strongly on one side, and fifty-one per cent. are lukewarmly on the other, the former opinion has the greater public force behind it and is certain to prevail ultimately if it does not at once. The ideas of people who possess the greatest knowledge of a subject are also of more weight than those of an equal number of ignorant persons. If, for example, all the physicians, backed by all other educated men, are confident that an impure water supply causes typhoid fever, while the rest of the people are mildly incredulous, it can hardly be said that public opinion is opposed to that notion. One man who holds his belief tenaciously counts for as much as several men who hold theirs weakly, because he is more aggressive, and thereby compels and overawes others into apparent agreement with him, or at least into silence and inaction. This is, perhaps, especially true of moral questions. It is not improbable that a large part of the accepted moral code is maintained by the earnestness of a minority, while more than half of the community is indifferent or unconvinced. In short, public opinion is not strictly the opinion of the numerical majority, and no form of its expression measures the mere majority, for individual views are always to some extent

[1] *Les Transformations du Pouvoir*, pp. 42 et seq.

weighed as well as counted. Without attempting to consider how the weight attaching to intensity and intelligence can be accurately gauged, it is enough for our purpose to point out that when we speak of the opinion of a majority we mean, not the numerical, but the effective majority.

No doubt differences in the intensity of belief explain some sudden transformations in politics and in ethical standards, many people holding their views with so little conviction that they are ready to follow in the wake of any strong leader in thought or action. On the other hand they explain in part also cases where a law is enacted readily but enforced with difficulty; for the law may be carried through by a comparatively small body of very earnest men, who produce a disproportionate effect by the heat of their conviction; while the bulk of the people are apathetic and unwilling to support the effort required to overcome a steady passive resistance to the enforcement of the law.

The problem of intensity of belief is connected, moreover, with the fact that different ways of ascertaining the popular will may give different results, in accordance with the larger or smaller proportion of the indifferent who are gathered in to vote. But this is a matter that belongs properly to a later discussion of the methods of expressing public opinion. We are dealing here only with its essential nature.

7. Conclusion

To sum up what has been said in this chapter: public opinion to be worthy of the name, to be the

proper motive force in a democracy, must be really public; and popular government is based upon the assumption of a public opinion of that kind. In order that it may be public a majority is not enough, and unanimity is not required, but the opinion must be such that while the minority may not share it, they feel bound, by conviction not by fear, to accept it; and if democracy is complete the submission of the minority must be given ungrudgingly. An essential difference between government by public opinion as thus defined and by the bare will of a selfish majority has been well expressed by President Hadley. After saying that laws imposed by a majority on a reluctant minority are commonly inoperative, he adds, "It cannot be too often repeated that those opinions which a man is prepared to maintain at another's cost, but not at his own, count for little in forming the general sentiment of a community, or in producing any effective public movement." [1]

[1] *The Education of the American Citizen*, chap. iii, p. 27.

CHAPTER II

PUBLIC OPINION MUST BE OPINION

After considering what is meant by "public," we must turn to what is meant by "opinion."

8. Opinions are Only in Part Rational

It has become almost a commonplace that the elder breed of political and economic philosophers erred in regarding man as a purely rational being, guided by selfish aims; whereas he is really, in the main, a creature of suggestion, whose strongest impulses are often generous. Later experience and modern psychology have started a new train of thought, have given us a different standpoint from which to study mankind. We are constantly told today how small a part of our actions are the result of our own reasoning, how small a proportion of opinion is personal, how much of it is taken from others in whole or in part ready-made.

The history of religious bodies shows that with the vast majority of men creeds are inherited; or, to speak more strictly, accepted on the suggestion and authority of parents and teachers. It is incredible that if everyone really thought out his beliefs for himself religious lines would remain from generation to generation so little changed as they have, for example, among the Catholics and Protestants in Switzerland. That such results are not due to

a transmission of mental traits in the blood, predisposing the child to the doctrines wrought out by his ancestors, would seem to be clear from the case of the Turkish Janissaries; for this great fighting force of the Ottoman Sultans was composed of Christian children taken from their homes in infancy and brought up in the Mohammedan faith. Although they revolted at times in consequence of grievances, they never showed any tendency to revert to the religion of their parents. In fact it would be safe to assert as a general rule that the members of every church have accepted its dogmas because they belonged to it, quite as much as they have clung to the church on account of a belief in its creed. Nor is this less true of other spheres of thought. It is manifestly the case in politics, where party affiliations have no less influence in fixing the principles of men, than the principles have in determining the membership of the parties.

Opinions may, of course, be adopted by conscious submission to the authority of someone who is better informed; and Sir George Cornewall Lewis points out that in such a case "The choice of a guide is as much a matter of free determination, as the adoption of an opinion on argumentative grounds."[1] But he does not appear to have perceived to how small an extent the selection of a guide is in fact deliberate or even conscious. In most of the affairs of life we are constantly acting upon suggestions without being aware of their origin, or indeed of the fact that we did not frame our conclusions unaided.

[1] *Influence of Authority in Matters of Opinion*, p. 68.

9. Opinions Adopted from Others may be Real Opinions

A conviction founded on a conscious deference to authority or a wholly unconscious process of suggestion, even if unworthy of respect on its merits and valueless as evidence of the truth of the proposition accepted, yet, if prevalent, may be a vital factor not to be neglected in politics and legislation. A mere blind prejudice of this nature when widespread must be heeded, but it does not belong to the class of opinions which popular government is designed to promote. We must, however, distinguish between different kinds of convictions formed apparently by the same process. A belief, although adopted on suggestion or authority without mature consideration, may nevertheless be a real opinion and not a mere prejudice or meaningless impression; for the line between what is opinion and what is not is by no means the same as the line between what is personally thought out, or consciously rational, and what comes in other ways. The bulk of every community accepts without adequate reasoning all its fundamental political principles, such as a belief in monarchy or in a federal system of government, in universal suffrage, in trial by jury, and in many other things that the people of a country habitually assume as axioms. In fact the reasons popularly given for the maintenance of these institutions are sometimes almost ludicrously insufficient to justify their existence. Occasionally they are quite inconsistent with actual facts or wholly foreign to the real benefits received. It is much easier to perceive

fallacies of that kind in another country, or a bygone age, than among ourselves. We smile at the divine right of kings as an argument for the British monarchy, while we repeat complacently equally futile traditions of our own. But all this does not mean that the things themselves are not excellent, or even indispensable for the objects they really serve. Bagehot, indeed, gave a great impulse to clear thinking when he pointed out that the merits popularly ascribed to the English Constitution were for the most part imaginary, and yet extolled those very institutions without measure for quite different reasons.

10. If an Integral Part of the Believer's Philosophy

In the category of opinions not wholly rational must be classed the faith of most persons in the dogmas of the religious bodies to which they belong. In such cases one might suggest that a man has in reality an opinion about his church, and not about the particular tenets which he accepts on its authority. But this is by no means always true, because in fact he accepts the doctrines and the church itself for much the same reason. Both of them form part of what the Germans call his *Weltanschauung*, his general point of view. They fit into his conception of the universal fitness of things, and hence they are woven into the very texture of his mind and are not easily changed. If held universally in a community, or nearly so, they are an integral part of the civilization of the people. If held only by a considerable portion of the people,

they are an integral part of the civilization of that portion.

Experimental psychologists tell us that, as a rule, a man cannot by hypnotic suggestion be made to adopt an idea inconsistent with his own character — a truth of general application to suggestions of other kinds, whether presented to individuals or communities. The Puritan of the seventeenth century would not have believed in predestination had it not been consonant with the puritanical tone of thought; and the same principle may be constantly traced in the evolution of political systems, for all law and custom embody in the main inherited opinions on the fitness of things. The most interesting aspect, indeed, of political science consists in working out the actual relation to one another of the various institutions of a nation; in discovering how far they make up a harmonious system, and how the incongruous elements are gradually eliminated or modified to suit their environment. This organic need of harmony makes it impossible to predict that an institution that has worked well in one country will produce the same results in another; and, on the other hand, it makes an innovation often hazardous, because, like the introduction of the mongoose into Jamaica, it may modify existing conditions to an extent altogether unforeseen.

Now a community may have a keen sense of the incongruity between some policy or practice and the rest of its civilization without having a rational understanding of either. The people of the northern states may have been incapable of weighing fairly

the arguments of the Greek philosophers in favor of leaving manual labor to slaves, and yet they came to perceive clearly that slavery anywhere in the United States could not be permanently in harmony with the system of free labor in their own part of the country. Again the American people did not attempt to study rationally the ultimate effects of polygamy and monogamy, but they were perfectly well aware that polygamy legally practised in Utah would be inconsistent with the principles on which their whole social structure was founded.

The real relation of ideas to each other is by no means always perceived at first sight, for the human mind is singularly capable of entertaining for a time contradictory principles without knowing it; but when an old conviction is retained, or a new one is accepted, on account of its consonance with a code of beliefs already in the mind, although without any sufficient process of reasoning or knowledge of the facts, it may be regarded as an opinion in a very different sense from an impression derived from authority or suggestion apart from any such connection with existing ideas. The first report by a navigator that he had seen the south polar ice cap might well give rise to an opinion that the pole was covered with ice, because that agreed with what was known about the distribution of heat over the earth; while a tale by the same navigator about meeting a sea-serpent might produce among his hearers nothing worthy of being called an opinion, because they know too little about marine life to estimate the probability of the fact. In one case

the report was in harmony with other ideas already in the mind; in the other it bore no apparent relation to any such ideas.

11. Otherwise an Opinion must Involve a Personal Judgment of Facts

A conviction, therefore, formed because it is in accord with a code of beliefs already in the mind is properly classed as an opinion; but many of the problems that arise in politics, as in the other affairs of life, cannot be solved in this way. They do not present a question of harmony with accepted principles, but the application of an accepted principle to a particular case, or the means to be adopted in attaining an end universally desired; and these things usually require for their determination a considerable knowledge of the subject matter. In short the question turns not on the abstract fitness of things, but mainly on the verification of facts, and in doubtful cases on ascertaining facts neither on the one hand self-evident nor on the other improbable. Take, for example, the grant of a street railroad franchise to a private corporation, and let us assume for the purpose of the argument that it is wise to grant the franchise on securing to the public a proper return for the concession, but not otherwise. The question presented is whether a specific bill does or does not secure such a return. To take another illustration: it is generally admitted that children should be educated for their duties in life at the public expense. To what extent are the studies leading to a general education and

to what extent are manual and industrial training best adapted to that end?

On problems of this kind an opinion worthy of the name cannot be formed without both a process of reasoning and, what is far more difficult, the command of a number of facts; although not necessarily all the facts in the case. Let us suppose that to decide a question it is necessary to ascertain facts A, B, and C; that I know A of my own knowledge, determine B to my own satisfaction by weighing contradictory evidence, and accept C (which is a technical matter requiring special knowledge) on the authority of an expert. A concrete instance will make the problem more clear, and for that purpose we may consider the case of the street railroad franchise just mentioned. The question presented is that of securing a proper return to the public, and this, we may suppose, involves the further question of a reasonable profit to the company. The reasonable profit may in turn depend upon what is a fair rate of interest on the capital outlay, upon the probable net income from operating the road, and upon the deterioration of the plant. Being a man of affairs I know what is a fair interest on that kind of investment. The probable net income I calculate by comparing the reports of street railroads in other cities and the estimates of various experts. For the deterioration I rely wholly on the statement of a civil engineer. Clearly it cannot be said in such a case that I have no personal opinion because I have taken a part of the data on authority.

If, on the other hand, I take all three facts on

authority or suggestion alone; still more if I simply accept the conclusion that the franchise bill as a whole is good on such a ground; or if I vote for it solely because my party is in favor of it, or because the promoter has a clear voice and engaging manners, or because he was once kind to my mother; obviously I have no real opinion of my own on the merits of the bill. I may have an opinion on the trustworthiness of the man on whom I rely, or of the party that I follow, but not on the subject itself. Now public opinion on a question means an opinion on the question itself; and hence in the case supposed, if the bulk of the community are in the same state of mind that I am, there can be no real public opinion about the franchise.

In order, therefore, that there may be a real public opinion on any subject, not involving a simple question of harmony or contradiction with settled convictions, the bulk of the people must be in a position to determine of their own knowledge, or by weighing evidence, a substantial part of the facts required for a rational decision.

12. Importance of Distinguishing the Real Subject of Public Opinion

It is all the more important to distinguish clearly between an opinion on the question itself and on something else, because the mass of the people do not so distinguish, and may not hesitate to vote freely on a question without having an opinion about it. Nor is it easy in practice to make the distinction without great care in selecting both the questions

to be submitted to a vote and the form in which they are submitted. This is obviously true when we try to deduce from an election of public officers the popular opinion upon the various matters discussed during the campaign; for it is often impossible to ascertain on which of the issues involved the people have rendered their verdict. A general election for Parliament, or for President and Congress, may be mainly an expression of opinion upon some salient measure, or an expression of greater confidence in one man or group of men than in another, or it may indicate merely an habitual submission to the authority of a party, a church, or a labor union. We shall have occasion to observe hereafter, in spite of frequent assertions to the contrary, that this may be true also of a popular vote on particular measures, by means of the referendum and initiative. The motives for a ballot of any kind often differ with different people who vote the same way, and are not seldom so mixed in the mind of a single individual that he would find it hard to disentangle them if he tried, and his own analysis would often be mistaken.

Now it does not follow that, because people have no true opinion on a question, they have no opinion on the method by which it ought to be decided. They may be incapable, and recognize that they are incapable, of forming an opinion about an intricate point of law, or about the guilt of a man accused of crime when the evidence is conflicting; and yet they may have a very definite opinion that the matter shall be decided by a court of law, and that

its decision shall be enforced. The public may have no opinion about dealing with an epidemic, and yet it may have a very strong opinion that it ought to be combated by physicians who have proved their competence. This suggests a point of practical importance, for it is obviously wise, so far as possible, to submit to the judgment of the people the questions on which they have, or may have, opinions, and not those on which they have none.

13. Opinion and Desire

It may be observed that nothing has been said in this chapter about popular desire as contrasted with public opinion. Nor for our purpose is it needful to dwell on the distinction. Both are subject to the same condition, that the desire, like the opinion, must be public, — that is, one which the minority feels bound to accept. This is more likely to be true in the case of opinion than of desire, because the former is more likely to comprise the welfare of the whole community in its scope; but if the desire fulfils the required conditions it can, for political purposes, scarcely be distinguished from opinion. It is not of necessity less rational, less in harmony with settled convictions, or framed without a comprehension of hard fact. The two are, indeed, always commingled. Nevertheless there is truth in Tarde's remark that power founded on popular desire is base, while power founded on popular confidence or opinion is noble.[1] Nor does a

[1] *Les Transformations du Pouvoir*, p. 44. He declares that popular election is defective because it expresses desire rather than

desire become noble because shared by many people. In saying this the word desire is used to mean a selfish impulse; but desires, and especially the strongest ones, are not always selfish. Man at his best is a moral being, and it is only as a moral being that he is fit for self-government. The great statesman, like the great moral leader, is one who appeals to the higher emotions, to principle, to self-restraint, not to selfishness and appetite.

opinion, and that the strongest governments in the world have possessed some sacred source of authority beside election (p. 45). He says also (p. 167) that a free state is one where the desires and opinions of the rulers are in harmony.

CHAPTER III

CONDITIONS ESSENTIAL FOR PUBLIC OPINION

HAVING analyzed the significance of the words "public" and "opinion" we have a base line whence we can survey the conditions under which public opinion can exist and the matters to which it can apply. We have seen that an opinion can be public only when those who do not share it feel constrained by a sense of obligation, and not merely by fear of superior force, to accept it; but this has by no means been the case in all countries at all times.

14. Doctrine of the Harmony of Interests

Rousseau conceived an ideal commonwealth where all men had in reality a common will, differing only in their opinions about what that will might be; and his idea has assumed various forms, some of them not very obvious on the surface. It is involved in the doctrine of the universal harmony of human interests which underlay much of the speculation of the earlier political economists. With characteristic lucidity that doctrine was expressly stated by the French physiocrats of the eighteenth century and by some of their compatriots in the nineteenth; while it was virtually assumed by the English classical school of economists and provided a half-concealed foundation for their principles.

Now, if the interests of all men are ultimately

in accord, any divergence of views cannot be due to a conflict of interests, because no such conflicts can in fact exist. The divergence must arise entirely from a difference of opinion about what the common interests of all men are, or how those interests can best be promoted. As in Rousseau's ideal state, everyone desires the same end, whether we call it the common will or the common welfare, and men differ only about the means of attaining that end. With such a faith it is not surprising that the adherents of this school of political economy should have been optimists.

Some of the earlier maxims of democracy rested upon the same premise and produced in like manner an optimistic spirit. The maxim, for example, that the people as a whole cannot want to injure itself, and hence that public opinion when enlightened must always be right, is all very well if the people have an essential solidarity based upon the fact that the true interests of all citizens are identical. But if not, the foundation of the maxim crumbles away. The majority may desire to injure the minority wrongfully; or the people now living may, in pursuit of their own objects, disregard the welfare of posterity.

If there were not some harmony of interests among men they would never have become civilized or lived in communities. Man is a gregarious animal, and all creatures that herd together in considerable groups do so because their common interests exceed in importance their conflicting ones Most of the carnivora dwell alone or in small

families, for the simple reason that their interests, especially in the matter of food, are antagonistic; and if this had been true of man he would have lived forever in the same way. Nevertheless the early economists and democrats certainly went too far in assuming the absolute truth of their doctrine, for the faith in the universal harmony of interests has not been verified by experience; or at least has not proved to be wholly in accord with the controlling impulses of mankind as we see them at work in the stress of political life under an extended suffrage. In fact the doctrine itself has suffered the fate of outworn theories. After dying a natural death it has been placed in the pillory that men might show how skilfully they could have killed it if it were not already dead. Even the strongest advocates of popular government have discovered, or believe they have discovered, that the interests of all members of the community are not identical; and although in many cases men seek to cloak selfish aims by arguments designed to prove that their own objects will promote general prosperity, this tribute to virtue is not always paid. Labor parties, for example, have arisen in some countries, wielding at times great power, and advocating frankly the interests of working men alone.[1]

[1] After declaring that the test of morality in politics is whether a course of action tends to enlarge the domain of sympathy and solidarity, Tarde asserts that every politician who sets before his eyes the exclusive triumph of one class or one caste, even if it be the class or the caste that is most numerous and most disinherited, is retrograde from the start. A socialist party, he says, may be in the great current of progress, but a working-man's party cannot. (*Les Transformations du Pouvoir*, pp. 257, 258.)

15. Growth of Race Feeling

Nor are the conflicts of interests that are manifest today due entirely to personal or material aims. One of the most striking facts of the last half century has been the growing intensity of race feeling, often in cases where the worldly prospects of the individual would be promoted by abandoning the language and traditions of his ancestors. The principle of the harmony of interests, being primarily an economic doctrine dealing with material prosperity, left out of the reckoning other motives of unmeasured power; and in the recent struggles of races for existence or supremacy the sentiments of comradeship, loyalty, and pride of race have often proved stronger than the greed of gain.

Curiously enough this phenomenon is by no means confined to races of men very far apart in natural qualities, to the great branches of the human family found in the different continents. It is acute among people of European stock who in the past have dwelt peacefully together, and have even fought shoulder to shoulder against a common foe. Sometimes it is reinforced by religious cleavage, sometimes not; but wherever it is bitter it mars the smooth working of popular institutions. Occasionally it takes the form of a genial sentimentality of no great political significance, like that which would have caused the national emblem of Wales to be inserted in one of the quarters of the royal standard. In other places, notably in Austria, it has become so violent as to dislocate at times the

machinery of parliamentary government altogether, causing scenes of disorder more befitting the passions of a mob than the counsels of a legislative assembly, and threatening even the stability of the state. The different races in such a case are striving for objects that cannot be reconciled. So long as one of them aims at supremacy and another at equality no compromise acceptable to both is possible; and the minority is absolutely unwilling to accept subordination because the majority so decrees. In short a truly public opinion on any matter touching the question of race cannot exist in a country torn asunder by antagonisms of that kind.

16. Irreconcilables in Politics

In countries with a popular or semi-popular form of government the conflict of races is the most obvious factor that interferes with the formation of a real public opinion, but it is not the only one. In several nations at the present day there are large bodies of irreconcilables who are unwilling for other reasons to abide by the decision of the majority on the most fundamental of all political questions, the form of government and the right of the existing authorities to rule. They submit, for the moment, because there is no immediate prospect of successful resistance, but so far as they are concerned no general or public opinion can be said to exist in the land.

In his recent book on *The France of Today*, Professor Barrett Wendell has portrayed one aspect of this state of things. Not only is the monarchical

minority irreconcilable, refusing to consider itself under any obligation to accept as final the verdict of the mass of the French people on the form of government, but, as he points out, the dominant majority is disinclined to conciliate that minority on any question or to take its views into account. Its attitude is rather one of repressive hostility. The majority, therefore, is not making an effort to create a true public opinion, in the sense in which we are using the term; and so long as both parties maintain such a relation, no opinion of that kind is possible.

Examples of irreconcilables, always more or less bitter, may be found in the cases of the Irish Nationalists, of the Clericals in Italy, of the Poles, Danes, and Alsatians in Germany, and of the many struggling races in the conglomerate of Austria-Hungary — to speak only of countries that have enjoyed for some time representative institutions. We have had in America also our own painful experience during the period of Reconstruction after the Civil War, when the white people of the states under carpet-bag rule may be fairly said to have been irreconcilable, although in all of those states they formed in fact the effective majority of the population. Until the period came to an end it was clearly a misnomer to speak of the administration of the southern states as government by public opinion.

In a territory recently conquered, like Alsace-Lorraine after the Franco-German war, the presence of irreconcilables is natural; but they may also

thrive in old communities if there are among the people deep lines of cleavage based upon race, religion, sharp historical conflicts, or upon radical changes due to social or economic ills that cannot be treated without political surgery. The dissensions may not touch the form of the government itself or the general right of the constituted authorities to rule. They may relate only to a particular policy which a fraction of the people regard as wholly inadmissible; yet in such a case, if the parties are evenly balanced enough to give to forcible resistance a fair chance of success, the struggle is liable to assume before long a revolutionary form. This was true of the quarrel with Charles I over ship-money and of the objection by the American colonies to being taxed by Parliament without their own consent. But even when there is no danger of an appeal to arms, the presence of a large body of men who are irreconcilable, on questions that arise frequently and unavoidably, undermines the foundation on which democracy is based, because on those questions public opinion, as we have defined it, and therefore the direction of political affairs by public opinion, is impossible. A community in which such a state of things is chronic is obviously not completely fitted for popular government.

17. Homogeneity of Population a Condition of Public Opinion

One essential condition, then, of public opinion is that the people should be homogeneous to such a point that the minority is willing to accept the decision of the majority on all questions that are

normally expected to arise. It is, indeed, largely a perception of the need of homogeneity, as a basis for popular government and the public opinion on which it rests, that justifies democracies in resisting the influx in great numbers of a widely different race. Quite apart from any effect on the standard of life of laboring men, Americans and Australians feel that Asiatics cannot be assimilated so as to form an integral and indistinguishable part of the population. Mr. Bryce tells us that the excellence of popular government consists, not in its wisdom, but in its strength; this strength depends, however, on the fact that the people are so homogeneous that public opinion touches them all.

Differences of race do not always prevent a people from being politically homogeneous; a fact abundantly proved by the experience of Switzerland, where three races, professing two creeds, are carrying on a highly successful democracy in perfect harmony. Race is merely one of the many factors that tend to divide a people. The essential point is that all elements of the population should be capable of common aims and aspirations, should have a common stock of political traditions, should be open to a ready interchange of ideas, and should be free from inherited prejudices that prevent mutual understanding and sympathy. This is a matter which thoughtful Americans must ponder seriously. If the huge masses of immigrants coming yearly to the United States can be assimilated within a couple of generations so as to be an indistinguishable part of the population, well and good; if not,

the peril to popular institutions is real, for without homogeneity a nation may be great, but it can hardly be a successful democracy.

A community not homogeneous enough to have a public opinion on ordinary political questions, and hence ill adapted for popular institutions, might seem incapable of any government save one maintained by force. But this is not necessarily true, because people who recognize their inability to agree and dread the danger of civil strife may submit willingly to a ruler who will not allow any part of his subjects to oppress the rest. A monarch reigning over a mixed people, and not a bigot, tends to be cosmopolitan in his sympathies, to have some regard for all classes of his subjects. On the other hand religious intolerance and racial antipathy, the horror of the man with an unfamiliar form of worship, the instinctive dislike of the man who speaks a different tongue or pronounces his words in a strange way, usually increase as one descends in the social scale. The result is that deep-seated divergencies of this kind not only unfit a country for popular government, but an attempt to introduce it tends to magnify them. The strife of races has increased in the Austrian Empire with the growth of representative assemblies, and the Irish demand for Home Rule became louder with each extension of the suffrage.

18. Another Condition is Freedom of Expressing Dissent

This brings us to another factor essential to the existence of a public opinion, the freedom of the

minority to propagate their views by all fair and peaceable means. Without the right of persuasion the minority would not be satisfied that the policy of the government embodied the deliberate wishes of a majority, and therefore expressed a real public opinion to which they were bound to submit. In a modern popular government, where the whole people are never within reach of a man's voice, where the chief difficulty consists less in making them weigh argument than in making them listen to argument at all, the right of persuasion involves freedom of speech, of publication, and of organization. Hence we find these matters wholly free in countries that have enjoyed popular government for any considerable length of time. Within the limits of a possible public opinion — that is, within the sphere where it is conceivable that the majority might be convinced and the minority might willingly submit — democracy does not suppress utterances repugnant to it, although it often ignores them.[1] It is partly, as Mr. Bryce points out, this very freedom of discussion that causes what he calls the fatalism of the multitude, in contradistinction to the tyranny of the majority — a fatalism which, he tells us, helps the action of opinion as a governing power, enabling it to prevail more swiftly and to acquire a solidity that strengthens the whole body politic.[2]

[1] While this condition is essential in popular governments, it is by no means confined to them. Tarde (*Les Transformations du Pouvoir*, p. 183) remarks that the Roman Empire was greater than all others because it opened a field for the competition of the ideas of all the little nations comprised within its borders.

[2] *American Commonwealth*, Ed. of 1910, Chap. lxxxv.

Sanguine enthusiasts for democracy are inclined not only to regard it as a panacea for all ills, but also to believe that it possesses an infallible power to create the conditions needed for its own successful operation. They are apt to urge, as the first step in a country hitherto despotically ruled, the creation of a popular representative assembly, assuming that practice in the art of self-government will rapidly develop the qualities essential for a genuine public opinion. But to throw a child suddenly into deep water and expect him to teach himself to keep afloat is as irrational as to forbid him to enter the water until he has learned to swim. Preparation and practice must go on together gradually; and the preparation consists largely in the growth of political homogeneity and of the interchange of ideas. England was prepared for self-government by the Norman and Angevin kings who forced upon the people a common nationality and a common law, while the habit of discussing public affairs was well established long before Parliament acquired supremacy. Even in a highly advanced state of civilization a representative assembly, set up before the community is capable of a real public opinion, is liable, if not a mere sham, to result for a time in the oppressive rule of a class, — as happened in Prussia for the dozen years after the convulsions of 1848 — or to develop corruption, such as was used to work the parliamentary form of government in France under Louis Philippe. For that reason it is unnecessary to shed too many tears over the present condition of the Russian Douma. The important

thing for the moment is not that it should be fairly representative, but that it should survive. So long as it exists at all, with a few spokesmen for the opposition, it is paving the way for popular institutions. Those men cannot be effectively muzzled within its walls, their speeches are certain in time to be allowed a publicity that will entail freedom of discussion outside, and when the country has come to the point of forming opinions that are truly public they will find an utterance that cannot be disregarded.

Freedom of expressing dissent includes liberty of organization, and in order that this may be completely effective it must not be confined to purely political objects, but must become a part of the popular customs, covering all matters in which people are interested; a point which France, with all her democratic theories, did not reach in anything like its fulness until more than a century after the Revolution. But while freedom of organization is necessary for the formation of a true public opinion, if carried too far it is likely to falsify that very public opinion itself, as we shall have occasion to observe in discussing political parties. Rousseau felt the danger so strongly as to assert that a community in which parties or factions exist is incapable of a common will, because under the influence of such bodies a man does not form his own opinions freely. The last century has certainly been marked by an apparent increase in the power of corporate, as compared with personal, motives. A hundred years ago democratic theories were individualistic.

They treated the state as a sum of equal and independent units. Now we have learned that man is a social being, not only in Aristotle's sense, that he is constrained by his nature to be a member of a state, but also in the broader sense that he is bound by subtle ties to other and smaller groups of persons within the state. We have learned to recognize this; and what is more, with the ease of organization fostered by modern conditions, the number, the complexity, and the aggregate strength of such ties has increased. No one can have observed social life carefully, under any aspect, without seeing that coöperative interests have in some measure replaced personal ones; that in its conscious spirit western civilization has become less individualistic, more highly organized, or, if you will, more socialistic. This is among the dominant notes of our time, and while the change is for the better, because it means greater devotion to something higher than purely personal objects, that very fact, whether the body be a bank, a railroad company or a trade union, may cover with a gilding of altruism what is after all only cooperative selfishness.

CHAPTER IV

QUESTIONS TO WHICH PUBLIC OPINION CAN APPLY

19. Limits Imposed by the Necessity that the Opinion be Public

THE principle that a true public opinion cannot exist unless the minority feel bound to acquiesce in the decision of the majority not only renders government by public opinion imperfect, or even impossible, in some countries, but also limits everywhere the subjects to which it can apply. We see this clearly in the case of religion. Everyone of Western European stock feels today that the state ought not to meddle with his religious convictions. The sharp distinction in the Middle Ages between the spiritual and temporal powers, with the Pope and his hierarchy directing one, and the Emperor or King and his vassals conducting the other, laid the basis for a distinction between ecclesiastical and political functions which bore fruit after divergencies of creed became profound and widespread. The immediate effect of the Reformation in most countries was an attempt on the part of the government to enforce religious uniformity, but when this failed, as it did in the more progressive nations, the inevitable secondary effect was toleration.

Nor was it in spiritual freedom alone that men gained by the change, for the elimination from poli-

tics of a subject on which the minority could not conscientiously submit to the decision of the majority removed a serious obstacle to popular government — that is, to the decision of all political questions by an opinion which is really public. It is safe to say that if any nation of European origin, with a popular form of government, were now to forbid a part of the citizens to worship according to their consciences, those men would regard the order as beyond the sphere where they were under a moral obligation to obey. A similar feeling would certainly be caused by the proscription of political opponents, by laws, for example, which sent them to the scaffold or into exile. It might be provoked by extreme legislation on other subjects, such as the relations of parents and children or a general attack on the right to private property.

G. Lowes Dickinson states this matter lucidly. "Government by the majority," he says, "is a convenient means of conducting national affairs, where and in so far as there is a basis of general agreement deeper and more persistent than the variations of surface opinion; but as soon as a really fundamental point is touched, as soon as a primary instinct, whether of self-preservation or of justice, begins to be seriously and continuously outraged, the democratic convention gives way. No minority, for example, even in a compact modern state, either would or ought to submit to a decision of the majority to prohibit the exercise of their religion. Such a decision could only be carried into effect by force, subject to the contingency of armed rebellion; and

orderly government would dissolve into veiled or open civil war. . . . It is the presupposition of all democratic government that certain principles, tacitly understood if not precisely formulated, will in practice be observed by any party that may be in power. . . . And, in my opinion, the realization of the political ideal of the extremer Socialists, and the attempt by that particular method to effect a social revolution, without any fair consideration for the claims of owners of property, would simply result in the collapse of the whole convention on which the possibility of government depends." [1]

Graham Wallas, who is moved by very different sympathies, is probably right in thinking that property in such a case would resort, not to resistance by force, but to corrupting the electorate. To quote his words: "Popular election, it is said, may work fairly well as long as those questions are not raised which cause the holders of wealth and industrial power to make full use of their opportunities. But if the rich people in any modern state thought it worth their while, in order to secure a tariff, or legalize a trust, or oppose a confiscatory tax, to subscribe a third of their income to a political fund, no Corrupt Practices Act yet invented would prevent them from spending it. If they did so, there is so much skill to be bought, and the art of using skill for the production of emotion and opinion has so advanced, that the whole condition of political contests would be changed for the future." [2] If either

[1] *The Development of Parliament during the Nineteenth Century*, pp. 161, 162.

[2] *Human Nature in Politics*. p. 5.

of these methods of resistance were adopted, the result, for a time at least, would be a destruction or demoralization of popular government, which would thereby cease to exist altogether or become, so far as the obnoxious subjects are concerned, a hollow sham.

Even in the most firmly established democracies there are questions touching a chord of feeling so deep that the minority would not voluntarily submit to the decision of the majority. To such matters a genuine public opinion cannot apply, and they lie, therefore, beyond the province of popular government. What these matters are cannot be determined by any universal formula, because they vary from place to place and from time to time; but it is the part of wise statesmanship to recognize them and avoid them if possible. Although in any nation there may come periods of revolutionary change when questions of this kind force themselves to the front, yet we must remember that to agitate needlessly subjects lying beyond the range of a true public opinion tends to undermine the foundation of popular institutions. A successful democracy which pursues its course without shocks, which works without violence and without oppression, must be one where the limits of a possible public opinion are generally understood and observed.

20. Benefit of a Written Constitution

We may remark in this connection that one of the merits of a written constitution, imposing strict limitations on legislative authority, consists in lay-

ing down in definite terms the "presupposition of all democratic government," in the words of Mr. Dickinson, "that certain principles . . . will in practice be observed by any party that may be in power." A constitution, if too difficult to amend, may in time cease to be in accord with those principles; it may not keep pace with the change in political conditions. Or if, on the other hand, it is too elaborate, it may include matters properly within the domain of ordinary public opinion, where the views of the majority ought to prevail; and in that case it may defeat its own object, by obscuring the distinction it ought to make clear. But errors so committed do not disprove the benefit to be gained by an authoritative statement of the limits beyond which the prevalent opinion ought not normally to be decisive. Among a people thoroughly trained in the difficult art of self-government the same result can, of course, be reached by mutual forbearance without a written constitution; nor is this the sole object of such a document, but it is certainly one of its chief advantages.

21. Limits Imposed by the Nature of Opinion

Beside the limits placed upon the subjects to which public opinion can apply by the fact that it must be public, there are others imposed by the fact that it must be a real opinion. The people of every homogeneous political community, however barbarous, are capable of a true opinion on some subjects; and no people, however civilized, are capable of forming real opinions on all subjects.

Whether the opinion of the great mass of citizens is the wisest or not, lies beyond the scope of our present inquiry, for we are considering not the merits and defects of popular government, but the conditions under which it can be carried on. Its object being to give effect to public opinion, it can evidently exist only where such an opinion is possible in regard to a considerable number of matters.

We have seen that a true public opinion can exist on a question involving apparent harmony or contradiction with settled convictions; and that it can also be formed where the bulk of the people are in a position to determine of their own knowledge or by weighing evidence a substantial part of the facts required for a rational decision. The first of these conditions is true of great moral issues, of questions of fundamental policy which require little knowledge of particular facts. In such cases the popular judgment is often remarkably sound and not infrequently generous, that is, contrary, to obvious material interests. The second condition is fulfilled where the essential facts are matters of common knowledge from everyday experience, or where they have been so much discussed that familiarity with them has been generally diffused. When it is not fulfilled, and this is often the case with new questions, especially where much detail is involved, no real public opinion is possible.

22. Knowledge of Facts Increasingly Difficult

Now the rapid evolution of democracy during the last century, and the extension of the suffrage to

larger and larger masses of men, would seem to imply that the people were becoming ever more capable of mastering the facts needed for an opinion on public matters, and hence better fitted to play a direct part in deciding the questions of the day. No doubt they are, as a rule, far better educated, both by the common schools and by political experience; but at the same time it is more difficult for anyone to become familiar with all the facts required for the solution of current problems. With the accumulation of human knowledge, with the growth of man's control over the forces of nature, with the greater complexity of modern transactions and of modern society, the amount of information needed to form an intelligent opinion upon public affairs has been constantly increasing. It has been suggested, as an explanation of the selection of administrative bodies in Athens by lot, that any ordinary Athenian citizen was competent to judge whether a trireme was seaworthy and properly provided with oars, sails, arms and provisions.[1] But the ordinary man today, or the ordinary member of Congress or of Parliament, is wholly unable by his own unaided observation to form an opinion of any value on the condition of the hull, machinery, or armament of a battleship. In the same way any sensible Yankee farmer who found himself two hundred years ago on a committee intrusted with the care of the schools in his town might be capable of knowing whether the little red schoolhouse was properly built and whether the teacher was quali-

[1] Headlam, *Use of the Lot in Athens*, p. 161.

fied to teach the three R's; while the best equipped member of a school board in a large city at the present time is unfit for his office if he attempts to decide questions either of schoolhouse construction or of education without the aid of expert advice.

It will, of course, be pointed out that if the onward march of natural science and mechanical invention has rendered the problems of modern life more complex, it has also enlarged vastly the means of diffusing information. We shall be referred to the railroad, the telegraph, and above all to the daily press. We shall be told that the greater rapidity, ease, and cheapness of travel and communication have promoted an interchange of ideas and information far more extensive than ever before; that the newspapers place within the reach of everyone at a trifling cost a daily bulletin of the current events. All that is perfectly true, but the question is whether these agencies are keeping pace with the growing complexity of affairs. It may be doubted, for example, whether the newspapers, although more voluminous than they were formerly, exhibit on the whole greater enterprise and sincerity than they did a generation ago in laying before their readers the facts needed for an intelligent and impartial opinion on public matters; and yet the progress of science, of the arts and of business, during that period has complicated those matters enormously.

That the greater facility of obtaining information at the present day has not in business affairs kept pace with the growing complexity of modern life, in the sense of enabling a man to deal as readily

with problems of all kinds, may be surmised from the increasing specialization of occupations. Seventy years ago a merchant in America was deemed fit to manage a factory or a railroad, but now these pursuits have become professions demanding special knowledge and experience. The process has been going on in a greater or less degree throughout the industrial world, and indeed in all fields of activity and of thought. Anyone past middle life can cite instances of it in subjects with which he has been brought into contact. The progress of specialization means that a man of good intelligence and education, with all the sources of general information within his reach, is less competent than he was formerly to decide the questions that arise in a vocation, not his own, with which he has had no particular familiarity. If this is true of business and of the other concerns of private life, it may not be less true of public affairs, for public work has not only shared the growing complexity of all modern life, but the government has been constantly expanding its sphere of operation by assuming new and delicate functions.

It is not improbable, therefore, that the amount of knowledge needed for the administration of public affairs is increasing more rapidly than the diffusion of such knowledge, and that this is lessening the capacity of the ordinary citizen to form an opinion of his own on the various matters that arise in conducting the government. If so, the range of questions about which the public cannot form a real opinion tends to enlarge, or at least does not

diminish. This is particularly true where the special knowledge of experts is involved, because it is not easy for the community at large to weigh expert opinion. Few things are, in fact, more difficult, or require greater experience; and yet the number of questions on which the advice of experts is indispensable grows with every advance in technical knowledge and mechanical invention.

23. Examples

That there are limits to the subjects on which a genuine opinion can be formed by the public will hardly be denied; and it will be readily admitted by anyone who asks himself candidly upon how many of the current political questions, national, state, and municipal, he feels competent to express a personal opinion of any real value, without an investigation that requires more time than he can spare. Again we are met by the impossibility of laying down general formulas to determine when a public opinion can and when it cannot exist. A few suggestions may, however, be ventured about the obstacles presented by different classes of matters. Owing to the difficulty of mastering the facts required for an intelligent decision, the people are, as a rule, more capable of forming an opinion on a general principle than of applying it to a concrete case, more competent to appreciate the policy of legislation than the wisdom of a particular statute, better judges of grievances than of the choice of remedies.[1]

On account of the same difficulty of becoming

[1] Cf. Lewis, *Influence of Authority*, chap. vi, pp. 173, 174.

familiar with the facts, the information needed to decide a question involving a considerable amount of detailed knowledge is more likely to be possessed by the people of a small community than of a large one. It is more likely to be possessed by all the people when the question touches an interest in which they are all engaged than when it touches one in which only a part of them are directly interested. A farming country is more likely to understand agricultural questions, a small community devoted wholly to the manufacture of shoes is more likely to be familiar with the needs of that trade, than the people of a huge metropolis are to grasp the problems of any particular industry. In the former cases the opinion may be more prejudiced, but it will probably be more intelligent. In the great city, if the people are less biased, they are also less competent to form any real opinion at all. It follows that, on a question involving a considerable amount of detailed knowledge, a true public opinion is more likely to exist in a rural district or a small town than in a large city where occupations are of necessity more diversified; more likely to exist in a local community than in a state; more likely to exist in a state than in the whole nation.

The obstacle to the formation of a public opinion arising from the difficulty of mastering the facts occurs in many kinds of special legislation; in some cases, for example, of grants of public franchises. The people may well have a decided opinion upon the general principles that ought to govern the conferring or withholding of such privileges and yet

be quite unable to determine whether the principles have been observed in any particular instance. The act or grant may seem needlessly liberal or the reverse, when in reality it is not so, especially if people are inclined to be suspicious of the motives of legislators. It is, in fact, the difficulty of forming an opinion of any value on such matters, without very careful study, that has given unscrupulous legislators a free hand and rendered possible many cases of improper grants of privileges. Unfortunately this subject, where a real public opinion is least likely to exist, is the very one in which the American representative system has proved most disappointing.

The difficulty of forming a public opinion is peculiarly great also where an act is the result of a compromise. The word has an evil sound, and rightly so, when it means a concession to selfish interests or sinister motives. But it has also a good side, where it signifies a middle path between extreme views or the surmounting of serious objections, for compromise in the best sense is the tap root of enduring legislation. In that case a compromise measure may in reality be in close accord with what the opinion of the people would be if they understood the whole situation, and yet popular distrust and the opposition of extremists on both sides may easily condemn it in public estimation. This is one of many cases where inability to learn the facts may make a genuine public opinion impossible and an apparent one misleading.

24. Difficulty in Foretelling whether a Public Opinion will be Formed

While we may indicate the limits of a possible public opinion in general terms, it is not always self-evident whether or not the conditions obtain in a particular case. We have seen that the public can form an opinion when a question has been so much discussed that familiarity with it is widely diffused; and that this is more likely to be true of a general principle than of a concrete application involving complex facts. But the shrewdest prophet cannot always foretell when the public will care enough about a subject to discuss it fully. Sometimes their interest is unexpectedly keen. This is often true of personal questions, for the mass of mankind has more sympathy with the fortunes of an individual than with the fate of a principle, and hence are often better qualified to select a man for office than to pass judgment on his measures. One thing is clear: public interest can rarely be stimulated artificially. No device except a popular assembly has ever been invented whereby the mass of the people can be made to expend considerable effort on mastering facts that do not touch their imagination or affect closely their daily lives. While, therefore, they may occasionally pay an unusual amount of attention to some particular matter, a political system wisely framed will refer to public opinion those questions alone on which such an opinion can reasonably be expected to exist.

The fact that on many of the questions arising

in the administration of a modern state no true public opinion is possible does not mean that with such questions popular government has no concern, or that public opinion cannot control their determination. The presence of such matters involves no condemnation of democracy, but a consideration of its mode of operation. It demands a careful study of the subjects to which public opinion is directly applicable, and the regulation of others by one of the indirect popular methods to be described hereafter.

Part II

The Function of Parties

Part II

The Function of Parties

CHAPTER V

ADVERTISEMENT AND BROKERAGE

25 Mobility of Modern Life

DEMOCRACY, as we see it at the present day, means many things. They may not all be of necessity interdependent or even consistent with one another, but we find them linked together in the civilization in which we live. In its political aspect democracy means popular government, the exercise of power by the mass of the people. In its social aspect it means equality of opportunity, which was expressed by Napoleon in the phrase "*la carrière ouverte au talens*," and by Pasteur, in a loftier vein, when he said that it enabled every man to put forth his utmost effort. The enlarged opportunity is furnished by a greater mobility, due in part to the fact that status and property, which were the pillars of an earlier society, have been to a great extent replaced by contract and credit; and the change in social conditions which this implies has been accelerated in the last hundred years by the advance in mechanical inventions. With the breaking up of former industrial methods, with the huge

accumulation of movable capital seeking investment, with the vast growth in the means of distributing products and spreading information, society has lost its rigidity and become far more fluid than of old.

With the increase of opportunity the force of habit has declined. Men do not walk in the beaten track so much as they did in the days of our great grandfathers, but turn aside more freely into new paths. They are less addicted to living all their lives in the same house, dealing at the same shop or with the same people, buying the same wares and reading the same newspaper. People are more easily brought to change these things; while at the same time it has become more than ever for the interest of tradesmen to induce them to make the change, because the declining margin of profit has taught men the necessity of increasing the volume of their business, of striving to conduct their affairs on a larger scale. It has therefore become far easier and more profitable than in the past, by catching the attention, to win the patronage of great numbers of people.

26. The Age of Advertisement

In short, we live in an age of advertisement. Lipton's teas, Sapolio, and a hundred other things, good, bad, and indifferent, force themselves upon you from the front page of your newspaper at breakfast, from the calendar and the blotting pad on your desk. They glare at you in the street cars and from the house tops. They hide the empty lots in the city and the landscape from the window

of the railroad train. Advertisement as an art has been brought to a high state of efficiency and yields great rewards to those who understand its mysteries. In its lower forms it tends to sensationalism in its effort to catch the eye or ear. The profits of the daily press are based today, not on the payments of the subscribers, but on the advertisements; and as these depend on the circulation, there is a tendency on the part of the managers to lower the price of the newspaper, to care less for the real merits of the contents, for the solidity of the editorials, for the accuracy and value of the news, and more for the power of captivating the multitude.

Even in regions far removed from trade, advertisement is a potent, if not a necessary, agency. The most dignified of our institutions, our universities, have felt constrained to resort to it; not blatantly, but in insidious and appropriate ways. Moreover, for anyone who desires to advocate a new idea, the difficulty is not so much to convince as to get a hearing, not so much to be judged fairly as to be judged at all. The most effective methods of reaching that goal are to say something sensational and startling, or to hold a post that in itself attracts attention. This is one of the growing advantages of official position of any kind, because the occupant, being prominent by virtue of his office, is in the public eye and is listened to by a large audience. Uttered by one in high office, platitudes become oracular.

27. The Age of Brokers

The same conditions that have caused the great development of advertising, where the mass of the public must be reached, have fostered another agency in the case of transactions which affect a smaller class of persons. The mobility of capital, with the range of unknown individuals that may want to purchase what others are ready to sell, has evolved a new profession whose function consists in bringing buyer and seller together. Its members may affect a trade between single individuals, or they may work on a larger scale, for success in the huge industrial concerns of our time requires capital, furnished in the main by a class of investors beyond the reach of ordinary advertisement and attracted only by persons in whom they have confidence. One of the most lucrative occupations at the present day is that of bankers or brokers with a wide clientele, who can persuade many people to embark in enterprises; and the business yields enormous profits because it is indispensable in large financial transactions. On all scales, therefore, large and small, from the commercial traveller and the man who negotiates the sale of a single plot of land, to the great banking house which places millions of bonds or prevails upon the security holders of a gigantic railroad to consent to a reorganization, the world is dependent on the agency of brokers far more than ever before. In fact we live in an age of brokers.

28. Politicians as Brokers

In politics the extension of the suffrage, coupled with the growth in population of the great nations, has had a similar effect; for the larger the number of individual minds concerned with public affairs the greater the difficulty of reaching an agreement, or in other words of forming and expressing opinions. If all men took a keen interest in public affairs, studied them laboriously, and met constantly in a popular assembly where they were debated and decided, there would be no need of other agencies to draw attention to political questions. But in a modern industrial democracy, where the bulk of the voters are more absorbed in earning their bread than in affairs of state, these conditions are not fulfilled, and in case no one made it his business to expound public questions or advocate a definite solution of them they would commonly go by default.

Moreover, if all men after a short reflection came to the same conclusion popular government would be plain sailing; or if the majority tended to think precisely alike the matter would be simple enough. But in fact all men, or even the majority of men, who think for themselves do not spontaneously reach identical conclusions. Their views range naturally over the whole gamut of possible solutions, and they can unite for action only by the sacrifice of a portion of their ideas. The process of forming public opinion involves, therefore, bringing men together in masses on some middle ground where they can combine to carry out a common policy.

In short, it requires a species of brokerage, and one of the functions of politicians is that of brokers. Perhaps it is their most universal function in a democracy, because, in the caustic language of Sir Henry Maine, the mincing of political power into very small morsels naturally makes the wire puller the leader.[1] The number of statesmen who strive to carry into effect a personal policy of their own on any large scale by leading and educating the community is very small. By far the greater part of the work done by public men consists in ascertaining what the people, or some fraction of the people, want; or, to put it in a less invidious way, in finding out how far the ideas which they hold themselves are shared by the bulk of the voters, how far the subjects in which they are interested are ripe for treatment, and in what way they can be popularly treated. It is, indeed, almost a truism to say that the success of a public man depends very much on his ability to gauge public sentiment. For this purpose the professional politician — meaning thereby not the man who makes a living out of politics, but one who devotes a considerable part of his life to it — has a great advantage over the amateur; and that explains no small part of the ineffectiveness of many reformers in America.

It is by no means always easy to distinguish the leader from the broker, the statesman who really guides the nation from the one who perceives and gives expression to a general sentiment as yet inarticulate. We are all prone to admire and follow the

[1] *Popular Government*, pp. 29, 30.

man who proclaims a principle that we have felt vaguely but never formulated; and on the other hand we may fail to recognize the influence of one who leads us cautiously. Throughout the earlier part of his administration President Lincoln was thought by many ardent people to be waiting for an impulse from outside, to be merely watching the trend of public sentiment and following it; but it is now generally admitted that he matured his own plans, led the people quietly to his own standpoint, and acted as soon as they were ready to support him.

To say that a species of brokerage forms a large part of the work of men in public life is not necessarily a condemnation. It does not mean that they are habitually insincere or adopt lines of policy in the righteousness of which they have no faith themselves. Some compromises they make, no doubt, but every leader must do that. No one can carry measures in exactly the form he would prefer. If he could, they would express no opinion but his own, and in most cases that would be defective. It may be assumed that the honest man in public life, when he listens for and interprets the whispers of popular sentiment, adopts only those suggestions that approve themselves to his own conscience. In doing so he is performing a service, not, indeed, of the highest grade in statesmanship, but one essential to popular government — that of crystallizing a mass of shapeless ideas into the general public opinion required for constructive legislation and political action. In his *History of the Relation*

between Law and Opinion in England, Professor Dicey has shown how fully English statesmen of both parties have acted in accord with the prevailing public opinion of the day. This was partly because they shared that opinion, partly because they followed it, and only to a very small extent because they created it.

In short the function of the broker is as needful for political as for commercial life, as proper and as honorable. The really serious evil comes when the brokerage is not confined to formulating public opinion, but degenerates into a traffic in public measures without regard to any public opinion on the measures themselves, or into a traffic in private legislation and in appointments to public office. It is these last things that have brought politics in America into discredit. It is in these that the boss plies his trade. He is essentially a broker, but a broker who deals in private benefits, not in public opinion.

