

NEW RESPONSIBILITIES OF CITIZENSHIP*

Persons living in great formative periods of history rarely are able to understand the social change that is going on about them. This fact is shown by contemporaneous literature, and is in accordance with reason and experience. The perspective of time is required to enable one to observe and to give due proportion to the various elements of such movements; and, indeed, some of the profoundest changes are entirely unperceived or ignored in their day.

It is quite apparent, however, that in our own time, and especially within the past five years, a most remarkable turn of social and political tide has set in. What the extent of the metamorphosis will be, our generation, perhaps our century, will hardly be able to answer. It is clear that in the United States there is a decided tendency toward a popularization of political power, especially the law making power. This tendency is observable not alone in our own state, which in some respects has blazed the way for others to follow, but elsewhere throughout the Union. And concurrently with this movement, and it may be to some extent because of it, there is a marked growth of interest in the doctrines of socialism and philosophic anarchism. The spirit of revolution is abroad, and it will be for the future historian a fascinating study to discover the causes, and to examine the scope and consequences of the impulse. The movement is evidently not confined to the United States. The fact is that there is a social ferment in various European countries, not less interesting and not less profound in depth and influence upon political institutions than in our own country.

In Oregon, extraordinary constitutional changes have already been adopted. It is more than likely, in view of what has been that further radical changes will follow. I am not here to denounce at wholesale such changes as ill-advised, or worse. Be it my duty, rather, to point out some considerations that may have a bearing on future conduct.

The mouth of the demagogue in these days is full of phrases about the rights of the common people. He is sure that the common man is downtrodden and oppressed, and that we should have a return of the good old days when everybody was on an equality, and the rich and the powerful could not take advantage

*Suggesting certain limitations on the use of the Initiative and Referendum.

of the humble citizen, and when the people themselves made the laws. It is assumed, and freely asserted, that popular rights have been lost, and that there was a time when every one had a part in the law making. As this latter statement represents a popular fallacy which is not well grounded upon historical fact, it may be well, before proceeding, to give this subject some slight consideration.

Citizens of the United States at the present time are not only the richest in material wealth, and the most comfortably housed, and the best fed of those of any country on earth, but they also enjoy (without reference to the power of direct legislation and direct nomination) greater political power, and have more individual influence upon public affairs than was enjoyed by their forbears. I have no sympathy with those misguided teachers who stand in the public places and raise their voices in an effort to divide the people into classes, to denounce the rich, and to excite the envy and hatred of the poor and the ignorant. They may be heard crying that the rich grow richer, and the poor grow poorer, and that the laws are made for the corporation, and the courts sell justice. This talk is not new. It is as old as history.

I venture to say that complaints against the inequalities of wealth, and criticisms of courts and public officials for partiality or venality, are made in every civilized country, and in all periods. I believe that the public men of our time are not a whit worse than those of earlier days, and I am satisfied that the pages of history show that the world grows better and not worse.

Abuses there are, but not more vital than the abuses of earlier days. Reforms are needed, but they may be worked out without throwing away the experience of history. The aggressions of wealth and corporate power, the delays and uncertainties of judicial proceedings and in the punishment of crime, the failure of legislators to faithfully serve the people, are evils to be sure, but not greater than the evils that have been coped with by earlier generations.

The patriotic men who so earnestly sought to frame a federal government that would best withstand the test of time appreciated the danger from direct popular legislation, and, as the debates show, agreed with practical unanimity that a democracy was much less stable, and much more amenable to this cause of decay than a representative form of government. Among the

names of those who pointed out the distinction and advocated the republican form are Hamilton, Madison, Ames, Gerry, Randolph, Wilson, Marshall, Rutledge, Bowdoin, Pendleton and Mason, besides many others.

It may surprise some of the modern law givers to learn that the reasons then urged against direct legislation were that experience of the past proved that turbulence, passion, partiality, lack of debate, despotism of majorities, insecurity of personal and property rights, intrigue of the designing, debauching of public morals, venality, and destruction of popular government, would result if the plan adopted should follow the pattern of the ancient democracies; and the representative plan, with its checks and safeguards, was considered the greatest invention and most important achievement of the convention.

