

# The Commoner.

WILLIAM J. BRYAN, EDITOR AND PROPRIETOR

VOL. 9, NO. 34

Lincoln, Nebraska, September 3, 1909

Whole Number 450

## Election of Senators by the People

The following correspondence explains itself:

Lincoln, Neb., July 13, 1909.—Hon. William H. Taft, The White House, Washington, D. C. Dear Sir: Now that the states are going to vote on the ratification of the amendment specifically authorizing an income tax why not give them a chance to vote an amendment providing for the election of United States senators by popular vote? In your speech of acceptance you said that you were personally inclined to favor such a change in the constitution. Would this not be an opportune time to present the subject to congress? Two constitutional amendments—one authorizing an income tax and the other providing for the popular election of senators would make your administration memorable—and I pledge you whatever assistance I can render in securing the ratification of these amendments. With great respect, I am yours truly,  
W. J. BRYAN.

The White House, Washington, July 22, 1909.—My Dear Sir: I have your kind letter of July 13. I am not prepared to urge as an administration matter the submission of an amendment changing the constitution with reference to the election of United States senators by popular vote. As I said in my "speech of acceptance," I hardly deem this a party question, and as there is a very wide difference of opinion in my own party in respect to it, I think it ought to be presented to congress not as a party or as an administration question, but as a matter of individual opinion. With great respect, I am,  
Very sincerely yours,  
WILLIAM H. TAFT.

Hon. William Jennings Bryan,  
The Commoner, Lincoln, Nebraska.

It is as we feared it would be. President Taft declines to recommend the submission of a constitutional amendment providing for the election of United States senators by popular vote. In the same speech in which he declared for an income tax he said he was personally inclined to favor the popular election of senators. He recommends an income tax, but declines to recommend the senatorial proposition.

It seems that he does not regard his expression of personal friendliness as committing him to any effort to secure the amendment. As it is not necessary for him to sign a joint resolution submitting such an amendment and as he now declines to recommend it it would look like his reference to it was a matter of surplusage. It is hardly fair to hold out such hopes during the campaign and then disappoint them when the election is over; we were afraid of it, as see notification speech, August, 1908:

"With respect to the election of senators by the people, personally, I am inclined to favor it, but it is hardly a party question. A resolu-

tion in its favor has passed a republican house of representatives several times and has been rejected in a republican senate by the votes of senators from both parties. It has been approved by the legislatures of many republican states. In a number of states, both democratic and republican, substantially such a system now prevails."

### ADVISABILITY OF THE POPULAR PLAN

The late Senator Stephen R. Mallory gave to Georgetown University in the District of Columbia a generous sum, the interest on which was to be used as a prize for the most meritorious original essay on any question arising out of or relating to the constitution of the United States, or arising out of or relating to the republican system of government. It was provided that at least 500 copies of the prize essay should be published in pamphlet form within three months after the medal had been awarded.

The Mallory prize essay for 1909 was entitled "The Advisability of Electing United States Senators by Popular Ballot." This essay was written by Earl John Mohn of the Georgetown Law School, class of 1910. Mr. Mohn's residence is 309 Rebecca street, East End, Pittsburg, Pa. The essay is so interesting and instructive that The Commoner reproduces it in full.

### "VOX POPULI, VOX DEI"

#### PART I

The convention that met at Philadelphia in 1787 and framed our national constitution was about equally divided between the advocates of a national and the advocates of a confederate government. The great conflict between these two factions was fought over the question of representation in our national legislature—the congress of the United States. Men whose names play a great part in the history of our country were very active in this conclave. The nationalists, as they were popularly called, were under the leadership of such brilliant men as Alexander Hamilton, James Madison, James Wilson and Gouverneur Morris, while the confederates were almost equally strong under the command of equally great men—Patterson, Lansing and Luther Martin.

A careful scrutiny of the conditions which surrounded these men when this incomparable political compact was made reveals the conflicting claims and warring factions ever present when popular action is invoked. A compromise was inevitable. And we can not too heartily thank God that the apparent superhuman wisdom of Roger Sherman and Benjamin Franklin rescued the sinking craft (for failure of confederation had made the destruction of the freed nation imminent) and harmonizing incongruous impulses, steered it into placid waters. The sovereignty of the new states was necessarily guarded with earnest vigor and keen watchfulness by nearly all the participants in the convention. It was apparent from the outset that some concessions must be made to strengthen the weakened bonds of union, but that those concessions should be yielded only after the most careful scrutiny into their effect and when the absolute necessity therefor had been established, seems to have been the actuating principle of most of the delegates. And this was not unnatural nor surprising.

