

off-hand opinion is not the basis of such a conviction as ought to excuse a man from the jury. If a man is himself a witness, or if he knows the parties intimately enough to be biased either way, he is not competent to serve, for absolute impartiality is required, but there is more risk of injustice being done by twelve men who are too ignorant to read the papers, than by a jury composed of men who have read newspaper reports, but are free to act upon the evidence as presented.

The selection of the jury should be hedged about by restrictions which will exclude the professional juror and make jury service the duty of all. While there may be special reason for excluding one from service no man should be excused merely because he can spend his time more profitably in business.

Your judges should be elected by the people rather than appointed and it would be well for your constitution to provide that the accused in any contempt proceedings shall be allowed to demand a trial by jury when the alleged contempt is committed outside of the court room. This is the real point in issue in the controversy over what is known as "government by injunction." When the contempt is committed in the presence of the court, the judge can be trusted to impose a fine, his action, of course, being subject to review. But when the alleged contempt is committed elsewhere and must be proven, the accused should be given the protection of trial by jury.

The doctrine of local self government is an essential part of free institutions. Beware of the tendency which manifests itself in so many ways to remove authority from the community and deposit it with some remote official. The appointment of police boards by the governor is an instance of this. On the theory that a city is incompetent to govern itself, some of the states have authorized the governor to appoint police boards. The real reason is usually a partisan one, although the excuse given assails the foundation principle of our government. It is an axiom that people can act best upon subjects which they best understand and it is equally axiomatic that they understand best that which is closest to them. Let the people of each community attend to all matters purely local. As the states are better custodians than the federal government of interests wholly within the state, so the people of a county are the best custodians of county interests and the people of a precinct the best custodians of precinct interests.

It may be well for you to put a constitutional limit to the length of time for which bonds can be issued. The present generation should not be permitted to burden future generations with a debt incurred for the benefit of those now living.

In fixing the limit of public indebtedness a distinction should be drawn between indebtedness incurred for an improvement that yields no revenue and for that incurred for an improvement that returns an annual income. To illustrate, a pavement is a public improvement which though of benefit does not bring a money return, while a water plant is usually a source of profit to a city. A higher limit of indebtedness may safely be allowed when the money expended is an investment which not only furnishes something which the people need, but which yields an income sufficient to pay interest and retire the bonds.

Elections should be scrupulously guarded and no better security has yet been found than a law giving each party representation on all election boards. The two larger parties ought always to be represented and if there is a third party of any considerable strength, it should also be represented. It is not wise to allow the dominant party to select representatives from the minority party or parties. Each party should have the right to select its representation; in no other way can fairness be insured. Where the dominant party selects the minority representation, the selection is too often made from those who are only nominally members of the minority party. If the party organizations are allowed to select representatives, the persons selected will not only be bona fide members of their respective parties but, owing their allegiance to their own organizations, they will be apt to be more trustworthy.

The cost of elections should, as far as possible, be thrown upon the community rather than upon the candidates or the parties. If the candidates have to bear the expense, the poor will be excluded from office holding, not to speak of the temptation which large campaign expenses present to the officer to reimburse himself at the cost of the public. If the expense of the campaign falls upon the parties, there is danger that corporations or individuals specially interested in legislation will finance the campaign in return for promises of favors. While corpora-

tions should be absolutely prohibited from contributing to campaign funds and while the public should be advised before the election of all individual contributions above a small minimum, it would be easier to enforce such a law if candidates and parties were as far as possible relieved from the necessity of making large expenditures. The cost of printing the ballot has already been assumed by the public and it is worth considering whether the bringing of the voter to the polls should not also be provided for by the public or the expenditure of money by the party for that purpose prohibited. It is possible that the end might be reached by the publication of the names of those voters who, without reasonable excuse, absent themselves from the polls on election day.

The direct primary is an improvement over the convention method of nominating, and I suggest that you obtain copies of the primary laws thus far adopted in other states and inquire of the heads of the respective party organizations as to the practical working of the laws. Conventions should be allowed for the framing of platforms and for the performing of any work which can not be done by primary vote, but the more fully the control of the party can be kept in the hands of the rank and file the better. Authority comes from the people and the more directly and completely the people control the less danger there is of the thwarting of the wishes of the voters.

The initiative and referendum are in harmony with our theory of government and should be applied as far as circumstances will permit. The representative is a necessary evil; he is employed because the people can not, on account of their numbers, act directly upon public questions. There is more virtue in the people than finds expression through those whom they elect; the faults of our government are not in the degeneracy of the voters but in the representative who uses a public trust for private gains. Your constitution should provide a way by which the people of each city and county, and the people of the state, may initiate legislation, if their representatives refuse to give expression to their wishes, and sit in judgment upon the acts of their representatives whenever a considerable number of voters desire to test public sentiment by a popular vote. The principle involved in the initiative and referendum is a sound one and experience has shown that it is a popular principle.