29. Parties the Means by which Brokerage is Conducted

If politicians are largely brokers, party is the chief instrument with which they work. The evolution of popular government has made political parties a permanent phenomenon in public life, and while many have denounced them, and many more have used them, a few speculative thinkers have sought to account for them. Their existence has been ascribed to several causes mainly of a psychological or economic nature. Röhmer, for example, an ingenious writer of the middle of the last cen-

tury, attributed them to natural diversities of temperament corresponding to the different states of maturity in man from youth to old age.[1] Youths, and men who retain throughout their lives a youthful spirit, are, he says, by nature, radical. Young men are naturally liberal; middle-aged men conservative; and old men absolutist and reactionary. More recent writers have ascribed the political parties to a conflict of interest between the different forms of property, such as land and movable capital; or traced them to the forces that make for individualism and for cohesion. Gabriel Tarde sought them chiefly in the contrast between the tendencies to imitate traditional customs and to imitate new fashions[2]; while Sir Henry Maine looked for their origin in the primitive combativeness of mankind.[3] Most of these writers, and especially those mentioned first, were, like all political philosophers, much affected by the conditions prevailing at the time in their own country, and their theories are mainly an endeavor to explain those conditions. We may observe, also, that in most cases the explanation is based upon the subject matter or principle on which the parties are divided, not upon any inherent necessity in the working of democracy on a large scale.

Looking at the present state of affairs in England and America, the two large nations where popular government has run a free course for the greatest length of time, we are justified in saying that the

[1] *Lehre von den Politischen Parteien.* Summarized in Bluntschli's *Charakter und Geist der Politischen Parteien.*

[2] *Les Transformations du Pouvoir,* pp. 143, 144.

[3] *Popular Government,* p. 31.

existence of parties is not mainly due to differences of temperament, to conflicting interests, or to the basic forces that create variations of opinion and emotion in mankind, but that they are rather agencies whereby public attention is brought to a focus on certain questions that must be decided. They have become instruments for carrying on popular government by concentrating opinion. Their function is to make the candidates and issues known to the public and to draw people together in large masses, so that they can speak with a united voice, instead of uttering an unintelligible babel of discordant cries. In short, their service in politics is largely advertisement and brokerage.

In a small community where people can all meet together, or in an aristocracy so limited that the members know one another, such a service is much less needed. Under those conditions parties would probably exist only while there was a sharp issue to divide them. They would fulfil, in a way they have long ceased to do, Burke's definition of a party as a body of men united for promoting by their joint endeavors the national interest upon some particular principle in which they are all agreed, and they would fade away when the issue was definitely settled. This actually happened in the United States during the "Era of Good Feeling" in Monroe's administration. In England also during the eighteenth century, and until the Reform Act of 1832, the parties were constantly tending to break up or degenerate into mere personal intrigues, a state of things that makes the political history of

the time very hard to follow. Whereas, with the extension of the suffrage and the growth of the electorate, parties in both countries have become permanent, and, although in different ways, much more highly organized.

30. Parties Enable the Voters to Act in Masses

Perhaps this function of parties can be put more clearly in a different form. Some years ago a prominent reformer urged that it was the duty of every good citizen to go to the polls and vote for the man he thought most fit for an office, whether other people proposed to vote for him or not. A more certain method of insuring the victory of bad candidates could hardly be devised. One might as well say that every good soldier ought to fight as he thinks best without regard to the manœuvres of the rest of the army. Savage warriors come nearer to that ideal than civilized troops. In personal conduct, not involving coöperation, each man may do what seems best in his own eyes; but in any movement which can succeed only through concerted action, that is not wholly possible. As men do not spontaneously agree exactly, the harmony that is needed can be reached only by mutual concessions. Here the services of the broker, and in public affairs the services of the political leader as a broker, are called into play. Here also comes in the function of parties as a means of bringing about a workable accord.

Independent expressions of opinion by all the citizens on the person to be elected would determine

nothing. They might suggest the general trend of thought, but they would not as a rule result in a majority, or even in a very large minority, for any one man. Suppose, for example, that in a country where parties did not exist, every voter, without previous consultation of any kind, were to write on a slip of paper the name of the man he preferred for chief magistrate. The slips when counted would usually give no idea of the real preference of the nation. Save in rare instances there would be no approach to a majority for any one man; and the name that received the largest number of votes might be abhorred by the vast majority of the people. Mr. X might have more votes than either A, B, C, or D, and yet the supporters of these four men, who comprise, let us say, three-quarters of the citizens, might prefer any one of the four to X. That is the reason that many advocates of proportional representation urge the adoption of the preferential ballot; and it is one of the reasons why the direct primaries established by law in many of our states often are, and must be, preceded by private meetings or conventions which designate candidates, or by an expensive campaign on the part of the aspirant himself.

In the case of measures this is certainly not less clear. Suppose each member of a protectionist Congress were asked to submit, without consultation, a draft of a tariff. It would no doubt be obvious that a large majority desired protection in some form, and yet a plan of a tariff for revenue only, being simpler, might be sent in by more mem-

bers than any particular protective schedule. In fact it is not improbable that no two schedules drawn up by protectionists would be precisely alike. It is evident, therefore, that collective opinion can be ascertained only by submitting a definite proposition and taking a vote upon it. In short any body of men, be it a board of directors, a legislative assembly, a mass meeting, or the electorate as a whole, can express itself intelligently only by answering "Yes" or "No" to a question submitted to it; or if, as in the case of most elections, the matter is to be determined by plurality, it can only select one from a list of candidates presented to it.

31. Parties Frame the Issues for Popular Decision

If then any large body of men can express itself only by voting "Yes" or "No" on a question submitted to it, someone must frame the question or present the candidate. In a body of moderate size this can be done by individuals, but in a very large body a fair chance of success can be obtained only by insuring a considerable support in advance, and hence concerted action is indispensable. Therein lies the main utility of parties in a popular government. It is their business to frame the issues on which the people are called upon to give an opinion, and to nominate the candidates among whom the voters make their selection. No doubt they exercise other powers, some good and some bad. In the United States they have been highly active in distributing among their adherents offices that ought to have no party character — an abuse as yet

checked only in part by the reform of the civil service. To some extent also, as Professor Henry Jones Ford pointed out years ago, they help to bring into harmony the branches of our government that were made wholly independent by the Constitution.[1] But it would seem that their essential function in any democracy, and the true reason for their existence, is bringing public opinion to a focus and framing issues for the popular verdict. Their service is like that of the counsel who draw the pleadings and argue the case for the jury. In performing it they are exposed to the temptations that beset members of the bar, without the strong professional safeguards which restrain abuse; but it must not be forgotten, also, that they are open to the exaggerated criticism which laymen have always levelled at lawyers.

[1] *The Rise and Growth of American Politics.*

CHAPTER VI

THE CONFUSION OF ISSUES

WHEN we speak of the function of political parties in framing the issues for popular decision, we must not imagine that those issues are by any means simple. It is not always the intention of the party to make them so; nor is it always the aim of a lawyer in arguing before a jury to make his client's case depend upon the determination of plain facts. Mr. Bryce has remarked that opinion is the thing with which American party organizations are least occupied; that the object of a platform is neither to define nor to convince, but rather to attract and to confuse; that it is a mixture of denunciation, declamation, and conciliation.[1] Nor is this surprising when we consider how politicians are always saying that they need an issue on which to appeal to the people, and yet are constantly evading subjects deemed vital by many of their supporters.

Such a condition, however, will appear less inconsistent with the statement that the parties frame the issues, if we distinguish carefully between the main question which the people must decide and the grounds of their decision. The former is usually perfectly clear, while the latter are often painfully obscure. What was the main question the people

[1] *The American Commonwealth*, ed. of 1910, vol. ii, p. 334.

of the United States were called upon to decide at the presidential election of 1908? It was whether Mr. Taft or Mr. Bryan should be President during the next four years. That issue was framed by the Republican and Democratic parties in nominating the candidates, and was settled by the election beyond the shadow of a doubt. In the same way the British voters decided at the election of 1905 that they were for the time weary of the Conservative administration and preferred to intrust the government to the chiefs of the Liberal party. This also was purely a party question, and was submitted to the judgment of the electorate by the two front benches in the House of Commons.

32. The Motives that Determine an Election are Often Obscure

Turning now from the immediate issue to the grounds of decision, we may ask whether an election really decides anything beyond the choice of a man for an office. Sometimes in fact it does not. Von Holst declared that the principal argument in the presidential campaign of 1828 was the planting of a hickory pole with a hurrah for Andrew Jackson. Yet the example shows how a vague public sentiment may involve weighty results, for that election, far from being a mere choice of a particular man, became one of the turning points in American history. At times, however, the principles professed by the two parties have presented so little of a definite issue that the people were unable to decide anything in the nature of policy; and on this account critics of our institutions charge Ameri-

can parties with a failure to educate the public. But such elections are exceptional. Some momentous questions are usually debated between the parties, the arguments upon them helping to supply the motives that determine the popular verdict; and yet it is often hard to know how far any one of these motives was decisive, because there are commonly a number of them operating with unequal force on different individuals. Unless some one problem of controlling significance — like the free silver issue in the presidential election of 1896 — has dominated the situation, one cannot be sure that the public has passed a judgment on any specific question.

Sir Henry Maine suggests that "the devotee of democracy is much in the same position as the Greeks with their oracles. All agreed that the voice of an oracle was the voice of a god; but everybody allowed that when he spoke he was not as intelligible as might be desired." [1] The difficulty is not confined to any country or any form of government. In England, where of late years a doctrine has grown up that Parliament ought to enact no drastic legislation without a mandate from the nation, a general election always gives rise to a dispute about the questions it has decided. Did the people in 1900 declare for anything but the South African War? At the election of 1905, which brought the Liberals into power, did the people pronounce in favor of secular schools, or Home Rule for Ireland, or merely against a preferential tariff? Did they in December, 1910, express an opinion on anything except the veto

[1] *Popular Government*, p. 185.

of the House of Lords? No one can be certain. and acrimonious debates on the subject habitually take place in Parliament.

A strange situation was brought about by the election of January, 1910. The Lords had rejected the budget, and the dissolution took place with the distinct purpose of determining whether they should be compelled to pass it or not. The election resulted in a majority for the Liberals, but only with the aid of the Irish Nationalist members who held the balance of power. Now the Nationalists disliked the provisions of the budget concerning licenses for the sale of liquor, and if the issues could have been completely separated they would have rejected those provisions, which were, however, deemed vital by the bulk of the Liberals. Under these conditions the desire of the Nationalist members of Parliament to sustain the Liberal government and to checkmate the House of Lords was so strong that they voted for the budget as it stood and forced the Peers to accept it. No doubt in so doing they had the approval of their constituents, who may be assumed to have cared less about the liquor clauses than about the ultimate policy of the party. But here was an election, turning primarily on the budget, which seemed to show that a majority of the constituencies did not want it as it stood; and yet the exigencies of party politics so complicated the issue that the Lords felt constrained to pass the budget as a concession to a popular demand.

A general election is of necessity a judgment upon the parties in all their relations, and therefore it is

impossible to isolate the different motives involved, such as the personal qualities of the candidates, the various measures proposed, and a revulsion of feeling against the party in power. One cannot separate these things so as to attribute the result to any one of them alone. That is the chief reason for taking a popular vote on a single measure by means of the referendum — an institution whose utility and limitations will be discussed in a later chapter.

33. But the Confusion is Less than if Parties did not Exist

Although political parties often present questions of policy to the electorate in a complex and confused form, they do at least present the sharp issue of a choice between their candidates for office; and even the result of the election as a decision on questions of policy is much more clear than it would be if there were no parties at all. Suppose, for example, that no political parties existed in the United States, and that some candidates were nominated who stood for a more vigorous national control of corporations and a tariff for revenue only, others who stood for a similar control and a protective tariff, others for prohibition and restriction of immigration, and so on through all the possible combinations of political creeds, while some of the candidates stood for nothing more definite than personal popularity. It has already been pointed out that in such a case no single candidate would probably receive more than a small minority of the total vote, and if so what would the result of the election signify? What would it tell us about public opinion on any

of these questions; and if we could compute that opinion by an elaborate process of adding and subtracting the votes cast for different programmes, what would be the chance that the persons elected shared that opinion on a considerable number of points? The confusion would certainly be far greater than it is today. In short, the function performed by the parties in framing the issues for popular judgment is not rendered useless by the fact that it is fulfilled very imperfectly.

34. In England the People Pass Judgment More on Measures, in the United States More on Men

We have seen that a general election must of necessity involve a number of different questions, and sometimes one of these may preponderate, sometimes another. We have known elections to turn mainly on the personal character of the candidates; we have known them to turn on one overmastering issue; and we have known them to be decided by general party tendencies without a marked prominence of anything in particular. In this connection it may be interesting to note the effects of different forms of popular government, and especially of the systems at work in England and the United States. If we were seeking for an epigram we might assert that under the English parliamentary system more emphasis is laid on policy, in America more on the men selected. Like all epigrams this contains an element of truth. In England the party that has a majority in the House of Commons must hold together and support the

cabinet on all important measures, or it will fall and be replaced by a cabinet of the opposition. Conversely the cabinet must avoid a policy that divides its followers seriously. Hence a general election is far less a decision on the merits of individual candidates for Parliament than a judgment on the national party leaders who stand on a fairly definite policy — a policy known, not solely from electoral promises, but from the positive attitude previously assumed on one side or the other of the table in the House of Commons. In America this is much less true. President Roosevelt and Congress were by no means always in perfect accord, and had we possessed the English system of cabinet responsibility, had he occupied the position of a British prime minister, Congress would have been compelled to follow him wherever he chose to lead, or he would have been forced to submit to its wishes or resign. In the United States people can vote for a President because they prefer his personal character, or his political views in the aggregate, to those of his opponent; and then can vote for a member of Congress who differs from him on some important question of policy. In 1904, for example, congressional districts could, and did, vote for Colonel Roosevelt, and elect at the same time congressmen strongly opposed to his plan for increasing the navy.

In England, therefore, the people at a general election pass judgment more directly upon the whole policy to be followed during the next few years, a fact which goes far to explain the new doctrine that

Parliament ought not to deal with matters of prime consequence unless it can be considered to have received a mandate for the purpose at the election. But on the other hand the people must accept one or other of the party programmes as a whole. They cannot support the Liberal ministry because of a desire for Home Rule in Ireland, undenominational public schools, or disestablishment of the Church in Wales, and elect members of the House of Commons who will vote for preferential duties on colonial products.

In the United States the popular decision on questions of policy is less direct and conclusive. Often it cannot be known until Congress acts, and Congress divides much less on party lines than Parliament. Thus in England the parties frame the issues for popular judgment more definitely than they do in America, but the public is less free to express an opinion upon each question separately. In America the parties perform that function less fully, and hence a general election has less the character of a popular mandate to the successful party to carry out a specific group of policies. This fact in turn helps to explain the far greater prominence of the personal element in American politics. In England the selection of the prime minister and his colleagues is made without reference to the electorate, which has, indeed, no strong desire to be consulted on the subject; whereas all American citizens were profoundly stirred by the question whether Mr. Taft or Colonel Roosevelt should be the Republican candidate for President in 1912, and there was a

vigorous demand that the matter should be decided by popular vote in direct primaries. This was not due chiefly to the immense power wielded by the President, but in the main to the fact that the party was not solidly united in its policy. It comprised within its ranks sharp differences of opinion; the same differences that were again fought over immediately afterward in the Democratic National Convention. The prominence of the personal element in the determination of policy, as compared with the English party solidarity on public questions, makes the American government in this respect less nearly a direct democracy and more representative; yet if the members of Congress, or of a state legislature, reflect accurately the views of their constituents, their action on any particular measure may be more in accord with public opinion on that question than a vote in Parliament would be. The difference is, of course, merely one of degree. In both countries elections turn on measures only in part, and largely on the personality of candidates; in both a considerable amount of discretion is practically intrusted to the men who are elected. We are dealing only with a difference of emphasis; but that difference is not without importance, and has a direct bearing on the topics of the following chapters.

35. Multiplicity of Parties in Continental Europe

Hitherto we have spoken as if there were only two parties to be considered; and that is in fact the normal condition in England and America, for although in both nations third parties have arisen

from time to time they have usually tended to dissolve, or there has been a process of absorption into the two most vigorous bodies. This results from the practical nature of politics in those countries, from the need of combining to support a ministry or elect a president, and from the sense, strong among a people accustomed to self-government, of the futility of voting with a hopeless minority simply as a protest.

On the continent of Europe a multiplicity of parliamentary groups has been the rule. There the parties are based, not so much on a difference of opinion on current public questions, as on political, philosophical, religious, racial, or social traditions. Sometimes these produce irreconcilable divisions, sometimes they do not; but they always make it very difficult for a man to transfer his allegiance from one party to another. The fact that an Englishman voted for the Conservatives in 1895 from a dislike to Home Rule was no reason why he should not vote for the Liberals in 1905 because he dreaded a preferential tariff and thought it the more important question of the two. A Frenchman, on the other hand, who believed in monarchy on principle could hardly have abandoned that faith because he did not like the attitude of his party in the Dreyfus case. He might stay away from the polls, but he could not without apostasy become a Republican, and it went against the grain to vote for any Republican candidate. This appears to be true to a smaller extent even in places like Switzerland, where party feeling does not run high, where it is based on political

philosophy rather than on the memory of bitter antagonisms, and where there are no irreconcilables.

Such a difference in the basis of parties explains why political fluctuations are much less rapid on the continent of Europe than in English-speaking countries. The frequent alternation in office of opposing parties, which is the characteristic phenomenon of modern popular government in England and in the United States, is unknown in most of the continental nations. Except in countries like Spain, where the government virtually controls the elections, a sudden shift of power from one side of the house to the other is rare, and the gain or loss of a party is often so slow that it must be attributed, not to any considerable change of opinion among the existing voters, but to the gradual advent of a younger generation.

36. Two Parties a Result of Political Maturity

Continental writers are generally convinced that a multiplicity of parties indicates greater maturity, that it is the condition to which all nations are tending. We may admit that it is a more natural division on subjects of an academic character. Save in a case where only two alternatives are possible, there will usually be more than two schools of thought. If a problem is capable of three or four rational solutions some men are likely to be in favor of each of them; and where the question is one of degree, as, for example, in the amount of control to be exerted over private industry, there are likely to be groups of men ready to go to different lengths.

In that sense a multiplicity of parties may be said to express the mind of the nation more accurately than a division of all the citizens into two opposing camps. But government is a practical art in which the currents of popular opinion can be but imperfectly reflected, and this brings another factor into the problem. We have already seen that in the final decision of a concrete question any body of men can consider only two alternatives, for the body can say only "Yes" or "No" to the proposal submitted to it. At that moment it must divide into two opposing parts, and this is true not of specific measures alone, but also of matters like the choice of a president or the support of a ministry. Switzerland is the only country which, by giving seats in the administrative board to representatives of the different groups of opinion, has succeeded in avoiding almost entirely a sharp antithesis between government and opposition; and it is at least doubtful whether the Swiss system could work on a much larger scale.

Assuming, as the most cursory observation of contemporary politics certainly indicates, that a great democratic country cannot, if it would, avoid government by party, the question arises who is to select the ruling party and thereby determine more or less definitely the policy to be pursued? When there are only two parties this is done by the people at a general election. The electorate is offered a pair of alternatives and chooses between them. The issue is Republican or Democrat, Conservative or Liberal; it is essentially a case of "Yes" or "No."

But where a number of political groups exist no question is presented to which the people can answer "Yes" or "No." They cannot decide which of the groups shall be in power, because that will depend upon the combinations or coalitions formed in the representative body itself when it meets. In France, for example, a new combination of groups, involving a profound change in the character and policy of the ministry, has often taken place during the term of the parliament and without recourse to the electorate. With a multiplicity of groups, therefore, the people play a less direct part in determining the party that shall rule and the policy that shall be pursued than they do if only two competing parties are in the field. The existence of several groups may produce a legislative body that reflects the complex state of the public mind better than a division into two parties, and that may or may not result in wiser legislation, but it does not give to public opinion so direct a control over the government. We may observe in this connection a growing stability in the coalitions of groups in continental assemblies, a greater tendency to cling together in blocks, and appeal to the electorate as a combined party supporting or opposing the administration of the day.

Of the large nations with a popular form of government it would probably be safe to assert that England is the one in which the people take the most direct part in deciding public questions, that they do so to a less extent in the United States, and still less in France under the group system of political

organization. One might suppose that their direct share in government would be least of all in Switzerland, where more than two parties exist and where the administrative body is not wholly partisan. This would be true, were it not for the practice of taking a popular vote on particular measures by means of the referendum and initiative; and that is no doubt one reason for the adoption of those institutions by the Swiss republics.

The prevalence of a number of groups in continental countries is due, not to any preference for representative over direct democracy, but to the fact that the lines of political cleavage are based upon deep-seated traditions rather than upon a difference of opinion on current questions. From that point of view we may fairly ask whether, in large, modern, democratic states, a division into a number of political groups may not be the result of imperfect homogeneity, of a partial evolution of popular government, and of a tendency to regard politics more from a theoretical standpoint than as a means of solving actual problems. Although the adherence of an individual to his party is in all countries largely a matter of tradition and of a conception of the general fitness of things, yet in a popular government that has developed fully the parties themselves ought surely to exist for the attainment of practical ends. They are not academic bodies for the expression of abstract ideas, but a part of the machinery whereby the people formulate and give effect to their opinions on public questions. While everywhere to a great extent

organs outside the domain of positive law, they are essentially instruments of government; and it is only by regarding them in this light that they can be fruitfully studied as a phenomenon in modern democracy.

CHAPTER VII

THE FALSIFICATION OF PUBLIC OPINION

If parties help to crystallize public opinion by framing the issues, they tend also to falsify it, and this in several ways, all at bottom connected with the fact that the whole system of parties is an artificial grouping of men, a device for the practical working of a large electorate.

37. Parties Cause a Bias

Every voter is more or less attracted or repelled by some political party, and usually to such an extent that he is unable to form an entirely unbiased judgment either on questions of policy or on the merits of candidates. No man can free himself from the influence of associated ideas. They are constantly shaping his opinions without his knowing it, and one of the strongest influences of this kind is that of membership in an organized body of men. It is among the primary, hence among the deepest, motives in human nature. It is a part of the gregarious instinct that has made man a social and civilized creature instead of a solitary animal. It is the link that binds the most savage tribe together, and it is far from extinct in the highest state of society. When it appears as devotion to one's country, we laud it as patriotism. When it takes the form of allegiance to party, educated people in

America are apt to decry it; unless, indeed, the party is a reform association, when it is considered a noble expression of public spirit. When it comes in the shape of loyalty to a church, or a charitable or educational institution, it is deemed excellent; while loyalty to a business corporation is popularly eyed with suspicion, if, indeed, it is not regarded as a cardinal sin. But whether for good or evil the influence of membership in an organized body is a force to be reckoned with, and its effect on men's judgments in all the relations of life is too obvious to require elaboration. Doubtless it was a consciousness of its power which led Rousseau to declare that any community in which parties existed was incapable of a true common will.[1]

In American municipal government this force has been especially disastrous, because the allegiance in that case is to a party which has no proper connection with the questions to be decided. For a man to follow blindly in national politics a national party that he has learned to trust is not wholly without justification, because there is a strong chance that it stands for the opinions he would himself hold if he studied the issues involved; but for him to obey the orders of a city boss by reason of a confidence in the views upon the tariff professed by the national leaders of the party to which the boss belongs has not the same excuse. Hence the outcry against party politics in the elections of our large cities, which is as rational as it has usually proved ineffective.

[1] *Contrat Social*, book ii, Chap. iii.

38. Parties Produce Unnatural Divisions

Political parties falsify public opinion in another way, because they do not correspond accurately to the real differences in thought. All party organizations contain an element of sham. A party, like a broker, tries to simulate a larger amount of agreement than actually exists. There may be bitter factional fights over the selection of the candidate or the drafting of the platform, but when they have been adopted, unless matters have gone so far as to cause an open rupture, a strenuous effort is always made to restore harmony, to bury dissensions and work as a unit for the election. The party thus pretends that all its members are more fully in accord than they are; and every active politician, in striving to win the victory, magnifies the points where he approves of the platform and passes over those where he does not; so that within the party itself, and consequently in the verdict of the electorate, public opinion is somewhat distorted. There is more sacrifice of the lesser interests to the greater, more subordination of personal conviction to party concord, than is quite consistent with the real public sentiment.

Such a condition is due to the unreality of party lines of cleavage, which are drawn, as we have already observed, on the assumption that men are divided by nature into two or more sections, the members of each section holding precisely the same views on all public questions. If this were true we should have parties with different policies, each wholly at

unity in itself and separated from any other party by a broad gulf. According to the common Anglo-American theory of two parties, one in power and the other in opposition, that is the case; and according to the continental theory of a multiplicity of political groups it is true of each group. But in fact such a condition does not prevail anywhere. The members of every political party differ among themselves profoundly on some questions, and on none are their ideas exactly alike. Men are not naturally separated by hard and fast lines into two or more compact groups, but present every kind of combination of opinions, agreeing with some persons on one issue and with others on a second.

Many single questions, moreover, admit of a variety of solutions, running from the extremely radical on one side to the highly conservative on the other; and instead of all men grouping themselves naturally into two compact bodies favoring very different solutions, as they ought to do under the theory of parties, a large part of the community is in fact inclined to a middle course. This is true not only of a single subject, but even more of the attitude of the public toward the general progress of political thought. Most men, in short, hold moderate views, inclining to neither extreme, and the dividing line between the parties usually cleaves these moderate men asunder, including some in one camp and some in the other.

A diagram may help to make the matter clear. If we represent the state of the public mind, on any question capable of a variety of solutions, or on the

general trend of politics, by a figure whose thickness at any point indicates the number of people naturally preferring the opinion corresponding to that point, the figure would by no means have the shape of a dumb-bell or figure eight, as the theory of parties would lead us to suppose. On the contrary, it would be thickest near the centre, not far from the very place where the division between the parties comes. The normal curve so formed is known to scientific men as the integral of probability.

Figure 1 expresses the condition of public opinion according to the theory of two parties; figure 2 according to the theory of groups; and figure 3 according to the universal scientific principle of the distribution of variations from a common mean:

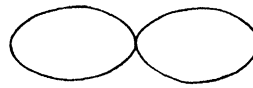

FIG. 1
Theory of Two Parties
Conservative Liberal

FIG. 2
Theory of Several Political Groups

FIG. 3
Natural State of Public Opinion
Conservative Liberal

39. People can Say only "Yes" or "No"

Now this distortion of public opinion by parties flows from the fact that the people can act directly only by answering "Yes" or "No" to a definite question presented to them; or if they act by a plurality, instead of by a majority, they can express a more general preference for one particular proposition or candidate than for any of the others. When an election is held for a public office, or a vote is taken upon a referendum, or any other attempt is made to elicit public opinion by a ballot, the question presented to the people is in substance, do you want this man or that man for the office? — do you approve of this measure or not? On such a question the people must divide sharply on the two sides of the line, although many of them might prefer to answer a different question which is not presented. If the popular decision is to have any intelligible meaning, it must be in the form of a choice between definite alternatives, propounded by someone; and in a large modern democracy this is normally done by the political parties. We shall have occasion hereafter to consider the effort to enable any other body of citizens to present measures to the electorate by means of the initiative; but we may remark here that to be more than momentarily effective a political organization must have a certain degree of permanence, and any such organization which is permanent is properly classed as a political party.

On every popular vote the people must divide

sharply on opposite sides, but it does not follow that the line of cleavage will be the same on all questions submitted to them. Normally, it would not be so, unless the ties of party were strong enough to create a strong bias. Yet the election of representatives and public officers on somewhat artificial party lines is, in a strictly representative democracy, the only authoritative expression of public opinion; and even where such a system is tempered by the referendum and initiative, election is by far the most important act that the people perform. But again it does not follow that after the representatives have been chosen they will differ on all the measures that arise as they were divided at the polls; that the Republicans will always vote one way and the Democrats the other. If they do, they will certainly not be reflecting the popular attitude correctly, and the distortion of public opinion is obviously likely to be greater than if they consider each question on its merits and act according to their personal convictions. Distortion of public opinion from this cause is, therefore, larger in the House of Commons than in American legislatures where votes are cast, as a rule, far less on party lines.[1]

40. Influence of Moderate Elements

There is still a third way in which parties falsify public opinion. This is by giving undue weight, either to the elements that are most aggressive or

[1] *See* A. L. Lowell, *The Influence of Party upon Legislation in England and America*, Annual Report of the American Historical Association for 1901, vol. i, pp. 319–542; summarized in the writer's *Government of England*, vol. ii.

to those whose attachment to the party is least strong. We have already observed that opinions are weighed rather than counted, and that happens within a party as well as in the whole community. The fraction that is most active and pushing has far more influence than its mere numbers would justify, and it is apt to be an extreme fraction, because extremists are usually more intense in their feelings than persons of moderate views. Yet the moderate man will often cling to them rather than break the tie of party, when if no parties existed he might vote differently; and thus the country may for a time be governed by what is really a small minority. The classic example of this is found in the history of the French Revolution, where the control of public affairs passed by successive stages into the hands of more and more radical groups, until the moderate men rose in disgust and put an end to the Reign of Terror by sending the Jacobin leaders to the guillotine.

In a long established popular government the tendency of a party to be ruled by an extreme wing is usually counteracted in some measure by the temptation to give great weight to the elements in its ranks that are most easily detached, these being normally the more moderate elements. In a country, for example, like England or the United States, where there are habitually two principal parties, the members in each who are nearest in accord with the other are more likely to be driven into it by dissatisfaction with their own leaders than are the extremists whose aversion to their opponents

is much stronger. The party chiefs are therefore very careful not to offend people of that type, sometimes to the exasperation of men of sterner mould. In the early part of our Civil War many ardent Republicans thought that Lincoln paid too great heed to the hesitation of his more timid supporters who dreaded, first a violent collision with the South, and later a drastic policy about slavery. In the same way Mr. Gladstone's cabinet in 1870, out of respect to Whig opinion, did not go so far towards free public non-sectarian education as the Non-Conformists desired.

Examples of cautious action due to this cause might be multiplied indefinitely, for the condition is perfectly natural. The extreme wing, the one farthest from the opposing party, may grumble and scold, but it is highly unlikely to join the enemy; whereas the men who stand closest to the opposition pass much more easily over the line, and must, therefore, be carefully conciliated. Thus in a country where only two parties exist there is a normal tendency toward what the French call government by the centres. This is a healthy condition, because it makes for moderation, for a stable progress, for a policy near to the average view of the whole community, and hence for government by public opinion. It is a beneficial offset to the other tendency toward the rule by men of intense and extreme convictions, and, if it falsifies opinion within the party, it helps to prevent party from falsifying the opinion of the people.

41. Influence of Extreme Elements

Occasionally the wing of the party most easily detached is not moderate, but extreme. That occurs when it consists of men who care more for some particular object than for all the other principles that hold the party together. In order to promote their ends in such a case they may be willing to engage in a triangular fight, or even to transfer their support to the other side, which may on its part be inclined to trade with them for the sake of getting into power. By this process the extreme wing can sometimes force the hands of the party leaders and gain an influence quite out of proportion to their numbers, thus bringing to pass a result out of accord with true public opinion. To some extent the Labor Party holds a position of this kind in England today. It is for most purposes affiliated with the Liberals, and it has certainly no disposition to trade with the other side, but it has often nominated an independent Labor candidate, even at the risk of giving the seat to a Conservative. Both Liberals and Conservatives need the votes of working men who are more or less under the influence of the labor leaders, and both feel constrained to obtain that vote by concessions. In 1906, therefore, neither party dared to reject the bill to exempt trade unions entirely from suits for tortious acts, although it is not improbable that the general opinion, both in Parliament and in the country, if not distorted by party exigencies, would have been against a measure so contrary to the spirit of the English common law.

The soundest, although by no means the universal, condition of parties is one where they are far enough apart to stand for real differences of policy, and yet sufficiently controlled by their moderate elements to be fairly close together. This is the best condition, because it is one that brings both of them near to the political centre of gravity of the whole people, neither of the alternatives offered to the voters being very repugnant to the average man. In such a case the parties perform their function of framing issues for the people, and yet falsify public opinion to the smallest extent.

42. Parties Prevent Distortion by Popular Vagaries

If political parties always distort public opinion in some degree, they also prevent the still larger distortion caused by sudden waves of excitement. As great ecclesiastical bodies tend to frown upon religious excesses, so party organizations are inclined to check political vagaries. They are essentially conservative, setting their faces against new experiments. For good or for evil, the Whigs in America were out of sympathy with the Free-Soil movement; and four decades later the regular Democratic politician did not like the Populists. Sir George Cornewall Lewis remarked that the absence of highly organized parties enabled a powerful orator to sway the Athenian Assembly much more readily than he can a modern legislative body. The division of the latter, he tells us, into parties, accustomed to discipline and guidance, makes it less accessible to sudden appeals to emotion, and thus gives

a greater ascendency to calm and prudent counsels than in the ancient republics.[1]

43. Parties an Obstacle to Despotism

Connected herewith is another service rendered by parties, that of enabling the people to hold the government in check. The constant presence of a recognized opposition is an obstacle to despotism. An oriental ruler has always become resistless as soon as he broke the armed force of his foes, because there has been no peaceable means of forming or expressing hostile opinion. There has been no man or body or organ for discontent to rally around, no alternative to submission but insurrection; and hence a pacific population has been ready to bear much without showing signs of disaffection. The same thing was true after the *coup d'état* of Louis Napoleon. At each of the *plébiscites*, in which he asked the people of France to ratify his assumption of power, there was and could be no real expression of public opinion, because there was no alternative. The citizen was asked to choose between a government that he might not approve and a grim spectre of anarchy or civil war. No man who cared for law and order could hesitate. Had there been another party in the state, with a rival programme that could have been quietly carried into effect if supported by a majority of the people, the result of the vote might have been different.

A similar situation in a milder form might be produced in any country if one of the parties were

[1] *Influence of Authority in Matters of Opinion*, pp. 216–18.

to disappear altogether, or if its chances of victory were permanently hopeless. The existence of a party of opposition, with a programme fairly within the limits of a possible public opinion, is a bulwark against the tyranny, not only of a despot, but also of a fanatical popular majority. It becomes a rallying place for sober common sense when a policy is carried too far. It is ballast for the ship of state and it forces the rulers to justify their conduct in the face of constant criticism. In a country governed by two parties the utter decay of one of them is a peril to the nation; and in fact it is a misfortune for the other party also, whose members in such a case are almost certain in time to get out of hand and break up into factions that fight among themselves.

CHAPTER VIII

THE ABUSE OF PARTY

In America party government has been for a generation the subject of severe criticism, some of it quite just and some of it exaggerated. We are told, for example, that the parties are in fact manipulated by a small number of politicians, and this is undoubtedly true. Government in every land and in every period of the world's history, whether of a nation, a church, a business enterprise or anything else, has been habitually conducted by a few guiding spirits whatever be the form of organization; and that will continue to be the case so long as men differ in ability, in force of character, and in the amount of effort they are willing to put forth to prevail in their opinions and their desire to rule. In the case of our political parties we are told that the men in control manage things despotically, with a reckless disregard of public opinion; and at the same time we hear constant complaints that the leaders have their ears to the ground listening for popular applause instead of pursuing courageously the course that they think right. Contradictory as these charges may be, they are both largely justified; and both are based on a perversion to improper ends of perfectly normal functions.

44. Need of Scientific Study of Party Government

In politics Americans are a little prone to rely on righteous indignation as a substitute for scientific study. Assuming that popular government is a simpler art than it has proved to be, and that public opinion when roused is well-nigh infallible, they are inclined to believe that institutions can easily be devised which will work perfectly. This habit of mind, coupled with a long-suffering nature due to absorption in other pursuits, tends to produce periods of lethargy followed by outbursts of disgust with existing institutions, when men are ready to accept as a panacea any plausible suggestion for reform. The remedies proposed may be salutary or they may be mischievous; they may allay or they may aggravate the trouble; but the main difficulty lies in the fact that they really treat the symptoms and not the causes of the evil, although their advocates are, of course, firmly convinced that they will strike at the root of the matter.

The result has been a series of experiments, each hailed as a new declaration of popular independence, and each in a measure disappointing. Some of them, like the Australian ballot, are excellent so far as they go, but have not succeeded in breaking down seriously the power of the party machines; while others, like the conferring of great power upon the mayors in cities, have so largely failed to purify politics that men are now turning to radically different plans, such as that of government by commission. The impulse that gives popularity to a

particular reform is often strengthened for a time by an immediate improvement in political conditions. But in fact the first effects of a reform are not a fair test of its permanent value. In times of moral awakening any cure for drunkenness will reform a number of drunkards, for at such times many men are in a state of mind to be cured by anything; and in the same way a change in political institutions is usually followed for a time by improvement, because the public spirit that wrought the change is likely to cause the election of good men to office. The real test does not come until the enthusiasm has faded into the light of common day. Judged from that standpoint, our devices for reform have rarely fulfilled the expectations they awoke.

The difficulty comes from a failure to study politics scientifically, to investigate the phenomena thoroughly. It is much easier to bring a railing accusation against men or institutions than to ascertain how far they are a natural product of the conditions in which they exist. To the scientific mind every phenomenon is a fact that has a cause, and it is wise to seek that cause when attempting to change the fact.

The need of scientific investigation is as great in the case of parties as of any other phenomenon in politics. Observation of modern democracies shows that parties in some form are almost invariably present, and that their activity and persistence are roughly in proportion to the size of the electorate. Hence they may be regarded as a natural result of popular government and must be studied as such.

American reformers have often complained bitterly of the "machine," and talked as if party organization were in itself an error, partaking of the nature of sin. Their own reform movements were formerly sporadic, carried on for the most part by small bodies of men, or by temporary expedients based on spontaneous ebullitions of feeling; but of late years they have learned the value of permanent, concerted work, and some of the most effective associations for good government today are as highly organized, and in fact as completely controlled by a small band of leaders, as the political parties in the places where they prevail. Moreover, the present effort of reformers is not to destroy party organizations, but to legalize and regulate them. In fact one of the burning issues of the day, that of direct primaries, involves a modification, no doubt, but also a recognition and sanction of party organizations. If, therefore, we assume that parties are inevitable, the question we ask ourselves should be, not whether they are a blessing or a curse, but how they can be made to perform their proper function well, without being perverted to baneful uses.

45. The Professional Politician

The perversion of political parties to improper objects is closely connected in America with the existence of professionals who make a living out of politics. Men of this type have not, indeed, the all-pervasive influence commonly attributed to them. They are not found in all parts of the country; but wherever our politics are unsavory, one may be fairly

certain that the professional politician is at work. In his recent suggestive book on *The Promise of American Life*, Mr. Croly has described the reasons for the rise of a special class of politicians.[1] He points out that according to the theories of the Jacksonian Democrats, which became the prevailing ideas of the nation, the ordinary citizen was expected to take an active interest in politics; but that, with the increasing complexity of conditions, the theory ceased to work. Commerce and industry on a large scale became divorced from politics, each of them tending to engross the whole of a man's attention, thus giving birth to a special professional class. He explains how "the American system of local self-government encouraged the creation of the political 'Boss,' because it required such an enormous amount of political business. Someone was needed to transact this business and the professional politician was developed to supply the need. . . . The ordinary American could not pretend to give as much time to politics as the smooth operation of this complicated machine demanded; and little by little there emerged in different parts of the country a class of politicians who spent all their time in nominating and electing candidates to these numerous offices. The officials so elected, instead of being responsible to the people, were responsible to the men to whom they owed their offices; and their own individual official power was usually so small that they could not put what little independence they possessed to any good use."

[1] Pp. 117–126.

Although much keen thought has been turned on the boss and his methods of operation,[1] there is still abundant opportunity for some political philosopher to study his natural history, examine the real extent and limitations of his power, and expound more fully his relation to the precise conditions in which he thrives. If his life is chiefly parasitic, it does not seem to his friends vicious. On the contrary his influence over the mass of his followers is largely based upon their belief that he is the centre of a great charitable institution which ministers to their wants, relieves their distress, and distributes among them the favors of a bountiful public providence. That these benefits are conferred to the injury of the whole community, and in the long run to the detriment of most of the persons who receive them, they do not see. Nor do they perceive that government by favoritism leads inevitably to corruption, and that corruption always turns to the profit of rich and unscrupulous men who can pay for the favors they demand. The alliance between the boss and predatory wealth is as natural as it is calamitous. But does such a condition exist because the people in a boss-ridden community prefer bad government, or because public institutions are so ill adjusted that someone must perform, well or ill, honestly or corruptly, the functions which the professional politician has acquired?

[1] See, for example, *The Boss*, a book written in imitation of Machiavelli's *Prince*, under the pseudonym of Henry Champernown by D. McG. Means; and *The American Boss*, by Francis C. Lowell in the *Atlantic Monthly* for September, 1900; as well as the discussions in Bryce's *American Commonwealth;* Ostragorski's *Democracy and the Organization of Political Parties*, vol. ii; and Hart's *Actual Government in the United States.*

One thing is clear. The boss does not act mainly as an exponent of public opinion or frame the issues therefor. Unless they affect his power, or private interests from which he can derive a revenue, he leaves such matters alone if he can. He cares little for public policy or legislation relating to the general welfare so long as he is allowed to pursue his trade in peace; and he deals chiefly in things that public opinion cannot reach, the distribution of minor offices and the granting of privileges great and small which the public can hardly follow. He is, indeed, a political broker, but one whose business relates far less to the subjects of a genuine public opinion than to private benefits.

46. The People Attempt too Much

This brings us to another point; for public brokerage in private benefits is in no small measure due to the form that democracy assumed in America. On the connection between the enormous amount of political business our system entails and the rise of a professional class of politicians Mr. Croly's remarks have been quoted, and they are certainly justified. The plain fact is that in America democracy undertakes more work, tries to attend to more details for which it is not fitted, than in any other country in the world. The excessive burden comes mainly from two things: the great number of temporary offices and the system of special legislation; and both are derived from the same source, the dislike of the people to intrust public duties to anyone but their direct representatives or to persons who

are kept in touch with public opinion by constant fear of removal. The American citizen is far less attracted by the idea of experienced public servants who retain their positions so long as they are faithful and efficient than he is repelled by the dread of bureaucracy. A natural result has been the creation of a vast number of elective offices and the principle of rotation in all offices. But a not less natural consequence is the inability of the people to control either the selection of men for office or their conduct after assuming their duties. It is a simple case of being paralyzed by trying to do too much. Every man of affairs knows that if he were unwilling to commit discretion in his subordinates, if he should insist upon considering all the details himself, he would be swamped with work, he would be unable to see the forest for the trees, and he would lose effective control of the general policy of his business. It is said that one way in which the bureaucracy in Russia has at times outwitted a reforming Tzar, anxious to take an active part in administration, has been to overwhelm him with detail; and by the same process the American democracy has placed itself in the hands of the professional politician. The growing demand for a short ballot is a recognition that the people have undertaken to elect to office more men than they can judge intelligently; and it is a step towards a simplification of popular government that ought to be carried far.

We shall, of course, be referred to the progress of civil service reform, which has taken great masses of appointments out of politics, and this has no

doubt proved a vast benefit by removing from the political arena a source of temptation and a means of corrupting the electorate. But the movement has as yet touched elective offices or positions with discretionary powers very little, and hence has not done much toward lightening the burden of popular government, which is still far too great for any people to bear. To the relief of members of Parliament the last appointments in which they had any voice, those of local postmasters, have within a few years been withdrawn from their influence; and they have thus been left free to devote their whole attention to public questions. This is all that people in a democracy ought to do.

Another product of American democratic ideas has been the vast amount of special legislation enacted by representative bodies. In other countries with a popular government matters of this kind are, to some extent at least, removed from politics by being placed primarily in the hands of administrative officials or of an impartial committee. But in the United States an attempt is made to bring them under popular control by intrusting them to the direct representatives of the people. They are, however, so numerous and so complex that the public cannot effectively control them, and the result has been to throw them into politics, to make the professional politician a private bill broker, and to bring the promoters, including the managers of public service corporations, into the political arena. This again is a case of democracy obstructing its own path by too much baggage.

We suffer from what Marco Minghetti, writing of Italy, called the undue interference of parties with affairs not properly within their province. But the parties deal with them because the people attempt to do so. If the people will elect many officers someone must nominate them, and that is the natural function of parties. If the public prefer to have a large number of other officers appointed on grounds other than special fitness, experience or automatic tests — that is on political grounds — the parties are certain to take a hand in the matter. If democracy demands special legislation by political bodies professional politicians are likely to be attracted to the quarry. The parties were not formed for the purpose of spoils or franchises, but they quite naturally took upon themselves all the work to be done by direct popular agency. The conscience of the nation has been aroused, and an improvement in the standards of public life will bring greater purity in government; yet so long as the people as a whole undertake more than they can attend to, some individuals will do it, and will be under a strong temptation to do it wrongly. Must we not strive to reduce popular action, and with it the activity of political parties, to those matters in which there can be a real public opinion?

We are told that the cure for the ills of democracy is more democracy, but surely that depends upon the disease from which it is suffering. To tell a merchant whose business has outgrown his old methods of personal management that the cure for his inability to supervise it is more supervision on

his part, that he ought to pay greater attention to details, might be the advice of a country storekeeper, but it would not be that of anyone familiar with administration on a large scale. Such a person would recommend the appointment of trustworthy permanent agents to relieve him of detail, and would add that if he had in his employ an unusually faithful and capable man he had better keep him as long as possible and make it worth his while to stay. The cure for the ills of popular government is more attention by the people to the things they undertake, and that object is not promoted by undertaking too much. There is a limit to the total amount of labor the whole people can expend on public affairs, and that amount must be divided among the different matters they are called upon to consider. A fraction is diminished by increasing the denominator.

47. Frontier Conditions

American democracy has been deeply colored by two feelings: one an early aversion to what it conceived to be the English system of a class privileged to rule; the other the distrust of special qualifications natural to a simple, homogeneous, pioneer community where every successful man must be able to turn his hand to anything. Until our own day the attitude of the frontier settlement has never been absent from America. It began on the Atlantic seaboard and travelled slowly across the continent. Its sentiments, reinforced by antipathy to anything deemed aristocratic, have given a strongly marked tone to our conception of popular government.

That conception, although defective and incomplete, was formerly not inapplicable to the actual condition of the country, but its shortcomings have grown ever clearer with the increasing complexity of our civilization, and there is no reason to suppose that they will lessen in the future. We are governing a vast and intricate community by methods suited to a small and simple one. The people must realize that they cannot administer so directly as in the past. They must find out the limits of what they can do, and learn to commit other matters to persons or bodies competent to take charge of them, trustworthy and so far as possible free from political motives. They must learn how to do this without losing control over the general policy to be pursued or abandoning an effective supervision of the administration. It is hoped that in the later chapters useful suggestions may be made upon these subjects.

Part III

Methods of Expressing Public Opinion

Part III

Methods of Expressing Public Opinion

CHAPTER IX

REPRESENTATION

THE authoritative methods in common use for expressing public opinion are representation and direct popular action; and these two forms of giving effect to the judgment of a people require analysis and scrutiny.

48. An Election does not Always Express Public Opinion

All representative government is based upon the assumption that an election is a more or less trustworthy expression of public opinion; that while the persons chosen may not hold precisely the same views as their constituents on all the questions that arise, yet they will reflect the general tone of thought of the electorate and its party complexion with some approach to accuracy. In countries expert in self-government the assumption may be safe, but it is not so everywhere. In Spain, for example, the cabinet of the day, whatever its politics may be, habitually carries the elections and obtains a majority in the Cortes. This was particularly striking in the

six troublous years that followed the revolution of 1868, when the ministries changed rapidly and each of them in turn, whether republican or monarchist, whatever form of republic it might prefer or whoever it might desire to seat upon the throne, could always appeal with a certainty of success to the verdict of the people. Such a sudden shifting on the most vital of all political questions obviously meant, either that the voters had no settled conviction, or that official pressure prevented them from expressing it, and in neither case was an election a true gauge of public opinion. The frequency with which military revolts have occurred in some of the Spanish-speaking countries is, indeed, explained by the fact that an election there has not been a faithful expression of the popular will, and therefore was not to be treated as final — a phenomenon that suggests grave reflections about the possibility of introducing truly representative institutions rapidly among a people unused to them. Nor is a condition of this kind wholly confined to states in which popular government is a complete novelty. With all the experience the French have had, one may still observe how great an influence the administration has at elections. In the English-speaking countries there is a distinct tendency toward a reaction against the party in power, commonly called the swing of the pendulum, while in France the opposite is true.

Nevertheless we may assume that, in a community fitted for self-government and accustomed to it, an election represents with fair accuracy the opinion of the people. But that statement does not carry

us very far. Most political generalizations appear simple enough until we begin to inquire into their real significance; and just as we have analyzed the terms "public" and "opinion," so we must ask ourselves here what we mean by "the people" and by "representation." In short, we must try to form in our own minds a perfectly clear conception of what people are represented and what relation the representative bears to them.

49. Representation of the Whole Nation and of Constituencies

Various contradictory theories of representation have been advanced in more or less systematic form. One pair of these, which meets us at the threshold, turns on the question of who are the people represented; in other words whether each member of a legislative body represents the nation as a whole, or only the particular constituency that elected him. Normally the ambassadors assembled at an international congress represent exclusively the states that sent them. They are absolutely subject to the directions of their home governments; and if they consider, not only the interests of their own countries, but also those of the whole family of nations, they do so because that is in accord with the wishes of their sovereigns. A tradition of this kind growing out of diplomatic relations among distinct, or only partially consolidated, states may survive long after the body in which it is found has become a national institution. The most familiar example at the present day is that of the German *Bundesrath* — the successor of the old Germanic

Diet — whose members are still compelled by a provision of the constitution to vote in accordance with the instructions of their respective governments. In theory, therefore, these members still represent the component states of the German Empire, not the Empire as a whole. But it is unnecessary to dwell on a single case of this kind, for history is full of similar instances and their nature is well known.

When we pass from bodies composed of the delegates of separate governments to representative chambers filled by popular election, it may be doubted whether any example can be found today of an assembly where the members are supposed, on principle, to represent their constituencies alone, in contradistinction to the country at large; or on the other hand, where they assume in practice to represent the nation as a whole, without regard to their constituencies. Nowhere do they consider themselves under an obligation to follow the sentiments or interests of one to the exclusion of the other. Nowhere would a representative declare himself free to disregard altogether the national welfare if it conflicted with that of his constituents, or the welfare of his constituents if contrary to that of the nation. This is habitually true even of a body that expressly represents the component states of a federation. It is as true of the American Senate as of the House of Representatives. No member of either branch of Congress would venture to assert openly that a bill was injurious to the nation, but beneficial to his state, and that he should, there-

fore, vote for it. Nor would he represent faithfully the opinions of his constituents if he stated these facts and voted against the bill. He would contrive to find good reasons for believing it advantageous both for the nation and for his state.

It is impossible to determine whether a modern legislature represents the whole country, on the ground that each of its members, although elected by one district, holds a national office; or whether it does so because, while each member represents only his own district, they reflect in combination the opinions of the country as a whole. Neither principle can be asserted absolutely and neither can be entirely denied; for in fact the representative has two duties and performs two functions. He does not keep them distinct in his own mind, and fortunately they are not contradictory enough to oblige him to do so; but we may observe that it is considered a mark of larger patriotism to talk in public about his duty to the nation.

