

corruption ceased. The system became fixed in the confidence and affections of the people, until it was unshakable: This republic is the best governed country on earth.

Hon. N. Droz, ex-president of Switzerland, said of it: "Under the influence of the referendum a profound change has come over the spirit of parliament and people. The net result has been a great tranquilizing of public life."

Prof. Charles Borgeaud of the University of Geneva, wrote, "The referendum has won its case. Unquestionably it has proved a boon to Switzerland and has no more enemies of any following in the generation of today."

The only canton in which the political boss and corrupt influences remained dominant was and is Freiburg, where direct legislation did not exist and could not be secured under the tyrannical and venal rule of a political dictator.

South Dakota adopted this system in 1898. Such was the experience which warranted Oregon in adopting this system.

2. DELIBERATION IN ADOPTION

The passage of the constitutional amendment for direct legislation in Oregon was not the result of caprice. It had long agitation in the press and party conventions. In the legislature of 1899 there were only 13 opposing votes. Both political parties approved it in their conventions of 1900. In the legislature of 1901 there was but one opposing vote and in 1902, when the vote was taken, all the political conventions favored it, and it passed by 62,024 yeas to 5,668 nays.

It should be noted that this amendment was the result of the vote of the legislature, submitting it to popular vote according to the then existing constitutional forms.

Not only has Oregon adopted the constitutional amendment, but in 1910 by vote 23,143 yeas to 59,974 nays (questions submitted Nos. 304, 305) on reference to a referendum by the legislature, a proposition for a constitutional convention was defeated.

Oregon Election Pamphlet, 1910, p. 18.

The argument used against this convention and which defeated the proposition was that its purpose was to have the convention take out the initiative, referendum and recall from the constitution and then proclaim its enactment without submission to the people for ratification.

3. PRACTICABILITY THROUGH THE MODERN BALLOT.

It must be borne in mind that this case involves a method of procedure in state affairs which was not in 1787 practicable. So far was the ballot then unknown that the people of New York in framing their first constitution gave the legislature authority to make a trial of the ballot system and to repeal the provisions if the system did not prove practicable. Furthermore, distances and methods of communication offered at that time obstacles which are now inconsiderable. The possibility of extending a town meeting to the limits of a state had not occurred to anyone at that time owing to the apparent physical difficulties. Now, however, experience has demonstrated that an actual poll of the people can be taken upon any proposition with ease and certainty. In considering, therefore, all old authorities which suggest that the delegation of legislative power is an essential feature of our form of government, we must accept such statements with the limitations of the then existing methods. All statements of this nature must be regarded as obiter dicta and not applicable to the existing conditions which have been produced by the growth and development of our electoral system.

4. EXCLUSION OF "CAPRICE" AND "MOB RULE"

There is another feature which must materially qualify the views of all previous statesmen and judges. In contemplation of previously existing democratic forms, the actual physical assemblage in one place of all the people was involved. No doubt there may be in popular assemblages a high degree of nervous tension, susceptibility to the influences of speech, of cabal and of skillful leadership. A condition of excitement may be created which is not consistent with careful deliberation and which may contain too much of the element of sentiment or sympathy.

Even these conditions may not be inconsistent with decisions which in the long run are righteous and advisable; there may be occasional lapses from good judgment, but the town meetings of New England are living illustrations of the general reliability of popular assemblages in the decision of public questions.

There has been ample opportunity in 300 years of experience with these gatherings to test

the dangers of what is so lightly designated as "mob law," and "the caprice of the majority," but it may be said that no institution in our country has so well stood the test of experience as the New England town meeting.

The jury system is open to similar objections, but it has persisted nonetheless and has become one of the cornerstones of the fabric of human liberty.

These considerations emphasize the absence of the dangers to which popular gatherings are exposed by physical contact, where such methods of deliberation are provided as we find in Oregon under the direct legislation system. Petitions for legislation must be filed three months before the day of election. Not only are the questions to be considered matters of general public notoriety, but the state of Oregon provides that citizens may offer argument for and against the proposed measures and these arguments, together with the text of the proposal, are printed at the expense of the state and placed in the hands of all the voters. There is thus laid before the voters complete information as to the measures upon which they are to vote, and carefully epitomized arguments for and against them. These matters are before the voter in his home, the object of study, deliberation and discussion. He is freed from passion or influence in the consideration of his duty as a voter, and probably in the history of republican institutions, no better system has been devised for securing from the voter a calm, dispassionate and patriotic decision as to his duty with respect to proposed legislation. "Mob rule" is far removed from this system.

It will also be observed that the voter is not called upon to study the character of men but the merits of measures, and an entire shifting of the character of political discussion is thus accomplished. Personalities of men cease to be determining factors when the merits of concrete propositions become the objects of consideration. The training of the voters in their public duties is such as to practically revolutionize the character of political controversies, to elevate the standard of citizenship, suppress passion and prejudice and to bring nearer than ever to perfect form, the deliberations of the people upon their own affairs.

