

ABOUT DIRECT LEGISLATION

An Address Before the Oregon Bar Association by the Retiring President, Stephen A. Lowell, at the Annual Meeting of that Organization held in the United States Court Room at Portland, Tuesday and Wednesday, November 15 and 16, 1898.

It was an English statesman, I believe, who thanked God that Great Britain had never been governed more than six hours at a time by her philosophers.

Perhaps it is a source of congratulation that this republic has never yet been governed by its reformers.

It may be that the fact that the reformer has rarely triumphed with his cause is in accordance with a decree of the God of nations who has raised, ruled and destroyed peoples, and governments, as steps toward the ultimate perfection of man's moral and social condition on earth—that the reward of the advocates of reformation is usually the fame of history and not the applause of contemporaneous multitudes.

Hither, it seems to me, however, that the reformer has failed while his reform has succeeded, because reformers, as a rule, are theorists, doctrinaires, often visionaries, urging upon a careless utilitarian world changes, often salutary, but which find recognition only when finally espoused and advocated by aggressive men of affairs, accustomed to the management of men, the development of ideas and the establishment of systems.

So it was the progressive, liberal ideas of the Florentine martyr, that glowing genius of the fifteenth century, Jerome Savonarola, Beneficent, humane and just as was the government he sought to institute upon the ruins of the cruel splendors of the Medici, his cloistered training had left him with all his wisdom and all his courage, impractical and unfitted to maintain his position, impregnable as it was in righteousness, against the organized opposition of vested wrong. And yet it was but little more than a century and a half later that the stern and practical Cromwell established substantially the same system in England, and maintained it long enough to demonstrate to a wondering world that governments could exist and prosper without a king—long enough to plant deep those seeds of liberty which found root and developed the sturdy plant which has bloomed and fruited in the American republic and the constitutional governments of the Old World.

Thus it was with that literary marvel of France, Jean Jacques Rousseau, whose vivid conceptions of individual sovereignty gleamed in the contrast social. He slept beneath the dark marble of the suicide, while the positive and forceful Mirabeau launched the revolution upon the basis of his dreams—and in that communistic holocaust France was cleansed for freedom's garb.

So again was it with the lofty philanthropy of William Lloyd Garrison and his early associates in the abolition society. Their methods failed, but their principle found a victory through the steadfast character, plain common sense and intimate acquaintance with human nature which characterized the great commoner, the might of whose pen shattered the slave block and melted human shackles on American soil.

In the same manner the imperial theorists of the German states dreamed of empire, but it required the executive ability, the purposeful energy and intense personality of the man of blood and iron to consummate the long-hoped-for unity of Germany, and to place the nation in the forefront of the world's great powers.

The average man is a fatalist, a votary of the seductive doctrine of laissez faire. He is wedded to the established order, and it is only under the resistless leadership of men whose persistence is stronger than his conservative predilections that he can be induced to shake off the chains which he realizes long have chafed him, and which bind him to the past. Conservatism reigns practically supreme, and its devotees never fail to greet impending change with a call of danger and an appeal, like that of the Ephesian silversmith, to the prejudice and selfishness of the ages.

And yet there are conditions existent requiring radical and immediate attention, that the dangers they threaten may be averted, and that there are some things valuable in the multiplicity of remedies always offered by professional reformers, the most ultra conservative will usually admit. He is ready, however, to permit the application of the panacea to the disease only at the hands of such men and such organizations as impress him with confidence that the proposed relief has not only merit, but availing vitality. Reform has come and will come only through the instrumentality of men

who are expositors of something more vigorous than theory, more stable than dreams.

So far as proposed government changes affect legislative methods and resultant laws, and most of them are directed to these, law associations are the most probable sources to which the public will look for guidance and information, hence the supreme duty which these organizations owe to society and the state demand for the subject that candid consideration and impartial examination which the training of each individual makes possible and his patriotism imperative.

Members of the legal profession are too broad to assume and too observant to believe that corruption permeates every department of government or distorts every act of legislation, or that every public man has his price, or that either national virility is deteriorating or individual patriotism declining. On the contrary, their intelligent study of history demonstrates that our difficulties are faults for which there is a remedy, and that there never was a time when the horizon of man was broader than it is today, when there seemed a brighter prospect for the ultimate triumph of those eternal principles of equality and humanity for which this republic stands and upon which rest the hope of happiness for the individual and the elevation of the race, than in this glorious setting of the century's sun. Individual liberty is not yet at the gates of Gethsemane, nor is free government approaching Golgotha; still each passing year is teaching that in our boasted freedom there is often license, and that under our form of government there is opportunity for monstrous tyranny.

As compared with the absolutism of kings, parliamentary government was a material advance, and as compared with constitutional monarchies representative government seemed to the fathers perfect in its ideals, yet after a century's test it is apparent that there is much to be attained before the popular government which exists in theory shall obtain in fact. There is something vitally wrong with a system which will permit a few men, sharp, suave and conscienceless, to mold legislation to their own purposes of cupidity and ambition, and to thwart year after year the public will in a government proclaimed as a democracy whose foundations are justice and equal rights.

