(U. S. S. at Large, Ch. 310, June 20, 1910) provided

Sec. 20—"The constitution shall be republican in form and make no distinction in civil or political rights or account of race or color and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence."

Congress provided for definite limitations upon the future powers of constitutional amendment, "by an ordinance irrevocable without the consent of the United States and the people of said states" touching religious freedom, polygamous marriages, sale of liquor to Indians, disclaimers to public lands, equality of taxation, taxing Indian lands, assumption of territorial debts, public schools, right of suffrage, &c.—which shall be made part of such constitution in terms to preclude later amendment "without the consent of congress."

It was open to congress to make like reservation with respect to amendment striking out direct legislation, but it was not done.

By these reservations it appears also that this constitutional contract with the U. S. was to be made with congress, showing that the political power is recognized in the execution of such agreements.

The same act

Sec. 21 (Ch. 310, 1910) provides for submission of the constitution proposed by the state convention to the people.

Sec. 22. "And if congress and the president approve said constitution the president shall certify said facts to the governor," &c.

Sec. 23. On election of state officers the president shall "issue his proclamation" and thereupon "the proposed state of Arizona shall be deemed admitted by congress into the union by virtue of this act on an equal footing with the other states."

The debates in congress show that congressional opposition to direct legislation had practically ceased.

It is public knowledge that the veto of the president was confined to the "recall" provisions of the constitution and following this veto congress amended the terms of admission by act approved Aug. 21st, 1911 so that "Arizona is admitted as a state upon amending the proposed constitution (Art. VIII, Sec. 1) adopted by the electors at the election held Feb. 9, 1911—so as to except members of the judiciary from the recall provision.

C. THE REAPPORTIONMENT ACT

But an act of congress of even greater significance has recognized the legal status of those state constitutions, which contain provisions for direct action by the people under the initiative and referendum.

House Report No. 2983, 1911, provided for the redistricting of states for representation in congress by customary legislative acts. This bill was amended in the senate, Aug. 3d, 1911, and became a law in the following form (Acts Aug. 8th, 1911.)

"Sec. 34. That in case of an increase in the number of representatives in any state under this apportionment such additional representative or representatives shall be elected by the state at large and the other representatives by the districts now prescribed by law until such state shall be redistricted in the manner provided by the laws thereof, &c."

This amendment was expressly intended to leave the redistricting subject to the initiative and referendum in states where they have been adopted.

Thus provisions for direct legislation have become a part of the political system of the United States, and the legality of future congresses may be dependent upon a like recognition by this court.

3. Opinions of the Courts

This court has in a sweeping statement confirmed the title of the people of Oregon to shape its government to their own free will:

"The powers of the states depend upon their own constitutions: and the people of every state had the right to modify and restrain them, according to their own views of policy or principle."

Martin v. Hunter's Lessee, 1 Wheat. 305.

The supreme courts of Oklahoma and Oregon have affirmed the validity of direct legislation in ex parte Wagner, 21 Ok. 35, and

Kadderly v. Portland, 44 Oregon 118.

In the latter case Justice King for the court erected an impregnable standard for the republican form:

——"each republic may differ in its political system, or in the political machinery by which it moves, but so long as the ultimate control of its officials and affairs of state remains in its citizens it will in the eye of all republics, be recognized as a government of that class."

Kiernan v. Portland, 111 Pac. Rep. 379.

So the Minnesota supreme court holds

"The test of republican or democratic government is the will of the people, expressed in majorities under the proper forms of law."

See also Hopkins v. Duluth, 81 Minn. 189.

See also In re Pfahler, 150 Cal. 77.

Much reliance has been placed by opponents of direct legislation on the case of

Rice v. Foster, 4 Harr. 479,

which contains language unworthy of an American court and has very properly come under severe criticism.

Mr. Justice Holmes, in the opinions of the justices, 160 Mass. 587, refers to the theory of Hobbes that the surrender of sovereignty by the people was final, and calls attention to the fact that the notion of Hobbes was urged in the interest of the absolute power of King Charles I., and thus disposes of the case of Rice v. Foster:

"I notice that the case from which most of the reasoning against the power of the legislature has been taken by later decisions states that theory from language which almost is borrowed from the Leviathan."

4 Historic Democratic Forms

It must be that in using the general term "republican form of government," it was intended to include beyond peradventure such preceding free forms as were known to the people of the states when they adopted the constitution. Such indeed furnished the only basis upon which the people could construe the term. If such precedents were to be excluded the submission of the constitution to the people was in this regard a snare.

Hume, Rousseau, Locke and Kant had then spread the doctrine of popular sovereignty through the world, and their works and theories were well known to the colonists. Paine and Jefferson were expounders of this doctrine in America. Locke had attempted to put his theories into concrete form in the charter for Carolina. Rousseau's "Social Contract" was already imbedded in words in the Massachusetts constitution. He had definitely challenged the representative system (Ch. XV.) in the words:

"Every law which the people in person have not ratified is invalid."

From these writers the colonists had absorbed the extreme ideas of democracy. Democracy flowed in their Teutonic blood, was imbedded in their town and colonial governments, and was the hope and inspiration of their revolutionary struggle.

"Representatives," "delegates," meant to them rulers and not servants. Their numerous democracies in the shape of towns had not in a century and a half yielded up even to the argument of force one jot of their purity. They exist today as lasting monuments of the truth, that the ultimate destiny of human freedom is pure democracy, the direct expression of the popular will in the exercise of sovereignty.

Democracy, and not a representative system, was the ideal of the colonists.

[The fourth installment of Mr. Williams' brief will be printed in the next issue of The Commoner.]