Said Hamilton in the *Federalist*:

"The difference most relied upon between the American and other republics consists in the principle of representation; which is the pivot on which the former moves, and which is supposed to be unknown to the latter, or at least, to the ancient part of them."¹

And Jefferson said:

"Modern times have * * * discovered the only device by which the (equal) rights (of man) can be secured, to-wit: government by the people, acting not in person, but by representatives chosen by themselves. * * *"²

We will stop a moment, then, to examine the historical basis of our constitutional and legal rights, as citizens, to assist in the making of the laws, and to take our share in the duties of government. We will find that there is no foundation for the claim that Americans have been deprived of the right of the direct exercise of the law making power. On the contrary, the essential difference between a pure democracy and a representative system of government, as applied to general legislation, has been preserved since very remote times.

Early German society was founded primarily upon distinctions in land ownership and in rank. None but the landowners possessed the right of participation in the popular assemblies, or to bear arms; there was also a broad distinction between the free, and the *servi*, or unfree. In the popular assemblies of those primitive people, none but the freemen had a voice, and the supposition that there was among them an equality of privilege

¹ *Federalist*, No. 62.

² Jefferson's Works, VII, 319.

and a universal suffrage, or even a general participation in the law making function, is founded upon misapprehension and error. So, when the Teutons invaded Britain, and brought their institutions with them, the local assemblies were there; the greater popular meetings of the parent country were also preserved in the *witangemot* and in the *folk moot*; but the fundamental distinctions of rank and land proprietorship were also there. None but the freemen could participate in the ownership of land, or, consequently, in the right to take part in governmental affairs. The unfree consisted of different grades, from the slave to the agrarian dependents with more or less liberty. In the generations following the first settlements, the system of feudal tenures was evolved. The distinction in class still persisted, and became more and more firmly established.

Neither time nor space permits, within the limits of this paper, details in these matters of basic history, but it should be kept clearly in mind that equality before the law, in the sense of social or political equality, was not a part of the autonomy of government, either in the remote or later periods of English history. Notice, too, that whatever the fact may have been with reference to the Germanic tribes, while they were more or less nomadic and migratory, a people small in numbers and loosely established, it is clear that in England, almost from the beginning, the representative system prevailed. For, while the township assembly was purely democratic and not elective, but consisted of either free alodial owners, or of dependent agrarians, as the case might be, the larger assemblies, such as those of the shire or the kingdom, consisted of elected representatives sent by these lesser assemblages.

Except in making the local by-laws, therefore, the legislative powers of the people were, from remote times, in England, exercised by delegates or selectmen. This fact is interesting in noting that, as centuries slipped away, and gradually the power of the sovereign increased, and the ancient rights of the people were encroached upon, until endurance ceased to be a virtue, and then there was wrested from the king the Great Charters of our liberties, it was not an assembly of all citizens that dealt with the crown, but a parliament of the "three estates." These estates were the clergy, the barons, and the commons, but the commons were represented in parliament by persons chosen by certain

electors. These electors did not by any means comprise all the lower classes, they were themselves essentially a privileged class.

One of the great writers on English history says that "the House of Lords not only springs out of, it actually is, the ancient *witanagemot*;" that is to say, the ancient popular assembly of landed freemen, in the course of time, had become the hereditary house of the peers. The earliest form of the commons, or the third estate in parliament, was by the shire assemblies electing the knights of the shire, who represented the lesser landowners, and the commercial interests of the towns. Thus it will be seen that the common people at large never participated in the great assemblies or parliaments, even in the early times. The general laws were not made by assemblages of the people, but by delegates or representatives, and the delegates were not of the lower order.

It was an assembly of such delegates that formulated the demand upon King John for the charter of liberty, and when he called the barons together at the historic field of Runnymede, on the Thames, and there executed the instrument under oath, this was done in the presence of twenty-five of the number chosen to represent the whole body. The twenty-five were not from the lowly people; they were all barons.

It was not until very recent times that there was any approach to manhood suffrage in England. In the American States, at the time of the adoption of the Constitution, there were various restrictions on the right to vote, and it was after the nineteenth century began that the right to vote became free to all, excepting the slaves of the South.