50. Comparison of England and the United States

Although neither of these views prevails anywhere to the exclusion of the other, a different emphasis is laid upon them in different places. In England, for example, there is in general a greater tendency than in the United States to lay stress upon the national, as compared with the local, character of a representative, — a fact that finds expression in the willingness to elect members of Parliament who do not reside in their constituencies — and in an article published in the *Yale Review* in May, 1908

(pp. 48–49), Professor Max Farrand has shown that this difference of conception was already well marked at the time of the American Revolution. It was, perhaps, due to the fact that in New England, at least, representation was in early days a device for collecting local opinion by means of delegates; and in fact long after the Revolution a practice still survived in Massachusetts of passing in town meeting votes instructing, or requesting, the representatives in the General Court to pursue a certain course of action.

Whatever the origin of the difference may have been, there is no doubt that several factors contribute to maintain it. One of these is the absence in England of national appropriations for local improvements. Another is the elaborate system of private bill legislation in Parliament whereby local matters are virtually removed from politics, whereas in American state legislatures they engross above all else the activity of many of the members. A third factor is the system of cabinet responsibility which, by concentrating attention on the battle between the two front benches and forcing the members to follow their party leaders keeps them in constant touch with national party issues and comparatively free from other questions.

The English system involves grave dangers, for the eager light of public interest, constantly focused upon the warfare across the table in the House of Commons, constrains the leaders in an unusual degree to seek immediate popularity. The fact that the party in power can be held to absolute

responsibility for the action of the House offers a peculiarly strong inducement to cater to the voters who can be won by general legislation; the fact that the Member of Parliament is under a tremendous pressure to vote with his party in critical divisions tends to make personal opinion subservient to political expediency; and these influences work on a larger scale than in the United States, where the control of a party over its members in the legislative body is much less effective.

In America, the chief danger is of a different kind. A representative, especially in the state legislatures, is tempted to think less of the common welfare, of public opinion in the whole community, and even of the general policy of his party, than of the way his action will affect the particular measure his constituents have at heart. Hence he is beset by an insidious motive to trade his vote in return for support on that measure. If he is not of high character, all this helps also to lay him open to the other influences that have promoted his election, the public service corporation and the machine boss. In short, the faults of our legislative bodies that bring them into disrepute are closely associated with the log-rolling incident to local and private acts.[1] In theory we may regard our representative as intrusted with the welfare of the community at large, but in practice he is far too closely bound to the interests of his particular constituents. Of course no country has a monopoly of any political

[1] *Legislative Shortcomings*, by Francis Cabot Lowell, in the *Atlantic Monthly*, March, 1897, pp. 368–369. *Cf.* Sect. 58, *infra*.

defect. All nations and all peoples are subject to the common frailties of mankind. We are speaking only of the comparative magnitude of different evils, and the contrast in this case between England and the United States is noteworthy.

A Member of Parliament represents the nation as a whole largely because he is under the guidance of the cabinet, or of the leaders of the opposition who expect to be ministers in their turn, and the present or prospective rulers of a country must have a national not a local standpoint. This is true also of a chief magistrate elected by the whole community. He may be the tool of a party, a class, a sect, or even of some special interest, but, save under very peculiar conditions, he can hardly be the agent of a district; and it is in great part a feeling that American legislative bodies represent a mass of local and other influences, while a single executive officer represents the community as a whole, that has caused the increase of his power. Of late years the mayors of American cities have had their functions increased by law, but the President and the governors of states have gained authority in almost equal measure through a mere change in public sentiment. Within the last generation they have used their veto power much more frequently, and they have undertaken with general approval a far more active part in shaping the policy of legislation.

51. Remedies Proposed

For the tendency of legislative bodies to represent a collection of local interests rather than public

opinion some remedies have been devised in other lands. Among them is that of electing a number of representatives in a large constituency, instead of having each one chosen in a separate electoral district. This has been done in France and Italy without effecting any radical cure; for although expansion of the constituencies enlarged the bonds of local interest, it still remained local.

Another remedy earnestly advocated in France[1] and faintly heard elsewhere may be noted for a moment. It is a suggestion that instead of representing geographical districts the members of the legislature should represent distinct interests; that instead of being elected by all the voters in a certain area they should be elected by people engaged in definite occupations. Thus we should have representatives of manufacturers, of bankers, of lawyers, of farmers, of artisans, and so on. The plan illustrates the principles we have been considering, for it would tend to eliminate altogether the theory that a member of the legislature represents the nation as a whole. Each man would hold a brief for some special interest. All would be for a faction and no one for the state. The condition would be worse than excessive representation of localities, because the aims of the several districts are not of necessity antagonistic, as those of the different occupations are assumed to be in such a proposal. The suggestion is contrary to the principle that the legislative body ought to give effect to public opinion, because the true conception of public opinion is not a sum

[1] Charles Benoist, *Le Crise de l'Etat Moderne.*

of divergent economic interests, but a general conception of political righteousness on which so far as possible all men should unite.

52. Proportional Representation

The device of proportional representation will naturally occur to the reader, but, while intended to correct certain defects in the system of representation, it is not aimed directly at the evil we are now discussing — the predominance of local interests. The attention paid to it has fluctuated very much, and of late years has revived. In the course of time the subject has given rise to a voluminous literature, all the larger because the advocates of each of the many forms proposed are often inclined to think their own plan quite different from, and far superior to, any of the others, although the general principles are in most cases essentially the same. The very size of this literature would make it impossible to treat the matter adequately here, even if more closely germane to the questions under discussion. We are perforce limited to pointing out that, in the forms usually suggested, proportional representation is designed to prevent the minorities in a district from being unrepresented, and thereby to insure that people holding different opinions shall have seats in the legislature in something like the ratio of their strength in the community. This is the more important where, in order to avoid the pressure of local interests, constituencies electing several members are substituted for single electoral districts, because the larger and

fewer the districts the greater the chance that considerable minorities will go unrepresented.

The representation of minorities can certainly be attained by the system, but, in view of the tendency of some advocates of the plan to claim for it the benefits of a panacea, it is not superfluous to observe that disproportionate representation is not the sole, nor the most potent, cause of legislative defects. The system has been adopted in Belgium and Switzerland, but although it has had its best trial in those countries, it has not yet lasted long enough in either for a complete determination of its ultimate effects. One result to be watched with care is how far, like other complications in machinery, it will enhance the influence of the machinist; whether it will increase the power of wire-pullers and lessen the opportunity of the independent voter who cares less for party regularity than for the personal integrity and character of the candidate. In Belgium, where party spirit runs high, it seems to have strengthened party discipline, eliminated independent candidates, and reduced the scratching of tickets at elections. Under the conditions that prevail there this is considered a decided advantage.[1] Such a result is most injurious where, as in Illinois, the system assists only a single minority by means of the limited vote. On the other hand, an effort to protect a large number of minorities may result, as in the case of the English school boards and the legislature in Geneva, in so splitting up the vote

[1] Dupriez, *L'Organisation du Suffrage Universel en Belgique*, pp. 174, 206–207.

that the elected body represents many small groups instead of the public at large. Partly for this reason the school boards in England have been abolished; and to reduce the number of small groups the quota for counting votes in Geneva has recently been raised.[1]

53. The Theories of Delegation and of Personal Judgment

Another pair of contradictory theories of representation raises the question of the relation of a representative to the people. One theory asserts that he is a mere delegate to express their views; the other that he is selected for the purpose of using his own judgment on the matters he is called upon to decide. The question was given prominence by the celebrated controversy between Burke and the electors of Bristol, and in one form or another it has been cropping up ever since. From time to time a claim has been made by some local political organization in England that it is entitled to call upon its Member of Parliament to resign when he ceases to act with his party. During the course of the South African War the claim was put forward in several cases, and on that occasion its validity cannot be said to have been universally admitted or denied. A symptom of the same trend of thought is seen in the demand made in the United States for a right on the part of a majority of the electorate to recall the men chosen to office.

The proper relation of a representative to his constituents is akin to the question already dis-

[1] Referendum of November 10, 1912.

cussed; that is, whether he represents the whole country or merely a single district. As in that case we can find examples of bodies whose members are clearly mere delegates appointed to vote as they are directed, and we may refer again to the German *Bundesrath* for this purpose. But in a legislature elected by the people neither view does, nor in the nature of things can, wholly prevail; for, on the one hand, a representative is presumably in general accord with the opinions of his constituents, and is in fact more or less sensitive to their desires; while, on the other hand, if he has self-respect he never feels absolutely bound to follow their directions in all matters. He is no doubt selected because the voters approve of his attitude on the leading public issues, but special questions often arise on which he must be free to act according to his own opinion.

54. Comparison of England and the United States

Although neither the theory that a representative is a mere delegate, nor that which regards him as a person selected to exercise his own unfettered judgment, is anywhere carried to its logical conclusion, yet, like the theories of local and national representation, the relative importance of the two principles varies in different countries; and the comparison of England and the United States in this respect is again instructive. One might suppose that the stronger representation of local interests and the tendency to be a delegate would go together on one side; and on the other the greater attention to broader issues with more personal

freedom of action. This would be so if the effect of national political parties did not enter into the problem, but we cannot leave them out of account as the political philosophers of the eighteenth century did when they speculated about democracy without an opportunity of watching it in action.

A Member of Parliament is less free than an American representative to follow his personal opinions, because he must support the leaders of the party to which he belongs on pain of seeing them turned out of office and being himself branded as a renegade. Contrary to a prevalent impression, statistics prove that in Congress party lines are much less strictly drawn than in the House of Commons, and still less strictly in the legislatures of almost all the states.[1] An American representative is, therefore, more free to exercise his own judgment on the questions with which he is called upon to deal. But if the Member of Parliament is less at liberty to act as he pleases, he is bound, not to his constituents as their delegate, but to a party that stands for national issues. The effort to exact from a candidate pledges on subjects of all kinds is, no doubt, carried farther in England than in the United States, but no prudent candidate will pledge himself against the declared policy of the party leaders, and they have usually taken their stand on most of the important matters that have a serious chance of being embodied in legislation.

The coercive force of a party over its members is, perhaps, carried farther by the Labor Party in

[1] For a reference to these statistics see the note to Sect. 39, *supra*.

Australia than by any other group of men forming the majority in a representative body at the present day. The action to be taken is determined by a caucus, and unlike the legislative caucus in America, which is rarely able to control all the members of the party, the decision of the Australian caucus appears to be rigidly obeyed. It is the English parliamentary system made democratic and carried to its logical result, a system where the ministry is responsible for the whole policy of legislation, and where it is strictly the business of the party in power to govern and of the opposition to oppose.

In England a member of Parliament habitually follows his party leaders except in the rare cases when he has a very strong conviction that their policy is wrong, and this makes his course plain. In the vast majority of questions he has only to vote with the whips of his party; but the American representative is placed by his wider freedom in a position of greater difficulty where he is more open to criticism. If he is honest and sensible, he may be assumed to agree with the majority of his constituents on the most important questions about which a public opinion had been formed at the time of his election. But how is he to act on matters that arise afterwards, or on the manifold details of legislation? Is he to follow his party; is he to listen for the whispers of popular sentiment; or is he to act as in his own judgment is best for the public welfare, taking into account, of course, the need of concerted action to achieve any result and all other far-reaching effects of his conduct? If he

is to do the last he will no doubt make mistakes for which he can throw the responsibility on no one else; and he certainly will not always conform to public opinion. A legislative body composed of men guided by that principle may be wiser or less wise than the mass of the people, but will not invariably reflect their views.

These two theories of representation — the duty to carry out the opinion of one's constituents, or to act on one's own best judgment — are to some extent inconsistent, and we must recognize that fact clearly with all the consequences it implies. We must remember also that, under the American practice of voluminous legislation there are many subjects upon which the public are quite incapable, for lack of time if for no other reason, of forming an opinion. In fact the legislature itself has not time to study them all thoroughly, for we have overwhelmed our representatives as well as the people with too much work. We demand that they shall act in accord with public opinion on matters where neither the public nor the legislature itself can have a real opinion. Such matters must be decided, but a discussion of the methods whereby this is or can be done must be reserved until we come to the regulation of matters to which public opinion cannot directly apply.

CHAPTER X

LOSS OF CONFIDENCE IN REPRESENTATIVE BODIES

55. The Rise of Modern Legislatures

MODERN representative government traces its origin to the mediæval device for taxing the different estates and giving them in consequence a share in the direction of public affairs. In most of the larger countries of Europe the institution disappeared in the seventeenth century with the growth of an efficient centralized monarchy; but in England it had strength enough to endure, and the House of Commons as the one great national assembly has furnished, directly or indirectly, the model for almost all the elected chambers of the present day.

When, toward the end of the eighteenth century, and during the first half of the nineteenth, discontent with autocratic rule and a desire for popular participation in politics spread over western Europe, representation was eagerly seized as the instrument needed for the purpose. It was generally extolled as the greatest of political inventions, as the only means whereby popular government could be conducted on a large scale. To its absence in the ancient world was attributed the small size of the democracies in Greece and the downfall of popular institutions in Rome. It was, of course, resisted

by men who had no confidence in democracy, but by almost all those who believed in the rule of the people it was acclaimed as the necessary, if not absolutely flawless, agency for liberty, progress, and justice. The turbulence and miscarriage of popular government in the French Revolution did not destroy the faith of democrats, and if succeeding assemblies in France were unsatisfactory, that was ascribed to the very limited nature of the electorate. Every popular agitation on the continent of Europe took the form of a demand for a constitution and a parliament, until all the more progressive nations had adopted legislative chambers elected by popular vote. They were to be the harbingers and pledge of a new era for mankind.

56. Recent Distrust of Legislatures

Many countries have now enjoyed for a considerable length of time representative legislatures elected on a widely extended suffrage, but the results have often been disappointing. The political millennium is farther off than when enthusiasts began to build the road to it and saw its splendors in the sky. Disillusionment has shed a cold gray light over the landscape, while men, heedless as usual of the inexorable laws of nature, are seeking for a scapegoat. Representative assemblies have not proved senates of unfailing wisdom, guided only by desire for the public good, and from many quarters we hear laments over their deficiencies.

The contrast between expectation and results is not, perhaps, so sharp in the United States as in

some other places, because the confidence in representative bodies was always tempered there. When Americans framed their own governments after the Revolution, they foresaw abuse on the part of legislatures, and strove to prevent it by limiting their power. Jefferson declared that they were the bodies most to be feared and would remain so for many years to come. Many years have passed, and the feeling has grown more pronounced. Public confidence in them has manifestly declined, and with increasing rapidity of late, until it almost seems that the American people are drifting towards a general loss of faith in representative government.

57. Causes of Loss of Confidence

The growing distrust of legislative assemblies is due partly to the actual defects they have displayed, and partly to popular exaggeration of their faults. One of the most universal causes of complaint is the tendency to play party politics instead of regarding purely the welfare of the whole community. It is strange that anyone with ordinary perception of human nature should not have anticipated this; but the earlier democrats were notoriously blind to the forces that give rise to parties in politics, and like reformers in all ages they assumed that their principles would bring about a change in the character of public men.

Bad as the results of the tendency to play politics often are, they cannot be attributed wholly to evil motives. Everyone who tries to work effectively with other men recognizes the need of concerted

action and knows that to achieve it he must keep those with whom he is associated united in a common cause. Even for a good man it is not easy in the heat of the fray to judge the means employed at their true value; for the battle often becomes engaged over a point that appears to the combatants more important, and to the spectators of less moment, than it really is. To a man who believes sincerely that the prosperity of the nation is bound up with the success of his party, the manœuvres of politics are apt to assume an undue prominence; and if this is true of a man with high conceptions of duty, it is still more true of the ordinary man in whom the excitement of the struggle is liable to overshadow greater ends.

The tendency of representative assemblies to play politics exists everywhere; and, as is often the case, the outcries against it are not loudest where it is greatest, but where it is most out of place. Grand tactics in party warfare are, perhaps, displayed on the most comprehensive scale in the British House of Commons, but they excite little reprobation because the motives are obvious and rational. Party politics play a considerable part and provoke as a rule more hostile comment in the continental assemblies with their divisions into many groups. They are prominent in Congress also, but are less fiercely condemned there than in the state legislatures, although, save in the case of the New York Assembly, party politics are a far smaller factor in the legislatures of the states than in Congress or in almost all other representative

bodies.[1] The reason for the severe criticism of the action of parties in American state legislatures is its general lack of justification. The parties are divided mainly on national issues which have no connection with the ordinary legislation of the state, and hence manœuvres for party advantage are foreign to the object the legislatures are designed to serve. This is, indeed, the strongest argument for withdrawing from them the election of United States senators, for that throws them almost inevitably into the vortex of national politics. Political parties have even less justification in municipal government where national politics have no proper place, and where their presence has fostered political abuses of the worst form.

58. The Pressure of Local Interests

Another defect of our legislatures is the prominence of local interests with the consequent temptation to log-rolling. The man who is sent to the legislature from the town of Southfield chiefly in order to secure an act for a dam on the Quinnebet River is in a false position. He meets a representative of the large city, a very sensible person, who appreciates quickly the desire of the inhabitants of Southfield for the dam, and tells him that the city people are very anxious for the benefits that will come from the grant of a franchise for a street railway; and so, perhaps deliberately, perhaps unconsciously, he

[1] See A. L. Lowell, "Party Votes in the House of Commons, in Congress, and in the State Legislatures," in the Annual Report of the American Historical Association, 1901. Vol. I, pp. 319–542.

trades his vote on the franchise for a vote on the dam. He knows nothing about the merits of the franchise. How can he? There are such a multitude of these bills and people make such contradictory statements about them. His new friend, who knows all about it, tells him that the opposition to the bill is worked up by a rival interest. Some years later there is an investigation, and he learns that the grant of the franchise was scandalous.

This subject has been discussed in the preceding chapter, and it is enough for our purpose to point out that since local matters cannot ordinarily be the subject of general public opinion, and since they are in practice too numerous for a real opinion on the part of the legislature as a whole, they ought, so far as possible, to be decided by the locality concerned, or placed in the hands of an administrative body or a committee that will act impartially and apply to each case principles established by general legislation.

59. The Pressure of Private Interests

A third defect arises from the action of private interests, at the present day mainly of a corporate nature. Direct conscious corruption, the sale of a vote for cash, is probably less common than it is often supposed to be. When it occurs, the fault lies primarily with the electorate for choosing dishonest men who are usually perfectly well known to be untrustworthy. No honest man is corrupted by an open bribe against his will. The fable of the French deputy who harangued his constituents

about the demoralizing condition of the Chamber, and told them the atmosphere there was so corrupt that even he did not escape entirely unscathed, is very well as a joke because it was a confession of his own lack of character.

The less transparent forms of influence are more common and more dangerous, for the well-intentioned but inexperienced legislator may be quite unconscious of the way in which his opinions have been warped. The fact that a corporation has given his near relative a good position, or has rendered his friend some service, may prejudice him in its favor without his realizing it. This is particularly true when, not being on the committee to which the bill is referred, he is not compelled to hear the evidence, and has neither the time nor the knowledge needed to study the question for himself. The force that can be brought to bear by the enormous pay-rolls of great corporations is prodigious, and in some cases it has been used to help a party boss as the price of political services. In addition to the public offices in his gift, a boss has often been able to find places for his dependents by recommending them to the kindly consideration of public-service corporations. This is a link between these bodies and the boss which increases the power of both; and where it exists it is an evil exceedingly hard to combat.

60. The Lobby

The lobby opens another channel for private influence. Unfortunately the term includes many different operations, from those that are perfectly

proper to rank bribery; and the very confusion caused by the vagueness of the word presents an obstacle to applying an effective remedy for what is wrong. So far as lobbying at the legislatures means employment of counsel to argue publicly before a committee, it is free from objection. In fact it is an important aid to wise and just legislation. But when lobbying means the personal solicitation of individual legislators it has quite a different significance, even when there is no trace of actual corruption. It is an attempt to catch the member alone and persuade him in private by arguments that might be easily refuted by the other side.

Clearly in those matters on which opinion cannot readily be formed by current public discussion, where a careful weighing of evidence is needed, it is important that the members should be placed in a judicial attitude and surrounded so far as possible by the safeguards that experience has proved essential in judicial proceedings. What confidence should we have in the verdict of a jury if the parties were allowed to interview the several jurors in private; and why should we put greater reliance on the decision of legislators if this is almost their only source of information? So long, however, as the legislator is called upon to deal with vast numbers of bills that cannot be discussed in open session with anything like the fulness with which cases are presented to a jury, it is impossible to prevent the people interested from bringing matters to the attention of members by talking to them. Some-

thing can be done, and has been done, in several of our states, to regulate the practice of lobbying, by distinguishing between counsel retained to argue before committees and lobbyists engaged to interview privately. The registration of such men in different lists gives the member a chance to know that the person who approaches him is a paid agent employed to advocate a cause. If this does not place the legislator in a judicial attitude, at least it puts him upon his guard.

61. Private Influences in Elections

If the American public is losing its faith in representative government and demanding direct popular action, the sinister influences in politics have long been travelling a similar road by turning their attention from the representative body to the electorate. Large private interests have found that, instead of seeking to obtain a control over the legislator after election, it is less difficult and less dangerous to devote their energy to the election itself, and herein again they have been able to contract an alliance with professional politicians for mutual benefit.

In the boss-ridden states the influence of the boss over the legislature is based mainly upon his power of controlling nominations and helping to elect the candidates. Even for legitimate campaign expenses money is needed, which can be provided by public-service corporations and other bodies that may be affected by the laws enacted in the ensuing session. Their easiest means of procuring friends among the

members is therefore a subscription to the campaign funds of the boss; and since their object is private gratitude, not party victory, they sometimes contribute to the funds of both parties, while the bosses, who are plying a trade, rather than advancing a public policy, have no scruple about joining to assist a common benefactor. Let us not imagine that this depicts a universal condition, for many states have never suffered boss rule; nor let it be supposed that the majority of any legislature is habitually under the orders of a boss, but the control of even a small number of members is usually enough where a case fairly good on its face can be made out.

We hear complaints in such cases that legislators do not represent the people faithfully. Yet if they are to be guided, not by their own sense of what is right, but by public opinion, it is not unnatural that they should gauge that opinion by the prospect of reëlection; and if their reëlection depends upon a boss whose good will in the matter is nevertheless contrary to the real sentiment of the electorate, then this mode of expressing public opinion is vitiated at its source. Clearly it is unfair to elect incompetent or untrustworthy men and blame the legislature for not being wiser and better. It is particularly irrational on the part of men who have voted for representatives of that character. If an honest legislator cannot be corrupted against his will, it is not less true that the people cannot be compelled to elect the candidates of the boss unless they want to do so. Moreover, bad as the conduct of some corporations has undoubtedly been, it must

be remembered that a vicious legislature is a sore temptation. Those who are familiar with the subject assert that the attempts to extort blackmail are far more frequent than the efforts to obtain privileges by purchase. This is no excuse either for seeking privileges or for resisting blackmail by corrupt means; but a condition that puts a premium on corruption in resisting injustice is exceedingly demoralizing to the whole community, and that condition is caused by requiring the legislatures to do work of a kind that they cannot do properly, and more work than any body could do well.

62. Defects of Legislatures Exaggerated

If the condition of legislative bodies in America is as bad as many good men believe, it forebodes mischief; for in the same way that a people among whom jurors cannot be trusted to be fairly impartial is unsuited for popular forms of trial, so a people who can neither trust nor control their representatives is at best imperfectly fitted for popular government. The complaints are, in fact, often exaggerated, because the public is unable to unravel the tangled threads of politics, to follow the innumerable measures through the criss-cross divisions in the legislature, or to appreciate the reasons for a vote on a particular bill. English politics are much more simple. One has only to keep his eyes on the battle between the two front benches, which is waged in a bright light with the party organs unceasingly explaining every move in the game.

But here, where the voting is far less on party lines and hence the party cannot be held responsible, where most of the work is done in the many committees of Congress and the state legislatures, where the field is complicated and the public are suspicious of everything they do not see, it is easy to give credit to rumors that are hard to disprove.

Both the difficulty of controlling public officers and the exaggeration of their shortcomings have increased with the growth of democracy and the greater complexity of party machinery resulting therefrom. Advocates of the initiative and referendum assert that public opinion was more effective before the national party conventions arose than it has been since.[1] But the national convention for the nomination of a presidential candidate was regarded as a highly popular institution when it was devised, a revolt against the undemocratic nomination by a congressional caucus. It was an effort to restore to the people the selection of candidates, which had been usurped by the representatives in Congress. That the choice of the members of the conventions fell into the hands of a machine was a natural consequence of the size and complexity of the electorate. That it turned to the profit of the wire-puller is merely another example of the truth that the larger the number of men to be united for common action the more elaborate the machinery will inevitably become, and the greater the power of the men who can manipulate the machine.

[1] *Memorial* of Initiative and Referendum League (Senate Doc., 60 Cong., 1 Sess., No. 516) pp. 4–5.

The tendency to exaggerate the defects of representative assemblies is due in part to the inclination of men not in active public life to assume that their views are shared by the community and improperly slighted by politicians. We suffer, no doubt, from a lack of experience in our public bodies; but we suffer also from a self-confidence that causes everyone to think himself capable of forming a valuable opinion on every subject, and not less from a general lack of mutual confidence in one another. This last is a highly important matter, for it lies at the root of much of our evil-doing in politics, in business, and in daily life. It extends from the college athletic teams to the railroad corporations. Much secret cutting of rates and illicit rebating has been due to the fact that the railroad managers did not trust each other. So far was this true that for a time the expression a "gentlemen's agreement" meant an agreement that was not kept. Each company was easily persuaded by a shipper that the other side was breaking faith, and thought it no sin to do the same. The lack of mutual confidence, which has been a fertile cause of dishonesty, arises from the upsetting of old standards by the sudden changes of industry, and from the extreme mobility of the population. It is, perhaps, a natural result of the rapid struggle to subdue a wilderness. In spite of many phenomena to the contrary the conditions of American life have developed individual self-assertion and self-reliance at the expense of the qualities that make for collective self-control.

We cannot repeat too often that one of the chief

difficulties in America lies, not so much in bringing public opinion to bear in cases where it can and does exist, as in the failure to perceive its intrinsic limitations. We need to learn on what subjects a real public opinion can be formed, how far it can extend to particular measures, and how far it is of necessity confined to general principles. We must then see that within those limits it is given its proper effect; but we must also recognize that beyond those limits there is a field in which the representative must act on his own judgment, and here we must take care that the conditions surrounding him promote as far as possible honesty and wisdom. Of this something will be said hereafter. The problem of preventing representative bodies from acting contrary to public opinion has hitherto attracted far more popular attention.

63. Results of the Confusion of Thought

It will be observed that our ideas of the functions proper to a legislative assembly are highly confused and to a great extent contradictory. We are not clear how far the members represent the whole community and how far their several constituencies; how far they are elected to give effect to public opinion and how far they are chosen in order that they may exercise their own judgment. It may be observed, also, that the defects in representative bodies which provoke criticism and lack of public confidence are in the main a natural consequence of this confusion of thought. The qualities that make a legislative body a faithful exponent of the

currents of public opinion do not confer on its members the independence of judgment needed to decide rightly intricate questions on which the public have no opinion. If, therefore, the legislature is intended to reflect the opinions of the state as a whole, its members ought to be chosen by reason of their political opinions, and it ought to deal as little as possible with matters of purely local interest; whereas in fact the member for Southfield, while calling himself by the name of the political party long dominant in the place, may be really elected to obtain for it a right to draw its water supply from the Quinnebet River. For the same reason a legislature so constituted ought to deal as little as possible with private bills, whereas the member is called upon today to vote on public measures far less frequently than on local and private ones, and if he owes his election to a boss he is subjected to constant pressure, not to say commands, to vote in these last matters according to the trades the boss has made. If, on the other hand, the legislature is intended to deal mainly with local and private matters, on which there is no general public opinion, the members ought to be placed in a judicial attitude, surrounded by judicial safeguards for impartiality, and like the judges and jurors they ought to be freed from political pressure of all kinds, even that which may call itself public opinion.

The confusion of aims has been the direct source of scandals; for the very fact that the legislature is elected ostensibly for public objects, and that the members are, therefore, nominated by the political

parties, whereas after election the attention of those members is largely occupied by local and private matters, naturally gives to the parties, or rather to the manipulators of the parties, an opportunity to exert an influence in these matters, with which the parties have properly no concern. In short, the main difficulty lies in a failure to distinguish between the affairs that are and that are not fit subjects for public opinion and to provide the appropriate machinery for dealing with each class.

64. Remedies Devised for Legislative Defects

In England this distinction is recognized, and the special system of legislation by private bills and provisional orders creates a different procedure for public questions and for local or private ones, the former being political, the latter essentially judicial, in character. But the remedies adopted in America have been almost wholly negative, designed to restrain bad legislation, or even to diminish all legislation, rather than to insure proper consideration of the laws enacted.

One device almost as old as our national existence, and lasting to the present day, is that of limiting the powers of the legislature by the provisions of the constitution. This prevents the legislature from doing things that the people in their sovereign capacity of constitution-makers think it ought not to have authority to do. We have already seen that it has great advantages in defining the field within which the minority is bound to submit to the will of the majority. Such is the object of the Bill of

Rights that finds a place in all our constitutions. Sometimes, however, the restrictions go so far that they prevent the majority from acting in matters where its opinion ought to be decisive. Of late years the tendency has gone very far, especially in the newer parts of the country, for the state constitutions have grown longer and more elaborate, fettering the legislatures to an ever increasing extent. Practically this results in restraining the people themselves, in preventing a genuine public opinion which exceeds the limits prescribed from having the operation it ought to have. It cannot, indeed, forever hinder the public from having their way if they continue long enough of the same mind; but it does erect a barrier that is not easily or rapidly surmounted. If carried too far it is a limitation of normal representative government, to be justified only on the ground that the legislature cannot be trusted; and this is, indeed, the motive of such provisions. The remedy is clearly negative, designed not to make the legislature good, but to prevent its committing certain specified sins.

One form the constitutional restraints have taken has been that of forbidding special legislation. If this went so far as to withdraw from the legislature all local and private bills, and provide some other method of settling those matters which cannot be regulated by general laws, it might have greater importance, but it has merely touched the fringe of the subject and has a slight negative effect. The provisions have been evaded by passing a general law, for example, for all cities of the second class,

and classifying the cities in the state so that only one of them falls into that class. The courts have begun to hold that such laws violate the constitution, but their frequent enactment has shown how difficult it is to enforce a provision of this kind. Moreover, provisions against special legislation have not seriously interfered with the flood of special acts, for Professor Reinsch tells us that in the five years from 1899 to 1904 the number of acts passed by legislatures in the United States was 45,552, of which 16,320 were public and the rest special and local.[1]

The flood of special acts has been in part the cause of another mode of restricting the legislative output — a method also more commonly used in the newer than in the older states — that of lessening the frequency and limiting the duration of the sessions. It seems to be done in pursuance of the theory set forth by Mr. Bryce when he spoke of the American principle that most bills are presumptively bad, *ergo* kill as many as you can. This again is an attempt, not to make the legislatures good, but to limit the harm they can do by limiting their total activity. It lessens their dignity, and therewith their sense of responsibility, while the shortening of the session renders well-considered legislation almost impossible. Forty days every two years is far too brief a period for a proper discussion of the questions that ought to come before the legislative body, and it is not surprising that the members make little effort to use that time for fruitful debate.

[1] *American Legislatures and Legislative Methods*, p. 300.

65. The Recall

A new device for keeping the representative under control has been urged of late, that of a power to recall him by vote of his constituents. It is akin to the practice freely employed at one time in Massachusetts of adopting in town meeting instructions to the representative. This disappeared about a hundred years ago, no doubt because it proved inexpedient, and because it could be effectively used only where there were frequent town meetings and the member was elected by the town. Like that practice, the recall, as applied to a member of the legislature, assumes that he represents, not the whole community, but only his constituency; and in this it differs for the worse from the Swiss institution for dissolving the whole legislature by vote of the whole canton, a provision which still has a place in the constitutions of several cantons, but, after a few fitful experiments at the outset, has long fallen into disuse.

The recall assumes also that the representative is essentially a delegate, whose duty consists in giving effect to the prevalent opinion of his district, instead of a public servant charged to exercise his own judgment on the evidence brought before him. It would be obviously improper for the district to recall him because it disliked his action on local or private bills in which it was not interested and had no real opinion; and if it did so because it disliked his action on a bill in which it was directly interested, the result would be to accentuate one of

the worst evils from which our legislatures suffer. Of course this is not the way the recall of a representative presents itself to its advocates. To them it appears as a method of getting rid of a man who has proved himself unworthy, but if so it is an acknowledgment of popular incapacity to choose trustworthy men, with a hope that a second election will be wiser than the first. The effects of the recall are at present a matter of speculation, and there is no need of dwelling upon the institution here, except to point out that it is one more symptom of the distrust of representative government, and another device for restraining misconduct rather than for improving the conditions under which the legislature works.

The recall touches the present discussion only so far as it affects the legislature; but where it has been adopted it is by no means confined to members of this body, nor, indeed, is that its primary intent. When it is applied to executive officers representing an entire community, and is coupled with a lengthening of the terms for which they are chosen, it has much the same object as frequent elections for short periods, and may, perhaps, accomplish that object better. Its application to the judiciary involves other considerations. If a judge is intended to render decisions that will be approved by the people at large, then he ought to be recalled if he fails to do so; but if his function is to administer justice without fear or favor, the recall is as much out of place as the decision of law suits by a mass meeting of citizens. The laws that he applies ought to

be consonant with public opinion, but he ought to decide cases according to his conscience. If he is incompetent, corrupt, or in any way unfit for his high office, he ought to be impeached or removed after trial or hearing.

66. The Direct Primary

Another remedy for the election of public officers who do not truly represent public opinion has been sought in nomination by a direct primary of all the voters in the party, instead of by a party convention of delegates chosen by the local caucuses. This again is not designed principally for members of the legislature, but for officers chosen from a larger area. Its object is to strike at the power of the political machine, at the control by the professional politician; and the desire for relief of that kind has caused it to be adopted widely, one might almost say generally, over the United States. But it is still so new that its ultimate effects can as yet only be conjectured. As in the case of all devices from which too much is expected, its first results have not been wholly satisfactory. Whether in the future they will improve or not time alone can show.

We have already seen that any body of people can only answer "Yes" or "No" to a question presented to them for decision, and at elections it is the function of parties to formulate the question by presenting candidates to the voters. This is still done under the direct primary; but the party itself is so large a body that someone must present the candidates for nomination to its members.

Even if all the Republican voters in a state could come together in mass meeting, a name to be discussed and voted upon would have to be proposed by someone, and this is certainly not less true when the members of the party never meet together, but cast their ballots singly in polling booths. Moreover, to propose a name to all the party voters in a large community is not a simple matter. It is not enough to collect the number of signatures required to entitle the name to appear on the ballot. That is laborious; but to have any chance of success the candidate and his qualifications must be made known to the voters, and that involves an organization with branches throughout the community.

The bill of Governor Hughes in New York provided that candidates for nomination should be proposed by the standing committee of the party, a plan that did away with nomination by a convention and made the party chiefs responsible for their selection of candidates to the whole body of the party, but did not entail any other organization unless the nominations were objectionable to a considerable body of voters, when there would be a palpable motive for it. But under the usual system of direct primaries a special organization to solicit the nomination is normally a necessity, even when the only question is between the rival ambitions of individuals; an organization, by the way, which is temporary in its nature, for it concerns only a single election if it is not to work a permanent split in the party. Now such an organization is very expensive, and can hardly be undertaken unless

the candidate or his friends are prepared to spend money freely. The contests for nomination at the direct primaries in Wisconsin in 1909 are said to have cost the candidates $802,659.[1]

The direct primary intensifies the practice, which had already begun to prevail under the convention system, of conducting an elaborate preliminary canvass for nomination. Perhaps this is inevitable under present conditions, but anything that tends to increase the personal expenses of election is unfortunate, and perhaps the tendency toward self-nomination is not altogether beneficial. The evil to be combated is real, and the effect of selecting members of a state legislature with a view to their choice of United States senator is not good: but it is by no means yet proved that the direct primary is the road to the promised land.

[1] Address of Senator Lodge at Princeton University, 1912 (Senate Doc., 62 Cong., 2 Sess., No. 406), p. 8.

CHAPTER XI

DIRECT POPULAR ACTION

67. The Referendum

THE inroads made on the representative system in the United States bring us to a consideration of the second method of expressing public opinion, that of direct popular action. In America this is in part a native growth and in part a recent imitation of Swiss institutions. Only two effective methods of direct action by the people have yet been devised: a popular assembly which can debate before it votes; and a ballot cast at the polls without a general meeting of the voters.

68. The Town Meeting

Popular assemblies have existed at various times from the dawn of history to our own day, the examples most familiar to us being the Athenian *ecclesia*, the Swiss *landsgemeinde*, and the town meeting of New England.[1] Obviously they can be used only when the community is compact enough to permit the citizens to come together easily, and

[1] There is a common feeling that the town meeting is a small affair compared with the Swiss *landsgemeinde*. It has not the sovereign power, but it is not by any means always smaller. The town of Brookline in Massachusetts, for example, has several times the population of the largest Swiss canton that still allows amendment and debate at its *landsgemeinde*.

small enough to enable them to hear a man's voice. When these limits are exceeded the institution loses its character as it has done in the Swiss canton of Appenzell-Ausserrhoden, where debate is no longer possible. In such a case the essential object of the meeting is lost, and the people might as well cast their votes in polling booths nearer home.

A mass meeting of the citizens has distinct advantages over a popular vote taken without a meeting. In the first place the questions that arise in a community small enough to have such an assembly are more likely to be simple and local. They are more likely to affect matters with which everyone is familiar, and hence fall more commonly within the range of subjects on which a real public opinion can be formed. Then they are not very numerous, so that the people vote upon them after hearing them all discussed; and in a New England town meeting, at least, they are often very thoroughly debated. The citizen cannot reach his conclusions merely after hearing one side stated by his friends, or reading one side in his newspaper, or being simply told by his party, or by some other organization, how to vote.

Moreover, the assembly or town meeting has an advantage quite apart from the formation of opinion on particular questions; for its most valuable functions are those of inspection, supervision, and criticism. The initiation of measures for the government of a New England town comes mainly from the selectmen, who are the executive officers of the community, always present to explain their

proposals and defend their official conduct; and the real importance of the town meeting, besides ratifying or rejecting these proposals, is that of providing constant criticism of the management of public affairs, or at least the possibility of such criticism which has much the same effect. This is the chief duty of the House of Commons at the present day; and in fact the selectmen bear to the town meeting very nearly the same relation that a modern English ministry does to Parliament, and precisely the relation that a Swiss executive council does to the legislature. Some such process of holding a general inquest on the administration of public affairs makes up a large part of the usefulness of any assembly that comes habitually into direct contact with the public officers.

It is unnecessary to describe here the various forms of mass meetings of citizens or to discuss their merits, because an institution of that kind is not adapted for government on a large scale. Excellent as it is for rural communities or small towns, it cannot be applied to a whole state or to a modern city with its hosts of voters, and it is with these that we are now concerned.

69. The Referendum

A popular vote without a mass meeting clearly cannot fulfil the purpose of a general inquest on the conduct of the government. At best it can express an opinion on the particular measures submitted to the people, and it does this in a less satisfactory way than a public assembly because there

is no certainty of adequate discussion. A popular vote, therefore, or, to use the term that has now come into universal vogue, the referendum, performs only a part of the functions of a mass meeting and performs those less perfectly. Yet it is the only means of direct popular action in the making of laws on a large scale. The growth of cities has been driving the town meeting out of its original home in New England, until only a small fraction of the people of Massachusetts now enjoy that form of managing their affairs; and although it has been adopted in other sections of the country, especially in the Northwest, it cannot, as we have observed, be extended beyond small communities. The referendum, on the other hand, which is physically capable of use on any scale, has of late years been winning a larger amount of public support, and is believed by many people to be destined to play a constantly increasing part in the government of the country. A consideration of the possibilities that it offers, and the limitations to which it is subject, needs, therefore, no apology.

70. Reasons for the Referendum

(*a*) *Distrust of the Legislature*

The objects sought in the use of the referendum as a means of expressing public opinion, instead of relying upon the elected legislature to express it, may be brought under two general heads. One of these is a fear that the representatives cannot be trusted to do so faithfully. They are exposed to many

temptations to betray the cause of the public, arising from the pressure of the party or the boss, from their willingness to trade their votes in order to carry through a measure — often a local one — in which they are chiefly interested, and sometimes from darker motives, based on the chances for blackmail or the corruption of unscrupulous men who are seeking for private profit to obtain or obstruct legislation. To guard against such dangers of misrepresentation it is urged that an appeal ought to lie from the agent to the principal, from the legislature to the people who are the source of its authority.

The opponents of the referendum reply that a popular vote may be subject to the same bad influences as a popular election. They ask whether a community that is unable to select intelligent, courageous, and honest representatives is more competent to pass judgment upon legislative measures; whether the springs of public opinion may not be stained by the same methods that corrupt the legislature; whether the voters themselves may not feel the pressure of the party or the boss as much when voting on a law as when casting ballots for a representative. They point out that the channels through which information and opinions are diffused may be polluted, that the press is not free from bias in favor of concerns that advertise largely in its columns, and that cases have been known where almost all the newspapers in a city were under the control of a corporation seeking privileges from the legislature. The dangers, they say, may not be so great in the case of a popular

vote as in that of a representative body; but he must be bold or reckless who would venture a prophecy on the subject until we have had more experience of popular votes.

The opponents of the referendum argue also that it would tend to impair the quality of representative bodies by reducing their sense of responsibility; and the Liberal Government in England recently rejected the proposal as a means of solving deadlocks between the Houses of Parliament partly on that ground. In this connection it is interesting to observe that in the United States the referendum is advocated as a radical measure by labor organizations and by people struggling against large financial and corporate interests, and is opposed by the more conservative elements; whereas in England precisely the opposite is the case. There the Conservatives regard it as a possible means of blocking radical legislation, and for that reason the Liberals with their allies in the Labor Party will have none of it.

(*b*) *Desire to Separate Issues*

Another reason for resorting to the referendum as a method of expressing public opinion arises from the confusion of issues in a general election to which we have already referred. An election means that the voters on the whole prefer one candidate or one party to another; yet they may not agree with all the points in the programme, and the referendum gives them a chance to separate the issues, passing a distinct judgment on each of them by itself. They can thus retain in power the party or persons with

whom they are most nearly in accord, while carrying public opinion into effect more accurately by rejecting the measures they do not approve. This is the chief reason for the existence of the referendum in Switzerland.

Used for such a purpose, the institution aims at curing what is to some extent an unavoidable defect of representative government in a large democracy, if we assume that the object of representation is solely to give effect to public opinion. Some people do not feel that measures ought to be separated in this way, and it is interesting again to refer to the opinion of an English radical — in this case a Socialist and one of the leaders of the Labor Party. In his *Socialism and Government*, Mr. J. Ramsay Macdonald says: "Democratic legislation must be the embodiment in many forms and directions of one comprehensive idea or sentiment, and every constitutional change which tends to break up the wholeness of a programme and to encourage the people to vote for separate measures and not for a group of measures, all equally necessary if the idea of the time is to be carried out, is reactionary. . . . Unless measures are attached to men and men to measures, both are pretty useless." [1] "The difference between Parliament with its continuity of policy and its pursuit of a steady course year after year, and a series of separate meetings on a series of disconnected subjects, is that in the one there is the guidance of party which secures that questions shall not be treated 'on their merits,' but in relation to general principles and

[1] Vol. ii, p. 9.

in connected groups, whilst in the other there is no such guidance, and decisions are therefore disconnected, and display no general idea. . . . Party is the consistent and organic way of applying a principle, and should be taken as a whole and not in parts. The existence of party secures that a stream of tendency flows through human affairs." [1]

71. The Sphere of Efficiency

From the point of view of this book we are less interested in the question whether the objects sought by the referendum are desirable than in the further question how far it is capable of attaining them. So far as it does so it is efficient. So far as it does not it is not efficient, although it may produce other results good or bad. Now both of the objects described above are included in the general aim of bringing to bear on political matters a direct public opinion as contrasted with an indirect expression of public opinion distorted more or less by passing through the medium of representation. A popular vote on a law being a means of ascertaining public opinion on that particular measure is clearly inapplicable unless the people have an opinion

[1] Vol. ii, p. 14. In another place (vol. i, pp. 102–4), speaking of direct popular legislation, he says: "Direct Democracy must bring primary instincts more into play. The appeal to a crowd must be couched in vague and general terms. It must have scintillating points about it. This will be taken into consideration by politicians competing for popularity. Intention will overshadow practicality. . . . The practical details will have to be enlivened and legislation popularized, not by way of improving it, but of making it more sensational, more grandiloquent, more effusive, if the people are to be roused up to vote for bills separately. This will tend to increase the shop-window display of legislation."

thereon; and this brings us back to the question discussed in an earlier chapter, on what subjects a real public opinion can exist. We saw that it can be formed on issues in apparent harmony or discord with principles already deeply embedded in the civilization of the community; and that on other matters, involving a knowledge of facts, it can exist if a substantial part of those facts are already familiar to the people, or if they will take the pains to ascertain them. The first of these cases, that of a measure depending on general principles alone, does not often occur; for legislation is a complicated business and can seldom be conducted on abstract principles. When such a case does occur, the representatives are highly unlikely to act in a way to shock popular conviction, and are certain not to continue to do so long. Nor is it common in a large community that a substantial part of the facts needed for framing a law are a matter of public notoriety. The people may be sufficiently familiar with a subject to be keenly sensible of a grievance, without knowing enough to judge of the remedy. They may feel sure of the general direction they wish legislation to follow, without being able to weigh the merits of particular provisions. That involves an adjustment of conflicting interests, a compromise of opposing views, a consideration of the remote effects, direct and indirect, that the law will produce, a balance of advantages and defects, which require careful study of all the facts involved in the situation.

A large part, therefore, of the measures passed

by most legislatures are of such a nature that a real public opinion upon them can be formed only if the people are willing to devote no little effort to their consideration; and the more complex they are, the greater the effort required. Whether the people will make the necessary effort or not depends upon how much interest they will take in the matter, and that is a very difficult thing to foretell. Occasionally they display a surprising interest and canvass the facts eagerly; but such examples furnish no reason to suppose that they will do so in all similar cases; and, indeed, from mere lack of time they could not do it if they would. Nor does the fact that a certain number of persons petition for a popular vote prove that the interest in the question is so widespread as to give rise to a true public opinion. It proves that some people are much interested, but not that the bulk of the community cares enough to study the facts carefully. A political system, like any other institution, cannot be constructed on the supposition that extraordinary events will habitually occur. It would seem wiser, therefore, to confine the referendum to questions involving general principles alone, and to the class of matters where the public is normally familiar with the facts required for a decision, than to extend it promiscuously to questions where a rational opinion can be formed only by a knowledge of details with which the ordinary man does not readily become acquainted.

72. Negative and Positive Forms of Popular Votes

A direct popular vote upon a law may be applied for two different purposes. It may be used to reject a law which the legislature has enacted, and if so, under the name of the referendum, it has a negative effect. In such cases it is a device for a popular veto, superimposed upon the executive veto if there be one, and is used not to legislate, but to prevent legislation.[1]

The other purpose is that of enacting a law which the legislature has not passed. This form is known as the initiative, and it is strictly a means of direct popular legislation. That the referendum and the initiative for general legislation in America have almost always been adopted at the same time, and are at present invariably advocated together by one set of arguments, shows that they are promoted rather from a belief that they are twin movements in a common direction, than from a consideration of their special effects. Yet their objects are so different that their political effects and their relation to public opinion may not be identical. Each of them deserves to be examined separately, and to be

[1] Except in states where it is provided that the governor's veto shall not stand if the popular vote is in favor of the law. In such a case, if he vetoes the act, its opponents will not petition for a popular vote in order at much trouble and expense to kill a law already dead, with the chance that it may after all be ratified; but the supporters of the bill might petition against it for the purpose of carrying it by popular vote. If so, the object would be, not to prevent, but to promote legislation, but although the form would be a referendum, the substance would be that of the initiative. The same would be true if a legislature, under the power conferred upon it, should order a referendum upon a bill in order to escape a veto by the governor.

studied, not as is too commonly done, from a theoretical standpoint alone, but primarily in the light of its actual operation in the two countries which have made the most use of it, Switzerland and the United States. We shall begin with the referendum.

CHAPTER XII

THE REFERENDUM IN SWITZERLAND

73. Compulsory and Optional

For more than a generation the Swiss have used the referendum freely in two distinct forms. One of these is known as compulsory, that is, when a popular vote upon measures passed by the legislature is absolutely required; the other is the optional, when it is required only in case a petition therefor is presented by a certain number of voters. The distinction is the same that exists in America between amendments to a state constitution which must go before the people for ratification, and the recent process of a referendum on petition. In Switzerland changes in a constitution, whether federal or cantonal, must always be submitted to popular vote; but for other laws the practice varies. In the Confederation and in nearly half of the cantons the referendum upon them is optional; in as many more it is compulsory; in six the laws are enacted in mass meetings called *landsgemeinde*, and in one only there is no referendum at all.

Now the compulsory form, being automatic, cannot be a dead letter, for a popular vote must be held; and in fact it often results in the defeat of a law, although naturally in a smaller proportion of

cases than under the optional form where the decision of the people is invoked only when there is strong objection to the law. In most of the cantons the optional form has proved effective; that is, a demand for a popular vote is not infrequently made with success.

74. The Results

In Appendix A, at the end of this volume, may be found lists of all votes under the referendum and initiative that have taken place in the Confederation from the adoption of a general referendum by the constitution of 1874 until 1912, and in the cantons from 1893 to 1910 and in some cases to 1912. A study of the lists throws much light upon the actual working of these institutions in the country where they have attained by far their greatest development; but in drawing conclusions from them one must not forget that the population of the land is comparatively small and homogeneous and that wealth is not very unevenly distributed.

In the Confederation during the nineteen years from 1893 through February, 1912, the referendum was used on twelve constitutional amendments, of which four were rejected; and on as many other acts passed by the legislature, of which six were rejected. An inspection of these measures in the Appendix will show that they were of various kinds, the most noticeable tendency being a hesitation, in the earlier years, at the rapid process of centralization.

In the canton of Bern — one of those where all laws, constitutional and ordinary, must be submitted

to popular vote — the referendum was used, in the nineteen years from 1893 through July, 1912, on sixty-two measures, and fifteen of them were defeated. It is interesting to observe what these last were. Laws on insolvency were rejected three times before a statute on the subject was accepted. A law requiring inventories of estates on death and two laws for an inheritance tax were rejected — a striking evidence of wide diffusion of property. Among other measures defeated were laws on vaccination; for the preservation of game; making women eligible to school boards; and lengthening the hours of work for women.

Zurich also has the general compulsory referendum, and it is the canton in which by far the largest number of popular votes have taken place. In the fifteen years covered by the statistics the referendum has been used on eighty-one measures, of which sixteen were rejected. Among those so voted down were a law on the salaries of members of the executive council and of the highest court of law; inheritance taxes; a factory act; laws requiring state inspection of savings-banks; raising the salaries of school teachers [1]; creating a state fire insurance office; introducing proportional representation; and as usual a game law.

In Aargau twelve laws out of forty-five were defeated by the referendum; among them a measure for taking over the bank by the state, and four tax laws.[2] In Thurgau the results are similar; fourteen

[1] Another law for this purpose was accepted later in the same year.