"The people," said Sherman, "should have as little to do as may be about the government; they want information and are constantly liable to be misled," and again, "Popular election is not likely to produce fit men." Mr. Gerry used language nearly as strong while Mr. Randolph indiscriminately attributed the evils of the country to the "turbulence and follies of democracy." But the skilful management of cooler heads and the personal influence of Madison of Virginia who earnestly advocated the system of election by the people and declared that he "thought the great fabric to be raised would be more

stable and durable if it should rest on the solid foundation of the people itself than if it should stand merely on the pillars of the legislature," averted what might easily have become a serious conflict and imperilled the chances of union. But it was an early conclusion that in order to induce the consent of the states dominated by such sentiments at least one of the branches of the legislature should accord in its selection, membership and power with the two fundamental requirements—recognition of the sovereignty of the state and restraint of popular action. The first is the one absolutely permanent feature of the instrument, for no imaginable development of political ethics admits a possibility of its voluntary cession. The mooted question depends entirely upon the necessity and extent of application of the second requirement. No one will deny the unreliability of the occasional waves of popular sentiment nor the desirability of some check upon the possible vacillation in governmental policy they might otherwise effect; but a free country must depend upon the will of its supporters. The consent of the governed implies the exercise of a conscious intelligence, not the mere aggregation of a material force.

"The senate," says Garrison, "was the great stumbling block—almost the crux—in the constitutional settlement." Edmund Randolph's plan provided for the election of senators by the house "out of a proper number of persons nominated by the individual legislatures." George Reid's plan substituted the president for the house. Dickinson, following Spraight of North Carolina, moved that the legislatures elect. Wilson of Pennsylvania, "than whom," says ex-Governor Higgins of Rhode Island, "there was no greater mind in the line of jurisprudence," on the other hand advocated direct popular election—by districts—arguing that a choice by the legislatures would "introduce and cherish local interests and local prejudices." Wilson's plan failed, but some of the greatest patriots and legal minds in the convention were in favor of its adoption even at that time and in that form.

We can readily see that some of the rejected schemes would have had their own dangers and abuses, but who can say whether the result of the adoption of any one of them would have been more disastrous than that of Dickinson's under which we have worked for more than a century? Dickinson, as I have mentioned above, moved that the respective state legislatures elect their representatives to the upper house of congress. His motion was carried and at that moment Article I, Section III, of the Constitution of the United States took its life.

"It is a maxim in law," says Edwin Maxey, the eminent writer on political science, "that reason is the soul of law and when the reason ceases the law should cease. This maxim is entirely logical although the logic of theory does not conform to the logic of fact." Applying this bit of philosophy to the case in hand we are furnished with an explanation of the continuance of the present method of electing United States senators, but not necessarily with a justification of it. When the framers of our constitution placed in that instrument the provision that senators should be elected by the state legislatures, thus making it the supreme law of the land, they had a reason for so doing and they considered the reason a good one. They, or at least the great majority of them, believed that it would not be safe to have the United States senators elected by the people, any more than it would be to have the president so elected. Their democracy had not developed to the point where they had sufficient confidence in the wisdom and conservatism of the people to entrust them with the power of electing more than one branch of congress.

Holding these views they had a reason for favoring the method which they adopted for electing senators. But the advancement of political science, the astounding growth of our country and the intelligence of our people have removed the reason, and this is proven by the fact that all over this land the trend seems to

## CONTENTS

ELECTION OF SENATORS BY THE PEOPLE
"EVERYTHING ALL RIGHT"
CAN NOT UNLOAD
EDUCATIONAL SERIES — "CANNONISM"
AND THE REPUBLICAN PARTY
REPUBLICAN CORRECTS REPUBLICAN
THE MONETARY COMMISSION
NO TIME FOR SENTIMENT
WHY I PREFER ENGLAND—BY AN AMERICAN MILLIONAIRE
THE BANK GUARANTEE IN CHICAGO
CURRENT TOPICS
HOME DEPARTMENT
NEWS OF THE WEEK