My aim is to show that with the recent modifications of the Oregon Constitution, the people have taken a step that has brought new and serious responsibilities of citizenship. The grave question is, how will the people meet the new demands made upon them? In view of the fact that the representative system in the republic has been on trial but a century and a quarter, and that the principle now engrafted upon the Oregon Constitution, if applied to the ultimate, is utterly subversive of this essential feature of the American plan, the subject is one of deep concern.

In 1857, Macauley wrote to an American correspondent:

"I have long been convinced that institutions purely democratic must, sooner or later, destroy liberty or civilization, or both. In Europe, where the population is dense, the effect of such institutions would be almost instantaneous. * * * You may think that

your country enjoys an exemption from these evils. I will frankly own to you that I am of a very different opinion. Your fate I believe to be certain, though it is deferred by a physical cause. * * * I heartily wish you a good deliverance. But my reason and my wishes are at war, and I cannot help foreboding the worst."³

When the great historian wrote these pessimistic views of our country, Americans had an intense pride in their institutions, a veneration for the Constitution that almost amounted to fetish worship, and a confidence in its sufficiency for all purposes (aside from the questions of slavery and state's rights) that has been repeatedly commented upon by such interested foreign-born observers as De Tocqueville, Von Holst, Munsterberg and Bryce. Mr. Bryce, perhaps the most sympathetic and admiring of the foreign writers that have studied our political institutions, gives as a reason for the probable permanency of the American government, the profound attachment of the people for the Constitution. "The Federal Constitution," he says, "is, to their eyes, an almost sacred thing, an Ark of the Covenant, whereon no man may lay rash hands."⁴

When the Civil War settled the only apparent cause of discord, and the new amendments were adopted, there seemed to be a universal feeling of confidence in the perpetuity of our republic. It seemed that thereafter, when great questions would arise for settlement, they would be settled within the Constitution. The supreme law of the land was a firm foundation, a standard rule and guide, a safe anchor in any storm.

It has come to pass in these days that the restraints and limitations of the Constitution are no longer respected. On all sides we hear the Constitution denounced as antiquated and insufficient for modern needs, and when courts apply it as the test, they are not infrequently abused in most intemperate language. Now, this may be popular, but before we allow ourselves to drift too far it may be well to see our direction and our danger.

The written constitutions of the United States have been well said to take the place in some degree of the ancient and revered institutions, customs and usages that in other countries tend toward stability. Here we have a nation whose citizenship is made up of many elements. Part of the population is foreign-born. Some of these persons are from countries where the laws

³ *Macaulay's Life and Letters*, II, p. 408-9.

⁴ 2 Bryce, *Am. Commonwealth*, p. 474.

and methods of government are radically different from ours; some of them are unable at first to comprehend our institutions; and some of them would find it difficult to participate with intelligence in any form of popular government. A considerable percentage of the native-born citizens, white and black, have little appreciation of the duties of citizenship. On the other hand, great fortunes are quickly made, and wealthy men and powerful business corporations are apt to pay little attention to any curb that holds them in check. Under these conditions, written constitutions are a great safeguard and protection to the right to enjoy life, liberty and the pursuit of happiness. Their very rigidity is a protection from force and power and wealth, on the one side, and from the tyranny of majorities on the other.

Yet, written constitutions are not inflexible. They do not always require formal amendment to meet new conditions. Amendments to such instruments, as a rule, are not readily made, nor is it desirable that they be readily made. But as customs and manners and habits of thought change from time to time, so the application and interpretation of a written constitution changes to meet new conditions. Not that courts rewrite the instrument, or interpose new words and phrases, but that with the development of the nation the instrument comes to have new applications. Professor Bryce has said that the Constitution of the United States has "stood because it has been submitted to a process of constant, though sometimes scarcely perceptible change, which has adapted it to the conditions of the new age."

Such modifications, because they are gradual, are not harmful; but if it comes to pass that the instrument may be amended at will, or, more serious still, that laws adopted by popular vote need not conform to the Constitution, the danger in times of public passion or prejudice is easy to understand.

