hath left in our power to choose what government we please for our civil and religious happiness."

The bill of rights of the Massachusetts constitution declares that by right, the people of the commonwealth, "invest their legislature with authority" and "provide for an equitable mode of making laws."

b. SOVEREIGNTY EXTENDS TO CONSTITUTIONS AND STATUTES.

Constitutions are not limited to organic law. Whatever may be the theoretical and aesthetic division between organic and statute law, this division, as to constitutions is urged only by text-writers as a matter of policy, and nowhere has a court undertaken to limit constitutional conventions or constitutional amendments to organic law.

The original constitutions of the states contain many provisions of a statutory nature, and since that time the practice has grown perhaps to an unreasonable extent; but the practice has its justification in the distrust of legislatures by the people and the necessity they have found of curbing ordinary legislative powers. That extensive provisions of a statutory character are not open to legal or political objection is notably evidenced by the admission of Oklahoma to the union under a constitution which is crowded with such provisions. The court likewise have not distinguished between such legislative provisions and organic laws.

Constitutional limitations of a statutory character are so extensive that upon analysis of the existing conditions they will be found to constitute the great bulk of constitutional texts. Examine Stimson "Constitutions."

The recognition of this power to enact legislation in constitutional form is a definite recognition of the full authority of the people of a state to enact legislation at their free will, and under such forms as they may constitutionally provide. Nowhere has this court or any other court undertaken to say in what exact form the people shall give expression to their sovereign will. The courts of some states, but not yet of the United States, have recognized that constitutional conventions may even promulgate constitutions without the ratification of even the preliminary consent of the people.

However questionable these decisions may be they illustrate the great possible exemptions from fixed forms which are allowed in expressing the popular will, even through the mere process of acquiescence. With how much greater reason is it accorded to the people in united action when they directly declare the law of the state?

No one questions the sufficiency of a constitution which is ratified by the popular vote, and it seems immaterial and technical to inquire into the form in which popular action is thus expressed. It must be beyond question that if the people choose to determine constitutional questions directly at the polls rather than through a convention, they have a power to do so, and it must be incontestable that the common practice of initiation of amendments by legislatures is a mere matter of convenience and not of principle. When, therefore, the people of Oregon fixed for themselves the method of popular initiation of constitutional amendments and a direct vote at the polls upon such amendments, their power so to do can not be questioned by any court.

It seems to be a necessary corollary to this statement that the people's power at the polls over questions of a statutory nature is not any more limited than it would be in a constitutional convention. If it were otherwise, it would be demonstrated that there is somewhere a judicial or political inhibition upon the people in constitutional assemblage to pass from a field of organic into a field of statutory enactment, but as is above suggested no such inhibition exists.

We are, therfore, dealing in this case with a mere matter of form which it requires very little ingenuity to change.

In the early history of the Plymouth colony in 1638, the first experiment with legislation by delegates was made, and it was provided as to any laws which such delegates might enact, "That the freemen at the next eleccon court after meeting together may, repeale the same and enact any other usefull for the whole."

The people of Oregon might copy from the Pilgrim Fathers and provide that at each election any laws passed by a previous legislature might be repealed This would constiute an optional referendum of all legislative acts. Surely with a greater sovereign power than could ever be conceded to the Plymouth colonists the people of Oregon might declare that every election should constitute a constitutional convention of the people to propose and enact their own measures as well as to repeal those of the legislature. Such indeed is the practical operation, and it may be said, the legal effect of the constitutional provisions now in force in Oregon.

Each gathering of the people at election day is in effect a constitutional convention at which the sovereign powers of the people are only limited by their own constitution and the constitution of the United States.

Constitutions are creators of law—they are called organic law, because they contain the plan or means of government, and the making of a constitution is legislation of the highest type. Legislatures can not meddle with it.

Threadgill v. Cross, 109 Pac. Rep. 558 (Ok. 1910.)

It is conceivable that a constitution might put forth an entire code of the law, and leave no powers to a legislature, giving to the people locally or generally assembled or represented the sole power of alteration through amendment of the constitution itself. It has not yet been decided that a permanent body of delegates, empowered to legislate, is an essential of a republican form of government. The town meeting still exists unchallenged, and nowhere does it appear that a city, a county and indeed a whole state may not act in like accord, if the people can find methods satisfactory to themselves.

If the perfection of the secret ballot system provides such a method, what prohibitions of ancient charters or customs shall avail against this form of legislating in the state.

c. THE RIGHT OF DIRECT LEGISLATION

When this court inquires into the right of the people of Oregon to make their laws at the polls, it should do so in the spirit of Mr. Justice Holmes when he made similar inquiry as a justice of the supreme court of Massachusetts:

"I ask myself as the only question what words express or imply that a power to pass a law (subject to rejection by the people) is withheld." Opinions of Justices, 160 Mass. 594

* * * "The supreme power is in a democracy inherent in the people and is either exercised by themselves or by their representatives." James Wilson, Elliot's Debates, Vol. II, p. 365.