[2] These figures and those for several of the other cantons cover twenty years through 1912.

laws rejected out of forty, including provisions about salaries of public officials, subventions to railroads, state fire insurance, the general registration of titles to land, and the care of drunkards. In the Grisons eight measures out of thirty-nine were rejected at the referendum, among them a law on the salaries of primary school teachers, inheritance and stamp taxes, two public health acts, and a couple of game laws. In Rural Basle (through June, 1912) sixteen were so defeated out of forty-three, the people showing themselves ill disposed toward school laws, and as usual toward acts relating to the salaries of public officials and taxation.[1] In Schwyz five out of thirty-six were rejected, including laws on taxes on schools, and insurance on cattle. In the Valais, apart from measures presented as alternatives, there were, out of twenty-five distinct matters, only three cases of rejection at the referendum, one of them that of a resolution fixing the salaries of public officials. In Solothurn eight measures out of fifty-one were so rejected; in Schaffhausen, through August, 1912, four out of thirty-one, two of them being proposals to revise the constitution.

In Geneva, through December, 1912, the proportion is very different, fifteen laws out of forty being defeated; one of them an act for old age pensions which was beaten by a majority of nearly four to one. In St. Gall the proportions of rejections through February, 1912, is still larger, only five measures out of eighteen having survived the ordeal;

[1] Even an act on the taxation of shares in companies was accepted only by a trifling majority.

among the casualties being a law on direct taxes, a game law, and four laws on the insurance of houses and of cattle. In Lucerne there were only four popular votes on referenda, two tax laws being accepted by narrow majorities, an amendment to the constitution being ratified, and a game law being defeated. Finally, in Vaud the people rejected a law on rest from labor on Sunday and ratified another forbidding the sale of absinthe. In none of the other cantons does the referendum, as distinguished from the initiative, appear to have been used for the last twenty years.[1]

From such an array of figures it is clear that the referendum in Switzerland has been effective; that is, it has caused the defeat of many measures that would otherwise have been enacted. Whether the popular action has been wise or not is a question that will be answered differently according to one's political inclinations. Opponents of the institution will not find evidence that its effect has been radical or socialistic, nor its advocates encouragement to believe its tendency progressive. On the contrary, the result has been on the whole conservative; although we cannot assume that this would be true in a country with different social conditions.

So much for the number and character of the laws rejected by the referendum in the country of its origin. Other matters relating to its working in practice, such as the size of the vote cast, can be considered more profitably in connection with its use in America.

[1] In Basle City the initiative appears to be used with the same object. (See Appendix A.)

CHAPTER XIII

THE REFERENDUM IN AMERICA

LEAVING aside the pre-revolutionary types of direct legislative action, the modern referendum, or submission of measures passed by the representative body to all voters of a state, has been introduced in three different forms at as many periods of American history. The periods have to some extent overlapped, yet the movements have been distinct and may be described separately. We can, in fact, recognize three notable waves of direct popular legislation, each rising higher than the last.

75. Referendum on Constitutional Amendments

The first appeared in the form of submitting state constitutions to the people for ratification, a practice which began in Massachusetts in 1778 and spread slowly until after 1820 almost all new state constitutions were subjected to a popular vote. The uniformity of the custom has been seriously interrupted on two occasions only, each the result of wholly exceptional conditions; first in the southern states during the stress of secession and reconstruction, and later in a number of the same states during their recent effort to disfranchise the negroes. Neither of these exceptions showed a distrust of the general principle, which may be regarded as a firmly

established tradition in American public life. The practice has been applied not only to the adoption of a new constitution but also to particular amendments. A provision to that effect first appeared in Connecticut in 1818, and was copied by other states until it became almost universal.

That the referendum on constitutional provisions has had a substantial effect in the American states 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 people 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 popular vote. A few figures quoted by Dr. Oberholzer are conclusive upon the freedom with which the public refuses its assent to things it does not like.[1] 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 these being accepted and sixty-two rejected. In Michigan, since the adoption of the first constitution in 1835, there had been submitted to the people, through 1908, no less than eighty-seven constitutional questions, of which forty-eight were accepted, and thirty-six rejected; while three for the calling of constitutional

[1] *The Referendum in America*, pp. 163, 164.

conventions failed because a majority of all those who voted at the election was required.[1]

In Massachusetts — whose legislature reflects public opinion better than those of most of the states, and whose people have voted on constitutional questions longer than any other community too large to meet in a general assembly — there have been submitted to popular vote, from the adoption of the constitution in 1780 through the year 1911, sixty such questions, of which forty-one have been answered in the affirmative and nineteen in the negative.[2] A survey of these sixty cases leaves the impression that, while the people were sometimes less progressive than their representatives, almost all the popular votes of doubtful wisdom were either in accord with the best thought of the time or were afterwards reversed. There can certainly be no doubt that the referendum on constitutional questions retains general respect in the United States, for the institution is as firmly rooted as ever and no one would seriously propose its abolition.

76. Referendum on Special Legislative Acts

The constitutional referendum was a natural result of the attempt to place the fundamental law on a different basis from ordinary legislation. The second development of direct popular action in law making,

[1] *Annals of the American Academy of Political and Social Science*, September, 1912, pp. 155, 158.

[2] One of those in the negative, relating to the introduction of woman suffrage, was merely of an advisory nature. Lists of these questions and the votes cast upon them may be found in the Bulletin of the Statistics Department of Boston for December, 1909, December, 1911, and January, 1912.

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 and other interests. With this object a clause was inserted in the constitutions of several states providing that the acts of the legislature upon certain subjects should not be valid unless ratified by popular vote, although the other formalities for constitutional amendments 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 buildings, to the contracting of state debts, to taxation in excess of a fixed amount, to the charters of banks, to the extension of the suffrage, and to a few other matters. It has been used mainly, though 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 considered 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 provisions for the reference of particular matters to popular vote one must speak of the resolutions occasionally passed by legislatures, without constitutional authority, to refer some perplexing question to the people. The procedure might perhaps have become common had not the weight of judicial opinion denied the right of a legislature to delegate its power and divest

itself of responsibility for legislation by shifting it onto the shoulders of the voters.[1] It can, of course, consult them informally, and it can make the local application of an act subject to its adoption by the voters of the place, but under the decisions, it cannot, in the absence of a constitutional provision, make the enactment of a statute depend upon ratification by popular vote.

77. The General Referendum

The third and most comprehensive movement for the referendum is very recent. It takes the form of a general provision in the state constitution that upon the petition of a certain number of citizens any law, not declared urgent by the legislature, shall be submitted to the people. Unlike the two earlier phases of direct popular action, which are native in origin and grew out of purely indigenous ideas and conditions, this last is a conscious imitation of the Swiss optional referendum. The movement has had a strongly theoretical tinge and has been urged by associations that advocate it on abstract principles. Nevertheless, the main force that has given it momentum with the public, and won its victory in a number of states, has been dissatisfaction with the legislatures, a conviction that they are too largely under the control of party machines allied with moneyed interests. The referendum in this general

[1] See Oberholzer, *The Referendum in America*, chap. viii, for a discussion of this point and a collection of cases thereon. Such a submission has been expressly authorized in some states that do not have a general referendum; as, for example, in the Michigan Constitution of 1908.

form was adopted first in South Dakota in 1898; and, in the fourteen years that have passed since that date, by Utah (1900),[1] Oregon (1902), Nevada (1904), Montana (1906), Oklahoma (1907), Maine (1908), Missouri (1908), Arkansas (1910), Colorado (1910), Arizona (1911), California (1911), New Mexico (1911), Ohio (1912), Idaho (1912), Nebraska (1912), Washington (1912). In several other states constitutional amendments for the purpose are still pending. As yet it is too early to predict what the ultimate effect of the institution will be. A generation must pass before that can be determined; but the use that has actually been made of it in the few years during which it has been in operation is not the less interesting. Appendix B to this volume contains a list of all the laws to which it has been applied through 1912, and with them are included, but separately marked, all the instances of popular votes on constitutional amendments and on measures proposed by the initiative in those states during the same period.

78. Actual Use of the General Referendum

(*a*) *The Emergency Clause*

The referendum on general legislation has been in actual use even a shorter time than the date of its first adoption would indicate, for although it was established in South Dakota in 1898 no popular vote took place under it there until ten years later; nor was it used in any state before 1906; and since in al-

[1] But the statute needed to put it into operation had not been passed up to 1912.

most all the states that have adopted it general elections regularly take place only every other year, the opportunities for submitting statutes to the people have not yet been numerous. It must be remembered also that vast as is the quantity of laws passed by an American legislature in the brief space commonly allowed for its session, the referendum does not apply to them all. The constitutional provisions for its exercise usually contain a clause authorizing the legislature by a two thirds vote to declare that an act is of urgent importance for the public peace, health, or safety, in which case it is not subject to a petition for a popular vote. This power is said to have been abused in order to withdraw measures from the referendum, and it has certainly been freely used. Thus in South Dakota the number of acts declared urgent in recent sessions compared with the total number of acts passed have been as follows:

Year	Total Acts Passed	Passed with Emergency Clause
1899	126	65
1901	185	82
1903	223	107
1905	173	87
1907	249	100
1909	295	96
Totals	1251	537

In six sessions, therefore, covering the legislation of a dozen years, about forty-three per cent. of the acts passed in the state were withdrawn by the emergency clause from the operation of the referendum. In other states the proportion has been smaller; but in

Oregon the charge of abuse of this power is made,[1] and the Governor is said to have vetoed a number of bills for that reason.[2]

(*b*) *Number of Laws Rejected*

The legislative output in America is so great that even a free use of the emergency clause leaves a vast number of acts to which the referendum could be applied. But in view of the fact that the referendum has been adopted in states where distrust of the legislature is acute, the quantity of acts rejected by its means has been moderate. Leaving aside constitutional amendments and popular votes provoked by the initiative, the only cases in which the general referendum has been used, through 1912, have been as follows:

State	Year	Bill	Result	Per cent. of votes at election
Arkansas	1912	An Act revising the tax laws	Rej.	79.6 Per cent. of registered voters
Arizona	1912	An Act to create a lien for labor upon mines	Acc.	62.2
		An Act to regulate the number of men to be employed on trains and engines . .	Acc.	60.3
		An Act to compel all engines to carry electric headlights	Acc.	60.1

[1] Introductory Letter to Suggested Amendments to the Constitution of Oregon, Portland, August 14, 1909, p. 6.

[2] *Arena*, September, 1908, p. 146.

State	Year	Bill	Result	Per cent. of registered voters
Arizona	1912	An Act to forbid employment of locomotive engineers without three years' service as firemen, or of conductors without service as brakemen, etc. . . .	Acc.	60.6
		An Act to limit the number of cars in a train.	Acc.	60.9
		An Act to limit passenger fares on railroads	Acc.	63.2
		An Act to provide for semi-monthly payment of wages by companies and public bodies	Acc.	62.1
		An Act to forbid the shooting of game without a license.	Acc.	62.2
California	1912	An Act to provide for a registrar of voters	Rej.	40.6
		An Act to regulate salaries and fees of officers in counties	Rej.	39.4
		An Act to change the law of officers of counties, etc. .	Rej.	39.4
				Per cent. of votes at election
Colorado	1912	An Act for eight hours' work for miners	Acc.	38.2
		An Act to place the branding of cattle under the charge of the State Inspector . .	Rej.	28.6
		An Act providing that state officers turn over receipts to the Treasurer daily instead of monthly	Rej.	24.8

State	Year	Bill	Result	Per cent. of votes at election
Colorado	1912	An Act to provide summer schools for teachers . . .	Rej.	33.0
		An Act on examinations and certificates for teachers . .	Rej.	30.2
		An Act to regulate water rights for immigration . .	Rej.	26.8
Maine	1910	An Act to regulate the percentage of alcohol in prohibited liquor	Rej.	50.7
		An Act to create the town of Gorges	Rej.	38.6
		An Act for a bridge at Portland	Rej.	36.2
	1912	An Act to provide for uniform ballot boxes and the preservation of the ballots cast	Acc.	75.1
Montana	1912	An Act for an Asylum bond issue	Acc.	81.1
Nevada	1908	An Act creating a state constabulary	Acc.	77.9
New Mexico	1912	An Act for a state highway bond issue	Acc.	90.1
Oklahoma [1]	1910	Bryan Election Law . . .	Rej.	73.3
Oregon	1906	An Act making an increased appropriation for the State University	Acc.	73.0
	1908	An Act to appropriate money for the State University. .	Acc.	72.3
		An Act for the better treatment of prisoners in jail. .	Acc.	77.3
		An Act to appropriate money for armories for the militia	Rej.	75.5

[1] Both in 1908 and 1910 the people of Oklahoma were consulted by the Legislature about the creation of a model capital city, but this was informal, not for the ratification of a law.

State	Year	Bill	Result	Per cent. of votes at election
Oregon	1908	An Act to allow railroads to give free passes to members of the legislature	Rej.	75.4
	1910	An Act to increase the salary of a district judge	Rej.	70.4
		An Act to create a branch insane asylum, referred to the people by the legislature	Acc.	76.2
		An Act for holding a constitutional convention, referred under the constitutional provision to the people by the legislature	Rej.	69.1
	1912	An Act giving the railroad commission power to regulate all public service corporations	Acc.	78.6
		An Act making special appropriations for the State University	Rej.	79.7
		An Act making an appropriation for a library and museum for the University	Rej.	78.4
South Dakota	1908	An Act for the protection of quail	Acc.	85.7
		An Act to forbid theatrical plays on Sunday	Acc.	84.6
		An Act to require a year's residence before suit for divorce	Acc.	86.9
	1910	An Act to require electric headlights on locomotives.	Rej.	83.0
		An Act empowering the Governor to remove delinquent public officers . . .	Rej.	79.8

State	Year	Bill	Result	Per cent. of votes at election
South Dakota	1910	An Act dividing the state into districts for the election of members of Congress	Rej.	71.6
		An Act to provide a military code for the militia . . .	Rej.	71.2
		An Act for licensing embalmers	Rej.	79.5
	1912	An Act for a direct primary law	Acc.	71.5
		An Act to require electric headlights on locomotives.	Acc.	74.7
		An Act to repeal the law on damages for trespass by animals.	Acc.	68.7
		An Act on "city, town, or place desiring to become a candidate for county seat"	Acc.	60.1

(c) *Character of Laws Rejected*

It will be observed that the referendum by popular petition was effective — that is, resulted in the defeat of the law — in twenty-three cases, and it is instructive to examine these with a view to discover how far they were, or might probably be, an expression of a general public opinion. Take first the five rejections in South Dakota in 1910. There were submitted at the same time one law proposed by initiative and six amendments to the constitution. *Equity*, the organ for direct legislation, says of this election,[1] "A 'vote no' campaign was made, and they

[1] January, 1911, p. 35.

were all defeated, except possibly one. A general 'vote no' or 'vote yes' campaign when there are so many measures submitted, some of which were doubtless meritorious, is not discriminating. It is said that the ballot upon which the referred laws were printed was six feet long, in fine print; the amendment ballot being less in size, and the candidate ballot still less." The result was that a constitutional amendment in relation to the renting of public lands was accepted and everything else rejected. An examination of the votes cast upon each measure, set forth in Appendix B, gives the impression that the voters had a definite opinion upon the initiative about intoxicating liquors, the amendments about woman suffrage and renting of public lands, the referendum about the militia, and perhaps on one or two more questions. The other measures voted upon were not of such a character as to render a true public opinion upon them improbable, yet the even run of votes for and against them makes it seem highly unlikely that the public formed a distinct opinion upon each of them separately. Curiously enough on the next occasion, two years later, every measure brought before the people of the state was accepted with as much uniformity as every ordinary law submitted to them had been rejected two years earlier. The measures of 1912 were, indeed, ratified by overwhelming majorities, and the largest majority of all — nearly four to one — was obtained by a law for headlights on locomotives very similar to that which was rejected in 1910.

In Oklahoma the Bryan Election Law was a

political measure, alleged to be passed for party purposes, and the people could no doubt form an opinion upon it without difficulty. Their ability to do so can be assumed also in the cases of the Maine law regulating the amount of alcohol in prohibited liquors, of the Oregon law appropriating money for armories, and certainly of the law permitting the railroads to give free passes to legislators. The people of California may have had a deliberate opinion also on the three laws rejected at the referendum in 1912, although in view of the fact that only about 40 per cent. of the registered voters cast their ballots upon them, a number less than on any of the other measures presented at the same time, one cannot assert positively that the people as a whole had such an opinion. On the other hand, the Maine laws to create a new township and for a bridge at Portland, and the Oregon law to increase the salary of a district judge, must have required a familiarity with local conditions which the people of the whole state could hardly be expected to possess by intuition; although they may well have had an opinion that special legislation of this kind is of a suspicious character, and that the laws in question were passed in a way to awaken suspicion. Nevertheless, the people of Oregon thought they had an opinion upon the salary act, for they voted against it 71,503 strong, a figure larger than half the registered voters in the state, and larger than any vote previously cast for or against any measure since the referendum was adopted. Yet it is noteworthy that the official pamphlet of arguments issued by the state govern-

ment contains no argument either for or against this measure. This was true also of the two appropriations for the state university rejected in 1912; and in that case the issue was complicated by an initiative presented at the same time for a special tax in favor of the university which involved the repeal of these appropriations.

In regard to the two local acts in Maine the people themselves evidently did not consider that they had opinions, for the total votes cast upon those acts were only 38.6 and 36.2 per cent. of the votes cast for Governor at the same election; the percentage of registered voters being, of course, smaller still. Thus not more than one third of the voters felt competent, or cared, to express an opinion about them, and the people who voted against them were only 24.6 and 21.2 per cent. of those who cast their ballots for Governor. This is even more true of the five laws rejected in Colorado in 1912, on which the total votes ran from 33 per cent. down to 24.8 per cent. of those cast for presidential electors at the same time; the largest negative vote being 24.1 per cent. and the smallest 14.3 per cent. of that for presidential electors. In the case at least of these two laws in Maine, and of four of the laws of South Dakota (or in about a quarter of the twenty-three instances where the referendum on petition has been effective) it is by no means clear that the people of the whole state formed or expressed a real opinion on the particular measures rejected. Nor would it be safe to assert that they acted on a deliberate judgment in rejecting the three laws in California, the five in

Colorado, or the two appropriations of 1912 in Oregon. All these added together make sixteen out of the twenty-three rejections, so that it can hardly be certain that a definite public opinion existed in more than about one quarter of the laws rejected. This does not mean that the defeat of the measures was a misfortune, for there can be no shadow of doubt that there was no general public opinion in their favor, and the delay of legislation under such conditions is usually no detriment to the state.

79. Size of the Vote Cast

Reference has been made to a phenomenally small vote on certain laws. The size of the vote has in two ways a bearing upon the expression of a true public opinion by the referendum. First, those persons who go to the polls and cast their ballots for Governor, but do not make a mark for or against the measure, may be assumed to have no opinion, or no serious opinion, thereon. Men may, and often do, vote without having a real personal opinion on that particular measure; but they surely do not fail to mark their ballots when they have a decided opinion. Second, the size of the vote is a measure of public interest in the matter; and hence an indication of the extent to which the people are likely to have studied the facts necessary for a decision, and thereby formed a genuine opinion about the law. A decision by a majority of the votes actually cast upon a question is doubtless the most natural method to pursue in the case of a popular vote, but that such a result expresses public opinion may

sometimes be a political fiction rather than a fact. That is not necessarily a condemnation of the procedure, for politics is at best an inexact art and must work by the nearest possible approximation; yet the probable accuracy of the approximation is a factor to be taken into account.

80. The Vote Cast in Switzerland

In the list of popular votes in Switzerland (printed in Appendix A) the number of registered voters appears for several of the cantons as well as for the Confederation since 1893, and the proportion of votes cast is surprisingly small. In the Confederation a majority of the registered voters cast valid votes at the referendum in only half the cases, in twelve out of twenty-four[1]; in Bern in ten cases out of sixty-two[2]; in Rural Basle in six out of forty-three[3]; in Solothurn in twenty out of fifty-one; while in not one of the twenty-five cases in the Valais was a majority of the registered vote cast. In Zurich the proportion is far larger, sixty-eight out of eighty-one,[4] the normal being a trifle over 55 per cent. of the registered voters, a result due, no doubt, to imposing a fine for failure to deposit a ballot, — although not for omission to fill out the blanks therein. In Geneva and Vaud the normal vote was about the same; and in Schaffhausen it ran even higher, from 65 to 75 per cent. of the registered voters.

[1] In these and the following statistics for Switzerland constitutional amendments are included, but measures proposed by initiative are not. A majority of the registered voters cast their ballots on five federal initiatives out of eight.

[2] On four initiatives out of nine.

[3] And on the only initiative.

[4] On ten initiatives out of eleven.

The percentage of votes cast often varies very much on different measures. In the Confederation it runs from 79.1 down to 34.3; in Bern from 63.3 down to 21.8; in Zurich from 76.4 down to 31.1; in Rural Basle from 73.5 down to 24.0. In Solothurn from 82.1 down to 21.4; and in the Valais from 49.8 down to 21. In Aargau, Thurgau, St. Gall, Schaffhausen, and Geneva, on the other hand, the number of votes cast shows comparatively little variation; but in other cantons, where the number of registered voters is not given, the differences are very large; and in Schwyz the number ran in 1895 and 1898 from 1,243 to 12,328.

Clearly in some questions the people took little interest, and the probability that the result expressed a real public opinion is therefore small. To take extreme cases: Is the legislature of Zurich less likely to have represented public opinion correctly in increasing the salaries of school teachers than the popular vote at a referendum where 31.74 per cent. of the registered voters cast their ballots against the law, 31.50 in its favor, and 36.76 per cent. did not vote at all? or the legislature of Schwyz when it passed a law about highways which was rejected by a vote of 1,682 to 1,593, the total number of votes against the bill being only 13.54 per cent. of the number cast four years earlier on the question of adopting a new cantonal constitution? Or again, what value, as an evidence of popular approval, had a ratification of a law on the organization of the police in Bern, when 17.4 per cent. of the registered voters cast their ballots for it, 17.2 per cent. against

it, and 65.4 per cent. did not vote? Do not these figures show that the people as a whole did not really have an opinion on the measures in question?

Such instances do not condemn the institution, but they shake our faith in a popular vote as an infallible index of public opinion. They make one feel that the referendum does not always accomplish the object for which it is designed; and what is true in these extreme cases is also true to a less extent in many others. The referendum, like every other human agency, is an imperfect instrument, that will work well only when used on the appropriate material.

81. The Vote Cast in America

In the United States, as in Switzerland, the vote on measures submitted to the people is habitually smaller than for the principal public officers elected at the same time. Dr. Oberholzer, finding that in general about one half as many voters cast their ballots on constitutional amendments as for presidential electors, says that only about half of all those who know their own minds respecting candidates seem to care anything about measures.[1] In Massachusetts, for which statistics have been carefully compiled, it appears that, from the adoption of the constitution of 1780 through 1911, sixty constitutional questions have been submitted to the people of the state,[2] and the votes cast upon them have varied from a number slightly in excess of those polled for

[1] *The Referendum in America*, ed. of 1900, p. 168.

[2] One of these, on the introduction of woman suffrage, was merely of an advisory nature.

Governor in the same year down to one thirtieth part thereof, two amendments to the constitution being actually carried with less than 4,500 affirmative votes although nearly 170,000 were cast in the election of the Governor. On ten questions the number of votes polled was less than one fifth of those cast in the election; on forty-two it was less than two thirds; and it must be remembered that on the average only three quarters of the registered voters cast their ballots even for Governor, while a considerable number of qualified citizens are not registered.

In Michigan, where eighty-seven constitutional questions have been submitted to the people since the adoption of the constitution in 1835, there is a similar variation in the size of the vote cast.[1] One amendment was adopted by 3,180 affirmative votes, while 130,818 were cast at the election. On eighteen questions the votes polled were less than one fifth of those cast for state officers, or, when no state officers were elected, less than one fifth of those usually so cast at the period; and in forty-seven, or more than half of the cases, they were less than one half of the votes so cast.

If now we turn to the states which have recently adopted a general referendum, the first thing that strikes us is the fact that there is no marked difference in the size of the popular vote cast on constitutional amendments and on ordinary laws. The vote on these last has certainly not been the smaller; nor is that surprising. A law against which a petition

[1] *Annals of the American Academy of Political and Social Science*, September, 1912, pp. 155–158.

has been filed is one that excites repugnance, and is therefore in some degree contentious; whereas a constitutional amendment, submitted automatically, may in some cases provoke no serious antagonism.

Taking the votes at the referendum on ordinary laws we find that they run all the way from 90.1 per cent. of the vote cast at the election in New Mexico in 1912 down to 24.8 per cent. in Colorado in the same year. In most of the states the number of votes cast on the different measures presented at any one time does not vary greatly, showing that the people who feel competent to express an opinion on one law voted as a rule on all the others also; but the variations from year to year are sometimes considerable. In Maine, for example, the average percentage of those taking part in the election in 1910 who voted at the referendum was 41.8; whereas in 1912 it was 75.1. In South Dakota it was 85.7 in 1908, 77.0 in 1910, and 68.75 in 1912. In Oregon it has been very uniform, ranging between 72 and 79. This is not far from the general average in the different states, which may be taken as not more than 75 per cent.[1]

From these figures it would seem that the votes cast are decidedly larger than in Switzerland, but it must be remembered that the percentage is of the votes cast at the election of public officers, not of the registered voters as in Switzerland. To bring them to this last basis — the most significant for their relation to public opinion — it is necessary to

[1] These figures do not include constitutional amendments or the initiative.

reduce the figures just given by a fifth or a quarter. Reducing them by a fifth, the average would be about sixty per cent. of the registered voters. This is somewhat better than the average in Switzerland, but it is not very large. Now if only three fourths as many people cast their votes on measures as for the chief public officers it shows that there are one third part more people who are interested in or feel competent to vote for candidates than measures. This would seem to indicate that there is a more general public opinion on the election of officers than at the referendum, although, of course, it by no means follows that the men elected will represent public opinion more truly than does direct legislation.

The small size of the vote has the more significant bearing on the question of a real public opinion where the majority is narrow. How much value, for example, as an indication of public opinion, had the ratification in 1908 of the appropriation for the state university in Oregon when 37.8 per cent. of the citizens actually present at the polls voted for it and 34.8 per cent. against it; or the acceptance in the same year of the law closing the theatres on Sunday in South Dakota when of the voters present 42.5 per cent. favored and 42.1 per cent. opposed it? A still stronger instance was presented in Colorado in 1912 where the law on the branding of cattle was rejected by 14.35 per cent. against 14.22 per cent., while of the voters actually taking part in the election five times as many failed to express any opinion on this measure as voted either for or against it. We cannot repeat too often that such results are not

necessarily a condemnation of the referendum. They do not prove that a popular vote is not under the circumstances the wisest and best method of deciding a question; but they show that a vote of this kind cannot always be regarded as *vox populi*.

82. Attempts to Stimulate Opinion

Efforts have sometimes been made to enhance the value of the popular verdict, by increasing the participation of the voters, or by furnishing them with better means of forming an opinion; and these attempts have been in a measure successful. In Zurich, for example, a fine is imposed for not depositing a ballot, though not for failing to enter a vote upon all the questions therein. We have seen that this results in a larger vote there than in other cantons, yet the blanks in the ballots have been discouragingly numerous, running all the way from 4.5 per cent. to 39 per cent. of the ballots cast, the average being almost exactly 20 per cent.[1] In other words, about one fifth of the voters whose ballots were actually placed in the box felt incompetent to form an opinion on the measures submitted, or took too little interest in them to make a mark on the sheet of paper in their hands.

In Oregon, on the other hand, the state has wisely attempted to educate the voters by furnishing them with arguments for and against each measure. These arguments are prepared voluntarily by the persons interested, but, together with the full text of

[1] In the case of one initiative the blanks ran as high as 58.5 per cent. of the votes cast.

the measures, are printed by the government in a pamphlet which is then sent to every voter. The pamphlet for 1910 contained, apart from the index, 202 octavo pages of fine print. Yet the arguments were by no means complete. Of the thirty-two measures submitted (including those proposed by initiative and all constitutional amendments) only twelve had arguments both *pro* and *con;* fifteen more having arguments in favor alone; four opposing arguments alone; and on one there was no argument at all. This last, the sole law against which a petition for a referendum was filed, was that for increasing the salary of a judge, and was rejected. In 1912 the pamphlet contained, apart from the index and local matters submitted only to the voters of Portland, 252 pages. Of the thirty-eight measures covered thereby, thirteen had arguments on both sides; six only in favor; six only against; while thirteen had no arguments at all. Thus the excellent plan of furnishing the people with arguments by no means accomplishes its object completely. The results do not show that absence of argument was due to confidence in the result, or on the other hand that the arguments had a decisive effect.[1]

[1] Thirty-two measures were submitted in 1910.

Of the twelve that had arguments *pro* and *con*, four were accepted and eight rejected.

Of the fifteen that had arguments *pro* alone, five were accepted and ten rejected.

Of the four that had arguments *con* alone, all were rejected.

The one that had no argument was rejected.

Of the thirty-eight public general measures in the pamphlet for 1912, one was not placed on the ballot.

Of the thirteen that had arguments *pro* and *con*, three were accepted and ten rejected.

The comparatively small size of the vote cast at the referendum everywhere, and the incomplete success of efforts to stimulate a larger vote or a more general consideration of the questions presented have, as we have seen, an important bearing on the trustworthiness of the popular vote as an expression of a genuine public opinion. We shall recur to this again after discussing the initiative.

83. The Local Referendum

A general referendum on ordinary laws in America has been adopted by a dozen states, but a local referendum on local matters, or on the local application of general laws, has spread far more rapidly and been adopted much more freely throughout the country. This is not unnatural, because some of the objections made to the general referendum do not apply, or apply with less force, to local popular votes. In fact the two things are not precisely the same. The term "local referendum" itself is used for at least three distinct processes: one is referring a special local act passed by the legislature to the people of the place for acceptance or rejection; another is making the local application of a general law depend upon its adoption by the people of each city, town, or county; and a third is giving to the people of a city a right to reject by

Of the six that had arguments *pro* alone, none were accepted and six rejected.

Of the six that had arguments *con* alone, one was accepted and five rejected.

Of the twelve that had no arguments, seven were accepted and five rejected.

popular vote a measure passed by their own local council.

When the local referendum means a reference of a special act for acceptance to the citizens of the place it is not an appeal from the representative body to the people it represents, but from the representatives of the state as a whole to the part affected. If the Legislature of Pennsylvania, for example, enacts a charter for Pittsburg subject to ratification by the inhabitants, this is not asking the people of that city whether their wishes have been rightly expressed by their representatives, for the members of the Legislature from Pittsburg may have opposed the bill. The contrast is primarily between centralized government and local home rule, not between representative and direct democracy. The question whether the act shall be referred to the people or the council of the city is, indeed, one of direct democracy, but as such it touches local not state government, the relation of the council to the citizens, not that of the legislature to the people of the state. This distinction must be borne in mind; because state-wide popular votes on local questions, like that on the Portland Bridge Act in Maine and like several initiatives on local matters in Oregon, while in accord with the principle of the general state referendum, are as much violations of the principle of the local referendum and local autonomy as if the legislature alone had acted.

The same distinctions apply to making the local application of a general law depend upon its adoption by the people of each local community; the common-

est example, and a typical one, being local option in regard to the sale of liquor. Here again there is no appeal from the representatives to their constituents, but the conferring of power over a matter deemed of local interest to the locality concerned to be exercised by local popular vote.

The third form of the local referendum — that of giving to the people of a city the right to reject by popular vote measures passed by their own local council — is a pure instance of direct, as compared with representative, democracy. But it may be observed that while the general principle involved is the same as in the case of a referendum to the people of a whole state, it is applied to a more limited class of questions on a smaller scale; and if our analysis of public opinion is correct, the difficulty with the problem of direct popular government lies not so much in the general principle as in the application.

84. Advantages of the Local Referendum

One of the objections raised against the state-wide referendum which does not apply to local popular votes is the danger of confusing constitutional and other laws. It is urged that if all laws are sanctioned alike by popular vote, people will cease to regard as peculiarly sacred those fundamental principles that are embodied in the constitution. Many of the advocates of direct legislation do not regard such a result with disfavor. They think that the sanctity of the constitution has been carried too far, and that it would be well to reduce it, if not to abolish it altogether. Other people feel that the fundamental

principles of public life ought to be held in peculiar reverence, and changed only after careful and mature deliberation; that changes once made ought to endure; that we ought not to experiment lightly with the foundations of civilized society. They believe that, while there are many ways of insuring political stability, the American method of doing so lies in a distinction between constitutional and other laws. A constitution, they say, should be readjusted to the fundamental, not the superficial, changes in society. The compass follows the slow movement of the magnetic pole, and a constitution should be a compass not a weathercock. Now this objection, whatever it may be worth, clearly does not apply to the local referendum.

Again, the referendum for local affairs is applied on a smaller scale, and the smaller the scale the greater the opportunity for discussion and hence the formation of a true public opinion. The questions presented, also, are more limited, more likely to be simple and familiar to the mass of voters, who are therefore in a better position to weigh their merits. That this is in fact the case may be seen in the relative size of the vote cast on state and local questions by the citizens of Boston. The figures have been compiled by the Statistics Department of the city for twenty-two years from 1890 through 1911,[1] and show that a decidedly larger proportion of the people were interested in, or felt competent to express an opinion upon, local than state-wide measures. It appears that the average percentage of registered voters in

[1] *Monthly Bulletin* for December, 1911, and January, 1912.

Boston who voted upon the thirteen state questions, though larger than the average percentage in the rest of the state, was only 52.44, while the average percentage on the seven city questions voted upon at state elections was 63.16; and that on six such questions submitted at city elections, where the attendance is naturally less than at state or national elections, the average percentage was 59.81.[1] It may be added that eight of the votes at city elections occurred when there was no election of mayor, and hence the attendance was unusually small; whereas at every state referendum a governor was elected. All this enhances very much the significance of the larger vote on local matters. Such a result goes far to justify a more general confidence in the local referendum as an expression of a real public opinion.

[1] One question, that of incorporating the Elevated Railway Company, presented on a special occasion when no election was held, is not included. The vote on it was only 33.11 per cent. — far the lightest vote on any of the city measures. Including this, the average vote on city questions at city elections was 56.57 per cent. These figures do not include the annual votes on licensing the sale of liquor which take place at city, not state, elections, and where the percentage of the registered vote cast has averaged 62.63 in the twenty-one years covered by these statistics.

CHAPTER XIV

THE INITIATIVE

85. The Nature of the Initiative

THE referendum is, after all, negative. It is an instrument whereby the people can reject an act passed by their representatives which they do not like. It enables them to take the same part in legislation that the governor does by his veto — a power, by the way, which no public officer possesses in Switzerland — but it gives them no power to legislate themselves. For this last purpose the initiative was devised by the Swiss, and has recently been copied in America by most of the states that have adopted the general referendum on ordinary statutes. It empowers a certain number of voters to draft a law and demand a popular vote upon it without regard to the opinion of the legislature. Herein it differs essentially from the right of petition. Any citizen can petition the legislature, and in America he can, as a rule, appear before a committee of that body to argue for his bill. Many useful laws originate in this way; but if the legislature refuses to act, the bill is dead. Now the specific object of the initiative is to open another channel for lawmaking, to enable citizens to draft a bill and appeal directly to the people on it when the legislature declines to

enact it. The procedure varies, but this is the essential object in all cases, and for our purpose the first question is how far there is a public opinion in favor of measures to which the legislature is opposed.

86. Results in the Swiss Confederation

The initiative was introduced in a couple of Swiss cantons as early as the middle of the last century, and after 1869 it spread rapidly, until for a score of years it has existed in some form in every canton but one. In 1891 it was adopted also for amendments to the federal constitution, but it does not apply to other federal laws.[1] An inspection of the tables in Appendix A will show the extent of its use and the cases in which it has been used with success. Eight attempts have been made to amend the federal constitution by this process, of which two only have been successful. The first of these, in 1893, forbade the slaughter of cattle by bleeding, chiefly in order to prevent the manufacture of kosher meat; and the second, in 1908, forbade the sale of absinthe. The first, although supported on the ground of cruelty to animals, certainly sprang from race prejudice; the second was a prohibitory law, on which people always disagree, and in fact the national legislature approved it. It may be observed that in neither case did a majority of the registered voters take part in the vote.[2]

[1] At an earlier date the initiative could be used to provoke a complete revision of the federal constitution, but it proved useless.

[2] An amendment on the use of water-powers was proposed by initiative, but withdrawn when the legislature drew up a measure of its own which was ratified at the referendum in 1908.

87. Results in the Cantons

In the canton of Bern the initiative was set in motion nine times from 1893 through July, 1912, and in but four of them with success. These four abolished compulsory vaccination; provided for improvement in cattle breeding; changed the price of salt; and introduced the election of the executive council of the canton by the people. It has not been used at all for the last six years. In the democratic canton of Zurich, where the votes on the referendum have been more numerous than elsewhere, the initiative has been put in operation, from 1893 to 1908, in eleven cases and once with success.[1] It was a proposal in 1894 to amend the cantonal constitution by providing that the apportionment of members of the legislature should be based upon the number of Swiss citizens, instead of the number of residents, in the district. In Aargau it has been successful, from 1893 to 1912, in three cases out of six: a game law; election of the executive council by the people; and a law on the local referendum. In Thurgau out of three trials it was successful once: creating industrial tribunals. In Solothurn both initiatives were rejected, but an alternative to one of them, proposed by the legislature, was adopted. In Schaffhausen the only measure brought forward by the initiative was rejected. This was true also of the single cases in Rural Basle and the Valais, of the two in the Grisons, and of the five in Lucerne.

[1] Two laws based upon initiative were enacted by the legislature and ratified at the referendum.

In Schwyz the only initiative was a proposal for a total revision of the constitution which was accepted by a light vote; but the constitution so framed was rejected by more than two to one at the largest popular vote polled in the canton on any measure. In St. Gall three measures were so proposed, of which one was adopted. It reduced the rate of interest on mortgages to four per cent., but three years later a law restoring the rate to four and a half per cent. was ratified at the referendum. Curiously enough, in a couple of cantons that make little use of the referendum the initiative has been comparatively frequent. Geneva, which has used the referendum only on ten measures in more than thirty years, voted on initiatives six times, and in two cases with success. One forbade a man to hold certain public offices at the same time; and the other provided for the election of judges by the people. In Basle City, where the referendum has not been used at all, the initiative has been set in operation twelve times and has been successful in two instances; one of which provided that the legislature should be chosen by proportional representation, and the other that non-residents should be charged tuition fees in the schools. In none of the other cantons has any attempt been made to use the initiative.

88. Tendencies in Switzerland

An examination of the list shows that, except for the federal act on the slaughtering of cattle, there is nothing very peculiar about any of the laws enacted by this process. People may well differ about their

wisdom, as about that of any legislation, but they were certainly not eccentric. The election of the executive council in Aargau, and of the judges in Geneva, by the people does not strike Americans as extraordinary; and, on the other hand, a study of the tables in Appendix A will prove that the really radical, unusual, or doctrinaire proposals were rejected by overwhelming majorities. A declaration, for example, of the duty of the state to furnish laborers with work was defeated in the Confederation by nearly four to one; a proposal in Geneva for the separation of church and state and for old age pensions was rejected by more than two to one (although when later separated the first part of this measure was ratified on a referendum), and an initiative in the same canton for compulsory mutual fire insurance was defeated more than four to one. Even proportional representation, although on the whole becoming more and more popular, has been rejected a number of times, and was accepted in Basle City only by a vote of 5,290 to 5,280. In short, the Swiss have shown themselves in the use of this instrument, as in that of the referendum, an eminently conservative people.

The most notable fact about Swiss experience with the initiative is the small amount of legislation it has produced. Even the attempts to use it have not been very frequent. The total output of federal legislation from that source in a score of years has been two measures, or one in ten years. In the cantons the result has been smaller still. In the eighteen, or in some cases twenty, years

covered by the tables only fifteen measures have been enacted in this way by all the eighteen cantons that possess the procedure, or an average of less than one measure per canton in twenty years; while in Bern, the most prolific of them all, the average is only one measure in five years. The Swiss people certainly do not appear to crave any considerable amount of legislation which their representatives are unwilling to enact. This is the more striking because in strong contrast with the experience of the American states, where the initiative has been used more freely than the referendum.

89. Results of the Initiative in America

Although the initiative was adopted in South Dakota in 1898, it was not used in any state until 1904, when it was put into operation by Oregon, which has, indeed, applied it more frequently and with greater positive results than all the other states that possess it put together.[1] Apart from constitutional amendments passed by the legislature and submitted as of course to the people, Oregon has had, through 1912, popular votes by referendum on eleven laws or appropriations, six of them being rejected. But by initiative twenty-eight constitutional amendments have been proposed, of which sixteen were adopted by the people; and forty-eight other laws, of which seventeen have been accepted

[1] All the states, except New Mexico, that have the general referendum have also the initiative, at least for ordinary laws. Nevada, however, adopted the former in 1904, but did not adopt the initiative until 1912. In Michigan the legislature has power to refer laws to the people, and there is an initiative for constitutional amendments.

in this way. The number of measures so proposed has increased steadily, but at the last four biennial elections the number adopted has remained nearly constant.[1] Truly the output is not meagre. In Oregon alone it is now four times as rapid as in the Confederation and all the cantons of Switzerland added together. In Colorado the institution, for the single year in which it has been in operation, has been equally prolific; for in 1912 twenty measures were proposed by that means and eight of them adopted. With such a number of laws enacted by petition and popular vote, the advocates of direct legislation are certainly right in believing that, if the votes express the real opinions of the people, the representatives in these two states are out of touch with their constituents; and if this is a permanent condition, representative democracy there has not been highly successful.

The other states have found the initiative less productive. In Maine, where it has existed several years, only one measure has been proposed and that was adopted. In Missouri six measures, all constitutional amendments, have been proposed, and all of them were heavily defeated. In Montana it was not used until 1912, when four acts were proposed and accepted by large majorities. In Oklahoma ten measures have been proposed, four

[1]

Year	*Proposed*	*Adopted*
1904	2	2
1906	10	7
1908	11	8
1910	25	8
1912	28	8

One other measure proposed in 1912 was not on the ballot.

of them being accepted; but the special election at which one of these was ratified was afterwards declared unconstitutional. It may be observed, however, that another of the measures received a majority of the votes cast thereon, but not a majority of all the votes cast at the election, which is required by the constitution. In South Dakota only three measures have been so proposed, of which only one was accepted; and that one, although proposed by initiative, was in fact enacted by the legislature.

Of the states in which the initiative did not come into operation until the election of 1912, Colorado has already been mentioned. For the rest, one measure, extending the suffrage to women, was proposed and adopted in Arizona. In Arkansas, on the other hand, six measures were proposed and three adopted. In California three were proposed and rejected; while New Mexico made no use of the institution.

90. Nature of the Laws Enacted by Initiative

The people of those American states which have established direct legislation have certainly been more attracted by the initiative than by the referendum, for they have used it more frequently. An examination of the various measures enacted thereby will throw light upon the working of the institution. Many of them have been of a purely political character; that is, they have dealt with the structure and powers of the state government or the forms of procedure. Twenty-two of the fifty-five so carried, or about two fifths, fell within that category. They

related to such matters as the method of amending the constitution, direct nominations, length of legislative sessions, recall of public officers and of judicial decisions, ballots at elections, expenditures by candidates, proportional representation, woman suffrage, and disfranchisement of negroes. Nearly a score more concerned other public affairs, such as civil service reform, judicial procedure, aid for schools, the limit of debt for roads, state printing, state institutions, the employment of convicts, free passes on railroads for members of the legislature, the kinds of property to be taxed and the rates thereon. Some of the measures in Oregon dealt with specific matters, like the adoption of a particular normal school by the state, and the imposing of a tax on the gross earnings of telegraph, telephone, and sleeping car companies. Other successful uses of the initiative related to local government. Of this nature were laws establishing local option in the sale of liquor, giving to cities power to create their own organization, providing for the referendum and initiative therein, regulating their debts, and in one case in Oregon creating a new county by special act.

Only nine of the laws adopted in this way concerned directly the conduct of private persons. Three of them regulated the taking of fish; three related to the hours of labor in public work, in mines, and of women; one to the liability of employers for accidents; one fixed freight rates; and another was a mothers compensation act. Of these nine, six were adopted in Oregon, and the other three in Colorado.

91. Nature of Proposals Rejected

The measures proposed and rejected are, perhaps, not less illuminating. Passing by for a moment the fertile soil of Oregon, we find, as in the case of the laws adopted, a great preponderance of measures of a political character; the only proposals relating primarily to the conduct of private persons being a number of attempts to secure prohibition in the sale of liquor and one to license horse-racing and forbid betting. A few proposals there were upon the border line; such as the creation of commissions to regulate public service corporations, a provision for trial by jury in cases of contempt of court, and perhaps we should add the maintenance of an immigration bureau. All the rest of the measures proposed and rejected dealt with the organs of government and their functions. They related to elections, local government, public education, high ways, taxation and the like, many of the measures rejected being similar to those adopted in other states.

Turning now to Oregon, the greatest of laboratories for experiments in direct legislation, we find that the laws proposed by the initiative cover a range of miscellaneous objects as wide as those which come before a state legislature. Nor, contrary to the usual assumption, did they proceed wholly from those who advocate lawmaking by popular vote, but in no inconsiderable share from its opponents. In other words, the measures brought before the people in this way have not been

by any means always radical, or all in one direction. Measures have been brought forward, for example, to enlarge and to restrict the operation of the referendum and the initiative. The questions of prohibition and taxation have been the subject of proposals and counter proposals seeking directly contrary ends; and so has the question of authorizing or limiting indebtedness for building roads. Some of the proposals, moreover, that have been adopted by the people, were not the radical ones.

The House of Commons has been compared to an elephant's trunk which can lift a tree or pick up a pin, and the initiative in Oregon seems to emulate that versatility. One proposal involved a reconstruction of the whole state government, abolishing the Senate, introducing proportional representation into the remaining House, making the Governor and all his defeated rivals *ex officio* members thereof, forbidding appropriations except on the recommendation of the Governor, etc.; while no less than ten special acts were proposed to create particular new counties or change the boundaries of existing ones. Save for one measure in 1908 creating a county these last proposals were rejected by overwhelming majorities. Attempts have also been made to transfer to the state a toll road and particular normal schools, in the case of one of the latter with success. Other proposals which were rejected dealt with woman suffrage, the law of elections, the apportionment of state taxes, the establishment of an official state periodical, a state highway department, a state hotel inspector, with state

printing, a state license for selling stocks and bonds, with the government and support of the state University and the Agricultural School, with the areas of local government, with the abolition of capital punishment, with the prohibition of boycotting and picketing and of meetings on public land without the consent of the mayor.

92. The Initiative and Public Opinion

An examination of the measures proposed by the initiative in Oregon makes it appear improbable that the public could have had a real opinion on all of them. No doubt there was a very genuine opinion on some of them which were well understood, such as woman suffrage, prohibition, and others. But this can hardly have been true of all the rest, on account of the number of questions submitted to popular vote at one time. In addition to the choice of many public officers, the people were asked to vote on thirty-two different measures in 1910 and thirty-seven in 1912. Now if any candid man who is not in active politics, but takes a serious interest in public affairs, will consider on how many of the candidates for office, constitutional amendments and other questions on which he votes (quite apart from the general referendum and initiative) he has a real personal opinion formed by personal judgment, he will be shocked if he is not already aware of his own ignorance. In a lamentable proportion of cases he acts upon an impression, a prejudice, or upon the advice of some person or party that he trusts; and if he is as intelligent and conscientious

as the average citizen, he may assume that the other voters are mostly in the same condition as himself. But the opinion of the whole people is only the collected opinions of all the persons therein. Even assuming that every citizen reads a pamphlet of over two hundred pages, with brief arguments on both sides of a part of the questions, it is unlikely that he will form a personal judgment on all of them. The fact that he votes on them all may prove only that he follows what he believes to be a good lead; and the fact that the people discriminate, not adopting or rejecting everything coming from a certain source, proves only that a fraction of the people act independently, rather than that they all have opinions of their own. Yet this is the assumption on which the initiative is based, and it becomes less accurate as the number of questions to be decided by popular vote exceeds the capacity of the ordinary busy man to decide for himself.

We have seen that such questions in Oregon are far more numerous than in any of the Swiss cantons, even those with both initiative and compulsory referendum on all laws. Among the laws, moreover, proposed by initiative in Oregon there were some requiring for the formation of an intelligent opinion a familiarity with facts not of common knowledge. This is true, for example, of the question which, if any, of three competing normal schools ought to be supported by the state. Others required information about local conditions, as in the case of the eight proposals of 1910 to create new counties or change the boundaries of existing ones. The people

seem to have recognized this in their rejection of all the eight; but if so, the vote was an expression of opinion, not on the merits of the measures themselves, but on the popular incompetence to decide them, and on the principle that such measures ought not to be proposed in this way.

93. Complex Subjects Presented by Initiative

Then some of the measures presented by the initiative in Oregon — that on judicial procedure in 1910, for example, and those changing radically the structure of the state government in 1910 and 1912 — were very comprehensive and complex, of a nature to require profound and prolonged study. Even the advocates of direct legislation assert that the issue in the case of the constitutional proposal of 1910 was confused. Their organ, *Equity*, quotes Mr. Alfred D. Cridge to the effect that, outside of the cities, the provision seeking to establish proportional representation was not understood, and that if it had not been combined with distinctly unpopular matters, and if the People's Power League has been able to place a few speakers in the field, it would have been carried by a large majority.[1] The judicial procedure amendment of 1910, although not very long, contained a series of provisions about trial by jury and about the power of the Supreme Court of the state to deal with appeals in cases where verdicts have been rendered. This is a highly technical subject in which it is easy to lose one's way. One of the objects of

[1] *Equity*, January, 1911, p. 42.

the measure was undoubtedly to prevent the vexation of a new trial where substantial justice can be done without it.[1] The provision reads:

"Sec. 3. In actions at law, where the value in controversy shall exceed twenty dollars, 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 offence for which a greater penalty is provided than

[1] *Official Pamphlet*, 1910, p. 177.

that of which the accused was convicted in the lower court."

One of the leaders of the Oregon Bar is of opinion that this empowers the Supreme Court of the state to enter judgment contrary to the verdict of the jury.[1] In view of the first sentence of the section, forbidding reëxamination of facts tried by a jury, and the last sentence, which assumes that a prisoner may be found guilty of an offence for which he was not convicted by the verdict of the jury if the penalty is not greater, the construction of the powers conferred on the Supreme Court in the body of the section appears, to a lawyer bred in another part of the country, open to doubt. Is it probable that the bulk of the voters of Oregon had an opinion on this intricate point of law; and if not, can they be said to have had an opinion in favor of investing the Supreme Court with powers that they did not understand? No doubt they had an opinion upon another section which provides for verdicts in civil cases by three quarters of the jury; but the question what the court shall do when the verdict is inconsistent with the testimony does not seem to have occurred even to the framers of the amendment, who were apparently thinking only of avoiding new trials on technical grounds.[2] Yet whatever the provision may mean, it obviously goes farther than this.