The popular impulse is often wrong, and even when right it is apt to swing to the extreme and then be followed by a reaction. Without restraints, therefore, the laws may become uncertain, or even unjust and unreasonable.

It is to the habit of resting with a sense of security under the law that free governments owe their existence. Without this general feeling of respect for law and order, change would be frequent. All admit that the respect for the supreme law of the land is a great influence for peace and order.

New conditions require new remedies. But methods, which if set in motion, will ultimately destroy the fabric of government, are not to be used while moderation and reason control.

In Oregon, we now permit the Constitution to be amended at will. Formerly, it required not only the majority of all of the electors (meaning the majority of the greatest number participating in the election) to change the Constitution, but the proposed amendment was required to be agreed to by a majority of all of the members elected to each house, in two successive legislative assemblies; now, a bare majority of those voting on the measure at any general election is sufficient to carry the proposition, though but a minority vote on it. Formerly, two years and a half in time, at the least, and the deliberations of four legislative groups, besides the vote of the majority of the people, was the requisite; now, in three months' time, an amendment, perhaps prepared in a secret manner by a single individual, submitted practically without opportunity for debate, certainly without opportunity for pruning, polishing, or enlarging, and generally not even read by the voter, may be adopted by a mere minority of the electors!

I say that this condition imposes new and grave responsibilities upon our citizens. Let them beware lest in seeking greater flexibility in the fundamental law of the state, they throw away the precious heritage of their liberties. Let them remember that it is by the restrictions of the time-worn instrument that disaster has more than once been averted; and that the stability of our institutions is the safeguard of not property alone, but of liberty, and of life itself.

Fortunately, our people are above the average in intelligence and respect for personal and property rights. An examination of the reports of the last census shows that a very large proportion can read and write; we have an excellent school system, and no very yellow journals. The experiment will be tried in safer conditions than might be the case elsewhere. But we are a new people, not bound by historic precedent, or accustomed to conservatism by training or education. We are apt to be led to make experiments, where to experiment is unsafe.

Aside from the ten amendments in the nature of a bill of rights adopted at the outset, the United States Constitution has been amended but five times in 120 years. But at the state election, held last June, ten different amendments to the Oregon Con-

stitution were proposed, and voted upon. There is no limit, and it might well have been forty instead of ten. Among the amendments adopted were some that go to the very heart of representative government, such as proportional representation and the recall of public officers; the former being utterly visionary and impracticable, since it cannot be put into practice, and the latter being so discouraging to independence of thought and action by public officers, and so dangerous if captiously exercised upon the judges of the courts, or the principal executive officers of the state, that the very fact that these amendments are adopted at the first opportunity under the new scheme, is one of the most discouraging signs for the future of this experiment.

Surely, I voice the sentiment of all thinking men when I say that some safeguard should be provided against the too free exercise of this new popular power. And if, as was the case formerly, while an amendment agreed upon by one legislative assembly was awaiting the action of another legislative assembly, or of the electors, no additional amendment might be proposed, then, I say, a similar protection now is the least that could be demanded, and the law should require that but one amendment might be considered at any one election. Indeed, I do not go too far when I assert that as matters stand there is no Constitution; for it is subject to such flux and change as no longer to be the mainstay of our government.

Direct legislation obliterates the essential characteristics of representative government. It is apparent that if the people vote directly, the element of deliberation is lost, and that influence that the minority almost necessarily have in any deliberative body, tending as it must toward modification and compromise, has no opportunity for assertion. The theory that majorities rule, is by no means literally true in representative government. The majority carries its measures; but after reasonable opportunity for debate and amendment, its measures are no longer the same. It is this deliberation and discussion, followed by amendment or possible defeat, that is essential to sound legislation.

In a recent book on *Proportional Representation*, by J. R. Commons (p. 31) occurs the following:

"In the United States, to-day, not only the original Anglo-Saxon is admitted to the suffrage, but also millions from antagonistic races. Especially is this true of the large cities, where 50 per cent. to 80 per cent. of the voters are foreign born, and the

children of foreigners. If England is threatened by the widening of the suffrage, far more is the Republic of America. The great political questions of to-day are those which grow out of the citizenship of the manual laborers, the former serfs. * * * These classes are distributed throughout all districts. They form the wide foundation structure of every community, upon which the other classes are built. They compose the majority of the voters."