PERKINS' NATIONAL INCORPORATION PLAN

Washington dispatches say that President Taft held a conference with Attorney General Wickersham relating particularly to the likelihood of passing a federal incorporation act.

Everyone should inform himself with respect to the meaning of "national incorporation." It means, in brief, the centralization of all authority over all corporations in the hands of the federal government and it is the trust magnates companionpiece for the Standard Oil and Tobacco trust decision. While the idea of centralized power is as old as the world and the idea of centralized power with respect to corporations has been presented in one form or another ever since corporations were created in America; the particular plan advocated by Mr. Taft was formally described by George W. Perkins, the financier, in February, 1908:

The story was told in one of the leading financial publications, the Wall Street Journal of Friday, Feb. 11, 1910. The story follows:

Two years ago on February 7, George W. Perkins read an address in the Columbia university lecture course of that winter which received less attention than it deserved. And it is a curious coincidence that exactly two years afterwards, to the very day, the administration's federal incorporation bill was introduced into both houses of congress. What Mr. Perkins, in February, 1908, advocated and expounded, President Taft and his administration have, so far as the general principle was concerned, warmly recommended to congress. And so it is a singular feature of this agitation by means of which there is hope of relief from certain features of the Sherman anti-trust law, that one of the great minds occupied in the construction of great combinations, like that of the International Harvester and the United States Steel corporation, should now find that what he recommended two years ago is advocated by the president and his administration, and has been whipped into the formality of legal and legislative phraseology by Attorney General Wickersham.

It may be that Mr. Perkins finds some occasion for criticism of certain of the details of the federal incorporation bill; and it is observed that the chairman of the board of directors of the United States Steel corporation, Judge Gary, speaks in approval of its general principle, still withholding complete commendation until there can be assurances that the bill, if it becomes a law, will furnish practicable remedies.

Of course, it is recognized here and has at Washington, that if some of the master minds of the greater corporations and combinations speak in approval of the principle of the incorporation bill, then the likelihood is that there may be accusation that these minds may discover in its legalized opportunity to continue as they have continued, except that the eye of the federal administration will be upon them.

Still, it is regarded as a reasonable answer to that doubt that the attorney general framed the measure, that the president has studied it and has given it his approval.

In all probability, the men of large affairs, who are sincerely and not with any falsehood at heart, seeking some way by which reasonable combination—that is, combination not injurious to public interest—may be made legal, would prefer that the supreme court should so interpret the Sherman anti-trust law as to declare it is in effect nothing more than a specific enunciation of the common law which prohibits such agreements or combinations as tend to or actually do work injury to the public. Were there an interpretation of that kind, there would probably be no necessity for an incorporation law. Moreover, such a measure as President Taft now approves will, if it becomes a law, be in danger of frequent testing through appeal to the courts, whereas a judicial interpretation by the supreme court would not. Such an interpretation, the great corporation managers say, and President Taft has also intimated of late to his callers, would permit the business of the United States now carried on through incorporations not only to know where it stands exactly, but that it can maintain combinations of capital without violating the law.

Mr. Perkins intimated that one reason why federal incorporation would be desirable, would be the relief from the various statutory exactions of the states of the union. But he emphasized what all business men have said, that federal supervision and regulation should be placed in the hands of men who are not creatures of political favoritism, but who have experience, judgment, ability, and a perfect sense of impartiality.

This is also the view taken by the president of the New York Central, Mr. Brown, than whom there is no stronger supporter of governmental supervision of public utilities corporations in the United States. Recently President Brown, speaking to a friend, said that already it has been discovered that the public utilities commissions of New York state are not only of benefit to the people, but of real benefit to the corporations which under the law they have the power to supervise. And in his view the brief experience we have already had with our public utilities commissions makes it clear that in due time, in case these bodies do not fall into the hands of the politicians, they will be of the highest services, not only to the corporations, but to the people.

In Mr. Perkins' Columbia university address, he spoke carefully upon one subject upon which in private he has spoken enthusiastically. It seemed to him that it is not only within the power of the people, through their representatives at Washington to create a very competent body of railroad and corporation control, but that in that creation the people will find themselves best served, as well as the corporation. Mr. Perkins is of the opinion that if to such governmental bodies there be brought men of expert knowledge, high character, free from all political or partisan influence, then in due time these bodies will be regarded as furnishing an appropriate, highly dignified, and distinguishing claims of careers of great achievements. Mr. Perkins thinks that if this idea be well worked out, then it would ultimately be regarded as high an honor relatively to serve for life or for a long term of years upon a body of this kind as lawyers regard the supreme bench as the climax of a professional career.

The feeling here is that there are some details in the bill as at present worded which must be eliminated or modified if the measure is to be practicable. It looks as though the bill intended that there should be nothing in the way of holding companies, but that the great corporations should buy outright subsidiary corporations and completely assimilate and absorb them.

APPRECIATED IN CALIFORNIA

C. M. Gidney, Santa Barbara, Cal: In renewing my subscription to The Commoner which I have taken from its first issuance, I desire to express my appreciation of the work you are doing through its columns. For one whose political enemies have buried so many times, you certainly have them going. It is evidently a case of "though dead he speaketh." California has just declared for progressive policies by an immense majority and I believe an appreciative sense of the part you have had in bringing about this result, is beginning to stir among the people. I also believe that the American people are beginning to realize that the seat of power in our government has been gradually passing to the courts and that it behooves them to see that the courts are run in the people's interest. Hence, the movement providing for the recall. While it would give me great pleasure to vote for you next year, I shall cheerfully support such candidate as The Commoner can consistently indorse.