The object of the initiative being to form and

[1] Address of Frederick V. Holman, President of the Oregon Bar Association, at its meeting, November 15, 1910, p. 39 *et seq.*

[2] See their argument in the *Official Pamphlet*, 1910, p. 177.

elicit a real public opinion, and to separate the issues presented to the people from general party considerations, the questions presented ought to be simple and single; whereas under a general initiative it is possible to present a complicated measure, difficult to understand, and sugar-coat it by some provision obvious and attractive at first sight. Thus in Oregon the amendment of 1910, repealing the constitutional provision about equality of taxation and giving to local bodies authority to regulate taxes, contained a provision abolishing the poll tax. The amendment was adopted by 36.7 per cent. of the citizens who took part in the election, 35 per cent. voting against it, and 28.3 per cent. not voting on it at all. A change of 1023 votes would have changed the result, and there may well have been more than that number who thought of the poll tax alone. I do not for a moment wish to insinuate that the provision was inserted to make the measure more palatable, or distract attention from the main issue, but the occurrence points to a possible danger in the unrestricted use of the initiative; and it is noteworthy that a repeal of the whole of the amendment, save the abolition of the poll tax, was ratified at the next election by a popular majority of 16,731.

94. Close Votes and Public Opinion

The doubts about the existence of a real public opinion arising from the closeness and small size of the vote apply, of course, to the initiative as well as the referendum. With what confidence, for

example, can we say that the people of Oregon did not want an income tax when at the election of 1912, 38.75 per cent. of those who went to the polls voted for it, and 38.92 voted against it. In other words, the decision was made by 0.17 per cent. of those who took part in the election, while 22.33 per cent. of those present did not vote on it, and probably as many more were absent altogether.

Several cases in Colorado in the same year are even more striking. The proposal to publish an official pamphlet containing arguments on the measures to be submitted to the people was defeated by a vote of 14.30 per cent. in its favor against 14.65 per cent. against it, while 71.05 per cent. of those who took part in the election abstained from voting either way on the question. On the other hand the law to place all appointed public officers under civil service rules was adopted by 14.61 per cent. against 13.42 per cent., 72 per cent. of those present not voting; and the laws to give home rule to cities, to forbid lists of party candidates on ballots, and to make eight hours a day's labor in mines were carried by only slightly larger margins. It must be remembered that the percentages of votes on these measures are of the votes actually cast for presidential electors at the same time, so that the proportions of registered voters were smaller still. In such cases it seems an exaggeration to speak of the result as a real expression of public opinion.

95. Stability as Evidence of Opinion

Persistence in the result of popular votes on a subject has an important bearing on the question of public opinion in two ways. If the people vote differently at short intervals it increases the probability that in one or other of the cases the majority was due to chance, or rather to something other than a deliberate opinion on the measure presented; and if the people really change their opinions in a short time, those opinions are of the less value as a basis for legislation. The public sentiment that should rule is one which is serious, deep-rooted, and stable. Now Oregon is the only American state that has made use of direct legislation long enough to measure the stability of the vote, and the results are not wholly reassuring. A constitutional amendment giving women the right to vote was brought forward and rejected with ever increasing majorities in 1906, 1908, and 1910, and was adopted by a small margin in 1912. The sale of liquor has been the subject of constant agitation. In 1908 a measure providing for local option was rejected by a substantial majority. At the next election in 1910 a similar proposal was made which was said by its opponents to be "the most impudent affront to the intelligence of Oregon voters," an attempt "to foist into the Constitution in a new dress, the Reddy Bill, which was defeated at the last state election"[1]; but it was carried. Again, it is charged from an entirely different quarter that the constitutional

[1] *Official Pamphlet*, 1910, p. 78.

amendment on taxation proposed by initiative in 1910, and adopted, had substantially the same object as an initiative of 1908 which had been defeated by a majority of nearly two to one.[1] The amendment of 1910 gave to the counties power to levy taxes in any way they pleased, and at the same time abolished the poll tax; but the next legislature passed an amendment to repeal the whole of the amendment of 1910 except the abolition of the poll tax, and this in turn the people ratified by a vote half as large again as that which had been cast against the measure adopted in 1910. A stranger cannot form an opinion of any value on the merits of these questions, but when leading citizens of the state on opposite sides allege that the people changed their mind at short intervals without adequate reason, he must admit that there is some ground for their statements.

96. Defects of the Initiative

Connected with this matter of stability of laws under the initiative is that of constant repetition of the same proposal. If a popular vote expresses a real opinion, an enduring opinion, of the electorate, it ought to be accepted as final until such time as the people may reasonably be supposed to have had good ground for changing their convictions. It is hardly wise to overburden the people by enlarging the list of measures they must decide with questions needlessly repeated. When they

[1] *Chicago Civic Federation Bulletin*, No. 3, Remarks of Frederick V. Holman, pp. 16–17.

are weary of the subject, it may by accident be carried by default because they think the result certain. This is quite different from the repetition of a bill in the legislature, which is bound to discuss it, at least in committee, before acting upon it. It might be well to provide that the same question shall not be proposed by initiative afresh until after a certain lapse of time.

There is also some objection to constitutional amendment by the ordinary initiative. This tends to incorporate in the constitution matters that have no proper place there. The object in resorting to it is to make the law a little more difficult to change; but if the people can be trusted, there is no sufficient reason for that. If there be any difference between constitutional and other laws, the former ought surely to require a greater degree of consideration and, therefore, a more deliberate procedure. Really fundamental institutions do not need to be changed in a hurry, and it is noteworthy that several of the states which have adopted the initiative have not applied it to constitutional questions.

Another practical difficulty arises from the lack of a thorough examination of the measure proposed. There may, or there may not, be an active discussion upon it in the press or among the people; but there is no one whose business it is to study it, to criticise it, or to hear evidence upon it; and in a democracy that which is anybody's business is apt to be neglected. We have already seen how small a proportion of the measures brought forward by

initiative in Oregon have been argued on both sides in the *Official Pamphlet*, and how many have not been argued there at all. In order to remedy this defect in the procedure some states have provided that initiated measures must first be presented to the legislature for debate and public hearing, and if that body sees fit it may submit to the people, alongside of the original proposal, an amended bill of its own. Such a provision for discussion, especially if accompanied by public hearings, may be a great benefit.

97. Impossibility of Amendment

The initiation of laws by private persons, instead of by public authority, has some practical inconveniences. The proposal is framed by men who are earnestly in favor of it, and there is no chance to amend it. In some states a referendum may be demanded against part of a statute. That has, no doubt, an objectionable side, because it mutilates a plan that may be acceptable only as a whole. But in the case of the initiative nothing of the kind is permitted. The people must accept or reject as a whole what is offered them, no matter how much they might prefer a different measure, for the public has no control over the questions it will answer. When a measure is proposed by initiative there is no chance for compromise with those who perceive objections to some of its provisions. Compromise, as we have already remarked, connotes evil things in the popular imagination, but it is the life-blood of healthy and enduring legislation, for it is the

means by which the centre of gravity of public opinion is found.

Under the initiative there is a peculiar danger of bad drafting of laws. The drafting of bills is none too good in our legislatures, but there the bill must at least pass two houses, and be read more or less critically by a number of people while opportunity is still given to amend it. Whereas a bill framed by popular initiative practically cannot be altered after signatures have begun to be collected, in other words after it passes out of the hands of its framers and first friends; and whatever grave defects of drafting it may contain cannot be touched after the petition for a popular vote has been filed, that is, after its opponents have a chance to criticise it. The judicial procedure amendment of Oregon is an example of bad drafting that would certainly be less likely to occur if the bill had been submitted to the examination of a committee on the judiciary in the legislature. A still worse case was that of the law forbidding free passes on railroads for members of the legislature, which contained no enacting words and was therefore without effect.[1] There would certainly be nothing inconsistent with the principle of the initiative in requiring all proposals to be submitted to a legislative draftsman for criticism and suggestion.

98. Does the Public Initiate?

We speak of the initiative as a method whereby the people can propose laws, and we are inclined

[1] Cf. *Political Science Quarterly*, December, 1908, p. 600.

to attach some peculiar importance to a bill because it originates directly with the public. Let us consider a moment precisely what we mean by that. In comparing the English criminal procedure, in which the offender is commonly prosecuted by private persons, with the system prevailing in other countries, where the matter is in the hands of a public prosecutor, Professor Maitland insisted that the English plan is really public prosecution because any member of the public can instigate it; whereas according to the accepted usage the term is applied to prosecution only at the instigation of a public officer. If we look at legislation in the same way, we may ask ourselves whether the initiation of laws is properly called public when conducted by private persons, or when intrusted to representatives chosen by the public for the purpose. A discussion of the meaning of words is futile except so far as it throws light upon the principles involved. Now the initiative enables a number of private and irresponsible persons to propose any legislation they please without regard to the wishes of the general public. Often that is unobjectionable, because the people can simply reject the law; but the art of government consists in reconciling and not aggravating differences, as well as in deciding them. There are many questions, of a religious or racial character, for example, which the good sense of the community refuses to raise, but which fanatics are anxious to bring forward. Is it better that the representatives of the public in the legislature should have power to suppress

such proposals, or that a fraction of the citizens should have a right to provoke a popular vote upon them even when public opinion is against permitting this? From the point of view of expediency there is much to be said on both sides. On the one hand the inflaming of anti-Semitic feeling in Switzerland by the proposal to forbid the manufacture of kosher meat was probably a misfortune; but, on the other hand, a legislature which has power to dismiss such questions may suppress others that ought to be discussed. Whether expedient or not it is hard to see how the right of a small minority to raise issues uncomfortable for the majority is giving effect to public opinion. May not the public properly demand evidence that the proposal issues from a really considerable popular demand? For this reason there is a tendency in some of the states adopting the initiative to require a larger percentage of voters to bring forward a law than appears in the earlier practice.

The more eager advocates of direct legislation resent any suggestions for restrictions upon the use of the initiative. But in this they seem unwise. New ideas ought to struggle against opposition, to prove their worth against a fire of criticism, before they are victorious; otherwise they may be adopted in haste and lead to repentance at leisure. A slow progress under the gradual pressure of a growing public sentiment does more for the advance of civilization than a more rapid movement followed by reaction. Nor is the danger only that measures will be adopted incautiously, for the premature

forcing of a popular vote upon an excellent proposal may result in a defeat which will retard its ultimate adoption. The most valuable institution is not that which bears the earliest, but that which bears the best, fruit.

CHAPTER XV

REFLECTIONS ON DIRECT LEGISLATION

It has been said that the initiative corrects the legislature's sins of omission, the referendum its sins of commission.[1] The objects of the two are quite distinct. The referendum may prevent laws that the people do not want, but it produces no legislation; while the initiative gives an opportunity to enact measures the people may desire, but it hinders no bad laws. Each of them has its merits and defects, its advantages, its dangers and its proper limitations. Hence under the conditions of any community it may be that one of them will prove beneficial and the other not, or that they may be wisely applied to different subjects and with different restrictions. Yet there are some general considerations that apply to both, especially in relation to the question how far, and under what conditions, a popular vote upon a measure is an accurate expression of a real public opinion.

99. Trustworthiness of the Result

We have observed that the vote on measures is almost invariably smaller, often very much smaller, than the vote for the chief elective officers; and if we may assume that the size of the vote indicates

[1] Professor L. J. Johnson, *The Initiative and Referendum, an Effective Ally of Representative Government*, p. 5.

the number of persons who have a serious opinion on the question, it bears upon the probability of a true public opinion in the community as a whole. We have noted cases where the majority by which the question was decided has been exceedingly small, and where the number of citizens who did not vote on the measure at all was as large, or even much larger, than the votes cast for or against it. The necessity for a decision in such a case may require that the majority, however minute, have their way, and those who do not vote may well be held not to object to the law; but it seems like an abuse of terms to speak of the result as an expression of a public opinion. The well-known fact that there is almost always a larger vote for representatives than for measures would appear to show that there is more truly a public opinion on the choice of men than on laws; yet the reason commonly given for direct legislation is that the representatives do not reflect the opinion of the people. Cases of narrow majorities on small votes may not be frequent, and there can be no doubt that a popular vote often expresses public opinion, but the immediate question before us is whether it always does so, and for this we are not confined to speculations about probabilities.

The possibility that a popular vote may not express the real views of the electorate is apparent from the sudden changes of opinion in Oregon to which reference was made in the last chapter. Another example was given in Massachusetts some years ago. In 1903 the legislature passed an act,

known as the Lucc Law, to create direct primaries, with a provision that it should go into effect in any town if adopted by vote of the inhabitants. A number of towns adopted it at once, and repented almost as quickly. They went to the legislature the next year, declared that they had acted hastily without appreciating the effect of the measure, and asked to be relieved from the consequences of their votes. One representative asserted that half of his fellow-townsmen had supposed they were voting on the question of local option in the sale of liquor. It so happened that when these appeals were made, the House of Representatives was ringing with oratory in favor of a constitutional amendment for a general referendum, and the spectacle of towns begging the legislature to undo by statute what they had done by popular vote, contributed largely to the rejection of the amendment.[1]

100. Delay of Legislation by Popular Votes

Even if it could be assumed that the popular vote always expressed a real public opinion, there would be some disadvantages to be balanced against the benefits. We have seen that the initiative may be used to bring forward proposals which, though rejected, arouse bitter religious or race animosities that had better not be stirred; and so in the case of the referendum although the people ratify the act referred the mere delay in enactment may do harm to the community.

[1] "Direct Legislation," by W. Rodman Peabody, in the *Political Science Quarterly*, September, 1905.

A case of this kind occurred in Oregon. A referendum was filed against the appropriation made by the legislature in 1905 for the support of the state university. The act was ratified at the next election in 1906, but in the meanwhile the professors were exposed to the danger of receiving no pay for the services they were rendering. The next year the legislature doubled the appropriation, and again a referendum was filed, which was voted upon by the people in 1908 with the same result and the same treatment of the instructing staff. Finally in 1911 a special increase was made and on that occasion the popular vote went against the act, as well as against a special appropriation for a university library. In the first two cases the vote was in favor of the grants, and it may be argued that as the professors were willing to take the risk, and eventually received their pay, no harm was done. But this is not true. Apart from the unfairness of placing faithful public servants in such a position as the professors were forced into, the university itself suffers, and will continue to suffer, from the occurrence. Every institution of learning depends for its excellence upon the high quality of its teachers, and risks of this nature which make one university less desirable than others, tend to deter the best men from accepting or retaining chairs therein. A referendum on the increase is clearly a very different thing from one on the whole appropriation, which enables a small minority of the citizens to stop a branch of the public service altogether or impose upon the em-

ployees a danger of intolerable loss of pay. For this reason it is provided in Missouri, for example, that the referendum shall not apply to acts making appropriations for the current expenses of the state government, for the maintenance of state institutions or for the support of the public schools.

101. Indirect Effects of Direct Legislation

The more remote consequences of any political institution are often of greater importance than its immediate results. Opponents of direct legislation insist that it will reduce the importance and therefore the character of the legislature, while its advocates claim that it will tend to exert a greatly beneficial influence upon the representatives. In explaining the fact that a popular vote was not demanded on any law in South Dakota for a number of years after the right was created, the Governor of the State wrote, "Since this referendum law has been a part of our Constitution we have had no charter-mongers or railway speculators, no wild-cat schemes, submitted to our Legislature. Formerly our time was occupied by speculative schemes of one kind or another, but since the referendum has been made a part of the Constitution these people do not press their schemes upon the Legislature; hence, there is no necessity of having recourse to a referendum."[1] If such a change is permanently accomplished it means an improvement of the first magnitude in a number of states; but lasting results are not produced at once, and many

[1] Quoted in the *Arena*, Aug. 1902, p 124.

years must pass before the final account can be made up.

We turn naturally to Oregon, as the state that has made the greatest use of direct legislation, to inquire the effect upon the representative body. We have opinions upon the subject expressed by the leading opponent and advocate of the institution. Mr. Frederick V. Holman remarked in February, 1911, "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." [1] On the other hand Mr. William S. U'Ren, speaking of the legislative session of 1911, said, "Taken altogether, the session was the most complete demonstration we have had in Oregon of the need for a proportional system of electing members of the legislature, and for a complete reorganization of the state government for the purpose of getting business results instead of politics. . . . The members of the legislature were a very fair lot of men individually and above the average of intelligence, but the session was one of the worst Oregon has had for log-rolling, hasty action and partisan voting, with small consideration for the merits of bills. The legislature was not at all representative of the people." [2] This is not so encouraging, although some allowance may be fairly made for exaggeration by men who are urging a

[1] *Chicago Civic Federation Bulletin*, No. 3, pp. 11–12.
[2] *Equity*, July, 1911, p. 113.

new reform on the one hand, or extolling the merits of one they have achieved on the other.

A reform often works better at the outset than it does later, because the moral impulse that carries it through causes good men to take part in administering it. The real test comes later when the first enthusiasm has cooled, when the reformers are busy with other things, and the professional politician, whose trade depends on being at work while others are not, has had a chance to try his hand at the new machinery. We do not know that a combination of the boss and special interests will not be able to control the smaller popular vote cast on measures as completely as the larger popular vote cast for representatives. It will take time, as it took time to control elections, but the intrinsic difficulties are not necessarily greater in one case than in the other. It has been said that reformers can succeed only by changing the political machinery faster than the professional politicians can learn to manipulate it; but that is a confession of failure for democracy. The real question is whether direct legislation is so adjusted to the means of forming a real public opinion that the people can decide intelligently all the questions presented to them without unusual effort, and without the aid of people who find a profit in steering them. Badly adjusted machinery is the opportunity of the boss and the combination. Professional politicians obtained control of elections because the people were called upon to do more than they could do without help, and the more the people are asked to decide

questions in which they are not as a whole seriously interested, the greater will be the opening for the boss and his allies.

102. Measures Suited for Popular Votes

All this does not mean that the referendum and initiative will not prove valuable when used in the appropriate way. It means simply that they are not so perfect as some of their advocates appear to assume, and that they ought to be used with a careful attention to the conditions in which they can be successfully applied. The earlier use of the referendum in America was restricted to constitutional questions and to certain specified matters, for the most part of a kindred nature; but in the recent adoption of a general referendum no serious attempt has been made to consider upon what classes of questions a genuine public opinion can be readily formed and to confine popular votes to these.

One inherent difficulty lies in the fact that the people are asked to vote upon a complete statute, which is usually hard to understand, however well it may be drawn, because it involves many facts connected with the application of the general principle. Of these the public is more or less ignorant, as well as of the reason for provisions made to meet valid objections. Such a difficulty is especially great in acts affecting public service companies or granting franchises, and involving in the main applications of principles, on which there is often no dispute, to cases where most people

have strong prejudices on both sides but know very little.

The class of measures in which legislators deliberately defy public opinion is that which involves jobbery, but this is a class about which the people at large are little competent to form opinions; and therefore the referendum is least likely to furnish a trustworthy remedy in the cases where the representative body most grossly misrepresents the public. If the people cannot, by election or otherwise, provide a body that can be trusted to deal with such matters honestly and wisely, then a popular vote, however ignorant, however far from expressing a real public opinion, is better than jobbery; but it is at best an imperfect instrument for the purpose. So strong is the distrust of the legislature in affairs of this kind, that in some states — as in Maine, for example — it is provided that a vote of emergency withdrawing an act from the referendum shall not be used on acts granting franchises, a precaution that may be required by the conditions.

If it be true that the people are more capable of forming opinions on general principles and moral issues than on a mass of details, then the referendum would appear to accomplish its object better in questions of the former class, and details should be referred to popular vote as little as the trustworthiness of the public servants will permit. In referring to Swiss examples in this connection we must remember that everywhere in continental Europe the statutes go into detail less than they do in the

United States; that much which is embodied in the text of an American act is left in Europe to be completed by executive ordinance. The objections to submitting to popular vote a comprehensive and complex law, or one requiring an accurate knowledge of unfamiliar facts is even greater in the case of the initiative, and could be prevented without impairing seriously the object of that procedure.

103. Direct Legislation will not Bring the Millennium

That direct popular action upon laws, when wisely and scientifically applied, will prove highly useful in certain conditions of society we may well believe without expecting it to usher in the millennium. All theories based on the assumption that the multitude is omniscient are fallacious, and so are all reforms that presuppose a radical change in human nature. It is easy enough to prove that any form of government will work like a charm if everyone who has a share in the public authority is spotless in wisdom and character; and there has probably never existed a political system of which men have not tried to demonstrate the perfection. Mankind is, and so far as we can see is likely to be, composed of some very good people, some very bad ones, and a large number who are well meaning, but more or less indolent and indifferent when their personal sympathies or interests are not touched; and the test of any institution is the fruit it will bear in a community of that kind.

People are constantly expecting the millennium from some political contrivance that proves after-

wards disappointing, and Americans from their love of machinery are perhaps peculiarly susceptible to this feeling. One panacea of promise in its day was representative government; another was universal suffrage; a third, the checks and balances of the American constitutional system. The debasement of party government in the United States has been traced to the state and national nominating conventions, which replaced the party caucuses in the legislatures and in Congress;[1] but in fact the convention was adopted because the legislative caucus was thought undemocratic. Let us not be led astray by generalizations. Each institution has its limitations and will work well only within those limits.

It is a significant fact that the demand for the referendum and initiative is as a rule strongest in those states where the constitutions are longest and most elaborate in their restraints upon the legislature, where that body has been most severely limited in the frequency and duration of its sessions; just as the recall of judges is urged with the greatest earnestness where they are popularly elected for short terms, rather than where they are appointed for life. In short the demand has generally been loudest where the reliance upon the integrity and capacity of the representatives has been least. Now if direct legislation were advocated on the ground that while representative democracy had been a success this would be better still, well and good; but

[1] Memorial Relative to a National Initiative and Referendum, May 25, 1908. Senate Doc., 60 Cong., 1 Sess., No. 516, pp. 4–5.

if it is urged as an attempt to retrieve a failure by the people to work representative institutions, then it is the result not of confidence, but of distrust in the capacity of the people, and does not augur well for the future of popular government.

Part IV

The Regulation of Matters to which Public Opinion Cannot Directly Apply

Part IV

The Regulation of Matters to which Public Opinion Cannot Directly Apply

---

CHAPTER XVI

REPRESENTATION BY SAMPLE

THE fundamental assumption of popular government is that public opinion should be carried into effect, provided, of course, that it is an enduring opinion, not a mere passing whim liable to be soon reversed; and there are two reasons why this should be done. The first is based, not on any supposition that the opinion of the people is always right, but on the belief that it is on the whole more likely to be right than the opinion of any other person or body which can be obtained. The second reason is that contentment and order are more general, and the laws and public officers are better obeyed, when in accord with popular opinion, than otherwise. It is unnecessary to discuss here the validity of these reasons, for we are dealing, not with the theoretical merits, but the methods of operation, of democracy. It is enough for us that these principles are the assumptions on which popular government rests.

In the preceding chapters we have considered

under what conditions a genuine public opinion can exist, by what means and to what extent it can be faithfully expressed; and we have seen that there are many matters on which the public can have no real opinion. How can these be regulated in a democracy?

104. Three Methods of Delegating Authority

The power to deal with questions which the people do not decide directly must be committed to some authority selected for the purpose, and the persons so designated may be intended to act in any one of three ways. (1) They may be chosen to express the opinion of the public, when there is one; (2) they may be appointed to exercise their own peculiar knowledge or skill in acting upon the questions that come before them; (3) they may be set apart to use their judgment as fair samples of the people, on the supposition that their opinion will be the same that the public itself would form if it could spend time enough to examine the matter thoroughly. Of course these objects are not rigidly separated in practice. An officer of state may be expected to act in two, or it may be in all three, ways. He may be in some matters the mouthpiece of public opinion, in others he may exercise his special professional skill, and in still more he may act as any intelligent citizen would; but it is only by keeping the three objects distinct in our own minds that we can have clear ideas about them. Let us, therefore, take examples where each of them stands alone.

A member of the electoral college for the choice of the President is selected solely to express the opinion of the voters. He is not to use his own peculiar knowledge, or to make up his mind as an impartial citizen upon the evidence he hears, but simply to cast his vote in accordance with the mandate he received at the polls. Of this function of expressing the popular will nothing more need be said here, because it has already been treated in the discussion of representative government. The problem before us now is that of dealing with matters upon which the public has no opinion, and these must be delegated to persons who are to use their own special qualifications or to act as samples of the people.

As an example of a person selected to use his own peculiar capacity we may take the case of a surgeon at a city hospital. He is certainly not intended to carry out the popular opinion in operating on a patient, nor is he supposed to act as an average member of the community might be expected to do with the same facts before him. On the contrary he is employed to use his personal knowledge and skill, and he is selected because his professional opinion is believed to excel, and therefore to differ from, that of the unskilled man.

The same principle applies to a general and a judge. In conducting a campaign or deciding a point of law they ought not to listen for the signs of popular applause, nor do we appoint civilians as generals, or laymen as judges. Everyone would be shocked if generals were ignorant of tactics, or

if judges were not lawyers by profession and failed in deciding cases to apply the science of the law. This function of special qualifications in government will be discussed more fully in the chapters on the use of experts in the public service.

105. The Jury a Sample of the Public

Of the third method, that of public opinion by sample, we have a singularly good illustration at hand in the Common Law jury — an institution used for matters about which the people at large cannot form a real opinion based upon familiarity with the facts. Service on a jury is irksome; to sit on more than one jury at a time is impossible; to read the evidence in all the cases that are tried in a single populous county is beyond the powers of any citizen; and therefore the whole people cannot by any stretch of the imagination be supposed to possess knowledge enough of the evidence in all the cases in court to have an intelligent opinion of them. But the jury-men are a sample of the great and general public, whose verdict may be taken to express what the opinion of the whole people would be if everyone heard the evidence; and they are drawn, as we draw a sample from a bale of merchandise, by a process designed to secure average, not selected, specimens.

Of course the sample must not only be a fair one, but it must remain so. It must not be open to corrupting influences or pressure, and that condition might prevent the use of the jury in some countries. The assertion has been made, for example, that it

cannot be adopted for the natives in India, because they would not convict rich offenders. Even with all our traditions, all our inherited experience, the jury is not a perfect instrument; and everyone knows that it would be a mere mockery if it were not encompassed by elaborate safeguards to insure an impartial hearing, deliberate consideration, and a judicial attitude. The jurors are brought into the court room, and solemnly instructed in their duties by the judge; they are seated together, apart from other people, while the case is being tried; they are compelled to hear all the evidence, and permitted to hear no evidence whose tendency to cause a bias is out of proportion to its proper probative value; newspapers are restrained under penalty of contempt of court from prejudging the case during the trial; the questions at issue, which have been carefully defined, are argued by counsel for each side; then the judge charges the jurors gravely; and finally their verdict must be unanimous.[1] Moreover, the judge can order a new trial if anything irregular or improper has occurred.

106. The Object of Rotation in Office

Public opinion by sample has played a larger part in popular government than is commonly recognized, and many devices have had that end more or less consciously in view. This is probably true, for example, of the principle of rotation in office. No doubt jealousy, and a conviction that everyone in

[1] *Cf.* Graham Wallas, *Human Nature in Politics*, pp. 209–10 on the impressiveness of the formalities surrounding the jury.

turn has a right to enjoy the sweets of authority, had something to do with it; but we must not fail to observe also the feeling that a new man, coming fresh from the people, will be in closer touch with popular opinion and will be free from official habits, or, in other words, a fairer sample of the public. This is the reason that jury-men serve short periods and are constantly replaced by a fresh panel.

To show that this phenomenon was perfectly natural, not due to the "political cussedness" of our forefathers, as many good people would seem inclined to imply, an example may be cited of very recent occurrence and far removed from politics. Some years ago a wave of democratic sentiment, of more than ordinary strength, swept over the undergraduates at Harvard College; and one of its first results was the adoption of a rule that no class president should hold office for two successive years. From the standpoint of utility this was a misfortune, for the president of a class is a public-spirited officer of great importance, who has the welfare of his classmates very much at heart and whose value grows as he comes to know them better. Nor was it a case where the number of men who could hope to fill the place was considerable; but it seems to have been felt, somewhat blindly, to be in accord with democratic principles.

107. The Use of the Lot

Another device of the same kind has been the selection of public officers by lot. Commentators have expended much ingenuity in trying to explain

why Aristotle and his contemporaries regarded the use of the lot as democratic; and on the part of writers in the English language this is the more remarkable because they have had the example of the Common Law jury staring them in the face. No doubt election in Greece involved a danger of the choice of rich men, and with party lines drawn as they were that meant a peril to the existing form of government in a democratic state. It is not improbable, however, that one reason for using the lot to fill the public offices at Athens was the same that has caused it to be used for centuries in the case of the jury. Mr. Headlam remarks that "mediocrity in office was its object, because this was the only means of ensuring that not only the name but also the reality of power should be with the Assembly." [1] Mediocrity, or in other words an average sample of the public, is certainly the object in drawing a jury by lot, for impartiality could be secured, as in the case of judges, by other means. Mr. Headlam is no doubt right that one object in seeking mediocrity was to insure the supremacy of the Assembly; but may not the Greeks, like our own ancestors when insisting on rotation in office, have felt the need of selecting the public officers from men on a level with the ordinary citizen, and of keeping them on the same plane.

The lot was used freely in the mediæval cities also, and notably in Venice where it had its most celebrated application in the machinery for the election of the Doge. The first step was the appoint-

[1] *Election by Lot at Athens*, Cambridge Hist. Essays (No. IV.), p. 32.

ment by the Great Council, of a committee which was then alternately reduced by lot and enlarged by coöptation until its membership depended very much on chance; and thus the choice of the Doge was placed in the hands of a body whose composition could not be determined by the personal or party factions in the Council. To cut off the political parties from activity in the election of the chief magistrate of the country may seem strange, but we must remember that the mediæval Italian states were torn by factions based upon family quarrels, rather than divided into parties by differences of opinion on general policy.

108. Selected Samples of the Public

The Doge was elected by what may be called a sifted or selected sample of the Great Council; and this brings us to another point. A sample of the public, in order to accomplish its purpose, is not necessarily an average sample, but may be a selected sample, or a sample from a selected body. The English special jury is drawn from persons with some property qualification, and of late years it has been growing in popularity with litigants, who have a right to demand it if they please. Such a jury is intended to represent, not the average public, but the average of the better educated part of the public; and in the same way public officers, not appointed by lot, but elected by the people and therefore presumably chosen for some superiority of intelligence, experience, or character, may in fact be used as selected samples of the public. The question

whether they act in this way, or as men designated to exercise special personal qualities, depends on their attitude towards their duties as well as on the method of selection. A general or a surgeon who endeavored to act as a man of good sense, but without special training, might act under the circumstances would be unfit for his place; but this is not true of a member of the legislature or even of a governor. In fact a large part of their work consists in doing that very thing, and in so far as they do it they are acting as samples, as selected samples no doubt, but still as samples of the general public.

The vast number of questions on which the public cannot form an opinion must, as we have seen, be referred to someone for decision; and when, as commonly happens, the difficulty consists not in a lack of technical knowledge or fitness, but simply in a lack of familiarity with the facts, the matter may properly be referred, not to an expert, but to a sample, and preferably a selected sample, of the public. No doubt expert assistance is usually needed, but the decision can often be confided to the good judgment of intelligent and faithful men without professional qualifications. This is true, for instance, in applying general principles of legislation to local and private matters, where the main problem is to determine whether the facts in the particular case justify the application of the principle. The persons intrusted with that duty are performing substantially the function of a selected jury, and their conclusion may be supposed to be that which the intelligent public would reach if it could conduct the investigation

directly. But in order that the result may be satisfactory the persons selected must be impartial, must act, not on their own knowledge, but on evidence, and the procedure must be such as to insure a full and fair presentation of the question.

109. Private Bill Committees in Parliament

The select committees to which private and local bills are referred in the British Parliament furnish an example of such a procedure. Until about sixty years ago these committees were made up in large part of known advocates and opponents of the measures to be considered, in order that they might be able to urge their views; but first in the Lords, and afterwards in the Commons, a practice was adopted of composing them of a small number of wholly impartial members, whose duties should be of a judicial character. The committee sits like a court, and hears evidence and argument presented by barristers retained on behalf of the promoters and opponents of the bill. The hearing is in effect a trial of a cause between contending parties, who seek to prove their claims as they would in a suit at law. In that trial the members of the committee play the part of jurors, save that being men of broader education and experience than ordinary jury-men, and being fortified by the august traditions of Parliament, the members do not need to be surrounded by the same safeguards. In its composition an English private-bill committee is essentially a sample of the House. For chairman, indeed, a man is selected who has had experience in

work of this kind, but the rest of the members are chosen from the body of the House without regard to special fitness, simply to go through a mass of facts which Parliament itself could not undertake to examine; and it is because they are a fair sample that the House almost always ratifies their conclusions.

110. Committee Hearings in America

The same function is performed to a less extent by the committees of American legislatures. The members, no doubt, are by no means all selected on the basis of impartiality. As in the old committees of Parliament on private bills some of them hold decided views on the policy to be pursued, and an effort is made to appoint men to the committees on the subjects in which they are interested. Still many of the members are impartial in regard to the bills that come before them, and this cannot fail to happen where every member of the legislative body must be given a seat on some committee. More important is the fact that the committees often give public hearings, and in doing so act in a semi-judicial character.

The subject of public hearings by American legislative committees has hitherto received far less attention than it deserves. They do not seem to have been described or discussed in any book until the recent work of Professor Reinsch on *American Legislatures*, and he devotes to the subject less than one page.[1] Yet they perform a service highly

[1] P. 174.

beneficial in some states, and capable of increasing usefulness in others. They are an American institution which exists in no other country. In England a private bill committee hears evidence presented by the parties who have a legal interest in the matter, but it hears no one else; while a select committee on a public bill examines only the witnesses it chooses to summon, and although a person of sufficient prominence would no doubt be summoned if he wished to appear, that is not at all equivalent to a public hearing where everyone has a right to be present and state his views. Nor has the writer ever met with anything of this kind in any other legislative body in the world.

111. Public Hearings in Massachusetts

The public hearing is a familiar institution throughout American political life, being used not only by legislative bodies, but occasionally also by councils, committees and administrative officers of all kinds; and in fact a request for it is hard to refuse. It has been developed very completely in the legislature of Massachusetts, where it has become so much a regular part of the procedure that every committee always gives a public hearing on every bill if anyone wants to be heard. The hearings are regularly advertised in the newspapers, and in the case of any particular bill a special notice is sent to a person who asks for it. Ordinarily everyone has a chance to express his opinions; but when the number of people attending is large — and it may run into the hundreds — a lawyer is usually employed on each side

by the chief supporters and remonstrants. He is recognized by the committee as counsel for his clients, and takes charge of the case, presenting the evidence and arguments as he thinks best. In fact the hearing is conducted much like a trial in court, save that the strict legal rules of evidence are not applied.

In American legislatures every bill when presented is regularly referred to one of the many standing committees, and in Massachusetts all the committees of that kind, except those on the Judiciary, on Ways and Means, and on Elections, are joint bodies representing both branches of the legislature. Even the few separate committees often sit jointly, so that a hearing before a single body almost always suffices for both houses,[1] a condition which tends to enhance the importance of the hearing.

The figures for a session will show how universally hearings are granted in Massachusetts, and how freely the public uses the privilege.[2] In the year 1910, the bills and petitions referred to committees numbered 1634. On 33 of them no hearing took place, either because they were sent to some commission for consideration, or because they were introduced late in the session and pushed through in haste. On the remaining 98 per cent. hearings were given on one or more days, in 1432 cases the hearing being finished at the first sitting, in 138 a

[1] Of the 1634 bills and petitions referred to committees in 1910, only thirty-five were considered separately by a committee representing one house.

[2] These statistics were compiled for the author by Mr. Henry W. Cleary from the weekly editions of the Bulletin of Committee Hearings issued by the legislature.

second day being required, in 19 a third day, in 10 four days, in 4 five days, in 4 six days, in 3 seven days, while one measure consumed twelve days.

It must be observed that this procedure applies to bills of all kinds, public, private, and local, and is thus a part of the regular machinery for legislation of every class. On matters of a purely local or private nature the people who appear are, of course, mainly those interested therein, but on public measures leading citizens of the state constantly attend and express their opinions. This is true of questions political, philanthropic, educational, and in fact of all matters touching the general welfare. Nor is the attendance by any means confined to officers and members of organizations formed to promote a public object, but extends to people of all sorts, and thus the legislature has a chance to learn the state of mind of the community in all its phases.

By this process of hearing evidence and argument the committee acquires a semi-judicial attitude. It comes to look on itself as sitting in judgment upon the matters presented to it, rather than as acting on its own initiative; and this to an extent that is at times surprising. Some years ago a most high-principled member of the Massachusetts House, in talking about a bill which he thought very bad, remarked that the legislature could not be blamed for passing it if the citizens who objected to it would not oppose it before the committee.

In the best sense the procedure is extremely democratic, for it gives the whole people a chance to take part in legislation at the formative stage.

But it is by no means democratic in the false sense that the opinions of all men are given equal importance. The views presented are weighed, in accordance with the knowledge of the subject shown by the witnesses and with their standing in the community. The people who address the committee are not regarded as so many voters to be conciliated, because they cannot be constituents of more than one or two of the members, and may very well not be constituents of any of them. A committeeman from New Bedford, for example, may have the greatest respect for the opinion of a prominent citizen of Boston, but he does not ordinarily care a straw for his vote. So far as he is conscientious and disinterested his object, after listening to the testimony, is to discover what ought to be done. One is, therefore, justified in speaking of the committee as a sample of the legislature, set apart to hear evidence which the whole body could not hear, and which without such a procedure could not be presented at all.

If in the case of local and private matters the committees could be freed from all interested motives and all improper influence, and still more if, like the English committees on private bills, they could be so formed as to escape wholly from the suspicion of such things, they would be even more valuable than they are. America is the only country where questions that do not affect the whole community, and require for their decision a careful study of details, are thrown into the vortex of legislative politics. On the continent of Europe they are habitually regarded as falling into the province of administration, and de-

cided by the executive, while in England, though treated as legislative matters, they are subjected to a special procedure of a wholly different character from other bills. The practice of public hearings opens a road to a system of that kind which might well be carried farther.

112. Public Hearings in Other States

All people in Massachusetts, who are well qualified by experience to form an opinion ascribe much of the merits of the legislature to the custom of public hearings. But on this subject Professor Reinsch says: "The potential influence of committee hearings to bring to bear upon legislative action the opinions and desires of the public in a truly democratic manner, has scarcely been realized outside of the Commonwealth of Massachusetts. In that state, committee hearings are a very important part of legislative action . . . but the General Court of Massachusetts is in all respects nearest the people, and most responsive of any American legislature to intelligent public opinion."[1] So far as this last remark is true, a reason for it, as Professor Reinsch observes, is to be found in the fact that Massachusetts is one of the states whose capital is in the largest city. This has the double advantage of making a sojourn at the legislature attractive to its members, and making it easy for citizens to attend committee hearings. The first advantage is subtle, though real, and applies everywhere; for even the charm of a seat in the House of Commons

[1] *American Legislatures*, p. 174.

would be much reduced if Parliament sat at Nottingham instead of London.

The second advantage is more obvious. To go to Albany or Harrisburg, or Springfield for a committee hearing involves a day's journey, and the most public-spirited citizen cannot be expected to undertake it often. But from their residences, or places of business, about half the citizens of Massachusetts can reach the State House in less than an hour, and perhaps a quarter of them in twenty minutes; so that public opinion or special knowledge can be brought to bear on the legislature with a very small expenditure of time and effort on the part of the community.

One who has made a far less thorough study of legislative action outside of Massachusetts than Professor Reinsch must hesitate before questioning his conclusion, and yet it may be suggested that he goes too far in speaking of the influence of committee hearings as scarcely realized outside that commonwealth. No doubt there are other states where matters determined in Massachusetts by committees, on the evidence presented to them, are settled by a boss or a private conference of political chiefs; but that is by no means true everywhere, nor are all questions so disposed of anywhere. No doubt committee hearings are in more general use in Boston than in most of the state capitals, yet extensive inquiries conducted by the writer seem to make it probable that the practice is not wholly unknown in any of our legislatures, while in many of them public hearings before committees are not uncommon and

have a distinctly beneficial effect. Their use and the extent of their influence vary, of course, with the nature of the subject, and hence the answer one is likely to receive will differ with the class of question in which the person speaking happens to be interested. In matters like education, which are not closely connected either with politics or with private interests, public hearings have the best chance of playing an important part; but in many places they are by no means confined to subjects of that character. They are probably growing in use and destined to gain in importance. In Wisconsin, for example, a deliberate attempt is being made to encourage them. They are, indeed, a highly valuable element in popular government; and this is the more true because with the elimination of thorough discussion from our representative bodies, due partly to the increase of legislative business, partly to the cutting down of time, and partly to the large proportion of new members, most of the real work must be done through public opinion by sample in the form of committees, and committees without public hearings are cut off from their best source of light.

113. The Three Objects that Public Officers Serve are Often Combined

We have considered separately the three functions that public officers are intended to fulfil, and we have passed in review pure examples of each of them; but as we saw at the outset all three duties are in practice constantly combined in the same office. This is true to a greater or less extent of all the members

of legislatures and elected councils, and of all presidents, governors, and other potentates chosen by popular vote. Elections for any of these positions are partly an expression of public opinion on certain issues that have become prominent; partly a selection of persons peculiarly fitted by their knowledge or experience to exercise their own judgment; and partly a choice of persons to represent the ordinary good sense of the community, and bring to bear on the questions that arise, not expert knowledge, but the general qualities whereby any healthy public opinion is formed. On different occasions one or other of these aspects of a political office may be given special prominence, but it is rare that any of them is wholly absent.

A large part of the work of men in legislative or executive positions, and, indeed, of all officials who are not experts, consists in dealing with the questions presented to them as any other sensible man might do. That is the reason why good sense is usually more important in public posts than remarkable talent. In ordinary times it is not essential, nor always desirable, that the holder of a great office should have genius or originality, that he should possess the imagination required for eminence in literature, art, science, invention or industrial enterprise. What is needed is quick apprehension, broad sympathy, and sound judgment, for the public officer should be rather the balance-wheel than the mainspring of government. Genius and originality often make mistakes. Many inventors and leaders in commercial ventures, although discoverers of a

path to future wealth, have died bankrupt, because in innovation there is risk. The road of progress is paved with failures that have made the way possible for others, and the risks which have caused them are quite justified in private life; but it is not right to speculate with public interests. Innovators are invaluable to the state, if they are under control, and the men who control them ought to represent the general good sense of the community.

The fact that the different classes of functions are so frequently combined, and must inevitably be so, makes it important to surround the performance of each with the safeguards appropriate to that function. When a legislator or officer is acting as a sample of the public he should be placed in the full light of publicity, made to feel that his duties have a judicial character, and should receive the kind of information to be derived from a well-conducted hearing. Such a hearing is quite different in its object from a cabinet council or a business transaction, and nothing but evil can come from blending the forms of different kinds of proceedings together.

114. Selection of Different Kinds of Officers

We are in the habit of speaking as if the election of public officers were the easiest thing in the world. It requires the voter only to mark his ballot, and drop it into a box. Yet the value of the vote depends, not on the mechanical act, but on the intelligence of the choice; and it is sometimes strange to compare the readiness with which the whole people elect a governor and the painful solicitude of the managers

of some large concern in selecting a man for an office certainly not more important. Examples from commercial life are now anathema, but there is no harm in observing how often the trustees of a college or university search long and anxiously for a president. Do we not recognize enough the greater difficulty of choosing good public officers in some cases than in others?

To revert for illustration to the comparison made in an earlier chapter between Parliament and an American legislature; in both countries new questions arise which the representative, guided neither by public opinion nor by special knowledge of his own, must decide by the light of ordinary common sense, questions, in short, that place him in a position where he must act as a good sample of the public. But those cases arise with very different frequency in the two bodies. Owing to the exigencies of the parliamentary system, a member of the House of Commons almost always follows his party leaders on questions of a public nature, save in some peculiar case where the interests of his constituents are manifestly opposed. The election of a member of Parliament is, therefore, mainly an expression of opinion on certain broad issues, and the choice of a man who will support the leaders of one of the political parties. The voter does not select those leaders. He does not designate them in a primary, caucus or convention, or prepare a platform for them. They are developed in the warfare of the House, and come before him with their issues formed. In short the people have the simplest of all political decisions

to make, that of choosing between two wholly framed alternatives by voting for one or other of the candidates for a seat where personality is of secondary consequence.

In America, where the representative is far more free to act on each question as his judgment dictates, the selection of the man is more important. The machinery for nomination and for a declaration of policy, which has given us so much trouble, becomes very serious, for thereby the people take in reality a much more onerous part in government than they do in England. The selection of adequate representatives and public officers is, therefore, a very difficult matter in America, more difficult perhaps than anywhere else in the world, and yet we multiply the difficulty with a light heart by increasing unnecessarily the number of elective officers, and complain that they are not so good as we are entitled to have.

Moreover, we do not confine elections to those kinds of officers that the people are most likely to choose wisely. A distinction may be roughly drawn between three classes of public servants according to the functions they are chiefly intended to perform: those who are chosen to express the opinions of the people; those who are appointed to use their own personal knowledge or skill; and those who are intended to act as fair samples of the public on the questions that may be brought before them. The people can certainly choose a man to express the opinions they have already formed, or to act as a sample of the public on questions that may

arise, far better than they can select a man, technically trained, to use his own expert judgment. They know their own opinion, and they can easily ascertain whether a candidate for office will express it honestly. They recognize a fair sample of the public, gifted with common sense, when they see him; but they know little about experts. A prudent President or Governor in appointing a technical officer does not ordinarily rely on his own impressions; but seeks advice which is not within reach of the public. The people are not in a position to obtain or weigh such advice, and hence are poorly qualified to choose the general for an army, the surgeon for a city hospital, or a judge. The election of judges by popular vote would not, indeed, work so well as it does, were it not for the great influence of the legal profession throughout American politics; and every sensible man will admit that to choose a general or a surgeon by popular vote would be a grave mistake. As Chief Justice Ryan tersely expressed it: "Where you want skill you must appoint; where you want representation, elect," and that will remain true unless we are to push to its logical extreme the dogma of popular infallibility.

CHAPTER XVII

EXPERT ADMINISTRATORS IN POPULAR GOVERNMENT

A DISCUSSION of the proper method of appointing technical officers opens the great subject of the function of experts in popular government. Presidents, governors, and mayors cannot be experts in all the matters with which they are called upon to deal, nor as a rule are they thoroughly expert in any of them; and in fact this is generally true of officers elected to administer public affairs. We cannot, therefore, avoid the question whether they do, or do not, need expert assistance if the government is to be efficiently conducted. The problem is not new, for the world struggled with it two thousand years ago. The fate of institutions has sometimes turned upon it, and so may the great experiment we are trying today—that of the permanence of democracy on a large scale. Americans pay little heed to the lessons taught by the painful experience of other lands, and Charles Sumner expressed a common sentiment when he remarked sarcastically his thankfulness that they knew no history in Washington. Our people have an horizon so limited, a knowledge of the past so small, a self-confidence so sublime, a conviction that they are altogether better than their fathers so profound, that they hardly realize the difficulty of their task. We assume unconsciously,

as a witty writer has put it, that human reason began about thirty years ago; and yet a candid study of history shows that the essential qualities of human nature have not changed radically, that men have little more capacity or force of character than at other favored epochs. Some improvement in standards has, no doubt, taken place, and certainly the bounds of human sympathy have widened vastly; but there has been no such transformation as to justify a confidence that the men of the present day can accomplish easily and without sacrifice what to earlier generations was unattainable.

We have already observed that a means of making democracy on a large scale possible in the modern world, although it had not proved so in the past, was thought to have been found in the device of representation. This was supposed to enable a large country to govern itself as small communities alone had hitherto succeeded in doing. But we have seen also that the faith in representative government as a universal means of solving political problems has markedly declined of late, and that the conditions under which it has worked must be improved or it will not by itself bring us to our goal. It is well then to inquire whether there were not other defects in the older forms of democracy which are still with us, and which a calmer judgment, an unimpassioned study of political phenomena, may help us to remove. In doing so we ought not to forget that the century during which democracy on a large scale has endured is a brief span in history, and offers no conclusive proof of the deeper currents of human destiny; that

in seeking to solve the riddle of man's social organization we must take long views, and not allow ourselves to be overwhelmed by the clamor, the complaints, and the enthusiasms of the moment in which we live.

115. Lack of Experts in Athens

No profound knowledge of history is needed to perceive that the republics of the ancient world made very little use of experts in the public service. The two of which we know by far the most are those of Athens and of Rome, and in some important respects their methods of dealing with public office were similar, since in both the officers were appointed, as a rule, for a single year, and were practically not reëligible. The theories of democracy, as then understood, were carried farthest in Athens, where most of the offices were collegiate and many of them were filled, not by election, but by lot, every free citizen being deemed fit to occupy any civic position in the state. Under these conditions, an official could have no expert knowledge of the work to be done in his department, however familiar he might be with the discussion of political questions in the assembly; nor could he in the short space of a year acquire any considerable experience in the management of his office. In short, the administration was conducted by amateurs. Nor were these men assisted by expert subordinates or advisers. There were, no doubt, slaves in the service of the state, to do the purely routine work of keeping accounts and the like, and sometimes, at least, a professional

architect was appointed to plan a public building; but as a rule all administrative work involving the exercise of discretion was performed by citizens holding office for a year only, without any aid from experts or persons familiar by experience with the duties of the position. There appear to have been no government engineers for constructing roads, no naval architects, no professional generals, no expert financial officers. The collection and expenditure of the revenues, the direction of a war, and the fitting out of the fleet, were intrusted to unskilled men selected in most cases by lot. Such a system, as we have seen, was considered by the Greeks themselves essential to democracy, for it tended to proclaim and preserve the equality of all the citizens. It did not work badly in a simple community where the various branches of the public service involved few things with which an ordinary citizen might not be familiar in his daily life, and of course it worked well while a Pericles directed the affairs of state outside of public office, as a sort of glorified boss. But the system was hardly equal to a severe strain, and we may safely assume that it contributed to the downfall of Athens before the blows of a highly organized monarchy of the same race under Philip of Macedon.

116. Expert Administrators in Rome

The Romans carried both the theory and the practice of democracy less far than the Greeks, yet the principle of rotation in office was rigidly applied, and the result, very different from that in Athens, has a more direct lesson for us. Under the republic,

the officials were chosen only for a single year, and as a rule were not reëlected. It is true that the government was in the hands of a ruling class, and that no one could hold a higher magistracy who had not previously filled the lower ones in the official ladder, so that the higher officers had enjoyed some experience in public affairs; but no single office was held by anyone more than one year, and there was nothing remotely resembling a permanent civil service. Every man was quite new to the administrative office he might fill, and left it before he had time to learn much more than he knew when he came in. This constitution worked well enough so long as Rome was a small Italian state with simple industries and few foreign complications; but when she acquired dominions beyond the seas, when the contact with the East destroyed her old traditions of discipline, when instead of governing a small town and an agricultural district, her people were called upon to rule a huge metropolis, to administer vast provinces, to regulate the commercial affairs and control the political destinies of the western world, the system broke down.

After the lack of experts in the public service began to be of serious consequence Rome, unlike Athens, came into conflict with no people at all her match in political or military qualities, and the republic was brought to an end, not by external forces, but by internal weakness and constitutional instability. Of course there were other causes contributing to its downfall; of course it is easy to point to particular men at whose hands the constitution suffered vio-

lence; of course it is impossible to distinguish sharply between the occasion and the underlying cause; but surely it is abundantly clear that government by a succession of amateurs, without expert assistance, had proved itself hopelessly incapable of maintaining an orderly administration on so gigantic a scale. The state had outgrown its machinery, and the empire by creating a new organization prolonged its life.