De Tocqueville, who published his acute observations upon American political institutions in 1835, said:

"If ever the free institutions of America are destroyed, that evil may be attributed to the unlimited authority of the majority."⁵

He pointed out that the tyranny of the majority was not less to be feared than the tyranny of the despot. His words are echoed by another learned writer of foreign birth, Professor von Holst, who published his *Constitutional History of the United States* in 1875, saying:

"* * * The tyranny of majorities may often be placed on a footing with the tyranny of absolute sovereigns. If, in the former case, the means of defense are far greater than here, the dangers on the other hand are more serious, because tyranny comes clothed in the garb of free institutions."⁶

As the right to vote has been given to a much larger proportion of the people since the beginning of the republic, so has the character of the legislation changed, while the country has grown older and its social and economic problems have become more difficult and intricate. The number of laws enacted by the early legislative assemblies was few, and the subject matter was simple enough. But now the questions for legislative consideration at each session are such as require the exercise of the most careful and intelligent judgment. This is not alone because of the increase of population, its greater density, or its greater geographic distribution. These things may have their influence, but the real cause is found in the great difference in society itself; in the enormous increase of material wealth, the wider dissemination of news, the more frequent mail service, the introduction of labor-saving machinery; the change from simple and comparatively plain style of living; the introduction of the railroad, steamboat, telegraph, telephone, typewriter, electric light, automobile, and other inventions and instruments of modern life;

⁵ *Dem. in America*, p. 273.

⁶ *von Holst*, p. 211.

and last, but not least, to the modification and enlargement of the functions of corporations as instrumentalities for the transaction of business.

Manifold, intricate and confusing are the swirling currents of modern life. To attempt to separate the threads, or to examine, or even to enumerate, the changing and shifting elements, is utterly impossible. But the duty of the lawmaker must necessarily be vastly more complex and difficult now than in former generations; the responsibilities of citizenship are greater; and the intellectual and moral requirements for the exercise of the duties and privileges of citizenship are much higher than at any former period in the world's history.

Here, then, is the problem: Shall it be that with these conditions before us, the safeguards formerly surrounding the process of making laws shall be entirely withdrawn?

Heretofore, when a law was proposed for enactment, it was required to pass through two houses of the legislature and be signed by the governor, and the journals must show each step in its progress through the assembly. The usual steps in this progress were for the bill introduced into either house to be read twice by title, then to be referred to a committee. Here it was supposed to be carefully scrutinized and debated. Hearings of persons interested were had, and such amendments as seemed necessary would be recommended by the committee. The report of the committee being received, it might be accepted or rejected, and the bill when under consideration for its final passage would be read in full by sections, and further subjected to discussion and amendment, and would be recommitted, defeated or passed. Then the same process must be gone through with in the other house, and any new amendments would cause its return to the house from which it originated. And when finally passed by both houses, and properly enrolled and engrossed and signed by both presiding officers, it reached the governor's hands for executive action.

Consider how carefully the Constitution guarded against hasty and unwise legislation. And yet, with all this, it is a matter of general knowledge that much of the legislation thus adopted has been found defective in form, or crudely conceived or expressed, or unscientific, careless, ill-advised or insufficient.

By the Constitution, many safeguards and checks are provided such as the prohibition of the passage of special and local

laws of certain kinds; the requirement that the title must indicate the subject matter, and that but one subject shall be legislated upon in each enactment; the requirement that an amended law must be set forth in full as amended; and many others that might be named. How far these provisions and other provisions of the Constitution apply to legislation adopted by direct vote of the people, under the initiative system, no man is now prepared to say, and these questions are for the courts to decide. Certainly, such laws are not capable of having applied to them the precautionary clauses regulating preparation and deliberation prior to passage, as is the case with legislative enactments.

