Direct Legislation in Arkansas

A great campaign for the initiative and referendum is on in Arkansas. Mr. Bryan has accepted an invitation to take part in the contest. Beginning September 7 he will spend four days in that state. Referring to Mr. Bryan's visit the Arkansas Gazette says:

"A special train may carry William J. Bryan over Arkansas when he makes his tour of the state the first part of September in the interest of amendment No. 10, providing for the initiative and referendum, according to Governor George W. Donaghey, who is now investigating the feasibility of securing the train.

"'I am thinking very seriously of securing a special train to take Mr. Bryan over the state,' stated Governor Donaghey yesterday. 'I have not fully made up my mind on the matter, but the indications are that such a step may be taken. I intend to accompany Mr. Bryan on his trip over the state. I have already made speaking engagements for a part of the time while Mr. Bryan is in the state, but I will secure someone else to take my place on these engagements and go with Mr. Bryan. If the special train is secured I will invite five or six represetnatives of the Arkansas press to accompany us, and also several others.'

"Governor Donaghey's attention was called to the fact that Mr. Bryan had wired that he would deliver eight speeches in the state, two a day. The governor stated, however, that he believed Mr. Bryan would consent to deliver a number of five minute speeches at small towns en route on the swing around the state. These would probably be made in addition to probably an hour's speech at some important point in the afternoon and possibly an hour and a half speech at some other important point each night.

"If the special train is secured the trip will probably prove to be one of the most striking events in Arkansas political history. Governor Donaghey is leading the fight for the adoption of amendment No. 10, providing for the initiative and referendum, and the indications are that he intends to put forth every possible effort to that end. The announcement that he may secure a special train for Bryan is an indication of the extent of the fight he intends to make on the issue, and if the train is secured it is considered certain that he will attempt to reach as many parts of the state as possible.

"It is expected that George A. Cole of Fayetteville, president of the Arkansas Farmers' Union, and E. W. Hogan of Franklin county, president of the State Federation of Labor, will be invited to join the Bryan party. Both organizations have heartily endorsed the cause of amendment No. 10.

"Governor Donaghey stated yesterday that he had not yet decided on the points where Mr. Bryan will be scheduled to speak. It is believed that this announcement will be held until it is definitely determined whether the special train will be secured."

Rev. A. C. Miller, a well known Arkansas educator, has written a review of the opinion given by a number of lawyers as to the legal effect of the proposed reform which in Arkansas is known as "amendment No. 10." Mr. Miller's article follows:

Proposed amendment No. 10 is already bearing fruit. The principle is intended to provoke discussion so that the people may know the meaning of proposed laws and intelligently adopt or reject. In the Gazette of August 14 a group of able and conscientious lawyers exercised their right and gave us their opinion. I thank them for publishing their difficulties, because they declare themselves friends of the principle, and are opposed only to the form of the amendment. As friends of the principle they will welcome its elucidation.

As lawyers accustomed to deal with statutes in relation to the constitution as it is rather than as it ought to be, they have a predilection for the actual rather than the ideal, and find it difficult to adapt their mental processes to the new idea sought to be incorporated into the constitution. They are democrats, but their notion of democracy is simply that the people may elect men, not that the people have a right to pass directly upon measures. To the legal mind this is anarchy. Theoretically these lawyers admit the principle of the Declaration of Independence, written by Jefferson, the father of American democracy: "That to secure these rights (life, liberty, and the pursuit of happiness) governments are instituted among men, deriving their just powers from the consent of the governed." "That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its power in such form, as to them shall seem most likely to effect their safety and happiness." Moved by this faith our fathers threw off the British yoke, and organized a government based on a written agreement. This agreement in the federal constitution and the agreements in the several state constitutions contain provisions for peaceful revolution by amendment. The people, the ultimate source of authority in our form of government, made organic law and they are competent to change it. This our lawyer friends theoretically admit, but practically deny.

As the vast areas through which our forefathers were scattered made direct legislation impossible, they, with their Anglo-Saxon genius for government, used the expedient of legislation through elected representatives. As improved means of transportation and communication have made direct legislation possible and practicable for a whole state, and as the frequent misrepresentation of the people in so-called representative bodies has called for reforms, the people are seeking through proper constitutional amendments to assume and resume the power which they had delegated to the legislatures. That there are dangers may be admitted, but God took the responsibility for evil by making human beings capable of choosing between good and evil, and man can not do what God did not do, make a form of government that can not be abused.

If these lawyers objected only to the clause, "each municipality, each county," their argument might have much weight, but they condemn it even without the so-called "joker" clause; consequently they either do not understand or do not approve the principle of direct legislation. As they profess to approve, let us see whether they can understand.

1. They object to amendment No. 10 because it will become an elemental part of our organic law. It would utterly fail of the purpose if it did not become a constituent part of the organic law. We expect it to become a part of the constitution.