Augustus and his earlier successors had no idea of setting up a bureaucracy to administer their dominions. In the main they merely took over, as each exigency arose and without a definite plan, those matters that were in sore need of attention. The former transitory officials of the senatorial class being unable to cope with the great problems of the day, one duty after another passed into the control of the head of the state and his personal subordinates; and it took three centuries to complete the process. Meanwhile the administrative machinery for dealing with these matters was being gradually developed; but again, not on a deliberate systematic plan, but in the earlier stages, at least, by adopting the means nearest at hand. During the century following Augustus, the Emperors used for this purpose to a great extent the freedmen attached to their own households and trained to conduct their private affairs on a large scale; but as time went on these were replaced by free citizens, drawn for the upper grades of the service from the order of knights, and thus a permanent civil service grew up, which men of ability entered young and followed for life as a

career.[1] It is this administrative system, apparently derived in part from the practice of the Egyptian monarchy, that produced and crystallized the forms of Roman law and government. The preservation of the Roman dominions for so long a period, as well as the far longer life of the Eastern Empire, must be attributed in great part to the adoption of the imperial form of government with its large use of trained expert officials; and to the same source must be ascribed also the overmastering influence of Roman civilization upon the modern world.

117. Experts in Monarchies and Democracies

Throughout the Middle Ages, and indeed until a hundred and fifty years ago, democracies were small, or turbulent and ephemeral. Venice was, no doubt, a powerful and prosperous republic for many centuries, but, far from being democratic, was an aristocracy of a restricted type, and furnishes no exception to the general rule that democracies have in the past been small or short-lived. At the close of the Middle Ages the great states of modern Europe began to assume their present form, and in every case they were ruled by monarchs who employed, not officials appointed for short terms and replacing one another by rotation, but men whom they retained permanently and who were skilled in the art of administration. The new monarchies meant government by experts, and that was one of the chief secrets of their efficiency and predominance.

[1] *Die Kaiserlichen Verwaltungsbeamten bis auf Diocletian.* Otto Hirschfeld. 2d ed., 1905. See especially the concluding chapter.

Now the fact that monarchies have habitually employed permanent administrators, while democracies have shown a preference for rotation in office, is not an accident. It is a natural result of the different principles on which the two forms of government are based. The use of experts is as normal in a monarchy or an aristocracy as it is foreign to the genius of a democracy. A monarch tends to retain in office the men he has learned to know and trust, who have become experienced in carrying on his business. If he is jealous, irritable, or captious, he may quarrel with them from time to time, or if something goes wrong he may make a scapegoat of one of them; but in the long run he saves himself trouble and worry by keeping about him the servants whom he has found faithful and efficient; and he does so whether he is himself good or bad. If he is good, he retains good men; if bad, men who will carry out his evil designs; but in any case men faithful to him. The head of a great industrial enterprise would not think of changing his subordinates every year or two. Whether honest or corrupt, whether generous or oppressive, he wants under him men who have proved themselves efficient for his purposes; and a monarch is in the same position. He keeps his servants so long as he is satisfied with them; and if one of his chief officers dies he is inclined to fill the place with a man who has made his mark in a lower post. His ministers, being permanent, are prone for the same reason to retain their own subordinates, promoting them to higher places as they show the ability, or subservience, required; and

thus a monarchy tends to produce a corps of expert administrators in every department, its public service becoming a career which a man enters young and follows through life. The service is not always good; it may become stagnant or rigid, and its members negligent, oppressive, or corrupt. There have been admirable bureaucracies, and there have been execrable ones, but even the worst of them have shown a certain durability derived from the expert character of their members. In spite of the gravest vices, they have given to the governments they have served a permanence beside which the democracies that existed on a large scale until a hundred years ago have seemed ephemeral.

Permanence in the tenure of public office is, on the other hand, unnatural to a democracy. The habit of repeated reëlection is, indeed, occasionally found — especially where a strong infusion of aristocratic feeling persists under popular forms, as in some of the rural cantons of Switzerland — but in general democracies tend, as in Athens, to frequent changes in office. That is partly because the people are afraid of losing their power or freedom under permanent officials. In this connection, indeed, it is interesting to compare in America the popular distrust of permanent administrators with the absence, until the last few years, of any widespread popular distrust of professional politicians; a difference largely due to the fact that the politicians mix with and court the people, taking pains to appear on a level with them, while the permanent official stands apart and remote. A boss, it is true, some-

times holds himself aloof, but at least he distributes favors and is regarded as a benign special providence.

Another reason for the democratic dislike of permanence of tenure grows from an insistence upon equality, demonstrated by giving every man a substantial chance to take part in the administration of public affairs. Men desire not only to be well governed, but also to feel that they are governing themselves, and the readiest way of reaching this result is to throw the offices open to all aspirants. We do not need to go back to the ancient world to learn a common principle of human nature. We can look about us. Among our forefathers, as among the Greeks, rotation in office was a corollary of democracy, and while the word has become obnoxious the practice has not lost its attractions. Rotation in office is based upon the same principle as the use of the lot in Athens, for it purports to give each man an equal chance at office, and to insure the control of public affairs by public opinion. It is, perhaps, the simplest, but not necessarily the sole or the best, method of securing that control, and one may wisely inquire whether it is not inconsistent with efficiency, and whether some more effective method of attaining the result cannot be found.

118. The Need of Experts Today

The first question, therefore, is whether experts are as much needed in modern governments as they have been in large states in the past; and the answer must clearly be that they are needed much more. The habit of frequent changes of officials, which

means administration by persons without special skill in the public duties they undertake, may work well enough in a small, primitive community, such as Athens in her earlier days, or New England a century ago, or the Western frontier settlements at a later time, where the common experience of ordinary men was such as to fit them to deal intelligently with the plain questions that came before the public officer. It worked well enough under the conditions that enabled a private citizen to take up a new business at any time without previous preparation. In short, it is good under the same conditions, and to the extent, as government by sample, and it is good no farther.

Now in private affairs we have reached a stage where the complexity of civilization, the growth of accurate knowledge, the progress of invention, and the keenness of competition which renders a high degree of efficiency alone profitable, have brought about the specialization of occupations. We no longer believe in America today that a man who has shown himself fairly clever at something else, is thereby qualified to manage a railroad, a factory, or a bank. Are we better justified in assuming that an election by popular vote, or an appointment by a chief magistrate, confers, without apprenticeship, an immediate capacity to construct the roads and bridges, direct the education, manage the finances, purify the water supply, or dispose of the sewage of a large city; and this when it is almost certain that the person selected will not remain in office long enough to learn thoroughly a business of which he

knows little or nothing at the outset? In industrial enterprise, in business concerns, the use of experts of all kinds is, indeed, constantly increasing. They have revolutionized some industries, and are indispensable in many more. Nor do we merely seek for men who have gained experience in practice. In one profession after another we have learned to train them carefully in the theory of their work, taking them young and educating them for it as a distinct career. Sixty years ago, for example, there was scarcely a school of applied science in the country, but now they are everywhere, and they can hardly turn out students fast enough to supply the demand. They are ever adding new departments, while our universities are creating new specialized schools, and thus adding to the number of professions. We are training men today for all services but that of the public.

To the argument that the use of expert knowledge in private industries has been growing, and that the need thereof in the enlarging sphere of governmental action must be growing also, it will be answered that popular education has been greatly extended, and hence the capacity of the people to deal with public questions is larger than ever before. This is, of course, an important factor in the problem of popular government. Elementary education is so nearly universal and compulsory today, that illiteracy is fast disappearing among the voters everywhere; and we may assume that as time goes on the schools will become more efficient and thorough, although probably more specialized, than at present. But

the bounds of human knowledge are growing faster than education. A Casaubon, who had mastered everything known in his day, has long been an impossibility; and with the vast progress of research in all fields, specialization in knowledge is daily becoming greater and greater. Hence we have every reason to believe that diffusion of information will not relieve the world of the need of experts; but that, on the contrary, the more men learn the more they will require the services of those who know the most about particular subjects.

119. Limited Use of Experts in American Government

It will be answered also that experts are used now for all professional work; that only a lawyer is made a government attorney or corporation counsel, only a physician is appointed health officer, only an engineer is employed to design a steel bridge, only an architect to plan a public building. This is true; and it means that the great professions, which have secured general recognition in the community, have been strong enough to insist that strictly professional work must not be intrusted to men who have had no professional training or experience. So far as it goes that is good; but what do we mean by professional work? We do not in practice include all work requiring special knowledge or experience in order to be well done, for we apply the principle only in the case of a few leading professions. We do not insist or demand, for example, that our postmasters, our collectors of customs, our superintendents of streets, the administrators of our finances for the

nation, state, or city, shall have any familiarity with the affairs they are to conduct, or any special qualifications for their duties; and yet these matters are often nearly as complex, and require nearly as much technical knowledge, as some of the recognized professions. They require quite as great skill as many positions in private employ to which one would not think of appointing an untrained man. Are we wise in intrusting such duties to a periodically shifting body of officials drawn for political motives from an inexperienced public? The question is not meant to imply that the political heads of departments ought to be experts; for, as will be shown later, we need in the public service both expert and lay elements, and the latter may well take the form of a non-professional head to a department, provided he has under him thoroughly competent, permanent experts. But in many branches of the public service, central and local, we have no experts at all, no permanent officials playing an important part in the administration; and even in those matters, like legal, medical, or engineering work, where experts are regularly employed, we rarely allow men to remain in office long enough to acquire that familiarity with their peculiar problems which confers efficiency and authority.

We are slowly making progress in these ways. The scientific departments at Washington are filled with men of the highest attainments, whom we may hope to see retained in spite of political changes. We have made progress also in civil service reform. Yet this practice, which was derived from England, was applied at first only to positions of the lower

grade, where the work is mainly of a clerical or mechanical character. A vast benefit has been gained by taking these places out of the field of political patronage and party spoils; but the system has been applied very little to posts requiring the exercise of considerable administrative discretion. We cannot estimate what we have suffered in our great public departments, like the Treasury and the Post Office, from the fact that we have not had permanent under-secretaries, thoroughly familiar with the business and its needs, and striving through a long period of years to improve the service. No cabinet officer holding his post for a single administration, or less, can possibly supply that want. It may be noted also that the United States is the only great nation with a popular government today which has not permanent officers of that kind, and it is they who keep the machinery of government elsewhere in efficient working order.

If democracy is to be conducted with the efficiency needed in a complex modern society it must overcome its prejudice against permanent expert officials as undemocratic. It might as well be alleged that skilled engineers and modern inventions were undemocratic in war; that a true republic ought to go into battle with bows and arrows against machine guns worked by trained soldiers. In fact, the disadvantage at which our cities fight with great public service corporations is largely due to the difference in the calibre of the officials employed. What chance, for example, has a city represented by a solicitor, who is perhaps changed at every

election, and is paid a small salary, against a great corporation which retains the best legal talent and pays for it many times as much? And what is true in a legal contest is true also of comparative efficiency in all directions. A democracy, like every other community, needs the best tools that it can find, and the expert of high grade is the best living tool of modern civilization.

CHAPTER XVIII

EXPERTS IN MUNICIPAL GOVERNMENT

120. Cities in America are of Recent Growth

THE defects of American methods are most obvious in municipal government, for our failure there to attain anything approaching our ideal of democracy is beyond question. Future historians will have no difficulty in assigning a cause for American shortcomings in this quarter. They will point out that in Europe cities existed before the dawn of history; that the institutions of the Roman world developed in the main out of urban conditions, and were always deeply tinged with municipal ideas. They will note that in the Middle Ages, when the national organization was essentially feudal and rural, the cities had a vitality of their own and presented the nearest approach on a considerable scale to self-government. They will observe, in short, that urban administration is by no means a new thing in modern Europe. On the other hand, they will perceive that local government in America was at the outset almost entirely rural in character, and long continued to be mainly adapted to rural needs. The result is that while the problem of rural administration has given rise in the last half century to quite as serious consider-

ation in Europe as the management of cities, this has been very far from the case in the United States. where local government, outside of the large towns, has followed a course so smooth that until scholars undertook a study of the subject, few men had any clear conception of rural institutions beyond their own section of the country. The very absence of general discussion of the subject shows that, while there is a great diversity in the rural organization in different parts of the nation, each system has grown normally from prevailing conditions, and is fairly well suited to local needs; whereas in the case of municipal government, where conscious imitation has been far more common, discontent is well-nigh universal throughout the land.

In the charters of American cities the separation of executive and legislative organs, and the division of the latter into two branches, was copied from the state and national governments, although these principles had no proper application, because a city government is essentially an administrative, not a legislative, concern. Moreover, wide as the divergence is today between the forms of rural and urban government in America, some principles appear to have been carried over from one to the other without regard to their fitness. The needs of a rural community are comparatively simple, and are readily understood by any intelligent man. This was particularly true half a century ago. The care of the roads and of elementary schools, the assessment of taxes on farms and live stock, the impounding of stray cattle, were matters within the knowledge of

everyone, and could be managed well enough by farmers of good sense chosen by their neighbors for the purpose. No special training was needed, no corps of experts; and rotation in office, if not too rapid, did not seriously interfere with efficiency. But such a custom is quite out of place in the administration of a large modern city, complicated as it must be by a variety of public services, most of which use the results of recent scientific discovery and mechanical invention. The problems arising in the supply of water, the disposal of sewage, the maintenance of streets and bridges with their numberless uses for wires and pipes as well as for travel, the provision for rapid transit, the elaborate system of public education, and the treatment of disease, pauperism, and crime, are not matters with which even the most intelligent citizen is made familiar in the pursuit of his ordinary vocation. They can be mastered only by special study or long experience, and they can be dealt with efficiently only by persons who have mastered them.

121. The Lesson of European Cities

It is generally admitted that our large cities are less well governed than those of Europe, and many wise men believe that we can learn something from their longer experience. But transplanted political institutions are likely to be barren unless the roots are carried with them. There are said to be monkeys in Africa so imitative that they copy faithfully the huts of men, and then live on the outside of them instead of the inside. Political imitation is not free

from this danger of copying the obvious, while failing to perceive the essential, in the working of a foreign government. Now the vital difference between American and European cities, more fundamental than any outward form of organization, is the fact that municipal administration here is usually conducted by inexpert temporary officers, whereas in Europe it is virtually in the hands of permanent experts, controlled to a greater or less extent, but never suppressed, by elected councils.

In Germany, a country where the bureaucracy does not seek shelter from the public gaze, the influence of expert officials in municipal government is self-evident. There is an elective city council, and the committees to which the various branches of the administration are intrusted contain unprofessional members; but the chief magistrate of the city, the burgomaster, is strictly a permanent professional administrator, and the business of the city is in the main conducted by him and by the other permanent officials for whom municipal work is a life-long career. In France and England the authority of the permanent officials is less apparent and one must look beneath the surface to see it. The statutes are, indeed, almost silent about their qualifications, their tenure, and their duties, but in practice their influence is little less powerful because concealed.[1] In England the council and its committees purport to do everything. Yet by working

[1] For the influence of the permanent officials see Professor W. B. Munro's *The Government of European Cities*, and for the English cities see also the writer's *Government of England*, chap. xl.

through these committees and their chairmen, the town clerk, the borough surveyor, the tramway manager, the engineers of the water and gas works, and their colleagues practically carry on the administration of the city; and in general it may be said that the excellence of the service is roughly in proportion to the strength of their influence. As in every other part of the British government, unwritten conventions are more powerful than formal organization, and while the forms are carefully observed and even paraded, the real forces work unseen in the background. For this reason observers often discover the action of the permanent officials in the government of an English city today as little as Montesquieu perceived the effect of the cabinet in restricting the personal authority of the King. Even the British public servant does not talk of it, and perhaps does not think much about it, until confronted by a system in which it is lacking, and then the contrast strikes him forcibly. Mr. Dalrymple, the manager of the Glasgow tramways, reported to the mayor of Chicago that it was hopeless for the city to think of operating the street railroads so long as the officials were appointed for short terms from political motives.

122. The Model Charter Discourages Experts

Until recently our municipal reformers have not appreciated the importance of this matter. They have fixed their attention mainly upon devices that would tend to promote the selection of good citizens for public office, and have not perceived clearly

enough that the best elective officers are in the long run as helpless without good permanent administrators as the latter are with a bad mayor and council. The failure to grasp this point is evident from the model city charter prepared by the National Municipal League in 1899. Read in the light of reports which explain it, that plan was certainly intended to encourage permanence of tenure by the heads of departments[1]; and yet under the arrangement proposed, they were highly unlikely to be men who devoted their lives to administrative service as a career. They could be removed, it is true, only with a statement setting forth the reasons therefor, which must not be their political opinions; but everyone knows that such a provision does not prevent removal for political reasons where the mayor has unrestricted power to appoint the successor. What sort of a position were they intended to occupy? In a small city it is conceivable, though unlikely, that the mayor might be the sole executive officer who took part in politics, who held by an uncertain tenure, and that he should supervise a corps of permanent heads of departments. But in a large city, this would be beyond his powers, and although there have been occasional cases of heads of departments in our large cities who have held office continuously for long periods through changes of administration, such cases have, for obvious reasons, been extremely rare. It is not impossible for a mayor to have a cabinet of non-professional,

[1] *A Municipal Program*, adopted by the National Municipal League Nov. 17, 1899, pp. 80, 82.

temporary lieutenants each of whom superintends one or more permanent officials in charge of departments as the English cabinet ministers superintend their permanent under-secretaries. In such a system, however, it is essential to distinguish clearly the positions of the layman and the expert; not to prescribe their duties minutely by statute, for that cannot be done, but to make the distinction itself obvious, to make it clear, by the absence of a substantial salary or otherwise, that the temporary or political chief is not to administer the department himself, but merely to see that it is properly administered and to keep it in touch with public opinion. Now the model charter did not do this. It apparently assumed that the head of a department was to be its real administrative officer. Under these conditions it would probably not be easy, after the first flush of the reform movement had passed, to find either experts or laymen competent and willing to fill the position. Experts of high grade would not be anxious to serve unless they had reason to suppose that they would remain during good behavior; and citizens of marked executive capacity would make a great sacrifice in giving up their regular occupations and devoting their whole time to public work for an indefinite period. Professor Goodnow, one of the authors of the model charter, has himself pointed out that heads of city departments are likely to be recruited too frequently from professional politicians rather than professional administrators or men of proved executive talent.[1]

[1] *City Government in the United States*, p. 191 *et seq.*

He has treated this subject in a very interesting way, and suggests in the passage already cited that only by means of boards of commissioners can permanence of tenure and popular non-professional supervision be secured; that single-headed departments will fall into the hands either of an official bureaucracy, or of men who make a living out of politics and from lack of adequate training are often not competent to fill these offices. In several notable instances, boards of commissioners, usually unpaid, but aided by paid permanent experts, have certainly succeeded in combining the two elements in a highly satisfactory way; although it may be doubted whether Professor Goodnow is right in thinking this the only means to the end.

123. City Government by Commission

One of the chief merits of the new plan of placing the whole city government in the hands of a commission is the opportunity it affords of maintaining a corps of permanent administrators working under the supervision of the members of a board; for an elected commission is well adapted to the purpose, and its operation in this way would not interfere in the least with the other merits rightly claimed for it.[1] That, indeed, has been the course actually

[1] Mr. Ford H. MacGregor, in his *City Government by Commission*, pp. 25–26 lays down four essential features of the plan. First, a concentration of all power and responsibility in a small body, instead of dividing it between an executive and a legislative branch. Second, election at large and not by wards. Third, the members of the commission the only elective officers of the city, with power to appoint all subordinate administrative officials. Fourth, the power to remove all such officials at will. None of these features is in the least inconsistent with the

pursued in Galveston, where the plan of government by commission had its origin and where its benefits have been most marked. The mayor receives a salary of $2,000 and is required by the charter to devote six hours a day to city work, but no such provision is made in the case of the other commissioners who are paid only $1,200 and are said to give on the average two hours a day. They do not, we are told, undertake the actual management of the routine in their departments, which is done by the superintendents under them. They simply advise and direct, and thus men prominent in active business have been able and willing to serve the city as members of the commission.[1]

But in the later charters that excellent principle has not usually been followed. A feeling arose that the commissioners ought to be the actual administrators of their departments; and hence in Houston, the second city to adopt the plan, their salaries were doubled and they were expressly required to devote their whole time to the city.[2] This idea has prevailed generally, and in most of the cities which have adopted government by commission, substantial salaries are paid to its members, intended apparently to be large enough to compensate them for their whole time. A few charters, indeed, such as those of Lynn, Massachu-

existence of permanent expert officials in charge of departments which are supervised but not directly administered by the members of the commission. In fact all these features, except the election at large, exist in substance in the English cities where the administration by permanent officials prevails.

[1] MacGregor, *op. cit.*, pp. 38 39. [2] *Ibid.*, pp. 43-44.

setts, and Baker, Oregon, go so far as to provide that the commissioners shall be specifically elected by the people to take charge of particular departments.

Now election by popular vote is a very poor way of selecting expert administrators, because however good judges the people at large may be of a man's general intellectual and moral capacity, they have neither the means nor the leisure for the careful scrutiny needed to estimate his professional qualifications. An appointing body, if it does its duty, examines more evidence and considers more candidates before making a selection than the public can possibly do, and the best experts are highly unlikely to be willing to undertake a campaign to obtain the place.[1] Moreover, if expert administrators could be chosen in this way, they could not be permanent, for that is in its nature inconsistent with representing a fluctuating public opinion as expressed in recurrent elections. Nor is it practicable to have expert administrators of high grade under commissioners chosen for the purpose of administering the departments directly and paid full salaries for so doing. It would be playing false to the people by taking pay for work not done, even if the double charge of full salaries to both commissioner and administrator were not prohibitive. Considerable salaries would, indeed, actually tend to eliminate men of large experience in affairs from the commission. A sense of civic duty will

[1] Mr. MacGregor (*City Government by Commission*, p. 49) remarks, "It is probably now generally recognized that it is easier to secure professional and technical men by appointment than by popular election."

induce many such men to devote their spare time to public affairs, but if they are expected to give up everything else they cannot afford it. The bigger the man, the more he earns in his private occupation, and the less adequate the compensation for his whole time; whereas a salary which involves a heavy sacrifice for him is very attractive to a smaller man.

City government by commission has not yet been tried long enough to warrant a decisive estimate of its value. Every new plan works well for a time, because the movement for reform from which it springs brings good men to the front and places power in their hands. The real test comes in later years, when the momentum is exhausted, and the moral enthusiasm of the dawn has faded into the light of common day. The merit of the commission plan will probably depend upon the capacity it develops for providing expert administration; and this brings us to the delicate question of the proper relation between the expert who carries on the public service and the representative of the public under whom he serves.[1]

[1] Since this book was written the National Municipal League has urged the adoption of the City Manager plan of municipal government with the express object of promoting expert service. This plan, which has been adopted in a number of cities, consists of placing the direct administration under the charge of a single permanent expert official, who has under him the whole body of public servants employed, and is in turn controlled in matters of policy by the elected Mayor and Council. This is the most hopeful plan yet tried.

A very incisive discussion of the function of experts in municipal government is contained in the Baldwin Prize Essay for 1912 by Arthur Dexter Brigham.

CHAPTER XIX

CONTROL AND RECRUITING OF EXPERTS

NAPOLEON was of opinion that as law is a science, based on eternal principles of justice, the laws of a nation ought to be made by a body of scientific jurists, and hence that for this purpose a representative assembly was out of place. He did not see that the principles of justice depend upon the conditions of the existing civilization, and it is to give these expression that a representative assembly exists. Our danger lies in an opposite direction. A democracy in giving effect to the popular will is liable to forget that running through all civilization there are eternal principles which cannot be violated with impunity. In fact there is a constant need of coöperation and compromise between public opinion and expert knowledge.

124. Cause of the Distrust of Experts

The American people distrust experts in public life for the same reason that the Athenians avoided officers chosen for long terms. They do not see how such men can be kept in touch with popular thought, and made amenable to public opinion. They dread bureaucracies like those created by monarchy in continental Europe; and of the English system of permanent officials under the control of

representatives of the people they are unaware because from its nature it conceals itself. The distrust is well founded to this extent, that if a modern popular government needs expert administrators, it must also take care that they do not strangle it or thwart its wishes. Clearly the ordinary methods of keeping representatives in contact with public opinion, such as rotation in office and the prospect of a new election, or, in the case of appointed political officers, a change of incumbents following a change of party, are inapplicable, because they are inconsistent with permanence of tenure and expert service. Nor are they always effective in preventing the evils commonly attributed to bureaucracy. Do we not know that by reason of the inexperience of our removable officials the United States government is one of the worst debtors, one of the most uncomfortable concerns with which to do business, of all the well-meaning institutions in the world? Have we not all groaned at its grievous red tape? The fact is that an official who is new to his work, and does not feel secure in his position, finds his chief safety in making no departure from the established precedents of the office. Whatever the perils may be in countries which have inherited a self-sufficient bureaucracy from a monarchical past, there would be little danger here that permanent officials properly supervised by non-professionals would be more seriously out of touch with public sentiment than temporary officials supervised by professional politicians.

The distrust of permanent experts has no rational

foundation if they can be kept in touch with public opinion through the control exerted over them by representatives of the people; and the constant practice in England shows that this is not in fact difficult, provided the proper relation between these two classes of officials is clearly understood and observed. But that is precisely the point on which at present we need to be educated.

125. Ignorance of the Relation of Experts and Laymen

Unfortunately, we often find in America, even among men with a wide experience in affairs, a strange ignorance of the relation which ought to exist between experts and the persons to whom they are responsible. There are many charitable institutions, for example, in which the paid administrative head is not present at the meetings of the board of trustees; and one hears the practice defended on the ground that it might be awkward to discuss his conduct if he were there — as if his work could be properly discussed except in his presence. Can anyone conceive of a successful railroad where the president was regularly excluded from the board of directors? No large or difficult enterprise can prosper without a permanent administrative manager, and it is his function not only to carry out the policy laid down by his directors, but also to give them his advice, to suggest to them improvements, to convince them of the soundness of his views if he can; and this he is not in a position to do unless he appears in person and takes an active part in their debates.

Even in cases, therefore, where experts are employed, it is not uncommon to commit the blunder of not giving them a chance to exert a proper influence. An error of the opposite character is often made by placing experts in positions which they ought not to fill. When our government undertook the construction of the Panama Canal the President, against his own better judgment, appointed engineers upon the commission to supervise the engineer in charge of the work.[1] Shrewd observers prophesied at the time that trouble would ensue, and before long the commissioners were changed. Now, it is a fundamental principle that an expert ought not to be set to supervise another expert in the same line — unless as his superior officer. An expert on a board of directors is in danger of relying too much upon his own technical knowledge, instead of being guided by the closer information of the expert in charge of the work, and a paralyzing clash of opinions is likely to result. There are, of course, instances where any of these elementary rules can be violated with impunity on account of the character of the persons concerned. Some professional men have a sense of their duties so delicate that on a board of directors they avoid bringing their opinions on technical matters into conflict with those of their paid experts, but such men are rare, and the fact that they are occasionally found does not invalidate the general principle.

[1] Francis E. Leupp, *Atlantic Monthly*, June, 1912, p. 847.

126. Examples of the Proper Relation

These examples have been mentioned to show that, although our people may understand the use of experts in their own business, they are often unaware of the primary rules of the art in affairs outside of their daily experience. In our great private industries and educational institutions the true relations between experts and laymen have been worked out and applied. The president of a railroad and his subordinates are railroad men by profession, skilled experts, and if they were not, the road would not be efficiently, progressively, or even safely, conducted; but the board of directors is composed of bankers, merchants, and other men of general business experience, who make no pretence to the technical knowledge required to manage the road. In fact they represent the business public — not by election, but by sample — and so far as the sample is not a fair one, and therefore the directors do not faithfully represent the business public, that public, and ultimately the railroad itself, is sure to suffer. In the same way, the presidents of colleges are experts, and most certainly the faculties are; but for boards of trustees they want, not professional educators, but broad-minded men of the world with scholarly sympathies.

In public office we are constantly confusing these relations. We hear people complain, for example, that some candidate for the school board is not an expert in education, although the object of supervision and control by the board is not to add to

the technical knowledge of the trained superintendent, but to supply the qualities which he lacks — the close touch with the popular point of view, and the sense of proportion that comes therewith. In some directions we have learned much within a generation, and in one service, that of education, we have seen a marked change in the attitude of the people toward their expert officials. To take an illustration from a single city, a score of years ago Boston had, indeed, a superintendent of schools who had been in office many years, but he was suffered to take little part in their management. He was not present at the meetings of the school board, and the most important of all functions, the selection of teachers, was performed by sub-committees of the board, who conferred with the masters, but rarely consulted him. In fact it was said that his work consisted chiefly in writing an annual report. Now all this has changed. The superintendent is present at all the meetings, nominates the teachers, conducts the administration under the general direction of the board, and is the real executive head of public education, bearing to the board, as he should, a relation similar to that of the head of any industrial institution to the board of directors. A process of this kind has been quietly going on in many parts of the country, and thus the administration of the public schools, as well as the teaching of the children, is becoming a great profession, whose members have a permanent career in the public service — a career, by the way, as wide as the nation, for an officer who has made

his mark in one place may be called to a position in another city. All this will greatly improve education; while, far from becoming bureaucratic, the administration of the schools has come into closer touch with the aspirations of the people. The teaching profession has become thereby more respected and more popular, as well as more influential than ever before. If the other branches of city work could be put on a similar basis, the question of municipal reform would be wellnigh solved.

Examples of expert management controlled by representatives of the public, are to be found throughout the political system of England, which was never that of an absolute monarchy, and has never become quite a democracy of the traditional type, but has ever carried the forms of one age over into the next and thus combined some of their virtues. The administration, national or local, is habitually conducted by a permanent official, who devotes his whole life to the career, and has under him a staff of permanent subordinates, professional like himself, but acting under the constant supervision and control of a cabinet minister or a committee of the local council. The minister, or the committeeman, may learn much about the business if he remains long in office, but he rarely becomes, or pretends to be, an expert.

127. The True Relation between Experts and Representatives of the Public

The relation which ought to exist between the expert in charge and the non-professional under

whose control he acts has never been more acutely discussed than by Bagehot in the chapter on "Changes of Ministry" in his *English Constitution.* The pith of the matter is in his quotation from Sir George Cornewall Lewis, "It is not the business of a Cabinet Minister to work his department. His business is to see that it is properly worked." The expert is essentially the executive officer who carries on the administration, suggests improvements, advises his chief on all questions of policy that arise, but gives effect loyally to any policy which his chief decides to follow. His chief, representing the public, ought not to administer directly, but keep the office from getting into ruts, stimulate it when lethargic, and lay down the general policy to be pursued. In short, the expert is responsible to his chief for good service, the latter to the public for the policy pursued and the general result.

In order that the chief who represents the public should control the administration, it is neither necessary nor wise for him to go much into details, because the public wants not means but ends, not methods but results; and the layman is at the mercy of the expert in matters of detail, whereas if he confines his attention to results and is a man of force and good sense, he will produce an effect. Nor is it necessary that public sentiment should be brought to bear at every rung of the official ladder. It is enough that it is brought to bear at the top with strength enough to affect the whole structure. To change the policy of a railroad, the

president does not need to replace all the employees, or even the ones in the higher posts. If they are capable men, and not mutinous, he needs only to steer them on a different course; and in the same way experience shows how a vigorous English minister can guide his whole body of officials, although no new man, except himself, comes into the department. In fact, the railroad president and the minister find it easier to carry out their policies than they would if all the men holding positions that require discretion were replaced by others, however intelligent, who were unfamiliar with their duties. The filling with politicians of all the important posts in a national business, like the post office or the custom house, is not a means of bringing public opinion to bear on public work. It simply prevents any intelligent policy from being carried out. Apart from general questions of policy to be decided by the Postmaster General or the Secretary of the Treasury, what the public really desires is simply the maximum efficiency in the service, and that can be attained only by a corps of highly trained men in high administrative positions.

It is for this reason that the frequent shifting of English cabinet ministers from one department to another is not inconsistent with efficient management. If they were to conduct their departments directly, such changes would mean inexperience and bad administration, but if their function is merely oversight, a fresh eye is not necessarily an evil, and may, as Bagehot insists, even be an advantage. In this connection it may be observed that since one of

the effects of popular government, with its rapidly shifting party majorities, has been a more frequent change of the political executive officers, there is the greater need of expert administrators to carry on the public service with the efficiency that modern civilization demands.[1]

128. Methods of Creating the True Relation

The proverb that there are many ways of killing a cat, and none of them always succeeds, is true of political machinery. The right relation between expert administrators and their political chiefs may exist under very different forms. It cannot be provided by law, because from their very nature the functions of the two classes of officers cannot be accurately defined. It is a distinction of influence rather than of power. Nor can it be secured by adopting any particular organization. The important thing is to recognize the principle, and make use

[1] J. Ramsay McDonald, himself a socialist and a leader of the Labor Party in the House of Commons, says on this subject (*Socialism and Government*, vol. ii, pp. 34-35), "The apparent incongruity of a Minister being at the Education Office one year and the Admiralty the next, disappears when examined at close quarters. The Cabinet is not a collection of experts on any one subject. Were that so its corporate responsibility for government would be unreal. It is a committee of men of good common sense and intelligence, of business ability, of practical capacity, in touch with public opinion, on the one hand, and by reason of that, carrying out a certain policy, and, on the other, it is the controller of a staff of experts who know the details of departmental work. The permanent officials obey their minister; he obeys public opinion. The Cabinet is the bridge linking up the people with the expert, joining principle to practice. Its function is to transform the messages sent along sensory nerves into commands sent through motor nerves. It does not keep the departments going; it keeps them going in certain directions."

of forms that will tend to emphasize it. The expert is permanent, irrespective of changes of party, and therefore he must keep clear of politics in his office and out of it, and as his duties are quite apart from the political questions which the people are called upon to decide, he ought never to be elected, but appointed without limit of time. The political chief, on the other hand, whose functions are distinctly political, ought to be in close touch with public opinion, and should from time to time give account of his stewardship. Hence he ought to come up for reëlection or reappointment at intervals long enough to show what he has done, not merely to promise what he will do

Another mode of giving emphasis to the distinction between the two classes of officials is furnished by the matter of salaries. The expert ought to devote his whole time, and, in fact, his whole life, to the public service, preferably being forbidden to follow any profession or business of his own, and he ought to be paid a liberal salary, large enough to attract able men into the career. But the political chief ought not to receive a compensation greater than the sacrifice he is expected to make. A cabinet officer who must leave his home and live at the capital, and the mayor of a large city whose time must be wholly engrossed by municipal work, ought to be paid full salaries; but a member of a city commission, or the political head of a city department ought not, as a rule, to manage the details of his office and the work of supervision ought not to take so much of his time as to prevent him from

paying attention to his private affairs. He ought, therefore, to receive, if anything, only a comparatively small compensation, and there is in such cases a distinct advantage in paying nothing because this tends to discourage the man who seeks office, not in order to render public service, but for the pay it brings.

129. Recruiting Experts for the Public Service

The question of selecting permanent administrative officials is by no means a simple one. From England we have taken the idea of civil service reform, the plan of appointment by merit instead of political pull, and we have thereby reduced enormously the field of party patronage and spoils, but hitherto we have adopted the system only in part. We have applied it mainly to places requiring work of a mechanical or routine character, and very little to the higher offices involving the exercise of discretion. Complaints are heard from Washington that a position which is permanent confers no real authority, while one that gives any scope for initiative is not permanent. The civil service examinations are, indeed, adapted to that condition, for they are designed primarily to test the immediate fitness of the candidate for the duties he will be called upon to perform; and this is easy to measure in the case of mechanical or routine work, but very difficult to ascertain when initiative, resourcefulness, good judgment, and willingness to assume responsibility are in question. These are personal qualities which a written examination reaches but

faintly. Civil service commissioners have, no doubt, authority to scrutinize the history of the candidates, with the reputation they have made in other positions, and thus to ascertain their qualifications as any other employer might do; but so far as they exercise this function they occupy the place of appointing, rather than of examining, boards. In any case they are seeking to discover the immediate fitness of men already trained, not the future capacity of men still ignorant of the work. Yet this last is an important thing to do, because many branches of the public service have no counterpart in private affairs, and the knowledge they require can be obtained only by experience in the department itself.

In great private industries employers do not seek mainly for persons already trained, but take promising young men, promoting them as they show talent, and this is in fact the practice of the British Government. When the Crown, after the mutiny, took over from the East India Company the administration of India, a commission was appointed to consider the method of recruiting the civil service there, and Lord Macaulay, who wrote the report, laid down the principle that the competitive examinations for appointment ought not to cover the special subjects needed by an official in India, such as the native languages and the laws and institutions of the country, because ambitious young men with good prospects of a career at home would not, on a mere chance of success in the competition, spend a year or two in studies that would

be useless in case of failure. The examination was therefore confined to the subjects ordinarily pursued at a university, leaving special training to be acquired after the selection was made; and the candidates have, in fact, been of excellent calibre. The system was applied later to the various departments of the English government, and is now in general use for recruiting the higher grade of permanent officials of the nation.

The Dutch colonial office followed the opposite plan, examining the candidates upon the subjects they would need in Java, an arrangement which required them to study for a couple of years at the Indian Institute at Delft. But the class of men who did so was unsatisfactory, and after a careful investigation, the plan was abandoned a dozen years ago.

These examples show the advantages of a system which does not attempt to measure immediate fitness for the work to be done, but merely tests the general education and ability of young men who are expected to make their own way up the steps of the service by their usefulness after they have entered it. Few people would be rash enough to suggest that the English examinations should be copied here. For many reasons they are out of place. But it is not inconceivable that some method could be devised that would bring men into the public service young, would eliminate politics in their selection, and would offer them a prospect of a permanent career. That many ambitious and capable young men would be glad to seize the opportunity so offered no one who knows them well

will doubt. But first we must reach a conviction that we want them. If we recognize the need, the means will be found and the rest will follow. As Professor Goodnow said, in discussing the case of permanent experts in the higher posts of the national service, "That this can be accomplished by any changes in the law may, perhaps, be doubted. That it will be accomplished, as soon as an educated and intelligent public opinion demands it, is a moral certainty." [1]

Many people feel that because popular government is new it must be lasting. They know it is a vital part of the spirit of the age, which they assume to be permanent. But that is the one thing the spirit of the age never is. It would not deserve its name if it were; and when any spirit of the age has become universally recognized, it is time to scan the horizon for signs of a new era. Whether popular government will endure or not depends upon its success in solving its problems, and among these none is more insistent than the question of its capacity both to use and to control experts, a question closely interwoven with the nature, the expression, and the limitations of public opinion.

[1] *Politics and Administration*, p. 121.

Appendix A

Results of the Referendum and Initiative in Switzerland

Date	Subject of the Voting	Character	Registered Voters	Votes Cast	
				In favor	Against
1874					
April 19	Constitution	Ref.		340,199	198,013
1875					
May 23	Deprivation of political rights	Ref.	626,820	202,583	207,263
Id.	Marriage and registry	Ref.		213,199	205,069
1876					
April 23	Issue of bank notes	Ref.	629,570	120,068	193,253
July 9	Tax on exemption from military service	Ref.	629,289	156,157	184,894
1877					
Oct. 21	Labor in factories	Ref.	630,390	181,204	170,857
Id.	Tax on exemption from military service	Ref.		170,223	181,383
Id.	Deprivation of political rights	Ref.		131,557	213,230
1879					
Jan. 19	Subsidy to alpine railroad	Ref.	636,996	278,731	115,571
May 18	Const. amend. to permit capital punishment	Ref.	633,038	200,485	181,588
1880					
Oct. 31	Total revision of Const. in order to create bank-note monopoly	Init.	635,168	121,099	260,126

1882					
July 30	Prevention of epidemics	Ref.	634,755	68,027	254,340
Id.	Const. amend. on patents	Ref.		141,616	156,658
Nov. 26	Creation of a federal secretary of education	Ref.	634,669	172,010	318,139
1884					
May 11	Organization of department of justice	Ref.	634,299	149,729	214,916
Id.	Repeal of tax on commercial travellers	Ref.		174,195	189,550
Id.	Appropriation for secretary of legation at Washington	Ref.		137,824	219,728
Id.	Removal of criminal cases	Ref.		159,068	202,773
1885					
Oct. 25	Const. amend. creating alcohol monopoly	Ref.	641,689	230,250	157,463
1887					
May 15	Liquor law	Ref.	649,494	267,122	138,496
July 10	Const. amend. on patents	Ref.	647,071	203,506	57,862
1889					
Nov. 17	Bankruptcy law	Ref.	661,225	244,317	217,921
1890					
Oct. 26	Const. amend. on compulsory insurance of workmen	Ref.	663,531	283,228	92,200
1891					
Mar. 15	Pensions for officials	Ref.	657,779	91,851	353,977
July 5	Const. amend. on right of initiative	Ref.	653,890	183,029	120,599
Oct. 18	Const. amend. on banknote monopoly	Ref.	654,372	231,578	158,651
Id.	The tariff	Ref.		220,004	158,934

THE SWISS CONFEDERATION. 1874–1912 (*Continued*)

Date	Subject of the Voting	Character	Registered Voters	Votes Cast	
				In Favor	Against
1891					
Dec. 6	Purchase of stock of Central R. R. Co.	Ref.	658,989	130,729	289,406
1893					
Aug. 20	Const. amend. to forbid the slaughter of animals by bleeding.	Init.	668,913	191,527	127,101
1894					
Mar. 4	Const. amend. to extend the power of the federal government to uniform legislation on trades. . .	Ref.	676,874	135,713	158,492
June 3	Const. amend. declaring the duty of the state to furnish work for laborers.	Init.	680,731	75,880	308,289
Nov. 4	Const. amend. for dividing the customs' revenue among the cantons	Init.	690,250	146,462	350,639
1895					
Feb. 3	Law on the diplomatic and consular service . . .	Ref.	689,180	124,517	177,991
Sept. 29	Const. amend. to create a government monopoly of matches	Ref.	690,592	140,174	184,109
Nov. 3	Const. amend. increasing the military authority of the Confederation	Ref.	697,131	195,178	269,751

1896					
Oct. 4	Law regulating the trade in cattle.	Ref.	709,788	174,860	209,118
Id.	Law regulating railroad accounts with a view to future purchase by the government	Ref.		223,228	176,574
Id.	Law on military discipline	Ref.		77,162	310,938
1897					
Feb. 28	Law to create a national bank owned by the government	Ref.	715,342	195,764	255,984
July 11	Const. amend. for federal supervision of water powers and forests.	Ref.	716,883	156,102	89,561
Id.	Const. amend. for federal legislation on articles of food	Ref.		162,250	86,955
1898					
Feb. 20	Law for the purchase of railroads by the government	Ref.	720,000	386,634	182,718
Nov. 13	Const. amend. giving the federal government power to enact a uniform code of civil law	Ref.	734,502	266,713	101,712
Id.	Const. amend. The same for a code of criminal law	Ref.		264,933	101,820
1900					
May 20	Law on compulsory insurance of working people against illness and accident	Ref.	744,066	148,022	342,114
Nov. 4	Const. amend. for the election of the federal House of Representatives by proportional representation	Init.	747,582	169,018	244,570
Id.	Const. amend. for the election of the Federal (Executive) Council by the people	Init.		145,936	270,502

THE SWISS CONFEDERATION. 1874–1912 (*Continued*)

Date	Subject of the Voting	Character	Registered Voters	Votes Cast	
				In Favor	Against
1902					
Nov. 23	Const. amend. for the support of the public schools by the Confederation	Ref.	758,706	258,561	80,429
1903					
Mar. 15	Tariff Act	Ref.	767,540	332,001	225,123
Oct. 25	Const. amend. on the method of electing the federal House of Representatives	Init.	767,542	95,121	295,075
Id.	Const. amend. on the federal authority over retail trade in liquor	Ref.		157,731	227,079
Id.	Law to punish instigation of evasion of military duty	Ref.		117,725	263,862
1905					
Mar. 19	Const. amend. to extend the protection of patents for inventions	Ref.	776,394	199,187	83,935
1906					
June 10	Law on trade in articles of food	Ref.	784,769	245,397	146,760
1907					
Nov. 3	Law on the military organization	Ref.	807,701	329,953	267,605

Date	Subject of the Voting	Character		Votes Cast	
				In Favor	Against
1908					
April 9	Const. amend. authorizing federal legislation on trades	Ref.		232,457	92,561
June 26	Const. amend. extending the federal authority over water powers	Ref.		304,923	56,237
July	Const. amend. forbidding the sale of absinthe	Init.	839,212	241,078	138,669
1910					
Oct.	Repeal of Art. 73 of the federal constitution and substitution of a law for the election of the federal House of Rep. by proportional representation	Init.		240,305	265,194
1912					
Feb. 12	Law on the compulsory insurance of working people against illness and accidents	Ref.		287,565	241,416

CANTON OF AARGAU

Date	Subject of the Voting	Character	Votes Cast	
			In Favor	Against
1893				
April 23	Law to withdraw from the agreement with other cantons on warranty in cattle sales	Ref.	24,915	4,636
Id.	Init. for the protection of game	Init.	14,918	14,979
1894				
Oct. 7	Law on tillage	Ref.	21,070	7,640

CANTON OF AARGAU (*Continued*)

Date	Subject of the Voting	Character	Votes Cast	
			In Favor	Against
1894				
Oct. 7	Law on insolvency	Ref.	14,637	13,842
Id.	Election law, amendment	Ref.	21,104	7,152
1895				
April 28	Law on burgher debts	Ref.	17,707	14,074
Oct. 20	Law on aid in kind to the unemployed	Ref.	20,468	9,655
1896				
May 3	Init. for the protection of game	Init.	21,135	13,117
Nov. 29	Law to improve the breeding of animals	Ref.	14,148	15,596
Id.	Paragraphs 3 and 9 thereof	Ref.	9,727	17,605
1897				
May 9	Law for the protection of game	Ref.	22,417	9,830
Oct. 24	Law on fire insurance	Ref.	27,799	5,138
Id.	Law on innkeepers and the sale of liquor	Ref.	14,483	18,482
1898				
Nov. 27	Law on the insurance of cattle	Ref.	18,942	12,927
Id.	Law on the petitions for popular votes	Ref.	17,584	12,681

1899				
March 19	Law on the salaries of school teachers	Ref.	18,744	14,292
Dec. 3	Law on the cantonal contributions for local roads	Ref.	14,229	17,662
Id.	Law for the protection of young people and domestic servants	Ref.	21,496	8,876
1900				
July 22	Law to transfer the Bank of Aargau to the government of the canton	Ref.	14,710	15,687
1901				
April 28	Code of civil procedure	Ref.	19,892	12,197
July 21	Law on the addition of one eighth to the taxes	Ref.	10,672	20,530
1903				
April 26	Law on innkeepers and the sale of liquor	Ref.	18,332	14,299
June 7	Init. for the election of the cantonal Executive Council and the members of the Council of States (federal senate) by the people	Init.	16,520	13,725
Id.	Tax law	Ref.	9,564	18,466
Nov. 8	Law for the protection of working women	Ref.	23,046	7,721
1904				
Feb. 21	Law on the addition of one quarter to the taxes	Ref.	19,071	14,820
Id.	Supplement to the penal law	Ref.	19,867	11,818
Oct. 30	Law for the election of the cantonal Executive Council by the people	Ref.	20,808	11,089
Id.	Law for the election of the members of the Council of States by the people	Ref.	19,128	9,953
1905				
April 2	Init. on the local referendum	Init.	21,349	10,707

CANTON OF AARGAU (*Continued*)

Date	Subject of the Voting	Character	Votes Cast	
			In Favor	Against
1905				
April 2	Law for its partial abolition	Ref.	4,434	27,389
Sept. 24	Const. amend. on the salt works	Ref.	18,952	12,029
Id.	Const. amend. concerning the local referendum	Ref.	24,296	6,820
1906				
April 29	Amendment of the law on the insurance of cattle	Ref.	21,830	11,752
Id.	Law on fire brigades	Ref.	19,102	14,707
Sept. 30	Law for the prevention of the phylloxera	Ref.	18,783	14,541
Id.	Law for the enlargement of Königsfelden	Ref.	24,199	9,589
1907				
May 5	Law on the addition of one quarter to the taxes	Ref.	17,603	19,956
1908				
May 10	Law of settlement	Ref.	19,983	15,731
Id.	Law on the organs of local government in the communes	Ref.	14,182	20,116
Id.	Separate vote on Art. 80 thereof	Ref.	11,958	16,314
1909				
May 9	Tax law with abolition of appeals	Ref.	25,837	12,823
Id.	Law on industrial courts of arbitration and conciliation	Ref.	22,718	15,409
Id.	Init. for proportional representation	Init.	14,499	24,272

Sept. 5 1910	Init. for total revision of the cantonal constitution	Init.	8,208	28,974
Dec. 4	Taxation of stock in companies	Ref.	30,291	7,527
Id. 1911	Law permitting laws to be initiated in their final form	Ref.	22,926	13,820
June 11	Law applying the federal civil code	Ref.	20,795	17,009
Id. 1912	Law prohibiting unfair competition.	Ref.	25,174	12,618
June 23	Creation of a cantonal bank	Ref.	19,217	14,371
Dec. 15	Increasing the state tax.	Ref.	13,537	28,119

CANTON OF BASLE (CITY)

Date	Subject of the Voting	Character	Votes Cast	
			In Favor	Against
1895	Proportional representation in the election of the Great Council (cantonal legislature)	Init.	1. Consenting to the initiative petition: 2731	2635
			2. Rejecting the law: 3850	4728

CANTON OF BASLE (CITY) (*Continued*)

Date	Subject of the Voting	Character	Votes Cast	
			In Favor	Against
1901	To repeal a resolution of the Great Council on wood pavements	Init.	1. Consenting to the initiative petition: 2532	1739
			2. Accepting the resolution of the Great Council 5233	3758
1903	Obligatory voting at elections and popular votes	Init.	Rejecting the initiative petition: 4064	5917
1904	Proportional representation in the election of the Great Council	Init.	Accepting the project: 5290	5280
1905	Protection of workers in bakeries	Init.	Rejecting the initiative petition: 1767	3732

1907	To repeal a resolution of the Great Council on a street railroad	Init.	1. Consenting to the initiative petition: 3489 1952 2. Accepting the resolution of the Great Council 4538 2202
1907	Repeal of Sec. 164 of the penal law of police . .	Init.	Rejecting the initiative petition: 3069 7392
1908	Highway law.	Init.	Rejecting the initiative petition: 3240 7041
1911	Abolition of the lighting tax	Init.	Rejecting the initiative petition: 3313 4585
1911	Introduction of compulsory voting	Init.	Rejecting the initiative petition: 3911 4595
1912	Abolition of the street-cleaning tax	Init.	Rejecting the initiative petition: 4559 6417
	Levying school tuition fee on non-residents . .	Init.	Accepting the initiative petition: 7824 2990

CANTON OF BASLE (RURAL)