At the recent Oregon state election, besides the ten constitutional questions submitted to vote, nine other subjects of legislation were voted upon. These measures, with the accompanying printed arguments, when published by the secretary of state in pamphlet form prior to the election, in pursuance of the legal requirement therefor, comprised some 124 pages of closely printed matter. It would require an intelligent study of this pamphlet to qualify for vote on these propositions, many of which were of such character as to totally change fundamental and existing principles of state government. I shall not attempt, at this time, to review these measures and to point out their defects. But a moment's time may be given by way of illustrating my theme.

One is a law changing the time of holding general elections in the state; but it is a question how far this may alter numerous co-related statutes, fixing the time when terms of office begin, and relating to other subjects of importance.

Another is known as the "Corrupt Practices Act." This law consists of fifty-five sections and over nine thousand words, or twenty pages of closely printed matter; its title is such as to readily secure the vote of any right-minded citizen, and its sponsors undoubtedly had no other purpose in proposing the measure than to promote the public welfare. But it goes without saying that very few voters could or would read and digest the provisions of a proposed law of such length and complexity, and it need surprise no one who voted in favor of its adoption if it is afterward discovered to contain clauses that were not generally known, and that are more or less lost to sight in its long pages. This law is highly penal, the punishment for violation of any provision of the act, the punishment for which is not otherwise specially provided, being not more than a year in jail, or a

fine of not more than \$5,000, or both; besides which any elector may contest the right of a person to nomination or office, on the ground of deliberate, serious and material violation of any of the provisions of the act, and the candidate whose nomination or election is annulled and set aside for any offense under the act may not be elected or appointed to office or position of trust, honor or emolument for a period of time. Among other offenses under the act is wearing a political badge or button on election day. The paying of a person for services on election day, such as distributing cards, or carrying banners or furnishing vehicles, seems to be prohibited. The provisions regulating the duties, and the prohibitions against the doing of various things, are extremely numerous, covering election expenses and statements of expenses and affidavits, the failure to file which deprives the candidate of the right to have his name upon the official ballot; and the expenditures regulated include those of not only the candidate, but of a descendant, ascendant, brother, sister, uncle, aunt, nephew, niece, wife, partner, employer, employe, or fellow official or fellow employe of a corporation.

Notwithstanding the constitutional provision that all elections shall be free and equal, the law in effect imposes a duty upon candidates for nomination to pay from one hundred down to ten dollars, depending on the name of the office, for a page of space in a publication to be printed by authority, and those who have any money left may purchase additional space at the rate of \$100 per page, no payment to be less than for one page, and not more than three additional pages to be allowed any one candidate. Opponents are also permitted space in this pamphlet to argue against the candidate, on paying for the privilege. This pamphlet is to be mailed by the secretary of state to all voters. Political parties and independents are permitted to pay for space in a pamphlet to be issued before election, but the tax is but fifty dollars per page in this publication. And in certain cities somewhat similar publications are to be issued, the space costing the candidate twenty dollars per page.

Now, it must be admitted that however salutary such legislation, this is a very complex law. Many of its features trench upon personal rights that have long been cherished; and in seeking to regulate elections, the elaborate and paternal supervision of persons and political organizations will seem to many citizens extreme and unnecessary, if not unconstitutional. Such a statute

is not one that presents a concrete proposition to be voted upon, yes or no, by the people as law makers. It is such, by its very nature, that opportunity for debate and amendment should be permitted. Voters may with great unanimity favor the general principle involved, and may readily support the measure because of its fair title and its general good design; but this is not enough to answer the requirement of intelligence and knowledge in the exercise of the law making power. It is but fair to state, however, that this measure was before the legislature and failed to pass, so that there was this reason for submitting it on the initiative.

To take another illustration:

At the last state election the people voted favorably upon the adoption of two separate and distinct measures regulating salmon fishing in the Columbia and Sandy Rivers. It is notorious that these measures were severally prepared in the interest of business competitors in fishing and canning salmon on those rivers. The two statutes are utterly at cross purposes, and their adoption concurrently presents a situation that will require further legislation to untangle. These measures were reasonable enough in title. So far as the Australian ballot showed they were proper laws for adoption. But it is probable that few voters read the bills carefully, or voted understandingly upon them.