B. The Demand for the System

1. IMPERFECT POLITICAL CONDITIONS

It is apparent that our country is in a condition of reaction against the control of privilege as powerful as that of France in 1792, of England in 1838, of Switzerland in 1848.

In France the republic was created, in England parliamentary government became a reality, and in Switzerland the union of states was perfected; here we are perfecting our democracy. The present movement constitutes the most momentous political revolution in our history, conducted without bloodshed and even without acrimonious political contests. It is a movement economic in its nature and accordingly steady and irresistible. Its objects are political, and it moves on like a tidal-wave which legislatures and courts can not halt.

The causes of this movement are apparent. Political organizations have not been responsive to the popular will. The effort to obtain good government by the selection of "good men" has failed. Legislators have become the people's masters in the exercise of unlimited power. Party platforms are not regarded as pledges. The people are unable to trust their servants. A power has developed which dominates politicians, parties and public servants. Evidences of repeating, bribery, corruption and perversion of delegates, representatives and officials in cities and states have persisted, and even the judiciary has at times been found subject to influences, hostile to the people's interests. The average citizen has abandoned efforts to regulate party machinery and to participate in party caucuses.

The new political movement aims to clear the avenues between the people and their institutions.

The perversion of party caucuses has been met by the plan of direct nomination of candidates at the polls. Even the direct nomination of delegates to presidential conventions is being accepted; repeated scandals and notorious corruption of legislatures in the election of United States senators have caused two-thirds of the states to devise methods of circumventing the constitutional method of election by the legislatures, and it is probable that in the immediate future the national constitution will be amended to secure direct election of senators by the people.

The numerous laws of states for the pre-

vention of corrupt practices and the limitation of campaign expenditures have been supplemented by national legislation, which is probably but the beginning of drastic enactments to maintain the purity of elections.

2. FAILURES OF THE LEGISLATIVE SYSTEM

The founders of the republic dreaded the power of the executive. Patrick Henry inveighed against it. Jefferson insisted with impassioned force that the republic would fall through the usurpation of power by the judicial department.

Prophecy takes a hard test by the light of experience. All fear of the executive has ceased after more than a century of trial. For the first time the judiciary has become a subject of apprehension in the last few years.

But it is the legislative department that has proved the weakest of the departments of state.

The people are strengthening this branch of democratic government by applying more democracy.

The sovereignty is being placed in practice, where it exists in theory, with the people; the instrument is direct legislation.

In adopting this system there have been no interferences with the regular operations of the customary legislative machinery. Representative government remains, but its products are no longer beyond popular reach. Vicious and corrupted acts can no longer be fastened upon the people against the will of the majority.

Experience has proven that it is not safe to trust delegates with unlimited power to make laws, and the question presented in this case is whether there remains in the people the power to apply controlling influences to them.

The history of this year's legislation furnishes a long list of broken pledges.

The governors of Colorado, Maine, New York, New Hampshire have publicly denounced the legislatures of their states for failure to redeem the direct promises of party platforms.

Governor Shafroth of Colorado declared that in the longest legislative session in thirty years not a pledge has been redeemed.

In Maine a direct primary act was refused by the legislature and at the polls under the "initiative" amendment of the constitution, the measure was adopted by a vote of 55,840 yeas to 17,751 nays.

In 1902, under a law permitting an expression of public opinion at the polls, the people of Illinois favored by a vote of 428,000 to 87,000 a constitutional amendment providing the initiative and referendum. The legislatures for eight years took no action. In 1910 the people again made the demand by vote of 447,908 yeas to 128,398 nays. All the political platforms endorsed it. The legislature this year has refused to pass the measure.

Two investigations are now in progress involving corruption in the election of senators of the United States; it is not denied that \$107,793 was expended to secure the election of a senator by the legislature of Wisconsin.

Even in England faith in parliamentary government has been shaken. Mr. Lecky says:

"A growing distrust and contempt for representative bodies has been one of the most characteristic features of the closing years of the nineteenth century."

Democracy v. Liberty, I. pp. 142, 143.

Mr. Dicey remarks:

"Faith in parliaments has undergone an eclipse."

13 Harvard Law Rev. 73, 74.

Governor Woodrow Wilson has described the political situation as follows:

"Many of the old formulas of our business and of our politics have been outgrown. We still revere 'representative government,' but we are forced to admit that—the governments we actually have have been deprived of their representative character. They do not represent us. They are filtered too fine through the sieve of secret caucuses and other machine processes; there are too many conventions preceded by too many private conferences between us and the persons through whom we legislate and conduct our governments.

"We, the people, have not free access enough to our own agents or direct enough control over them. We mean by one change or another to make our governments genuinely popular and representative again. We are cutting away anomalies not institutions." Boston Common, May 13, 1911.

Such are the failures and scandals which have created distrust in parties and legislatures and caused the people to secure direct control of their political machinery, their officials and