2. They object, because they think that "constitutional limitations fixed to protect the weak against the strong, minorities against aggressive majorities" will be gone. Their sympathy with the weak and minorities is admirable, but they become exercised lest the weak and the minorities might issue bonds and change county seats and county lines. There is no ground for their sympathy, because under our present constitution the weak and minorities have absolutely no way to raise a public question except to grow strong and become the majority. A legislature composed of the representatives of the majority refuses to submit constitutional amendments unless convinced that the majority want it. There is no legal method by which the weak can make themselves effectively heard or felt. There is no ground on the other hand for the fear that minorities would control in settling questions of bonds and county lines and seats. The initiative makes it possible for a respectable minority to raise a question, to get it logically before the voters, and the referendum make it impossible for the measure to become a law until approved by a majority of all who vote on it. Our lawyer friends should favor the amendment because it gives the weak a power that they now do not possess, and prevents a few (sixty or seventy members of the legislature, no wiser than the average citizen) from overriding the will of all the people, as they have occasionally done.

3. Our lawyer friends criticise the amendment, because it permits the amendment of the constitution in the same manner as it provides for action upon statutes. If there were any clear and persistent distinction between organic and statute laws this argument might have weight, but our lawyers recognize common law (unwritten) as prior to either and above either unless formally abrogated; and James Bryce in the American Commonwealth, recognized as the finest exposition of our institutions says, after giving numerous illustrations: "The framers of these more recent constitutions have in fact neither wished nor cared to draw the line of distinction between what is proper for a constitution and what ought to be left to be dealt with by the state legislature. And, in the case of three-fourths of the states, no such distinction now, in fact, exists."

Woodrow Wilson, the greatest American student of constitutions, says: "Not only do the constitutions of the states go very much more into detail in their prescriptions touching the organization of the government; they go far beyond organic provisions and undertake the ordinary, but very different, work of legislative enactment." "The motive, of course, is dissatisfaction with legislation; distrust of legislatures."

4. If it is argued that only a majority of the votes cast on an amendment is necessary, if No. 10 carries, the answer is that in thirty-two states amendments are adopted by a "majority of the votes cast thereon." Moreover, to require a majority of all votes cast without regard to the number cast on the question gives the advantage to the indifferent and unintelligent and the stay-at-home vote. The people who are interested ought to settle the question. In the two famous slum precincts of Cincinnati the results are distinctly good. In the Sixth ward 308 votes were cast for president, but only one vote on the taxation amendment. In the Eighth ward 496 votes were cast for president and only nineteen for the amendment. Thus the "slum" vote eliminated itself.

5. Our legal friends are alarmed, because if No. 10 is adopted, five per cent of the voters may suspend the action of any and all bills till the next regular election. Certainly. They argue that almost every law might be thus suspended. Yes. Every man has the power to kill himself. How many men do it? It is necessary that the referendum power be general except as to laws necessary for the preservation of the public peace, health and safety, because no man can foresee to which law the referendum should be applied. Appropriation bills, apparently innocent and necessary, may involve the foulest graft. These good lawyers fear the suspension of laws for two years, the effect of which should terminate in that period. Certainly such a thing might occur, but now twenty-six members of the house and ten senators (being majorities of a quorum) may enact laws on subjects not even mentioned in the campaign laws demanded only by corporate interests, possibly by the use of graft, all of the legislators being later convicted of bribery, but the law, if not set aside by the courts as unconstitutional, goes into effect and can not be touched for two years. Which is more terrible, to take the chance of a law being suspended for two years by a part of the people themselves, or to allow a law, passed corruptly, disapproved by all the people to exhaust itself before the people can legally prevent it?

6. These lawyers show not only lack of appreciation of the real nature and spirit of the amendment, but even of its very letter, when they say: "As all acts of the legislature will be hung up until after the time the governor has to act, it would seem to follow that the veto power of the governor will disappear from the constitution." All acts are not hung up until after the time the governor has to act. He has the same veto power he has ever had except when the legislature itself refers a law to the people. It is because No. 10 gives the legislature itself the power to reverse a law; that it withholds the governor's power to veto; and thus prevents a corrupt or arbitrary governor from thwarting the will of the legislature in submitting a law to the people. To illustrate: If a prohibition legislature passes a prohibition law and decides to submit it, a whisky governor can not stop it. If a whisky legislature passed a whisky law and did not submit it, the governor could veto it. If he did not, the people could hold it up for a referendum vote.

7. Our legal friends, after closely missing the foregoing important principle proceed gravely to assure us that our own supreme court and the United States supreme court would declare amendment No. 10 (even without the "joker") void, as contrary to the guarantee of the constitution to the people of each state of a republican form of government. If constitutions are made by the people and the people formally and by constitutional process decide to resume some of the delegated powers the courts will hardly deny them the right. Indeed, in Oregon where the provision is the same as in amendment No. 10 (without the so-called "joker") the court has decided: "The initiative and referendum amendment does not abolish or destroy the republican form of government or substitute another in its place. Laws proposed and enacted by the people under the initiative laws of the amendment are subject to the same constitutional limitations as other statutes and may be amended or repealed by the legislature at will." The judges of the Oregon supreme court have expressed themselves publicly. Judge King says: "In my opinion the initiative and