At the same election the entire state voted on the creation of Hood River County, and also on a proposition regulating the price of meals to prisoners in Multnomah County. These were purely local concerns, on which few persons not directly interested could act with judgment.

I call attention to these examples, not for the purpose of protesting against direct legislation in general, but to emphasize the fact that under the Oregon Constitution as it exists, a new and grave responsibility has been imposed upon the citizens. As I have already said, this responsibility calls for the exercise of a very high degree of intelligence, a personal study of measures proposed for consideration. That the new duty has not been well performed in the case of the salmon legislation is apparent, but the failure in this instance is not more glaring than the failure of legislatures to do their duty in other instances. It is fair to credit the voter with a sincere desire to vote right upon the questions submitted, and it is evident that in cases where the question is one of general policy or principle, on which he can

express himself by a yes or no vote, the best judgment and will of the majority of the people may be secured. In cases, however, where the proposed measure consists of many intricate and involved provisions, the fact that there can be no opportunity of amendment or any guarantee that the measure will be read or fully comprehended in all its bearings, points to a danger in this mode of securing legislation. The danger is not so apparent in cases where the vote is upon the referendum, for there it is to be presumed that the measure voted upon has had the benefit of revision in the legislative assembly, and examination by the governor.

In many of the rural districts of the state, where intelligent interest is manifested in the working of the new scheme of legislation, there will be neighborhood meetings, and debates, and lectures on the proposed laws; but elsewhere, and especially in the towns and cities, few will read or meet to discuss such measures, and the best that can be expected is that some will find in the newspapers brief statements of the general purport of the laws to be voted upon.

These reflections suggest the inquiry whether, where the initiative system is to be used, it should not be confined to cases in which the law voted on shall be expressive of a single principle or remedy.

The American people have long been accustomed to vote upon constitutional amendments; sometimes other measures have been submitted to popular vote for ratification or adoption. It will be found that usually in these instances the duty required did not involve more than an affirmative or negative vote upon a single question. It is when the duty involves more than this that the chief danger of the wholesale adoption of ill advised and badly prepared bills will be encountered.

I am of the opinion that for the reason already stated the power of the referendum is not open to the criticisms I have mentioned, but that it ought not to be made the means of holding back, and perhaps by the delay making ineffective, measures adopted by the legislature, unless a much larger percentage of voters sign the petition than is now required. And I suggest the question whether, since the real object of the initiative is to enable the people to make laws where their servants in the legislative assembly are recreant to duty, it would not be advisable to confine its use to cases where the assembly has refused to pass a bill

introduced, and where the executive veto has defeated a bill voted by the legislature.

But my purpose is served by showing that in this new field there is room for the highest order of statesmanship and patriotism. Timid men, believing that it is not popular to question the all-sufficiency of this new scheme that has been adopted by such substantial majority in Oregon will hesitate to undertake the duty of formulating and urging modifications and restrictions. But if the initiative is to be upheld as a part of our plan of government, it should be so limited as to insure against worse evils than those it was designed to correct.

I will not pursue the subject further, but will summarize what I have said in these propositions:

1. There is a marked tendency in the United States and in other countries toward enacting sweeping legislation on novel principles.

2. The evils that apparently give a reason for these changes are not more serious than have been experienced and dealt with before.

3. The plan of vesting the law making power in the people at large is not new in history, and was expressly rejected in favor of the representative plan by the founders of the United States Constitution.

4. The recent changes in the Oregon Constitution, and the facility with which it may now be amended, put new and serious responsibilities upon the electorate.

5. The initiative system of law making, in the form now under experiment in Oregon, requires the exercise of an extraordinary degree of intelligence, impartiality, and devotion on the part of those having the right of suffrage, and is open to certain criticisms that suggest limitations upon the exercise of the power.

6. These suggestions embody the following changes in the present plan:

- (a) Limitation of the number of constitutional amendments, and of initiative measures that may be submitted to vote at any one election.

- (b) Limitation of the subject matter of any such measure to a single proposition, in concrete form.

(c) Confining the use of the initiative to bills that have been introduced and failed to pass in the legislature, and those that have been vetoed by the governor.

(d) Modifying the referendum to require a larger number of petitioners.

Charles H. Carey.