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast	
					In Favor	Against
1893						
April 16	Law on the salaries of members of the Executive Council of the canton, clerks of courts and their deputies	Ref.	12,737	6,442	1,844	4,482
1895						
April 21	Law on gratuitous legal aid for the poor	Ref.	13,055	4,773	2,385	2,169
Id.	Law on contentions over wages between employees and employers	Ref.			2,609	1,868
Id.	Law to improve cattle breeding	Ref.			2,458	1,956
Id.	Law on absence from school and vacations	Ref.			1,950	2,483
Id.	Law on the salaries of district school teachers	Ref.			1,523	2,897
1896						
May 17	Law on the regulations of fields and lanes	Ref.	13,132	5,491	2,931	2,325
Id.	Law on elections and popular votes	Ref.			2,287	2,363
Nov. 29	Law on the organization of the cantonal Supreme Court and the supervision of the collection of debts and insolvency	Ref.	13,196	6,792	2,322	4,295
Dec. 13	Init. for an amendment of the law of mortgages	Init.	13,208	6,767	1,898	4,782

1897						
Aug. 29	Law on absence from school	Ref.	13,163	3,811	2,094	1,579
Id.	Law on the organization of the Supreme Court	Ref.			2,097	1,493
1898						
Nov. 13	Law on direct taxes	Ref.	13,377	6,576	1,798	4,621
1899						
Aug. 13	Law to create a second class district clerk's office in Arlesheim	Ref.	13,510	5,593	3,260	2,119
Id.	Law on the salaries of cantonal officials	Ref.			2,684	2,633
1901						
Sept. 29	Building law	Ref.	13,858	4,715	1,991	2,504
Id.	Law on cattle insurance	Ref.			2,056	2,383
Id.	Law on the taxation of joint stock companies, partnerships, etc.	Ref.			2,379	2,097
1902						
May 11	Building law	Ref.	14,107	5,730	3,513	2,125
1903						
Sept. 27	Law on the salaries of Protestant ministers	Ref.	14,257	3,915	1,682	1,961
Id.	Law on the Catholic parishes	Ref.			1,449	1,978
Id.	Law on cattle insurance	Ref.			1,970	1,740
Id.	Law on the granting of state scholarships	Ref.			1,585	1,941
1904						
June 5	Law on the salaries of Protestant ministers	Ref.	14,284	4,917	2,616	2,082
Id.	Law on the Catholic parishes	Ref.			2,227	2,250
Id.	Law on the granting of state scholarships	Ref.			2,292	2,257

CANTON OF BASLE (RURAL) (*Continued*)

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast	
					In Favor	Against
1905						
May 21	Law on judicial procedure	Ref.	14,432	8,433	4,956	3,088
Id.	Law on organization and salaries in the inferior courts	Ref.			3,956	3,952
Id.	Law on the Catholic parishes	Ref.	14,432	8,433	4,668	3,201
Id.	Law on public days of rest	Ref.			4,604	3,433
1907						
Nov. 3	School law	Ref.	14,995	11,161	4,702	6,316
1908						
Nov. 15	Law for subventions to railroads	Ref.	15,324	5,597	3,477	1,984
Id.	Law on the application of the net income of the cantonal bank	Ref.			3,866	1,569
Id.	Tax on sales of property	Ref.			3,125	2,276
Id.	Law for conditional sentences for crime	Ref.			3,769	1,598
Id.	Law on midwives	Ref.			3,952	1,385
1909						
Sept. 12	School law	Ref.	15,526	7,218	3,273	3,863

1909						
Sept. 12	Law on the duties and salary of the hospital physicians	Ref.	15,526	7,218	3,908	2,976
1910						
May 19	Law on traffic in automobiles and bicycles	Ref.	15,778	7,803	6,362	1,357
1911						
July 9	School law	Ref.	15,993	5,473	3,167	2,254
Aug. 27	Law on salaries of public officials	Ref.	16,096	6,472	2,735	3,583
	Law applying the federal civil code	Ref.			4,572	1,676
1912						
June 23	Law on aid in kind to the unemployed and the state employment office	Ref.	16,141	6,042	3,923	1,883
	Law on the salaries of public officials	Ref.			2,746	2,983

CANTON OF BERN

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast	
					In Favor	Against
1893						
April 23	Law on the organization of the cantonal police. .	Ref.	111,118	38,458	19,340	19,118
Id.	Law on the political effects of insolvency and fraudulent mortgages	Ref.		38,252	18,120	20,132
June 4	Total revision of the cantonal constitution . .	Ref.	113,683	71,989	56,424	15,565
Aug. 20	Amendment of the law governing the property tax	Ref.	114,288	48,452	31,853	13,744
1894						
May 6	Law on primary schools.	Ref.	116,301	76,974	40,133	29,128
Id.	Law on the political effects of insolvency and fraudulent mortgages	Ref.		76,832	34,170	35,917
July 15	Law on the local control of building lines and building regulations	Ref.	116,803	49,979	26,746	16,948
Id.	Law on hotels and the sale of liquor	Ref.		50,503	28,076	18,435
1895						
Feb. 3	Abolition of compulsory vaccination	Init.	118,449	53,127	27,468	24,600
1895						
May 5	Law on the cattle indemnity fund	Ref.	117,400	41,427	24,792	13,274
Id.	Law on vaccination	Ref.		41,792	16,683	22,679

1896						
March 1	Law on tillage	Ref.	119,006	56,582	20,770	30,462
Id.	Law for official inventory of estates	Ref.		56,434	19,794	34,382
Id.	Law on prizes for cattle	Ref.		56,985	26,224	27,101
Id.	Game law	Ref.		56,943	9,663	43,906
Id.	Law on insolvency	Ref.		56,835	16,339	36,844
May 3	Init. for the election of the Great Council (cantonal legislature) by proportional representation	Init.	119,542	62,471	29,093	32,118
Id.	Init. for the election of the Executive Council by the people by proportional representation	Init.		62,341	27,903	32,787
Id.	Init for the election of the members of the Council of States (federal senate) by the people	Init.		62,309	28,197	32,192
Oct. 25	Init. to improve the breeding of horses and cattle	Init.	120,754	57,392	33,126	20,606
1897						
Feb. 28	Resolution on the participation by the state in the construction of railroads	Ref.	120,915	68,401	50,679	15,961
July 11	Init. for proportional representation in the election of the Great Council	Init.	121,336	47,008	19,521	23,504
Nov. 28	Law on poor-law settlement	Ref.	122,174	71,646	56,784	14,450
1898						
May 1	Law on the cantonal bank	Ref.	124,405	61,762	39,534	15,089
Id.	Law on the political effects of insolvency and fraudulent mortgages	Ref.		62,141	33,013	22,555
Id.	Law for the local administration of guardianship	Ref.		61,840	39,664	15,004

CANTON OF BERN (*Continued*)

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast	
					In Favor	Against
1899						
Oct. 29	Law regulating popular votes and elections . . .	Ref.	125,769	54,375	32,889	13,140
Id.	Law on contribution by the canton to the care of the sick	Ref.	125,769	54,956	38,384	10,447
1900						
Jan. 21	Law for combining the veterinary school with the university	Ref.	125,947	40,596	30,215	8,887
April 29	Init. regulating the price of salt (a cantonal monopoly)	Init.	125,693	62,421	44,566	17,336
Nov. 4	Supplement to the law on local control of building lines and regulations.	Ref.	127,328	62,978	30,416	26,133
Id.	Law making women eligible for school boards . .	Ref.		63,142	17,190	42,238
1902						
March 16	Law for the preservation of antiquities	Ref.	125,784	33,142	20,389	12,000
May 4	Law for the participation of the canton in the construction and management of railroads.	Ref.	126,607	66,287	43,867	18,263
Id.	Inheritance and legacy taxes.	Ref.		65,978	30,104	31,302

1903						
Feb. 8	Law for the protection of animals	Ref.	128,876	43,081	15,059	26,990
Dec. 13	Init. on the normal school	Init.	127,233	65,316	25,264	39,514
May 17	Law on the insurance of cattle	Ref.	130,249	46,569	31,975	13,733
Oct. 25	Law on the dog-tax	Ref.	128,496	61,354	36,749	22,439
1904						
Mar. 13	Law on the inclusion of fixtures in mortgages of real estate	Ref.	130,827	39,400	24,522	13,986
1905						
Mar.19	Law on vocational training for industry and trade	Ref.	131,161	52,635	29,965	18,912
Id.	Law for ceasing work on Sunday	Ref.		52,651	35,102	14,093
Id.	Intercantonal agreement to relieve non-residents from giving security for costs in law suits	Ref.		52,368	30,500	17,082
Aug. 20	Forestry law	Ref.	131,194	39,601	20,858	17,459
Id.	Inheritance and legacy taxes	Ref.		39,435	17,433	20,216
1906						
Mar. 4	Const. amend. for the election of the Executive Council by the people with minority representation	Init.	132,648	49,964	38,331	10,936
May 6	Law on the cantonal police	Ref.	132,876	56,990	39,651	14,633
June 10	Law on the highway police	Ref.	133,528	56,321	37,975	15,450
1907						
May 26	Law on the use of water powers	Ref.	133,422	29,794	21,901	7,239
Nov. 3	Law on conditional sentences for crime	Ref.	138,064	92,831	44,875	29,521

CANTON OF BERN (*Continued*)

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast	
					In Favor	Against
1907						
Nov. 3	Law on the protection of vineyards from the phylloxera	Ref.	138,064	92,771	48,891	25,783
Id.	Const. amend. on courts of law	Ref.		91,847	41,951	31,511
Id.	Revision of Art. 111 of the cantonal constitution (which declares that no statute shall violate its provisions)	Ref.		92,364	23,760	49,025
Id.	Amend. of the law on street lines for building	Ref.		90,641	40,596	25,952
1908						
Feb. 23	Law on the protection of working women (lengthening the hours of work)	Ref.	137,945	59,304	36,867	20,085
Id.	Law on the creation of boards of arbitration and measures against violence in strikes	Ref.		59,454	35,240	22,897
Id.	Law on the prevention of tuberculosis and the care of the insane	Ref.		59,155	48,583	7,852
May 7	Law (founded on an initiative) to improve the breeding of horses and cattle	Ref.	137,540	41,779	25,375	14,569

1909						
Jan. 31	Law on the organization of courts of law	Ref.	139,138	31,696	16,727	13,693
Id.	Law on notaries public	Ref.		31,662	20,113	10,481
Id.	Law on the cantonal technical schools	Ref.		31,694	21,711	8,801
June 27	Law to simplify the registration of titles to land .	Ref.	138,649	33,546	17,259	14,886
Id.	Law authorizing a cantonal loan of 30,000,000 francs	Ref.	138,649	33,437	14,937	16,959
Id.	Supplement to the law for the protection of working women	Ref.		33,414	10,915	20,893
Oct. 31	Law on the administration of justice in the case of acts by public officials	Ref.	139,446	61,326	37,196	20,068
Id.	Law on the salaries of primary school teachers . .	Ref.		61,695	45,286	15,421
1910						
May 8	Law authorizing a cantonal loan of 30,000,000 francs	Ref.	140,421	76,381	45,526	28,955
1911						
May 28	Law applying the federal civil code	Ref.	141,292	42,435	29,485	11,763
Id.	Law on agricultural education	Ref.		42,196	26,451	14,148
Id.	Law authorizing a cantonal loan of 30,000,000 francs	Ref.		42,228	27,593	13,402
1912						
July 7	Law on the construction and management of railroads by the state	Ref.	144,316	39,633	28,646	10,440

CANTON OF GENEVA

Date	Subject of the Voting	Character	Registered Voters	Votes Cast	
				In Favor	Against
1880 July 4	Const. amend. to abolish state support of religion .	Ref.	17,413	4,044	9,306
1881 July 3	Const. amend. introducing popular election of judges	Ref.	19,256	2,652	3,746
1882 April 23	Law granting a subsidy of 40,000 francs for ten years to the narrow gauge railroad from Geneva to Ferney	Ref.	19,877	4,739	7,127
1884 July 6	Law for a subsidy for the construction of a railroad from Vollandes to the French frontier . . .	Ref.	18,631	7,040	3,040
1886 Sept. 26	Const. amend. changing electoral districts . . .	Ref.	18,441	6,355	5,986
Nov. 28	Const. amend. relating to the administration of public charity funds	Ref.	18,454	7,453	357

1888					
Nov. 25	Const. amend. extending the jurisdiction of the trade courts (prud'hommes)	Ref.	18,666	5,730	3,474
1890					
June 15	Const. amend. obliging members of the Legislature to submit to a re-election after appointment to salaried public office	Ref.	15,644	1,488	2,419
Id.	Const. amend. concerning the optional referendum	Ref.	15,644	1,480	2,397
Id.	Const. amend. concerning the legislative initiative	Ref.	15,644	1,508	2,715
1891					
July 5	Const. amend. concerning the legislative initiative	Ref.	18,544	5,588	605
Id.	Const. amend. prolonging from two to three years the tenure of the legislature and of the executive council	Ref.	18,544	3,903	2,318
1892					
May 22	Total revision of constitution	Ref.	18,668	4,369	6,053
Aug. 7	Const. amend. introducing proper representation for state legislation	Ref.	18,596	3,793	2,493
Id.	Const. amend. relating to the administration of the Protestant Church	Ref.	18,596	4,576	312

CANTON OF THE GRISONS

Date	Subject of the Voting	Character	Votes Cast	
			In Favor	Against
1893				
April 16	Law on the salaries of primary school teachers	Ref.	4,539	6,616
Id.	Law for an inheritance and legacy tax	Ref.	2,688	8,341
Id.	Stamp tax	Ref.	2,602	8,232
1894				
May 6	Game law	Ref.	4,038	5,119
Id.	Building law	Ref.	4,931	4,536
Oct. 14	Law on the political effect of insolvency	Ref.	6,628	1,548
1895				
Nov. 3	Law on the taxation of railroads	Ref.	6,601	5,295
1897				
June 20	Law for subventions by the canton for the construction of railroads	Ref.	9,362	2,578
Nov. 28	Police law	Ref.	7,128	2,852
Id.	Law on cattle insurance	Ref.	7,880	2,171
1898				
Nov. 6	Fishery law	Ref.	4,104	5,181

1899				
Nov. 19	Law on pedlars	Ref.	7,471	2,141
Id.	Law on fire police	Ref.	6,965	2,284
Id.	Law to divide Giova	Ref.	7,664	795
Id.	Law relating to the cantonal high school	Ref.	4,915	4,125
Id.	Amendment of the law of legal residence	Init.	3,393	6,514
1900				
Oct. 15	Law on the salaries of school teachers	Ref.	8,371	2,438
Id.	Law on innkeepers and the sale of liquor	Ref.	8,001	2,324
1901				
Nov. 3	Game law	Ref.	6,743	3,138
Id.	Sanitary ordinance	Ref.	4,190	4,461
1902				
Nov. 16	Fishery law	Ref.	6,162	2,896
Id.	Law on the legal liabilities of public officers for their official acts	Ref.	6,611	2,074
Id.	Law for the prevention of tuberculosis	Ref.	6,059	2,315
1904				
Feb. 28	Law to build a cantonal library	Ref.	5,631	3,918
Id.	Law to join in the agreement to relieve citizens of other cantons from giving security for costs in law suits	Ref.	6,120	2,509
Sept. 11	Law on compulsory education and the period of study	Ref.	6,488	3,900
Id.	Law on the election of representatives	Ref.	7,044	2,090
1906				
Mar. 18	Law on water rights	Ref.	8,515	2,243

CANTON OF THE GRISONS (*Continued*)

Date	Subject of the Voting	Character	Votes Cast	
			In Favor	Against
1907				
Oct. 13	Law on fire insurance	Ref.	8,416	5,181
Id.	Init. for the regulation of automobiles	Init.	2,074	11,184
Id.	Partial revision of the sanitary ordinance	Ref.	3,676	8,704
Nov. 3	Law on civil procedure	Ref.	8,740	5,756
1908				
Mar. 1	Law for a subvention by the canton to the Splügen railroad	Ref.	13,269	966
Id.	Law on carrying arms	Ref.	12,888	1,351
Oct. 25	Law to regulate strikes	Ref.	7,133	3,376
Id.	Law on the apportionment of cost of dykes in streams	Ref.	7,842	1,804
1909				
April 25	Law on conditional sentences for crime	Ref.	6,565	3,077
Oct. 31	Law on the salaries of school teachers	Ref.	7,426	3,463
Id.	Law on public assistance in the care of the sick	Ref.	8,544	2,667
Id.	Law for the protection of plants	Ref.	5,607	4,262
1910				
April 24	Law for building a chemical laboratory and model school	Ref.	2,905	9,467

CANTON OF LUCERNE

Date	Subject of the Voting	Character	Votes Cast	
			In Favor	Against
1893				
Feb. 5	Law on taxation	Ref.	11,426	11,392
1905				
April 2	Reduction of the Executive Council to five members to be chosen with minority representation	Init.	12,531	16,542
Id.	Init. forbidding members of the Executive Council and the highest court to be directors of companies	Init.	12,449	16,404
Id.	Election of the President of the Executive Council by the people.	Init.	12,489	16,313
Id.	Revision of taxation to raise the limit of exemption and to tax charitable and religious funds.	Init.	12,101	16,568
Id.	Init. granting one quarter of the revenue from liquor, etc., to the communes	Init.	11,458	16,096
Oct. 29	Supplement to the law on taxation	Ref.	14,603	12,708
1906				
Mar. 20	Law for the protection of game	Ref.	6,025	9,402
1909				
April 4	Const. amend. to provide proportional representation for the election of the Great Council	Ref.	15,735	11,531

CANTON OF ST. GALL

Date	Subject of the Voting	Character	Votes Cast	
			In Favor	Against
1893				
Jan. 29	Initiative for proportional representation	Init.	19,875	22,143
1896				
Jan. 19	Law for the protection of game	Ref.	7,327	29,219
June 28	Law for compulsory insurance of cattle	Ref.	16,314	17,545
Id.	Init. reducing the rate of interest on mortgages to four per cent.	Init.	22,642	12,859
Aug. 23	Law on fire insurance	Ref.	9,212	25,786
1897				
June 30	Law on the normal school	Ref.	13,584	21,624
Id.	Law on the code of civil procedure	Ref.	16,558	17,576
1899				
June 25	Law on burials in church graveyards	Ref.	12,996	22,871
July 30	Law restoring the rate of interest on mortgages to $4\frac{1}{2}$ per cent.	Ref.	21,799	12,928
1900				
Jan. 28	Law on direct state taxes	Ref.	17,859	23,972
1901				
Jan. 20	Init. for proportional representation in elections to the Great Council (cantonal legislature)	Init.	24,419	24,919

1901				
Feb. 10	Law on the teachers' council	Ref.	15,233	26,804
1904				
July 31	Law on the support of primary schools and the normal school	Ref.	24,891	14,066
1905				
Aug. 6	Law on innkeepers and the sale of liquor	Ref.	25,233	15,355
1906				
May 27	Law on district prisons	Ref.	16,321	26,416
1906				
July 22	Init. Partial revision of the constitution for proportional representation in the election of the Great Council	Init.	26,153	26,705
1907				
Feb. 24	Law for compulsory insurance of cattle	Ref.	19,522	22,619
1909				
Mar. 28	Game law	Ref.	13,586	35,844
May 23	Law on fire insurance	Ref.	10,940	31,819
1910				
Feb. 27	Law on apprentices	Ref.	16,224	28,786
1911				
Feb. 5	Const. amend. introducing proportional representation for the Great Council	Ref.	29,700	28,106
1912				
Feb. 4	Const. amend. on the union of communes	Ref.	27,411	16,343

CANTON OF SCHAFFHAUSEN

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast	
					In Favor	Against
1895						
Feb. 24	Const. amend. to introduce the compulsory referendum	Ref.	7,816	6,052	4,453	1,427
1896						
Nov. 15	Revision of the constitution of the canton	Ref.	7,862	6,712	2,409	4,204
1897						
May 23	Law on cattle insurance	Ref.	7,687	6,049	4,097	1,722
Id.	Law to repeal Sec. 477 of the civil code	Ref.	7,687	6,055	4,796	944
1898						
July 10	Law on the building of a cantonal high school house.	Ref.	7,798	5,806	4,490	1,190
Id.	Supplement to the law on water powers	Ref.	7,798	5,823	4,322	1,354
1899						
June 25	Law on the phylloxera	Ref.	8,090	6,073	3,307	2,548
Id.	Law on markets and pedlars	Ref.	8,090	6,033	4,640	1,225
Id.	Question of a further revision of the constitution of the canton	Ref.	8,090	6,033	1,507	4,334
1900						
Feb. 11	Init. for amendment of Art. 48	Init.	8,179	5,980	2,668	3,173
Dec. 2	Law on the clerks of the district court of Schaffhausen.	Ref.	8,155	6,411	2,804	3,384

1901						
June 30	Law for the transfer to the state and enlargement of the cantonal hospital	Ref.	8,153	6,123	4,538	1,476
1902						
May 25	Law for the improvement of the river Biber	Ref.	8,315	6,457	5,723	679
1903						
July 19	Law on innkeepers and the sale of liquor	Ref.	8,313	6,116	3,363	2,540
1904						
Feb. 14	Law on the Schleitheimer railroad	Ref.	8,412	7,187	4,267	2,861
July 3	Election law	Ref.	8,366	5,956	4,276	1,414
1905						
April 30	Forestry law	Ref.	8,338	5,850	3,641	2,036
Oct. 1	Law on the salaries of teachers in the high school	Ref.	8,415	6,329	4,197	2,023
Id.	Game law	Ref.	8,415	6,361	2,262	3,993
1907						
Nov. 10	Law on the salaries of parish ministers	Ref.	8,468	6,433	5,008	1,312
1908						
April 12	Law on the production and distribution of electricity	Ref.	8,484	6,585	5,378	1,097
May 3	Law on the salaries of school teachers	Ref.	8,421	6,158	4,387	1,656
Id.	Resolution for the enlargement of the insane asylum	Ref.	8,421	6,165	5,513	562
June 14	Foresters' law	Ref.	8,410	5,687	4,012	1,431
Id.	Law on the keeping and taxation of dogs	Ref.	8,410	5,706	3,523	1,923
1909						
Mar. 7	Law on the salaries of public officials	Ref.	8,468	6,175	3,158	2,880
June 27	Code of criminal procedure	Ref.	8,476	5,957	4,878	847

CANTON OF SCHAFFHAUSEN (*Continued*)

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast	
					In Favor	Against
1910						
Dec. 18	Inheritance tax	Ref.	8,684	6,327	4,494	1,684
1911						
Sept. 24	Law for applying the federal civil code	Ref.	8,788	6,449	3,605	2,688
1912						
Aug. 11	Const. amend. to reduce the number of members in Great Council	Ref.	8,869	6,268	4,216	1,828
Id.	Amendment of the electoral law	Ref.	8,869	6,266	4,349	1,714
Id.	Law on taxes on water rights	Ref.	8,869	6,262	4,535	1,498

CANTON OF SCHWYZ

Date	Subject of the Voting	Character	Ballots Cast	Votes Cast	
				In Favor	Against
1895					
May 12	Law on the taxation of business incomes	Ref.	7,801	1,152	6,614
Oct. 20	Init. for a total revision of the cantonal constitution	Init.	5,527	4,430	1,065
Oct. 27	Amend. of Secs. 7, 8, 9, and 10 of the criminal code	Ref.	1,248	984	259

1896					
Sept. 27	Law for the erection of a work-house	Ref.	1,927	1,615	310
1897					
Jan. 10	Law for the erection of a cantonal bank building	Ref.	2,923	1,690	1,222
1898					
Feb. 13	Vote on adoption of a new constitution framed Nov. 18, 1897	Ref.	12,419	4,079	8,249
Oct. 23	Partial revision of the constitution	Ref.	7,309	6,440	632
Id.	Law on the issue, payment of interest on, and redemption of stocks and bonds	Ref.	7,309	6,571	468
Id.	Law on usury	Ref.	7,309	6,614	405
Id.	Law on the price of salt and the application of the net profits therefrom (a state monopoly)	Ref.	7,309	6,502	473
1899					
Sept. 24	Law on the discharge of encumbrances on land	Ref.	4,050	3,078	718
Id.	Law on innkeepers and the sale of liquor	Ref.	4,050	2,609	1,299
Id.	Law to create a voting precinct at Goldau	Ref.	4,050	3,028	605
1900					
Mar. 11	Partial revision of the constitution	Ref.	5,181	3,777	1,162
Id.	Building law	Ref.	5,181	3,618	1,346
1901					
Nov. 24	Law on warranty in the sale of cattle	Ref.	2,142	1,470	580
Id.	Law for completion of the registry of title to land	Ref.	2,142	1,551	485
Id.	Law to create a voting precinct at Studen	Ref.	2,142	1,718	258
Id.	Law to create a voting precinct at Immensee	Ref.	2,142	1,715	259

CANTON OF SCHWYZ (*Continued*)

Date	Subject of the Voting	Character	Ballots Cast	Votes Cast	
				In Favor	Against
1901					
Nov. 24	Law to create a voting precinct at Merlischachen	Ref.	1,941	1,666	248
1902					
Mar. 9	Highway law	Ref.	3,435	1,593	1,682
Id.	Tax law on the export of wood	Ref.	3,435	1,884	1,357
1903					
Oct. 25	Law to create a voting precinct at Siebnen-Schubelbach .	Ref.	5,060	3,598	1,100
Id.	Law on bee hives.	Ref.	5,060	2,802	1,658
Id.	Law on commercial trades.	Ref.	5,060	2,604	2,063
1906					
Oct. 28	Law on the practice of the law	Ref.	2,314	1,597	654
Id.	Law concerning the local administration and accounting of the communes	Ref.	2,314	1,641	585
Id.	Resolution on the use of the fire insurance fund	Ref.	2,314	1,732	502
1907					
April 21	Const. amend. and law for proportional representation in the election of the Cantonal Council (legislature). . . .	Ref.	4,937	2,616	2,089
Id.	Law on apprentices.	Ref.	4,937	3,259	1,406

1908					
Jan. 26	School law	Ref.	5,917	1,791	3,425
Id.	Law to create a voting precinct at Ried-Bisisthal-Muotathal	Ref.	5,917	3,700	1,396
April 26	Law on cattle insurance	Ref.	9,676	1,910	7,223
1908					
Sept. 13	Law on the expropriation of water rights	Ref.	4,273	2,933	1,251
1909					
March 7	Law to create a voting precinct at Schindellegi	Ref.	3,444	2,933	307
Id.	Law on criminal procedure	Ref.	3,444	2,371	820
1910					
Jan. 16	Law on the improvement of streams beyond the limits of the canton	Ref.	5,271	4,303	895

CANTON OF SOLOTHURN

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast	
					In Favor	Against
1893						
Jan. 15	Act for the revision of the constitution by a constitutional convention	Ref.	18,601	11,802	4,943	6,631
Id.	Law for the creation of industrial courts of arbitration	Ref.		11,802	9,936	1,311
May 7	Law for reform of the finances	Ref.	18,846	15,539	6,996	8,473
Aug. 20	Law on the political effect of insolvency	Ref.	18,803	7,091	5,503	1,395

CANTON OF SOLOTHURN (*Continued*)

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast	
					In Favor	Against
1894						
Mar. 4	Law on the legal residence of the town clerk of Balsthal, Olten, and Dorneck	Ref.	18,589	4,869	3,548	1,126
Nov. 25	Law on cattle insurance	Ref.	19,092	5,393	3,293	1,997
1895						
Mar. 17	Const. amend. to allow Init. for amendment of the constitution, proportional representation, and reform of the finances	Ref.	19,180	11,331	8,359	2,776
Sept. 29	Law on the sale of bread	Ref.	20,026	7,447	6,609	545
Nov. 3	Law on the cantonal bank and the savings bank	Ref.	20,434	11,235	9,348	1,432
1896						
Feb. 9	(*a*) Init. by the liquor dealers for a new law on innkeepers and the sale of liquor	Init.	20,419	7,715	182	6,920
	(*b*) Alternative proposal by the Cantonal Council for a law on the subject	Ref.		7,715	4,210	3,086
Id.	Law on the protection of working women	Ref.	20,419	7,715	6,798	712
1897						
Feb. 28	Amendment of the law on compulsory attendance at the primary schools	Ref.	21,658	13,122	4,636	8,060

1897						
July 11	Law on the salaries of the cantonal police.	Ref.	21,519	7,503	6,023	1,249
1898						
Feb. 20	Law on the dog-tax.	Ref.	22,190	16,686	8,706	7,229
July 31	Law on the salaries of members of the Executive Council of the canton	Ref.	22,037	8,826	4,833	3,687
Nov. 13	Resolution for a subvention by the canton to the Solothurn-Münster railroad.	Ref.	22,785	15,314	9,938	5,074
1899						
April 23	Amendment of the law to create courts for industrial arbitration	Ref.	22,513	12,476	9,904	2,060
Id.	Law on the increase of salaries of primary school teachers with length of service, and on the appointment of teachers	Ref.		12,476	8,930	3,178
July 16	Law on popular votes and elections.	Ref.	22,379	5,208	3,161	1,623
Id.	Law on markets and pedlars.	Ref.		5,208	4,050	824
Oct. 29	Law on fire insurance and fire police	Ref.	22,519	11,342	5,777	4,877
1900						
Nov. 4	Law amending the code of civil procedure.	Ref.	23,051	13,755	9,702	3,394
Id.	Law on the organization of the building, land registry and forest administration	Ref.		13,755	6,088	6,921
1901						
Feb. 10	Law on the beginning of the school year, and the extension of the technical department of the higher trade schools by a summer semester	Ref.	23,129	8,477	4,174	3,917

CANTON OF SOLOTHURN (*Continued*)

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast	
					In Favor	Against
1901						
Nov. 17	Amendment of the law on fire insurance and fire police	Ref.	22,874	6,741	4,793	1,639
1902						
Oct. 26	Law on the officials and employees of the canton.	Ref.	23,314	17,754	8,116	9,157
1903						
Mar. 15	Law on local cattle insurance	Ref.	23,639	15,889	9,007	6,117
Oct. 25	Law on the granting of citizenship in the canton	Ref.	23,652	12,766	7,502	4,772
1904						
Aug. 7	Amendment of the law putting in force the federal statute on the collection of debts and insolvency	Ref.	24,163	12,894	9,085	2,500
Nov. 27	Law on the officials and employees of the canton.	Ref.	24,392	18,271	9,789	8,113
1905						
Jan. 29	Resolution for the establishment of an arsenal in Solothurn	Ref.	24,378	10,680	8,644	1,852
April 30	Game law	Ref.	24,386	12,483	3,800	8,506
1906						
Mar. 18	Law on the salaries of the professors and teachers in the cantonal school	Ref.	24,530	8,853	4,447	4,148

1906						
May 13	I. Init. to change the law on thatched roofing . .	Init.	24,445	8,639	2,155	5,957
Id.	II. Resolution for a subvention by the canton to the Solothurn-Schönbühl railroad	Ref.		8,639	3,352	4,936
Id.	III. Resolution for a subvention by the canton to the Langenthal-Oensingen railroad	Ref.		8,639	4,580	3,701
June 10	I. Law for the increase of the capital of the cantonal bank	Ref.	24,542	11,218	6,970	3,502
Id.	II. Building law	Ref.		11,218	6,160	4,165
1907						
Feb. 3	I. Law to join in the agreement to relieve citizens of other cantons from giving security for costs in law suits.	Ref.	25,020	11,709	9,623	1,645
Id.	II. Resolution for the subvention by the canton to the Solothurn-Schönbühl railroad	Ref.		11,709	7,655	3,702
June 16	Amendment of the law for direct taxation.	Ref.	24,956	6,542	1,203	5,036
Dec. 15	I. Const. amend. relating to the organization of the building, land registry and forest administration .	Ref.	25,556	9,757	5,995	1,640
Id.	II. Law on the same subject.	Ref.		7,957	6,018	1,615
Id.	III. Divorce law	Ref.		7,957	4,188	3,512
Id.	IV. Law on the insurance of goats	Ref.		7,957	6,730	930
1908						
Feb. 2	Law on the cantonal police	Ref.	25,644	13,245	10,328	2,597
Nov. 3	Amendment of the law on the cantonal bank and the savings bank	Ref.	25,854	11,896	9,043	1,561

CANTON OF SOLOTHURN (*Continued*)

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast	
					In Favor	Against
1908						
Oct. 25	Resolution for a subvention by the canton to the Niederbipp-Solothurn street railroad	Ref.	25,848	13,053	7,786	4,524
1909						
Mar. 21	I. Const. amend. to repeal the provision about the salaries of primary school teachers	Ref.	25,893	17,436	12,367	4,139
Id.	II. Law on the salaries of teachers in the primary and trade schools, and on the cantonal school funds . .	Ref.		17,436	12,228	4,043
Aug. 29	I. Law on the cantonal school, the agricultural school, and the secondary schools	Ref.	25,838	6,507	5,076	1,208
Id.	II. Resolution for a subvention by the canton for the extension of the Birsigthal railroad	Ref.	25,838	6,507	4,863	1,352

CANTON OF THURGAU

Date	Subject of the Voting	Character	Votes Cast	
			In Favor	Against
1893				
Jan. 29	Law on the salaries of district sheriffs	Ref.	6,315	10,042
Id.	Law for a general land registry survey	Ref.	6,832	9,448
Id.	Law on the taxation of licenses for the sale of beer	Ref.	6,823	9,464
Id.	Law for state subventions to spur branches of railroads	Ref.	3,799	12,429
June 18	Init. for furnishing textbooks without charge in public schools	Init.	5,539	9,649
1894				
Jan. 28	Law on the mortgaging of cattle	Ref.	8,104	4,822
May 6	Resolution for the completion of the cantonal insane asylum at Münsterlingen	Ref.	8,048	6,217
1895				
Feb. 3	Law on the obligation to carry through the canton and feed poor travellers	Ref.	10,235	3,963
Aug. 11	Law on highways	Ref.	7,112	6,276
Id.	Law on the improvement and maintenance of the public waterways	Ref.	7,387	5,988
1896				
Feb. 9	Law on fraud in the sale of real estate	Ref.	8,157	6,816

CANTON OF THURGAU (*Continued*)

Date	Subject of the Voting	Character	Votes Cast	
			In Favor	Against
1897				
Aug. 8	Law on the salaries of school teachers	Ref.	7,623	7,540
Id.	Law on insurance against phylloxera	Ref.	7,724	7,174
1898				
Feb. 22	Revision of the cantonal bank law	Ref.	13,944	5,207
July 3	Law on taxation	Ref.	7,768	6,397
Id.	Law on the organization of the cantonal hospitals	Ref.	8,208	5,723
Id.	Resolution for a ward for paying patients in the cantonal insane asylum	Ref.	6,790	7,035
Dec. 18	Law on markets and pedlars	Ref.	10,106	4,648
1899				
April 9	Law on gratuitous burial	Ref.	8,633	7,236
Id.	Amendment of the notarial law	Ref.	5,216	10,544
1900				
April 29	Law for state subventions to railroads	Ref.	5,801	7,480
Id.	Law on the sale of salt	Ref.	7,519	5,613
Oct. 14	Law on the supply of liquor to public officials	Ref.	8,131	6,234
Id.	Law on the insurance of cattle	Ref.	9,007	5,045

1900				
Dec. 9	Agreement with other cantons about warranty in cattle sales . .	Ref.	7,187	6,654
1901				
Mar. 17	Law on the organization of the teacher's college	Ref.	6,502	8,667
1902				
July 27	Law on a general cantonal fire insurance office	Ref.	6,138	6,503
Id.	Law on the bonds of public officials	Ref.	6,885	5,653
1904				
Jan. 3	Init. to repeal the law on the supply of liquor to public officials .	Init.	5,910	10,935
Oct. 2	Law on the suffrage, elections, popular votes, and on the dismissal of officials	Ref.	11,677	2,337
Dec. 18	Law on the salaries of public officials	Ref.	3,383	13,854
1905				
Mar. 19	Law on traffic in automobiles and bicycles	Ref.	17,911	2,323
Nov. 5	Resolution to join in the agreement to relieve citizens of other cantons from giving security for costs in law suits	Ref.	13,397	5,929
Id.	Resolution to adopt the provision about cases of necessity in the new law on innkeepers and the sale of liquor	Ref.	10,583	9,303
1906				
Jan. 21	Law for state subventions to railroads	Ref.	11,663	9,368
Id.	Law for the establishment of a winter agricultural school . . .	Ref.	12,141	8,883
Aug. 19	Resolution on the cantonal school buildings.	Ref.	8,555	11,241
1908				
April 26	Law on the salaries of public officials	Ref.	7,435	14,385
May 31	Init. for the creation of industrial courts	Init.	10,910	8,550

CANTON OF THURGAU (*Continued*)

Date	Subject of the Voting	Character	Votes Cast	
			In Favor	Against
1908				
July 5	Resolution on the cantonal school buildings	Ref.	13,834	7,798
1909				
May 16	Law on fire insurance of buildings	Ref.	8,149	10,330
Id.	Law for the improvement of cattle breeding	Ref.	9,410	8,902
1910				
Feb. 20	Law for the care of drunkards	Ref.	10,321	13,178

CANTON OF THE VALAIS

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast	
					In Favor	Against
1895						
Oct. 20	Decree authorizing a public loan of a million francs for the cantonal savings and mortgage bank . .	Ref.	27,605	12,969	8,758	4,161
1904						
June 19	1. Shall the constitution be revised?	Ref.	29,609	18,409	11,846	1,290

1904						
June 19	2. Shall it be total?	Ref.		18,409	11,822	1,055
	3. Shall it be partial?	Ref.		18,409	1,042	11,234
	4. Shall it be made by the Grand Council?	Ref.		18,409	10,854	2,089
	5. Shall it be made by a constitutional convention?	Ref.		18,409	1,889	10,629
1905						
Jan. 8	Law on highways	Ref.			12,240	2,509
1907						
May 12	Vote on accepting the constitution so framed	Ref.	29,745	10,930	8,144	2,621
June 9	Law on cattle insurance	Ref.	28,240	9,290	7,267	1,996
Aug. 18	Law on primary and normal schools	Ref.	29,444	6,212	4,002	2,174
Dec. 15	Law on advertising posters	Ref.	29,586	7,939	5,667	2,053
Id.	Law on deposit of soil by irrigation	Ref.	29,586	7,939	5,024	2,793
Id.	Law on municipal offices	Ref.	29,586	7,939	5,100	2,601
Id.	Decree on the salaries and removal of state officials	Ref.		7,939	2,206	5,380
1908						
July 5	Law on elections and voting	Ref.	30,341	11,060	7,040	3,721
Dec. 27	Law on revenue stamps	Ref.	30,410	8,434	5,810	2,204
Id.	Decree on the mortgage bank	Ref.			5,540	2,731
1909						
Sept. 26	Law against indecent pictures	Ref.	30,168	13,190	8,533	4,344
Id.	Law on the organization of the police	Ref.		13,190	5,597	7,231
Id.	Law on the salaries of school teachers	Ref.		13,190	6,737	6,075

CANTON OF THE VALAIS (*Continued*)

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast	
					In Favor	Against
1911						
Jan. 29	Law changing the code of criminal procedure . .	Ref.	30,416	14,978	11,190	3,350
	Law on secondary education.	Ref.		14,978	9,316	5,226
Aug. 27	Law applying the federal civil code.	Ref.	30,545	11,667	5,614	5,636
Dec. 17	Law on fire police	Ref.	30,496	11,174	6,745	4,249
1912						
May 5	Law on the enlargement and repurchase of an asylum.	Ref.	30,821	7,252	4,383	2,846
June 23	Law applying the federal civil code.	Ref.	30,728	12,397	9,848	2,424
Id.	Revision of the const. provision on salaries:					
	1. As proposed by initiative.	Init.		12,397	1,133	10,800
	2. As proposed by the Grand Council. . . .	Ref.		12,397	7,889	4,071
1913						
Jan. 12	Amendment of the law on elections and voting .	Ref.	30,916	8,946	5,614	3,238
Id.	Intercantonal agreement	Ref.		8,946	6,087	2,047

CANTON OF VAUD

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast	
					In Favor	Against
1902 Sept. 28	Law to make Sunday a legal day of rest	Ref.	68,225	38,920	18,978	19,530
1906 Sept. 23	Law to prohibit the sale of absinthe at retail . .	Ref.	70,037	39,493	23,062	16,025

CANTON OF ZURICH

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast		Per cent of invalid or blank ballots cast	Per cent of registered voters casting valid votes
					In Favor	Against		
1893 April 23	Amendment of the constitutional provision for the appointment of teachers and ministers	Ref.	83,586	63,919	25,725	23,109	23.6	58.4
	Whether such an amendment shall be made (a) as proposed by initiative . .	Init.			8,625	34,913	31.9	52.1

CANTON OF ZURICH (*Continued*)

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast		Per cent of invalid or blank ballots cast	Per cent of registered voters casting valid votes
					In Favor	Against		
1893								
April 23	(*b*) as proposed by the Cantonal Council	Ref.			24,368	16,973	35.3	49.5
Id.	Amendment of the law on innkeepers (re-establishment of licensed taverns)	Ref.			31,533	13,603	27.8	53.9
Id.	Building law for urban communities	Ref.			26,366	20,497	26.7	56.1
Aug. 20	Law on the keeping and taxation of dogs	Ref.	84,950	61,763	42,959	9,811	14.6	62.1
Id.	Law to separate certain parishes already in practice independent	Ref.			37,295	6,625	28.9	51.7
Id.	Law for the assumption by the canton of the greater part of the expense of maintaining the highways	Ref.			42,504	7,025	20.0	58.3
1894								
Mar. 4	Law forbidding work in factories on holidays	Ref.	86,451	62,750	45,701	5,489	18.4	59.2
Id.	Law reducing the premiums in the institution for fire insurance	Ref.			40,788	6,294	25.0	54.4

1894								
June 17	Amendment of the law on markets and pedlars	Ref.	87,292	63,070	38,385	9,536	24.0	54.9
Id.	Resolution for the maintaining of the cantonal phylloxera fund	Ref.			30,375	15,996	26.8	52.9
Id.	Amendment of the law on prevention of the phylloxera	Ref.			29,156	16,063	28.3	51.8
Id.	Law increasing the tax on bank-notes	Ref.			37,334	10,004	24.9	54.2
Id.	Resolution to create two new communes by dividing old ones	Ref.	87,292	63,070	22,497	29,639	17.3	59.7
Aug. 12	Init. to base the representation in the Cantonal Council on the number of Swiss citizens instead of the number of inhabitants	Init.	87,269	67,199	32,515	25,955	13.0	67.0
Id.	Law regulating more strictly the signature of petitions for the initiative	Ref.			41,723	13,580	17.7	63.4
Id.	Law for the protection of women workers	Ref.			45,909	12,531	13.0	66.9
Id.	Init. to abolish retiring pensions for teachers and ministers	Init.			23,207	35,756	12.3	67.5
Dec. 28	Law on the salaries of members of the Executive Council and the Supreme Court of the canton	Ref.	87,266	65,991	19,544	41,177	8.0	69.6

CANTON OF ZURICH (*Continued*)

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast		Per cent of invalid or blank ballots cast	Per cent of registered voters casting valid votes
					In Favor	Against		
1895								
May 19	Law for the division of certain voting districts	Ref.	88,527	65,982	41,067	10,999	20.0	58.8
Id.	Law for the compulsory insurance of cattle and on the indemnity for their loss by disease	Ref.			34,118	22,127	14.7	63.6
Id.	Const. amend. for an inheritance tax.	Ref.			21,595	28,318	24.4	56.4
Id.	Law for an inheritance tax (taxation on direct descendants and an official inventory of all estates) .	Ref.			21,200	34,190	16.1	62.6
Nov. 3	Law to abolish the official regulation of the weight of bread . . .	Ref.	88,184	67,365	34,826	21,339	16.6	63.7
Id.	Law for the election of laymen to the Synod of the Church	Ref.			34,420	14,684	27.1	55.7
Id.	Law to increase the number of judges of the district court of Zurich	Ref.	88,184	67,365	36,127	12,902	27.2	55.6
Id.	Law to create a new parish. . . .	Ref.			42,896	7,008	25.9	56.6

Dec. 22	Law for the organization of industrial courts of arbitration	Ref.	88,365	67,757	39,231	15,510	19.2	61.9
Id.	Law on the trade in cattle (higher taxes)	Ref.			33,630	20,495	20.1	61.2
Id.	Init. to prohibit vivisection. . . .	Init.			17,313	39,478	16.2	64.2
Id.	Alternative law for the protection of animals.	Ref.			35,195	19,448	19.3	61.8
1896								
May 31	Law on innkeepers and retail trade in liquor, with stricter police supervision.	Ref.	89,566	66,372	42,238	15,601	12.9	64.5
Id.	Law on bond and note brokerage (higher taxes and more strict supervision)	Ref.			38,403	11,657	24.6	55.9
Id.	Law on the capital towns of districts (increasing the compensation to the city of Zurich).	Ref.			37,775	10,601	27.1	54.0
Id.	Law to accept associations of public officers as sureties on the bonds of their members	Ref.			38,861	10,125	26.2	54.7
Oct. 25	Law for the inspection of savings banks.	Ref.	91,501	63,380	19,870	30,056	21.2	54.6
Id.	Law to relieve Winterthur from the obligation to build the technical school	Ref.			32,275	15,720	24.2	52.5

CANTON OF ZURICH (*Continued*)

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast		Per cent of invalid or blank ballots cast	Per cent of registered voters casting valid votes
					In Favor	Against		
1897								
June 27	Init. for amendment of the code of criminal procedure	Init.	93,451	69,977	18,526	32,122	17.6	54.2
Id.	Init. for amendment of the criminal law (the suppression of brothels).	Init.			10,273	18,761	58.5	31.1
Id.	Alternative law proposed by the Cantonal Council to tolerate them	Ref.	93,451	69,977	40,751	14,710	20.7	59.4
Id.	Law to increase the cantonal police	Ref.			37,377	13,905	26.7	54.9
1898								
July 3	Law on admission to practice law .	Ref.	94,243	59,748	24,355	17,705	29.6	44.7
Id.	Special vote on the section admitting women	Ref.			21,787	20,122	29.9	44.5
Id.	Law to tax land values instead of rental values in the city of Zurich and on the transfer taxes on land in Zurich and Winterthur	Ref.			27,709	14,390	29.6	44.7
Id.	Resolution for a loan to enlarge an insane asylum	Ref.			37,252	6,347	26.9	46.4

1898								
July 3	Resolution for the sale of the old prison, and the building of a new one and police barracks	Ref.			33,830	8,200	29.7	44.7
Nov. 13	Law to establish a cantonal fire insurance office for movable property	Ref.	95,253	72,276	26,709	39,689	8.1	69.7
1899								
Feb. 26	Const. amend. to abolish the provision that the number and pay of persons employed by the state must be fixed by statute	Ref.	95,753	62,572	24,458	21,032	27.3	47.5
Id.	Law on the organization and procedure of the Executive Council and its bureaus	Ref.			24,338	21,418	26.9	47.8
Id.	Law on the navigation of the lakes in the canton, to comply with the uniform regulations of the Confederation.	Ref.			33,801	11,667	27.3	47.5
June 11	Law on the years of attendance, etc., required in the public schools	Ref.	95,338	71,827	41,371	25,860	6.4	70.6
Aug. 20	Resolution for the assumption by the canton of the deficit in conducting the home for the infirm .	Ref.	95,289	61,129	42,998	6,369	19.2	51.8

CANTON OF ZURICH (*Continued*)

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast		Per cent of invalid or blank ballots cast	Per cent of registered voters casting valid votes
					In Favor	Against		
1899								
Oct. 29	Law to increase the number and fix the salary of the judges of the Supreme Court	Ref.	95,606	63,994	27,786	22,114	22.0	52.2
Dec. 17	Factory law	Ref.	95,715	67,188	19,375	40,106	11.5	62.2
Id.	Law increasing the strictness of provisions for the inheritance tax.	Ref.			23,193	35,340	12.9	61.2
1901								
Mar. 24	Law on the appointment, salaries, etc., of district officials	Ref.	96,444	65,240	30,880	18,588	24.2	51.3
Id.	Amendment of the statute on the cantonal fire insurance office (tax for exemption from fire duty, etc.)	Ref.			31,387	17,973	24.4	51.2
Id.	Init. to repeal the examination for admission to practice law	Init.			25,500	27,442	18.9	54.9
June 2	Law regulating examinations for the united veterinary school and university	Ref.	95,721	49,526	21,692	9,880	36.3	33.0

Id.	Law reducing the number and lengthening the term of members of the city council of Zurich . .	Ref.			20,005	10,226	39.0	31.6
Dec. 15	Law making uniform regulations for water powers	Ref.	95,648	59,990	26,587	24,332	15.1	53.3
1902								
Mar. 16	Init. to reduce the number of liquor licenses	Init.	96,335	63,270	10,018	43,000	16.2	55.0
Id.	Law regulating the business of the cantonal bank	Ref.			37,425	14,362	18.2	53.8
Id.	Const. amend. to reduce the ratio of members of the cantonal legislature to population	Ref.	96,335	63,270	22,383	28,085	20.3	52.4
April 27	Resolution to transfer an agricultural experiment station to the canton	Ref.	96,295	68,990	46,790	10,587	16.9	59.6
Oct. 26	Law to revise the organization of the evangelical established churches .	Ref.	96,839	65,067	28,445	26,721	15.3	57.0
1903								
Aug. 30	Law to revise the city government of Zurich (redistricting, proportional representation, direction of education by the school board, but election of teachers by the city council, etc.)	Ref.	97,088	63,630	17,964	33,279	19.5	52.8

CANTON OF ZURICH (*Continued*)

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast		Per cent of invalid or blank ballots cast	Per cent of registered voters casting valid votes
					In Favor	Against		
1903								
Aug. 30	Law on the capital towns of districts (increase in compensation thereto, etc.)	Ref.			21,565	27,724	22.5	50.8
Id.	Resolution for an agreement among the cantons to limit the security required in law suits	Ref.			28,633	20,319	23.1	50.4
Id.	Const. amend. to change the method of appointing school teachers in towns with more than 10,000 people	Ref.			17,464	33,147	19.1	52.1
1904								
Jan. 31	Const. amend. on the administrative union of school districts. . .	Ref.	97,870	72,611	36,936	22,734	17.8	61.0
Id.	Law on the formation, union, and separation of school districts. . .	Ref.			39,076	22,406	15.3	62.9
Id.	Init. to repeal the Act of 1897 which tolerated brothels	Init.			18,016	49,806	6.6	69.3

May 15	Law to increase the salaries of school teachers	Ref.	97,827	67,420	30,811	31,040	8.3	63.2
Nov. 27	Law that mortgages shall cover rent, etc., in suits for debts and in bankruptcy	Ref.	98,520	78,773	44,122	25,498	11.6	70.7
Id.	Init. to permit anyone to practice medicine without the use of drugs or surgery	Init.			23,020	51,486	5.4	75.6
Id.	Law to increase the salaries of school teachers	Ref.			43,704	31,565	4.5	76.4
Id.	Law on the capital towns of districts. (See Aug. 30, 1903) . . .	Ref.			45,359	21,362	15.3	67.7
1905								
April 30	Init. to make four per cent. the maximum rate of taxation . . .	Init.	99,071	73,785	24,116	42,592	9.6	67.3
June 25	Resolution for new buildings for the cantonal school, the technical school, and the university . . .	Ref.	98,939	56,013	31,436	15,195	16.7	47.1
1906								
April 22	Law for leasing the right to shoot birds and game (caused by the new federal law)	Ref.	100,545	71,933	26,025	40,534	7.5	66.2
Id.	Law on apprentices (practical training and examination)	Ref.			37,629	28,110	8.6	65.4
Dec. 9	Law to unite certain communes . .	Ref.	101,294	59,538	45,808	2,986	18.0	48.2

CANTON OF ZURICH (*Continued*)

Date	Subject of the Voting	Character	Registered Voters	Ballots Cast	Votes Cast		Per cent of invalid or blank ballots cast	Per cent of registered voters casting valid votes
					In Favor	Against		
1907								
May 12	Const. amend. on elections (eligibility of women; right of insolvents and paupers who have not contracted debts to vote; reduction of ratio of members of the legislature to population, etc.) . .	Ref.	102,377	75,504	26,161	37,963	15.1	62.7
Id.	New electoral law, providing for proportional representation at the option of the communes, etc. . .	Ref.	102,377	75,504	26,352	39,146	13.2	64.0
Id.	Law on public days of rest replacing the Sunday Law of 1882	Ref.			52,217	18,071	6.9	68.7
July 28	Law (based on an initiative) to amend the building law in cities .	Ref.	102,778	63,909	38,133	14,569	17.5	51.3
Id.	Forestry Law, enlarging the area affected, with better inspection and cultivation (caused by a federal statute)	Ref.			35,269	17,250	17.8	51.1

Id.	Law (based on an initiative) on the organization and salaries in notarial offices — compensation, etc.	Ref.			36,826	17,751	14.6	53.1
1908								
Mar. 15	Law on permits for the shooting of birds and game (caused by the new federal law)	Ref.	104,767	76,528	60,098	9,929	8.5	66.8
Id.	Law on the electrical industries of the canton	Ref.			61,735	8.505	8.2	67.0

Appendix B

Results of the General Referendum and Initiative in America

ARIZONA. 1912

Subject of the Law	Character [1]	Yes	No	Total	Result	Per cent of voters at election voting	Per cent of registered voters voting
Registered voters	. . .	. . . .	. . .	31,119			
Vote for presidential electors	. . .	. . . .	. . .	23,722			
To extend the recall to all public officers	C. A.	16,272	3,705	19,977	Yes	84.2	64.2
To authorize the state and each municipality to engage in industrial pursuits	C. A.	14,928	3,602	18,530	Yes	78.1	59.5
To authorize any method of assessing and levying taxes that may be prescribed by law	C. A.	15,967	2,283	18,250	Yes	76.9	58.6
To provide that local debts shall not exceed four per cent. of the taxable value without a vote of the inhabitants	C. A.	15,358	2,676	18,034	Yes	76.0	58.0
To give women the right to vote and hold office	Init. C. A.	13,442	6,202	19,644	Yes	83.2	63.1

To create a lien for labor upon mines . . .	Ref.	13,551	5,804	19,355	Yes	81.2	62.2
To regulate the number of men to be employed on trains and engines	Ref.	11,123	7,635	18,758	Yes	79.1	60.3
To compel all engines to carry electric headlights of specified power	Ref.	11,286	7,408	18,694	Yes	78.8	60.1
To forbid service of locomotive engineer without three years service as fireman, or a conductor without three years service as brakeman or conductor of a freight train	Ref.	10,921	7,956	18,877	Yes	79.6	60.6
To limit the number of cars in a train . . .	Ref.	10,709	8,228	18,937	Yes	79.8	60.9
To limit passenger fares on railroads to three cents a mile	Ref.	14,823	4,835	19,658	Yes	82.9	63.2
To provide for semi-monthly payment of wages by companies and public bodies . .	Ref.	13,350	5,986	19,336	Yes	81.5	62.1
To forbid the shooting of game without a license	Ref.	13,121	6,334	19,455	Yes	82.0	62.2

[1] "Ref." indicates an ordinary law passed by the legislature and submitted to popular vote by the referendum; "C. A.," a constitutional amendment which is so submitted automatically; "Init.," an ordinary law proposed by initiative; "Init. C. A.," a constitutional amendment so proposed.