I would also recommend the recall—the name is used to describe the system whereby the people of a community may revoke the commission of an official who has betrayed his trust. The right of the people to honest and faithful representatives is superior to the right of an official to hold an office or draw a salary.

You will not have much difficulty in agreeing upon constitutional provisions where there are no special interests to dispute the claims of the general public. You will probably find your greatest difficulty in drawing the provisions relating to corporations and I am sure you will pardon me if I deal with this subject with some elaboration. For the present purpose, corporations will be divided into three classes, private corporations proper, corporations holding municipal franchises, and transportation corporations, such as railways, interurban electric lines, express companies, sleeping car companies, telegraph lines and long distance telephone lines.

I ask you to consider the advisability of creating a Board of Corporations, composed of a number of state officers, or of men elected specifically for that position. This board should have the right to pass upon all articles of incorporation before they are filed, to insure compliance with prescribed conditions. The watering of stock and the issuing of fictitious capitalization should be forbidden and the issuing of stock for anything excepting actual money should be carefully guarded. No corporation should be allowed to own land except as the ownership of land may be incidental to its legitimate business and then the amount should be carefully limited. A corporation can not cultivate land and it would only lead to the inauguration of a tenant system if corporations were allowed to own farm land.

Coal, iron and other mineral lands should be leased rather than sold, insofar as the state has control, and the leases should be limited in duration and in the amount that one person or corporation can control.

Time and experience have brought out two corporate evils which should be corrected. One is the duplication of directorates. No person should be permitted to serve as a director of two or more corporations that either compete with each other or deal with each other. To the extent that two corporations are controlled by the

same persons competition is eliminated, and this is one of the methods now employed for monopolizing an industry.

If the same men control two corporations which deal with each other they are constantly subjected to temptation to sacrifice one corporation to the other. The minority stockholders have rights that must be respected and one of their rights is to have directors who have no pecuniary interests adverse to the interests of the stockholders.

No corporation should be permitted to hold stock in another corporation.

Monopoly of the product is the second evil to be prevented. Except where the corporation owns a patent right, no corporation ought to be permitted to control enough of the total product to enable it to fix the market price or the terms of trade. The proportionate limit is fairer than an arbitrary limitation upon the capital stock, because a capitalization sufficient to monopolize one industry might be insufficient to enable the company to control any considerable part of the product of another industry. The object of the law should be to prevent monopoly rather than to prevent association together for production on a large scale. As long as competition operates freely the public will get the benefit of improved methods, but when competition is eliminated the purchaser has no protection.

No corporation should be permitted to discriminate between purchasers for the purpose of driving a rival out of business; it should be compelled to treat all alike. The trusts have very frequently resorted to the practice of reducing prices in a competitor's field while they maintained or raised them in other parts of the country.

These suggestions occur to me, but they do not exhaust the subject. The board of corporations should be given ample power to require publicity as to the financial condition of the corporation, to supervise its relations with other corporations and to suspend or, subject to appeal, revoke charters for violation of articles of incorporation.

Franchise holding corporations should not be created except under strict regulation. No franchise should be granted except by a majority vote of the people of the city, and then only for a short period, not more than twenty or twenty-five years. The books of the corporation should be open for inspection, its net income over a fixed per cent should be turned into the city treasury and the city should be permitted to purchase the plant upon a year's notice and on equitable terms. There is no excuse for the squandering of the property of the community as it has been squandered in most of our large cities. In some cities franchises worth many millions have been given away by corrupt councils. It is the rule in the English parliament now to limit the dividends which a public service corporation can pay and compel the surplus to be turned into the public treasury or used to reduce service charges.

Cities should be empowered to own and operate such municipal plants as the people, by a majority vote, may decide to be desirable, and the city charter should be easily amendable through the initiative and referendum. The tendency is strongly toward the municipal ownership of water plants and lighting plants. The same arguments which have led people to favor municipal water and lightning plants will lead them to favor municipal heating plants, municipal telephone plants and municipal street car systems.

Your constitution should be clear and explicit in regard to railroads. An elective railway commission should be vested with power to protect the public against discrimination, rebates and extortionate rates. There is no danger of giving this commission too much authority, for the courts can correct any of its errors on appeal, but the power granted to the railway commission should not exclude action by the legislature. The commission should have power to ascertain the present value, measured by the cost of reproduction, of all railroads now operating in the state, and the endorsement of the commission should be necessary before any new stock is issued, to the end that fictitious capitalization may be prevented, as it is by the Texas law.

The capital of a railroad should represent money actually invested and the freight and passenger rates should not be higher than necessary to return a reasonable dividend upon the present value of the road. All rates and classifications should be submitted to the board before they go into effect. In other words, while the rights of the stockholders of the roads should be carefully protected the quasi-public character of the road should always be borne in mind. It