Andrew Jackson, in his inaugural address, said: "Experience proves that in proportion as agents to execute the will of the people are multiplied there is danger of their wishes being frustrated. Some may be unfaithful; all are liable to err. So far, therefore, as the people can with convenience speak, it is safer for them to express their own will."

Commenting on the statement that the people who delegate power "have a right to resume it, and place it in other hands or keep it themselves, whenever it is made use of to oppress them, &c." John Adams answered:

"These are what are called revolution principles. They are the principles of Aristotle and Plato, of Livy and Cicero and Sidney, Harrington and Locke; the principles of nature and eternal reason; the principles on which the whole government over us now stands. It is therefore astonishing, if anything can be so, that writers, who call themselves friends of government, should in this age and country be so inconsistent with themselves, so indiscreet, so immodest, as to insinuate a doubt concerning them." Works, Vol. IV, p. 14.

Jameson (Constitutions, p. 21) says:

"Sovereignty manifests itself in two ways, first indirectly, through individuals, acting as the agents or representatives of the sovereign and constituting the civil government; and secondly, directly, by organic movements of the political society itself without the ministry of agents."

"A portion of this sovereign power has been delegated to government which represents and speaks the will of the people so far as they choose to delegate their power."

Luther vs. Borden, 7 How. 29.

The sovereignty of the people being conceded the claim that the law making power can only be exercised through delegates has a fair parallel in the reasoning of the chambermaid, who insisted upon hanging a picture of the leaning tower of Pisa awry, and explained that she could only get the tower to hang straight by hanging the picture crooked.

The assertion that the sovereignty of the people is sufficiently exercised by a legislature, is well met in the words of Washington, when the confederation was toppling and he was asked to use his influence:

"Influence is not government."

d. OREGON IS A REPUBLIC

If the people reserve their original power to themselves and delegate to their agents only limited functions, the republican form is not lost but perfected. The only test of such form is the supremacy of the popular will, and nowhere is it supreme except in the original exercise. Any uncontrolled delegation is a qualified or indirect supremacy.

A monarchy is not less a monarchy because the sovereign elects to act personally rather than through ministers; aristocratic sovereigns need not put their power out of their own hands in order to act effectively. By what token shall it be said that a sovereign people, constituting a republic, ceases to be republican, when it dispenses with delegates and acts directly?

Surely the people may grant such restricted power to their delegates as they choose, and powers not granted and thus reserved are not lost to the people. We can not make any key fit such a lock.

There is no law, which sets the legislature above the people; not in the decisions of courts, not in the constitutions or the conventions which made or ratified them, not in early colonial history, where pure democracy had been the foundation of government.

There is a rank incongruity in the propositions that in a republic the people must be sovereign, and that a government ceases to be a republic when the people refuse to delegate all their sovereign power of legislation to agents.

A people is not sovereign which has not the power to exercise its sovereignty, and a delegate body is the sovereign if it has power to deny to its principal the right to resume and exercise the delegated power. Only when the sovereign voluntarily relinquishes its right to exercise any sovereign function to delegates can the delegates have logical claim to possess the sovereign power. We call this voluntary relinquishment a constitution.

After a century of repetition of the evident truth that delegates of the sovereign function must trace their authority to the constitutional grant, the claim is now made, that our republican form has ceased to exist, and the republic has disappeared if the sovereign has declined to abdicate its full sovereign power to its agents, and chosen to reserve certain of such powers to itself, and indeed only power which is withdrawn upon the failure of the representatives to represent.

May not the sovereign say to his agents, "You must represent me, you must execute my will, or I shall exercise the power myself." If this illogical contention can stand, it must involve the downfall of the entire theory of popular sovereignty.

James Wilson, whose influence in the federal convention and with the people of the states was second to none made brilliant and conclusive answer to the contention of this appellant. "No, sir, I have no right to imagine that the reflected rays of delegated power can displease by a brightness that proves the superior splendor of the luminary from which they proceed."

The people of Oregon have not been disappointed in the direct exercise of their sovereign functions. Nine other states have followed in their footsteps; the wisdom of their course is reflected in the laws they have thus enacted. Democracy has been vindicated; it promises to bring better government, better citizenship and a perfect republic. The people are fit to govern themselves; and are justifying the confidence and injunction of the martyred Lincoln.

"No men living are more worthy to be trusted than those who toil up from poverty; none less inclined to take or touch aught which they have not honestly earned. Let them beware of surrendering a political power which they already possess, and which, if surrendered, will surely be used to close the door of advancement against such as they, and to fix new disabilities and burdens upon them till all of liberty shall be lost."

GEORGE FRED WILLIAMS,

Counsel for the states of California, Arkansas, Colorado, South Dakota and Nebraska, who pray to be heard as amici curiae.

Of counsel for the state of Oregon.

THE FRAUD CONSUMMATED

The Standard Oil trust is "reorganized" with the Rockefeller interests in as complete control as they were before. The Tobacco trust is also "reorganized" with no change in the control. The court refused to allow the independents to intervene and the government declined to appeal, so the fraud is consummated.

How long can a confiding public be deceived by such slight-of-hand performances?