ARKANSAS. 1912

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
Total vote cast at the election				169,649		
Revision of the tax laws	Ref.	56,806	78,230	135,036	No	79.6
Prohibition law	Init.	67,995	83,701	151,696	No	89.4
To amend law on the conduct of elections	Init.	56,361	71,532	127,893	No	75.4
To create a state textbook commission to be elected by the teachers	Init.	63,782	72,553	136,335	No	80.4
To limit the payment of members of the legislature to sixty days	Init. C. A.	103,242	34,193	137,435	Yes	81.0
To provide for the recall of all elective officials	Init. C. A.	71,946	58,721	130,667	Yes	77.0
To permit cities to issue bonds for improvements	Init. C. A.	76,239	54,108	130,347	Yes	76.8

CALIFORNIA. 1912

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting	Per cent of registered voters voting
Registered voters				987,368			
Vote for presidential electors				673,527			
To regulate the deposit of moneys belonging to the state, etc.	C. A.	307,199	128,411	435,610	Yes	64.7	44.1
To regulate boards of education, free textbooks, etc.	C. A.	343,443	171,486	514,929	Yes	76.5	52.2
To provide for a registrar of voters	Ref.	145,924	255,051	400,975	No	59.5	40.6
To regulate salaries and fees of officers in counties in the third class, etc.	Ref.	135,303	254,327	389,630	No	57.8	39.4
To change the law on officers of counties, etc.	Ref.	142,729	246,818	389,547	No	57.8	39.4
To regulate the consolidation of city and county governments, etc.	Init. C. A.	174,076	280,465	454,541	No	67.5	46.0
To prohibit book-making and pool-selling, and to license horse-racing.	Init.	149,864	353,070	502,934	No	74.8	50.9
To regulate taxation by counties, cities, towns, districts, etc.	Init. C. A.	169,321	243,959	413,280	No	61.1	41.8

COLORADO. 1912

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
Vote for presidential electors				263,000		
Amendment for state-wide prohibition	Init. C. A.	75,877	116,774	192,651	No	73.3
To enforce liquor laws by search and seizure	Init.	64,616	79,190	143,806	No	54.6
To limit labor of women in trades and industries to eight hours	Init.	108,959	32,019	140,978	Yes	53.6
To create public service commission and regulate public service corporations	Init.	30,347	64,138	94,485	No	35.9
To establish a state fair	Init.	49,002	52,462	101,464	No	38.6
To create a special fund for the state immigration bureau	Init. C. A.	30,359	54,272	84,631	No	32.1
To provide for reduced publication in newspapers of measures referred to the people, rather than a pamphlet	Init.	39,551	50,635	90,186	No	34.3

To give home rule to cities of more than 20,000 people	Init. C. A.	49,596	44,778	94,374	Yes	35.8
To provide for recall of public officers	Init. C. A.	53,620	39,564	93,184	Yes	35.4
To provide that measures referred to the people shall be published as provided by law	Init. C. A.	33,413	40,634	74,047	No	28.2
For publishing a pamphlet containing the measures referred to the people with arguments thereon	Init.	37,616	38,537	76,153	No	29.0
To provide for trial by jury in cases of contempt of court	Init. C. A.	31,850	41,855	73,705	No	28.0
To create a public utilities court for the regulation and control of public service corporations	Init. C. A.	27,534	51,820	79,354	No	30.0
To provide that ballots at elections shall not contain party lists of candidates	Init.	43,390	39,504	82,894	Yes	31.5
For wider use and control of the schools by the people of cities	Init. C. A.	38,318	59,691	98,009	No	37.3

COLORADO. 1912 (*Continued*)

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
To provide for recall by the people of judicial decisions holding laws unconstitutional	Init. C. A.	55,416	40,891	96,307	Yes	36.6
"Mothers' Compensation Act" on the support of dependent and neglected children	Init.	82,337	37,870	120,207	Yes	45.7
To place all the appointed offices under civil service rules	Init.	38,426	35,282	73,708	Yes	28.0
An eight hours' law for labor in mines, smelters, etc.	Init.	52,525	48,777	101,302	Yes	38.5
To place the internal improvement fund in the hands of the State Highway Commission	Init.	44,568	45,101	89,669	No	34.1
Eight hour law for miners	Ref.	69,489	30,992	100,481	Yes	38.2
To place the branding and marking of live stock in the charge of the state inspector	Ref.	37,387	37,740	75,127	No	28.6

To provide that state officers shall turn over receipts to the Treasurer daily instead of monthly	Ref.	20,968	44,322	65,290	No	24.8
To provide summer schools for teachers	Ref.	23,521	63,266	86,787	No	33.0
On examinations for teachers and the granting of certificates	Ref.	25,369	54,086	79,455	No	30.2
To regulate water rights for irrigation	Ref.	22,931	47,614	70,545	No	26.8
That smelting, refining, milling, etc., shall be regarded as business affected with a public interest	C. A.	35,997	37,953	73,950	No	28.1
To provide a state tax commission and county board of equalization	C. A.	32,548	40,012	72,560	No	27.6
To substitute salaries for the fees of county, precinct and other officers	C. A.	28,889	41,622	70,511	No	26.8
To increase the debt limit of counties for highways, etc.	C. A.	29,741	47,284	77,025	No	29.3
To authorize a state debt of $10,000,000 for highways	C. A.	36,636	53,327	89,963	No	34.2
Act to construct a tunnel through James Peak	Ref. by Legislature	45,800	93,183	138,983	No	52.8

MAINE. 1910

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
Vote for Governor	. . . .	. . .	. . . .	141,031		
Act to make uniform the standard relating to the percentage of alcohol in intoxicating liquors	Ref.	31,093	40,475	71,568	No	50.7
Act to establish the town of Gorges	Ref.	19,692	34,722	54,414	No	38.6
Act relating to the reconstruction of Portland Bridge	Ref.	21,251	29,851	51,102	No	36.2

MAINE. 1911

Vote for Governor in 1910	. . . .	. . .	. . .	141,031		
Direct primary law	Init.	65,810	21,774	87,584	Yes	62.1
Repeal of prohibition of the sale of liquor	C. A.	60,095	60,853	120,948	No	85.8
On permanent location of the state capital at Augusta	C. A.	59,678	41,294	100,972	Yes	71.6
To increase the debt limit of certain cities	C. A.	39,242	38,712	77,954	Yes	55.3

MAINE. 1912

Vote for Governor	. . .	. . .	. . .	142,105		
To provide for uniform ballot boxes and the preservation of ballots cast	Ref.	72,816	33,884	106,700	Yes	75.1
To provide for the issue of bonds for state highways	C. A.	80,619	21,454	102,073	Yes	71.8

MISSOURI. 1910

Total vote cast at the election	. . .	. . .	. . .	671,763		
To establish a tax for the benefit of the State University	Init. C.A.	181,659	344,274	525,933	No	78.3
Prohibition of the sale of liquor	Init. C.A.	207,281	425,406	632,687	No	94.2

There were also nine constitutional amendments proposed by the legislature, all of which were rejected.

MISSOURI. 1912.

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
Vote for Governor				699,210		
To authorize public schools for persons under six and over twenty	C. A.	207,298	367,032	574,330	No	82.1
To increase the debt limit of St. Louis County for sewer and water works	C. A.	140,611	402,472	543,083	No	77.7
To increase the limit of tax rates for local purposes	C. A.	121,794	401,918	523,712	No	74.9
To limit voters to citizens of the United States	C. A.	172,140	378,263	550,403	No	78.7
On the registration of voters in counties	C. A.	151,694	385,698	537,392	No	76.9
Amendment for single tax on land, inheritances, and franchises	Init. C. A.	86,647	508,137	594,784	No	85.1
Creation of a state tax commission	Init. C. A.	96,911	475,151	572,062	No	81.8
To allow grand juries to examine ballots cast at elections, etc.	C. A.	197,643	348,495	546,138	No	78.1
For a state tax of 10¢ on $100, for public schools	Init. C. A.	154,952	401,843	556,795	No	79.6

MONTANA. 1912

Vote for Governor	. . .	. . .	. . . .	79,778		
Military law	Ref.	21,195	41,749	62,944	No	78.9
To create direct primaries	Init.	46,437	12,879	59,316	Yes	74.4
To limit election expenses, etc.	Init.	44,337	13,645	57,982	Yes	72.7
For direct nomination of United States Senators	Init.	45,620	12,442	58,062	Yes	72.8
For direct vote on party preferences on candidates for President	Init.	46,241	12,143	58,384	Yes	73.2
Asylum bond issue	Ref.	34,235	30,461	64,696	Yes	81.8

NEVADA. 1908

Vote for presidential electors	. . .	. . .	. . .	24,442		
Police Bill	Ref.	9,954	9,078	19,032	Yes	77.9

NEVADA. 1912

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
Vote for presidential electors	. . .	. . .	. . .	20,031		
To introduce a general initiative for constitutional amendments and laws	C. A.	9,956	1,027	10,983	Yes	54.9
To subject all public officers, state and local, to recall	C. A.	9,636	1,173	10,809	Yes	54.0
All property given for education, and certain other funds, to be pledged for education, with provisions for investment, etc.	C. A.	8,418	1,683	10,101	Yes	50.4
To make women eligible for offices of school superintendent or trustee, and notary public	C. A.	8,603	2,241	10,844	Yes	54.1
Amendment of provision about indictment for crime, depriving of property without due process of law, etc.	C. A.	8,259	1,504	9,763	Yes	48.7

NEW MEXICO. 1912

Vote for presidential electors	. . .	. . .	. . .	48,380		
To abolish provision requiring state officials to know English	C. A.	26,663	13,678	40,341	Yes	83.5
State highway bond issue	Ref.	26,333	17,338	43,671	Yes	90.1

OKLAHOMA. 1908

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
Vote for presidential electors	. . .	. . .	. . .	255,228		
To provide a state agency for sale of liquor	C. A.	105,392	121,573	226,965	No	88.9
To establish the Torrens Land Title registration system	C. A.	114,394	83,888	198,282	Yes	77.7
To allow the permanent capital to be fixed at any time by popular vote	C. A.	120,352	71,933	192,285	Yes	75.3
People consulted on question of "New Jerusalem," or model city for seat of state government		117,441	75,792	193,233	Yes	75.7
Act to authorize sale of school lands to homesteaders	Init.	96,745	110,840	207,585	No	81.3

OKLAHOMA (*Continued*)

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
Special Election, June 11, 1910						
(Later declared unconstitutional)						
Total vote cast	. . .	. . . .	. . . .	161,989		
To provide for merger of railroad companies	Init. C. A.	53,784	108,205	161,989	No	100.0
Question on location of state capital	Init. C. A.	96,515	64,501	161,016	Yes	99.0
Special Election, August 2, 1910						
Total vote cast	. . .	. . . .	. . . .	241,655		
Const. amend. containing "grandfather clause" for disfranchising negroes	Init. C. A.	135,443	106,222	241,655	Yes	100.0
Regular Election, 1910						
Total vote cast at the election	. . .	. . . .	. . . .	254,730		

To introduce local option	Init. C. A.	105,041	126,118	231,159	No	90.7
To introduce woman suffrage	Init. C. A.	88,808	117,736	206,544	No	81.1
Act on location of state capital (New Jerusalem)	Ref.	84,336	118,899	203,235	No	79.8
"Bryan Election Law"	Ref.	80,146	106,459	186,605	No	73.3
To regulate tax distribution	C. A.	101,636	43,133	144,769	Yes	56.8
To regulate railroad building	C. A.	83,169	55,175	138,344	Yes	54.3
Special Election, April 25, 1911						
To allow railroads to buy, sell or lease franchises, subject to the control of the corporation commission over their business	C. A.	41,768	46,662	88,430	No	100.0
Special Election, August 6, 1912						
Direct vote for United States senator	Init.	139,844	23,400	163,244	Yes	100.0
Regular Election, November 5, 1912						
Total vote for presidential electors				252,446		
Campbell Russell Bill	Init. C. A.	164,530	63,586	228,116	Yes	90.3
Location of capital	Init.	86,549	103,106	189,655	No	75.1
School Aid Bill	Init.	100,042	65,436	165,478	Yes	65.5

OREGON. 1904

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
Total vote cast at the election	. . .	. . .	. . .	99,315		
Direct primary law	Init.	56,205	16,354	72,559	Yes	73.1
Local option liquor law	Init.	43,316	40,198	83,514	Yes	84.1

OREGON. 1906

Vote for Governor	. . . .	. . .	. . .	96,715		
To introduce woman suffrage	Init. C. A.	36,928	46,971	83,899	No	86.7
For local option	Init.	35,397	45,144	80,541	No	83.3
For tax of two per cent. on gross earnings of telegraph and telephone companies	Init.	70,872	6,360	77,232	Yes	79.9

For state ownership of a certain toll road . . .	Init.	31,525	44,525	76,050	No	78.6
For a tax on gross earnings of sleeping, refrigerator, and oil car companies	Init.	69,635	6,440	76,075	Yes	78.6
To prohibit free passes on railroads to members of the legislature	Init.	57,281	16,779	74,060	Yes	76.5
To make state printing subject to control by statute law	Init. C. A.	63,749	9,571	73,320	Yes	75.8
To give people power to enact and amend their systems of local government	Init. C. A.	52,567	19,942	72,509	Yes	75.0
To allow one legislature to propose const. amends., and to require a popular vote to call a const. convention	Init. C. A.	47,661	18,751	66,412	Yes	68.7
For direct legislation on local affairs	Init. C. A.	47,778	16,735	64,513	Yes	66.7
Appropriation for the state university	Ref.	43,918	26,758	70,676	Yes	73.1

OREGON. 1908

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
Total vote cast at the election	. . .	. . .	. . .	116,614		
To introduce woman suffrage	Init. C. A.	36,858	58,670	95,528	No	81.9
To introduce the single tax	Init. C. A.	32,066	60,871	92,937	No	79.7
To give local governments exclusive power to grant licenses for theatres, race tracks, sale of liquor, etc.	Init. C. A.	39,442	52,346	91,788	No	78.7
Act instructing legislators to vote for United States Senator receiving highest popular vote	Init. C. A.	69,668	21,162	90,830	Yes	77.9
Act relative to custody and employment of county prisoners	Ref.	60,443	30,033	90,476	Yes	77.6
To increase pay of legislators	C. A.	19,691	68,892	88,583	No	76.0
To make all public officials subject to recall	Init. C. A.	58,381	31,002	89,383	Yes	76.6
To appropriate $100,000 for armories	Ref.	33,507	54,848	88,355	No	75.8

To require railroads to furnish free passes to public officials	Ref.	28,856	59,406	88,262	No	75.7
To restrict salmon and sturgeon fishing down river	Init.	46,582	40,720	87,302	Yes	74.9
To restrict same fishing up river	Init.	56,130	30,280	86,410	Yes	74.1
To increase appropriation for the state university	Ref.	44,115	40,535	84,650	Yes	72.6
To limit campaign expenses (corrupt practices act)	Init.	54,042	31,301	85,343	Yes	73.2
To change the date of general elections	C. A.	65,728	18,500	84,228	Yes	72.2
For proportional representation and preferential voting	Init. C. A.	48,868	34,128	82,996	Yes	71.2
To permit location of state institutions elsewhere than at the capital	C. A.	41,975	40,868	82,843	Yes	71.0
To change the powers of judges and to increase their number	C. A.	30,243	50,591	80,834	No	69.3
To require indictment by grand jury, etc.	Init. C. A.	52,214	28,487	80,701	Yes	69.2
Act to create a new county	Init. C. A.	43,948	26,778	70,726	Yes	60.6

OREGON. 1910

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
Total vote cast at the election				120,248		
To regulate the sale of intoxicating liquors	Init.	42,651	63,564	106,215	No	88.3
To prohibit manufacture and sale of intoxicating liquors	Init. C. A.	43,540	61,221	104,761	No	87.1
To give to cities and towns the exclusive right to regulate liquor licenses	Init. C. A.	53,321	50,779	104,100	Yes	86.6
To introduce woman suffrage	Init. C. A.	35,270	59,065	94,335	No	78.5
To authorize branch insane asylums	Ref.	50,134	41,504	91,638	Yes	76.2
To transfer to the state the normal school at Monmouth	Init.	50,191	40,044	90,235	Yes	75.0
Act relating to liability of employers in hazardous occupations	Init.	56,258	33,943	90,201	Yes	75.0
To transfer to the state another normal school	Init.	38,473	48,655	87,128	No	72.5
To transfer to the state a third normal school	Init.	40,898	46,201	87,099	No	72.4
To provide for county regulation of county taxation and abolish the poll tax	Init. C. A.	44,171	42,127	86,298	Yes	71.8
To change the boundaries of two counties	Init.	16,250	69,002	85,252	No	70.9

Act relating to direct primary vote for President, etc.	Init.	43,353	41,624	84,977	Yes	70.7
To increase a judge's salary	Ref.	13,161	71,503	84,664	No	70.4
To permit counties to incur indebtedness beyond $5,000 for building roads	Init. C. A.	51,275	32,906	84,181	Yes	70.0
To create a commission to examine the subject of employees' compensation for injuries sustained in the course of employment	Init.	32,224	51,719	83,943	No	69.8
To permit a verdict of three quarters of the jury in civil suits, and regulate appeals in jury cases	Init. C. A.	44,538	39,399	83,937	Yes	69.8
To create a new county of Nesmith	Init.	22,866	60,591	83,457	No	69.4
Act for the election of a constitutional convention	Ref.	23,143	59,974	83,117	No	69.1
Act on fishing restrictions in Rogue River	Init.	49,712	33,397	83,109	Yes	69.1
To establish a board of inspectors and an official state magazine	Init.	29,953	52,538	82,493	No	68.6
Act relating to change of boundaries between two counties	Init.	14,047	68,221	82,268	No	68.4
To extend the initiative, referendum and recall	Init. C.A.	37,031	44,366	81,397	No	67.7
To provide for the creation of new towns, counties and municipal districts by popular vote within the territory affected	Init.	37,129	42,327	79,456	No	66.1
To create a new county of Otis	Init.	17,426	62,016	79,442	No	66.1
Act for government purchase of railroads	C. A.	32,844	46,070	78,914	No	65.6

OREGON. 1910. (*Continued*)

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
To create a new county of Williams . . .	Init.	14,508	64,090	78,598	No	65.4
To create a new county of Orchard . . .	Init.	15,664	62,712	78,376	No	65.2
On elections of state senators and representatives	C. A.	24,000	54,252	78,252	No	65.1
To create a new county of Deschutes . . .	Init.	17,592	60,486	78,078	No	65.0
To permit classification of property for purposes of taxation. (Repealing uniform system.) . .	C. A.	37,619	40,172	77,791	No	64.7
To create a new county of Clark.	Init.	15,613	61,704	77,317	No	64.3
On the apportionment of state taxes	C. A.	31,629	41,692	73,321	No	61.0

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
Vote for presidential electors				136,021		
To extend the suffrage to women	Init. C. A.	61,265	57,104	118,369	Yes	87.0
To create the office of Lieutenant-Governor	C. A.	50,562	61,644	112,206	No	82.5
This and the following were two substitutes for the provision of a general property tax. This one provided for uniform rules of taxation by statute for state and local purposes on different classes of property, etc.	C. A.	51,852	56,671	108,523	No	79.8
To provide that no tax shall be imposed except by the people or the assembly. All taxation to be uniform on the same class of property in the same taxing district	C. A.	52,045	54,483	106,528	No	78.3
To repeal all of single tax and local home rule taxation amendment adopted in 1910, except the abolition of the poll tax	C. A.	63,881	47,150	111,031	Yes	81.8
To require for ratification of constitutional amendments a majority of the votes cast at the election, instead of majority of those cast on the amendment	C. A.	32,934	70,325	103,259	No	75.9

OREGON. 1912 (*Continued*)

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
To make stockholders in banks liable to depositors to the par value of their stock, in addition to unpaid subscriptions for the stock	C. A.	82,981	21,738	104,719	Yes	77.0
To give the railroad commission power to regulate all public service corporations	Ref.	65,985	40,956	106,941	Yes	78.6
To create a new county of Cascade	Init.	26,463	71,239	97,702	No	71.8
To create a single board of regents for the state university and agricultural school and provide six tenths of a mill tax for their support	Init.	48,701	57,279	105,980	No	77.9
To require a majority of all votes cast at the election to ratify measures proposed by initiative, but only a majority of the votes cast thereon to defeat laws at the referendum	Init. C. A.	35,721	68,861	104,582	No	76.9
To authorize counties to issue bonds for construction of roads	Init.	49,699	56,713	106,412	No	78.2
To create a state highway department	Init.	23,872	83,846	107,718	No	79.2

To put into effect the law creating a state printing board in December, 1912, instead of January, 1915	Init.	34,793	69,542	104,335	No	76.7
To create the office of state hotel inspector	Init.	16,910	91,995	108,905	No	80.1
To make eight hours a day's labor in all public work	Init.	64,508	48,078	112,586	Yes	82.8
To create a corporation department to supervise and license sales of stock and securities	Init.	48,765	57,293	106,058	No	78.0
To forbid the employment of state convicts by private persons and allow their employment on public works	Init.	73,800	37,492	111,292	Yes	81.8
The same for local convicts	Init.	71,367	37,731	109,098	Yes	80.2
To create a state road board with power to issue bonds	Init.	30,897	75,590	106,487	No	78.3
To limit the state debt for roads to two per cent. of taxable property	Init. C. A.	59,452	43,447	102,899	Yes	75.6
To authorize counties to issue bonds for construction of roads	Init.	43,611	60,210	103,821	No	76.3
To limit county debts for roads to two per cent. of taxable property	Init. C. A.	57,258	43,858	101,116	Yes	74.3
To provide for uniting cities and towns, and for creating new counties	Init.	40,199	56,992	97,191	No	71.5
To provide for an income tax	Init. C. A.	52,702	52,948	105,650	No	77.7
To exempt from taxation household goods and personal effects	Init.	60,357	51,826	112,183	Yes	82.5

OREGON. 1912 (*Continued*)

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
To exempt from taxation all debts, public securities, and stocks, except bank stocks	Init.	42,491	66,540	109,031	No	80.2
To revise the inheritance taxes, with a slight increase, and extend exemption of charities to those incorporated elsewhere	Init.	38,609	63,839	102,448	No	73.2
To fix the ratio of freight rates on carloads and smaller lots	Init.	58,306	45,534	103,840	Yes	76.3
To authorize counties to issue bonds for the construction of roads	Init. C. A.	38,568	63,481	102,049	No	75.0
To abolish the state senate, introduce proportional representation in the legislature, all candidates for Governor to be *ex officio* members, no appropriations except proposed by Governor; to increase effect of referendum, etc.	Init. C. A.	31,020	71,183	102,203	No	75.1
To provide for graduated taxes on franchises, lands and natural resources exceeding $10,000; and to exempt from general taxation all personal property and improvements on land .	Init. C. A.	31,534	82,015	113,549	No	84.2

To abolish capital punishment	Init.	41,951	64,578	106,529	No	78.3
To forbid boycotting and picketing	Init.	49,826	60,560	110,386	No	81.2
To forbid meetings in public streets or grounds without consent of the mayor	Init.	48,987	62,532	111,519	No	82.0
Special appropriations for the state university	Ref.	29,437	78,985	108,422	No	79.7
Appropriation for a library and museum for the university	Ref.	27,310	79,376	106,686	No	78.4

SOUTH DAKOTA. 1908

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
Vote for Governor				113,904		
For licensing, restricting, and regulating manufacture and sale of intoxicating liquors	Init.	39,075	41,405	80,480	No	70.7
Divorce Act	Ref.	60,211	38,794	99,005	Yes	86.9
For preservation of quail	Ref.	65,340	32,274	97,614	Yes	85.7
To prohibit theatrical and other performances on Sunday	Ref.	48,378	48,006	96,384	Yes	84.6
On revenue and finance	C. A.	34,915	47,732	82,647	No	72.6
On the salary of the Attorney-General	C. A.	43,908	52,437	96,345	No	84.6

SOUTH DAKOTA. 1910

Subject of the Law	Character	Yes	No	Total	Result	Per Cent Voting
Vote for Governor	. . .	. . . .	. . . .	105,812		
On intoxicating liquors	Init.	42,416	55,372	97,788	No	92.6
To introduce woman suffrage	C. A.	35,290	57,709	92,999	No	87.9
On renting public lands	C. A.	48,152	44,220	92,372	Yes	87.3
On the salary of the Attorney-General	C. A.	35,932	52,397	88,329	No	83.5
On headlights	Ref.	37,914	49,938	87,852	No	83.0
On the amount of debt of counties, cities, etc.	C. A.	32,613	52,243	84,856	No	80.2
On suspension from office	Ref.	32,160	52,152	84,312	No	79.8
Act regarding embalmers	Ref.	34,560	49,496	84,056	No	79.5
On the establishment of new state institutions	C. A.	36,128	47,625	83,753	No	79.2
On taxation	C. A.	29,830	52,943	82,773	No	78.2
On congressional districts	Ref.	26,918	48,883	75,801	No	71.6
On the militia	Ref.	17,852	57,440	75,292	No	71.2

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
Vote for Governor	. . . . .	. . .	. . . .	112,000		
To provide for the taxation of corporate franchises, etc.	C. A.	62,302	26,814	89,116	Yes	79.6
Direct primary law proposed by Init., but enacted by legislature	Ref.	51,154	28,892	80,046	Yes	71.5
To require headlights of certain power on locomotives	Ref.	65,946	17,721	83,667	Yes	74.7
Repeal of law on damages for trespass by animals	Ref.	50,100	26,874	76,974	Yes	68.7
Amendment of the law on a "city, town or place desiring to become a candidate for county seat"	Ref.	43,222	24,111	67,333	Yes	60.1

Subject of the Law	Character	Yes	No	Total	Result	Per cent of voters at election voting
Vote for Governor	. . .	. . . .	. . .	111,495		
On the compensation for members of the legislature	C. A.	6,056	30,113	36,169	No	32.4
To fix the limit of local public debt	C. A.	9,122	25,004	34,126	No	30.6
On counties, cities, and towns and the creation of new counties	C. A.	12,966	22,132	35,098	No	31.5
To regulate the duties of the state Auditor and Treasurer	C. A.	13,041	21,150	34,191	No	30.7
To regulate the general taxation of property	C. A.	6,415	25,684	32,099	No	28.8
To define the duties of state and county boards of equalization of taxes	C. A.	6,944	24,863	31,807	No	28.5
On the classification of property for taxation	C. A.	6,093	25,737	31,830	No	28.5
On the taxation of mines	C. A.	8,919	23,440	32,359	No	29.0

Index

Index

PAGE

Aargau
Results of referendum in 166, 311
Results of initiative in 200, 311
Advertisement
This an age of 57–59
Arizona
Referendum
Adoption of 174
Results of 368
Initiative, results of 205, 368
Arkansas
Referendum
Adoption of 174
Results of 176, 370
Initiative, results of 205, 370
Athens
Use of the lot in 47, 245
Lack of experts in public life 264

Bagehot, Walter 296, 297
Basle, City
Results of referendum in 315
Basle, Rural
Results of referendum in 167, 185, 186, 318
Results of initiative in 200, 318
Benoist, Charles 121
Bern
Results of referendum in 165, 185, 186, 322
Results of initiative in 200, 203, 322
Boston
Local referendum in 196–197
Boss, the
Natural history of 103
A broker in private privileges 105

Boss, the (continued) PAGE
Sources of his power 135, 137–138
(See also Parties and Politicians)
Brigham, A. D. 288
Brokers
Need and influence of 60
Politicians act as 61, 64, 67
Bryce, James 7, 35, 37, 71, 104, 146
Bureaucracy
Dread of in America 106, 109, 270, 289
Burke, Edmund 66, 124

California
Referendum
Adoption of 174
Results of 177–182, 183, 371
Initiative, results of 205, 371
Civil Service Reform
Its limitation in America 107, 275–276, 300
Examinations in England 301
Colorado
Referendum
Adoption of 174
Results of 183, 184, 189, 190, 372
Initiative, results of 204, 206, 215, 372
Commission
City government by 285
Its relation to use of experts 286
Common Will
Of Rousseau and public opinion 8
Compromise
Prejudice against 52, 63
Consent
As a basis of government 9
And force 10–12
Courts
Power to hold statutes unconstitutional 9–10
Constitutional Restraints
Merits of 9–10, 44–45
Corruption
Causes of 104
Forms of 134–135

Creeds PAGE
How far opinions 16
Cridge, Alfred D. 211
Croly, Herbert 103

Democracy
Slowly learned 38
Meaning of 57
Its fear of experts 270
Desire
And opinion 26
Dicey, A. V. 64
Dickinson, G. Lowes 42
Direct Primary. (See Primary, direct.)
Dissent
Freedom to express 37
Dupriez, Leon 123

Elections
How far they express opinion 25, 71 et seq., 91, 113 et seq., 137–139
In Spain 113
Private influences in 137
England
Theory of mandate 73
And United States. 76
Difference in meaning of elections 76–79, 259
Solidarity of parties 78–79, 92, 118–120, 125–128, 132, 139
Committees on private bills 248
Experts
Growing use of in industrial life 49, 272
Lack of in Athens 264
Lack of in Rome under the Republic. 265
Their use under the Empire 267
In monarchies 268
Their absence in democracies 270
In English government 295, 297
Need of in public life 49–50, 262, 271
Little used in American public life. 274, 282
Use of in German cities 281
Use of in English cities. 281–282
The municipal program 283
Relation of commission government to 285

Experts (continued) PAGE
Control of 289
In public education 294
Proper relation to lay superiors . . . . . 291 et seq.
Method of creating it 298
Methods of recruiting 300
In England 302
In Holland 301

Facts
Knowledge of 22–24
As basis of opinion 22–24
Difficulty in ascertaining . . . . . 47 et seq.
Examples 50
Farrand, Max 118
Force
As a basis of government 11
Ford, Henry J. 70
Freedom
To express dissent 37
To organize 39
In religion 41–42
Freeman, E. A. 12
Frontier
Its effect on public life in America 109

Galveston
Plan of commission government 286
Geneva
Results of referendum in 167, 185, 186, 328
Results of initiative in 201, 202, 328
Goodnow, F. J. 284, 303
Grisons
Results of referendum in 276, 330
Results of initiative in 200, 330

Habit
Its loss of force 58
Hadley, A. T. 15
Harmony
Of principles a basis of opinion 20

Harmony (continued) PAGE
Of interests 28–30
Doctrine of 28–30
Hart, A. B. 104
Headlam, James W. 47, 245
Hirschfeld, Otto 268
Holman, Frederick V. 213, 229
Holst, H. von 72
Homogeneity
Essential for public opinion 34–36
Houston
Plan of commission government 286
Hughes, Governor
His bill for direct primaries 150

Idaho
Referendum, adoption of 174
Initiative
Its nature 162, 198
In Switzerland
Its tendencies 201
Its small use 202
Results in the Swiss Confederation 199, 306
In Aargau 200, 311
In Bern 200, 203, 322
In Geneva 201, 202, 328
In Grisons 200, 330
In Lucerne 200, 333
In Rural Basle 200, 318
In Schaffhausen 200, 336
In Schwyz 201, 338
In Solothurn 200, 341
In St. Gall 201, 334
In Thurgau 200, 347
In Valais 200, 350
In Vaud 185, 353
In Zurich 200, 353
In America
Results in
Arizona 205, 368
Arkansas 205, 376
California 205, 371

Initiative (continued) PAGE
Colorado 204, 206, 215, 372
Maine 204, 376
Missouri 204, 377
Montana 204, 379
New Mexico 205, 380
Oklahoma 204, 381
Oregon 203, 204, 206, 207–217, 384
South Dakota 203, 205, 395
Utah 398
Laws enacted 205
Proposals rejected 207
Complex measures proposed 211
How far an expression of public opinion . . . 209 et seq., 224–226
Evidence from stability 216
Defects of 217
Is it public or private 221
Class of measures suited for 231
Not a panacea 233
Intensity
Of opinion 12–14
Its effect 12–14
Irreconcilables
And public opinion 10–12, 32
And race feeling 31
Cause of 34

Janissaries 17
Johnson, L. J. 224
Jury
A sample of the public 242
Safeguards surrounding it 243
Special juries 246

Landsgemeinde 152, 164
Legislatures
Recent distrust of 130
Its causes 131
Tendency to play politics 131–133
Local interests in 133, 143
Private interests in 134, 137–139, 143

Legislatures (continued) PAGE
Defects exaggerated 139, 141
Remedies in United States negative 144–146
Excessive restrictions in United States 145, 146
Leupp, Francis E. 292
Lewis, Sir G. C. 17, 50, 96, 296
Lobbying
Different kinds of 135–136
Lodge, H. C. 151
Log-rolling 134
Lot
Use of in Athens 47, 245
Use of in Venice 245
Lowell, Francis C. 104, 119
Lucerne
Results of referendum in 168, 333
Results of initiative in 200, 333

Macdonald, J. R. 158, 298
MacGregor, Ford C. 285, 286, 287
Machine, the
Its causes 140
(See also, Politicians and Parties and Boss)
Maine
Referendum
Adoption of 174
Results of 182–183, 189, 376
Initiative, results in 204, 376
Maine, Sir H. S. 3, 62, 65, 73
Maitland, F. W. 221
Majority
Not enough for public opinion 4–7
Basis of their right to rule 9
Artificial nature of 61, 68
Mandate
Theory of in England 73
Massachusetts
Results of constitutional referendum 171, 187–188
The Luce Law 226
Public hearings 250
Its benefits 252
Means, D. McG. 104

Michigan PAGE
Results of constitutional referendum 170, 188
Minghetti, Marco 108
Minority
Duty to submit 11, 15, 44
In religion 42
Missouri
Referendum, adoption of 174, 377
Initiative, results in 204, 377
Montana
Referendum, adoption of 174, 379
Initiative, results in 204, 379
Municipal Government
In Europe 278, 280
In America 278–280, 282
(See also Commission)
Munro, W. B.. 281
Mutual Confidence
Lack of in America 141

Nebraska
Referendum, adoption of 174
Nevada
Referendum
Adoption of 174
Results 178, 379
New Mexico
Referendum
Adoption of 174–189
Results of 380
Initiative, results in 205, 380

Oberhaltzer, E. P. 173, 187
Oklahoma
Referendum
Adoption of 174
Results of 178–181, 182, 184, 381
Initiative, results in 204, 381
Opinion
Not always rational 16, 18
Real if part of believer's philosophy 19

Opinion (continued) PAGE
Otherwise must be based on facts 22
Opinion and desire 26
(See also Public Opinion)

Oregon
Referendum
Adoption of 174
Use of emergency clause 176
Results. 178–179, 182, 189, 190, 227, 384
State pamphlet of measures 191–192
Effect on legislation 229
Initiative
Adoption of 203, 204
Results in 206, 207–217, 384
Organization
Its political effect 39–40
Distorts public opinion. . . . . 86 et seq.
Ostragorski, M. 104

Parties
Causes of . . . . . 64 et seq., 101
Organs for formulating opinions 66–67
Frame the issues 69
Confuse the issues 71, 75
Greater solidarity in England than in United States . . 76–79, 92
Multiplicity in continental Europe 79
Their nature 80
Slow changes 81
Causes of. 81
Their effect. 82–84
Cause a bias 86
Cause false lines of division. 88–90
Distort public opinion 92
Influence of extreme elements. 93, 95
Influence of moderate elements 93
Prevent popular vagaries. 96
An obstacle to despotism 97
Unscientific criticism. 99–101
Legislation by. 102
Argument for 144
Dealing with private interests. 158

Parties (continued) PAGE
In municipal government 87
Conventions in United States at first popular 140
(See also Politicians and Boss)
Pasteur, Louis 57
People, the
Can say only "Yes" or "No" 69, 91
In America undertake too much 103, 105–110, 260
Politicians
As brokers 61
Of public opinion 67
Of private privileges 64
Work through parties 64
Cause of 103, 108
Popular Interest
In man greater than in measures 53
Primaries, direct 68, 102, 149
Cost of 151
Private Bills
In England 248
Proportional Representation 122–124
Public Hearings
In America 249
Practice of in Massachusetts 250
Practice of in other states 254
Public Officers
Three kinds of 240
Often combined 256
Difficulty of selection 258
Methods of selection 260
Public Opinion
Must be public 3
Majority not enough 4–7
Unanimity not required 7
Does not include irreconcilables 12
Case of the Southern States 5, 33
Effect of race feeling 31
Need of homogeneity 34–36
Effect of intensity 12–14
It involves freedom to express dissent 37
And to organize 39
It must be opinion . . . . . 16 et seq.

Public Opinion (continued) PAGE
Conditions essential for . . . . . 28 et seq.
Not necessarily rational 29
How far must be based on fact 46
Knowledge of facts difficult . . . . . 47 et seq.
Examples 50
Limitation of in religion 41, 42
In other matters 42, 44
Uncertainty in predicting 53
Distortion by parties . . . . . 86 et seq., 92
Methods of expressing . . . . . 113 et seq.
By elections . . . . . 25, 71 et seq., 91
Direct expression . . . . . 152 et seq.
By the referendum . . . . . 159 et seq., 181 et seq., 190
By the initiative . . . . . 209 et seq., 224–226
Evidence from stability 216
Evils from failure to perceive its limits 142–144
Why given effect 239
Opinion by sample 242
Need of impartiality 136
(See Opinion, Representation)

Race Feeling 31, 35
Recall, the 147
Referendum
Compulsory and optional 164
Reasons for 155
Distrust of legislature 155
Separation of issues 157
Criticisms of 156
In England 157, 158
How far an expression of public opinion . . . . . 159 et seq., 181 et seq., 190, 224–226
Its effect negative 162
Results in Switzerland not radical 168
In the Confederation 165, 306
In Aargau 166, 186, 311
In Bern 165, 185, 186, 322
In Geneva 167, 185, 186, 328
In Grisons 167, 330
In Lucerne 168, 333

Referendum (continued) PAGE
In Rural Basle 167, 185, 186, 318
In Schaffhausen 167, 186, 336
In Schwyz 167, 186, 338
In Solothurn 167, 185, 341
In St. Gall 167, 186, 334
In Thurgau 166, 186, 347
In Valais 167, 185, 350
In Vaud 168, 185, 353
In Zurich 166, 185, 186
Its use in America . . . . . 169 et seq.
On Constitution changes 169–170, 187
Results in Michigan 170, 188
Results in Massachusetts 171, 187–188
On special acts 171
On ordinary laws . . . . . 173, 188 et seq.
Use of emergency clause 174
Results in Arizona 176, 368
Arkansas 176, 370
California 177, 182, 183, 371
Colorado 177, 183, 184, 189, 190, 372
Maine 178, 182, 183, 189, 376
Missouri 174, 204–377
Montana 178, 379
Nebraska 174
Nevada 178, 379
New Mexico 178, 189, 380
Oklahoma 178, 181, 381
Oregon 178, 182, 189, 190, 191–192, 384
South Dakota 179, 180, 183, 189, 190, 395
Utah 398
Number of laws rejected 176
Character of laws rejected 180
Smallness of the vote cast 184–191
Fines for not voting 191
State pamphlet of measures 192
The local referendum
Its meaning 193–194
Its advantages 195
Size of vote in Boston 196–197
Delay sometimes harmful 226
Effect on the legislation 228–230

Referendum (continued) PAGE
Class of measures suited for 231
Not a panacea 233
Reinsch, Paul 156, 249, 254, 255
Representation
Of the nation and of constituencies 115–117
In England 117–120, 125
In the United States 117–120, 125
Of interests 121
Theories of delegation and personal judgment 124–128
Former faith in representation 129
Recent distrust of 130
Three kinds of 240
Often combined 256
By sample 242
The jury 242
Rotation in office 243
Use of the lot 244
Selected samples 246
Use of in public affairs 247
Private bill committees in England 248
Public hearings in America 249
Practice of in Massachusetts 250
Practice of in other states 254
Difficulty of selecting officers 258
(See also Legislatures)
Rohmer, Friedrich 65
Rome
Lack of experts under the Republic 265
Their rise under the Empire 267
Rotation in Office
Its object 106, 243
Rousseau, J. J. 8, 28, 87
Ryan, Chief Justice 261

St. Gall
Results of referendum in 167, 186, 334
Results of initiative in 201, 334
Sample
Public opinion by 242
(See Representation)

PAGE

Schaffhausen
Results of referendum in 167, 185, 186, 336
Results of initiative in 200, 336
Schwyz
Results of referendum in 167, 186, 338
Results of initiative in 201, 338
Shams
Use of 3–4
In parties 89
Social Compact 8, 9
Solothurn
Results of referendum in 167, 185, 341
Results of initiative in 200, 341
South Dakota
Referendum
Adoption of 174
Use of emergency clause 174–175
Results 179–181, 183, 189, 190, 395
Effect on legislation 228
Initiative, results of 203, 205, 395
Special Legislation
Its evils in America 107, 119, 143
Log-rolling 133
Forms of corruption 134–135
Amount of in United States 146
Attempts to restrict 145
In England 144
Private bill procedure in England 248
Sumner, Charles 262
Swiss Confederation
Results of referendum in 165, 186, 306
Results of initiative in 199, 306

Tarde, Gabriel 26, 30, 37, 65
Thurgau
Results of referendum in 166, 185, 347
Results of initiative in 200, 347
Town Meeting 152
Its merits 153

Unanimity
Not needed for public opinion 7

United States PAGE
And England . . . . . .
Difference in meaning of elections 76–79, 259
Differences of opinion within its parties 80, 118–120, 125–128, 132, 140
(See also Parties, Special Legislation, Referendum, Initiative, Experts, etc.)
U'Ren, W. S. 229
Utah
Referendum not in effect 398
Votes in Constitutional Amendments 398

Valais
Results of referendum in 167, 185, 186, 350
Results of initiative in 200, 350
Vaud
Results of referendum in 168, 185, 353
Results of initiative in 353
Von Holst, H. (See Holst, H. von.)

Wallas, Graham. 43
Washington
Referendum, adoption of 174
Wendell, Barrett. 32

Zurich
Results of referendum in 185, 186, 353
Fines for not voting 191
Results of initiative in 200, 353

RAILROADS, RATES AND REGULATION

By WILLIAM Z. RIPLEY, Ph.D.
Nathaniel Ropes, Professor of Economics in Harvard University

With 41 diagrams in the text. Small 8vo. Pp. xviii–659
Net $3.50

FOR various reasons, railroads during the last ten years have occupied a peculiarly prominent place in public attention in the United States. Representing an investment of about one-fifth of the nation's wealth, their affairs are a matter of direct concern, through bankers, to thousands of holders of their securities all over the country. Every merchant and manufacturer, in connection with the every day conduct of business, is bound, as a shipper, to be interested in their status. Several million officials and employees are dependent upon railroad welfare for their livelihood. The general public, as consumers, is vitally concerned with the manner in which they are conducted; and now, since the advent of strict public control of rates, in the outcome of that political experiment. The legal profession is directly interested also — by way of the multitude of cases now arising for settlement before the various federal and state railroad commissions. This treatise, more detailed and elaborate than a mere text-book, aims to set forth the nature of the railroad problems of the time, commercial, fiscal and political; while at the same time avoiding the extreme technicalities of the narrow specialist. This first volume deals with the matter of rates and government regulation; while a second, in preparation, will deal with matters of finance and corporate organization. Amply provided with footnotes and references, the text, nevertheless, deals with the subject in a manner comprehensible to the ordinary reader. Over forty maps and illustrations in the first volume alone serve to render the problems discussed more interesting and intelligible. It is a work which should appeal alike to bankers, investors, railway officers and employees, lawyers and publicists, as well as to all students of economics and politics and the serious general reader.

"Professor Ripley is presenting the most exhaustive study of the railway problem in the United States that has yet appeared. By his intimate knowledge of the whole field of railway operation and by his attractive literary style, he has produced a book that is likely long to remain a standard authority on the subjects discussed. . . . A treatise of high merit, and the most scholarly work that has appeared since Hadley's book in 1885." — *The Nation.*

"Taken as a whole, Professor Ripley's first volume seems likely to become the authoritative treatise on the subject."
— *The Economic Review.*

LONGMANS, GREEN & CO., - - New York

LONGMANS, GREEN, & CO.'S PUBLICATIONS

THE ECONOMIC HISTORY OF THE UNITED STATES

By ERNEST LUDLOW BOGART, Ph.D., Professor of Economics, University of Illinois. With 93 Illustrations and 27 Maps and Charts. Crown 8vo. Pp. xvi+597. $1.75.

THE NEW STATE. Group Organization the Solution of Popular Government

By M. P. FOLLETT, Author of "The Speaker of the House of Representatives," etc. Small 8vo. $3 00 *net*.

"'The New State' is almost unique among reconstruction books because it really drives down to fundamentals. . . . . The strength of the book lies in the fact that it presents not a mechanism, but a principle, and yet a principle so immediately realizable that the New State takes form and body before our eyes. The book will therefore, appeal both to philosopher and to practical men of affairs . . .

It is its strong grip on underlying principle that makes 'The New State' a really notable contribution to the forward thinking of our day."— *The Nation.*

ENGLISH LOCAL GOVERNMENT

By SIDNEY and BEATRICE WEBB.

"The Parish and the County." 8vo. $5.00 *net*.

"The Manor and the Borough." 2 vols. 8vo. $8.00 *net*.

"The Story of the King's Highway." 8vo. $2.50 *net*.

"A valuable unit in a study of English local institutions. . . . The book is almost impeccable. . . . It is impossible to read three pages without finding, among the evidences of the author's wide reading, some delightful touches of earlier and less progressive times."— *Daily News*, London.

INDUSTRIAL EFFICIENCY

A Comparative Study of Industrial Life in England, Germany, and America. By ARTHUR SHADWELL, M.A., M.D. New and cheaper edition in one volume, with a supplementary chapter. Crown 8vo. Pp. xx + 720. Price $2.25 *net* (Postage 15 cents).

HISTORY OF MONEY IN THE BRITISH EMPIRE AND THE UNITED STATES

By AGNES F. DODD. Crown 8vo. Pp. xvi + 356, price, $1.60 *net* (Postage 10 cents).

THE TRADE AND ADMINISTRATION OF CHINA

By HOSEA BALLOU MORSE, sometime Commissioner of Customs and Statistical Secretary, Inspectorate-General of Customs, author of "The Gilds of China," "The International Relations of the Chinese Empire," etc. Revised edition. With 14 full-page Illustrations, 2 Diagrams (1 Folding) and Folding Map. 8vo. $4.00 *net* (Postage 17 cents).

THE AGRARIAN PROBLEM IN THE SIXTEENTH CENTURY

By R. H. TAWNEY. With 6 Maps in color. 8vo. $3.00 *net* (Postage 12 cents).

A study of English agrarian conditions at a time when they were undergoing a rapid transformation, and when modern conditions of agriculture and land tenure were coming into existence. It is based mainly on original authorities, printed and in manuscript, and is intended both to introduce the general reader to an important chapter in economic history, and to make a contribution to historical knowledge.

HALF A MAN

The Status of the Negro in New York. By MARY WHITE OVINGTON. With a Foreword by DR. FRANZ BOAS of Columbia University. Crown 8vo. $1.00 *net*. By mail, $1.10.

TWENTIETH CENTURY SOCIALISM

By the late EDMOND KELLY, M.A., F.G.S. Crown 8vo. $1.75 *net*. By mail, $1.88.

"Noteworthy in Kelly's book is his broad treatment, for he endeavors to look at socialism from the political, scientific, and ethical points of view, as well as from the economic. Certainly a strong presentation of socialism is made for those for whom his book was especially intended, namely, the general public. . . .

"A refutation of Kelly's book means a refutation of socialism in its essential elements. . . ." — *The American Economic Review.*