When Lincoln uttered at Gettysburg his celebrated apothegm, a government of the people, by the people and for the people, the characterization was in substance true, but with the very struggle which gave birth to that famous utterance began the corruption of the ideal and the crumbling of the idol. The extraordinary legislation which the civil war made necessary disclosed to the unscrupulous promoter and the political charlatan the possibilities for using legislative bodies, state and national, as instruments for the accomplishment of purposes of greed, and step by step the encroachments of aggregated wealth have advanced until it is undeniable that at times a representative government, theoretically a popular government, seems, in fact, a government of the people, by the politicians and for the corporations.

If we are to be governed by wealth, we should at least be honest; if the majority favor such control, let us deposit the immortal document of Jefferson with the dust of its illustrious author in the historic tomb at Monticello, and as a decaying nation chant before it dirges to dying hopes and lost opportunities; let us revise the handwork of Hamilton's brain, remodel our constitution, frame our government upon the reactionary lines of privilege, and openly declare to the world that this is a government by classes.

But we shall not be so governed. The alarmist may have his mission, but it is not yet. This republic will not fall, nor will the control of its affairs permanently pass from the people. But it will not do to rest upon laurels of the past nor upon the wisdom of the fathers. Neither can patriotic citizens afford to reject every proposed exercise of power by the people because wealth and fashion are pleased to scoff and style a reform a vagary of socialism.

Free government will only reach perfection as man himself reaches it, and as human wisdom is developing socially and materially, why should it not progress in systems and methods of government?

Lawyers—those lawyers whose manhood dignifies the noblest of secular

professions—easily the leaders of thought in their several communities, largely the molders of opinion in political parties, versed in the basic laws of municipality, state and nation, exerting everywhere an important influence, are clothed with vast responsibility, and are bound in sacred honor to dedicate themselves to the furtherance of reasonable plans which promise reform of recognized abuses existing in our governmental system, and to lend their powerful aid to the formulation into effective law of such as are found to fulfill the requirements of the occasion and to reflect the spirit of our institutions. A change of some character is inevitable, and it is far better that it come through constructive influences than through destructive forces.

One remedy suggested has already entrenched itself among the masses, and even in the strongholds of conservatism is impressing political students in every walk of life that it is worthy a trial, to-wit the reference of certain classes of legislation to the whole people for final adoption or rejection.

Known to social and political science as direct legislation, to literature as the Swiss system, and to party platforms as the referendum, it unfortunately has been, either intentionally or ignorantly, presented and discussed as a part of a socialistic propaganda perilous to society and inimical to the stability of our institutions, while in truth it is but an extension of the idea embodied in the organic law of substantially every state in the Union—that provision of constitutions which requires proposed amendments to be submitted not to legislatures alone, but to the whole body of electors. Such is the referendum—that bogey of socialism and anarchy which monopolistic demagogues have diligently sought to impress the public is hostile to liberty, dangerous to property and subversive of good government.

Direct legislation usually, and perhaps necessarily, couples with the referendum the mandatory petition, popularly denominated the initiative, that is, the power of electors to institute legislation by written application, which, if signed by the requisite number, becomes a command which legislative bodies must obey, and submit the requested law to the people. This, in spirit, is as ancient as the Declaration of Independence, and is nothing more than the right of petition, always sacred to men of English blood, strengthened by its mandatory character only.

The important requisite of the initiative would necessarily be that the legal percentage of voters petitioning should be sufficiently large to be a guaranty that the legislation asked for has behind it the sound judgment of the people—something more than that peculiar and perpetual desire to disturb existing conditions, which seems always to infect a small portion of every community, consisting of a class of well-meaning but ill-balanced men, to whom every change is reform, and who, like Hamlet, imagine that the times are out of joint and that they were born to set them right.

Briefly put, direct legislation is the inception and consummation of laws by the whole people—the substantial establishment of a pure democracy, with congress and legislature essentially the agents and not the masters of the people.

The argument is, and thus far it is unanswered, that with its adoption the fabric which the corruptionist, the trickster and the lobbyist have constructed for selfish ends upon the present scheme of delegated authority, must fall, and the will of the voters be supreme.

Gradually, as has been the case with every preceding attempt at reformation of abuse which has proven meritorious and availing, the proposition has risen above politics and is receiving increasing consideration as a measure of vital and far-reaching public interest. If the people can be trusted to wisely amend constitutions by direct vote, certainly they do not need to make laws by proxy. If they can intelligently delegate power, they can better directly exercise it.

That there is need of some change is evidenced by widespread social unrest and the indifferent attitude in elections, state and national, of an increasing element in our population. The apparent lack of faith among the people in legislatures, the outspoken criticism of the methods of congress and the character of much of its work, the admitted degeneracy of the federal senate from statesmanship to commercialism, from high duty to pitiful dollar, present a substantial demonstration that representative government is not sustaining itself in the crucible of this age. Honorable as is its history, memorable as are its achievements, its armor is not invulnerable, and improvement of some character must be secured.

Change must come either in a stronger central government, a reversion toward the monarchical idea, or in a forward movement toward a fuller assumption of responsibility by the whole people. The latter is the natural solution of the problem. There will be no permanent backward movement. Neither sovereign nor subject

can exist here. The individual must exercise the prerogatives of both. The republic will surely advance to the fulfillment, under God, of its mission of liberty and humanity to the world, and it can do this only through the instrumentality of a government of the people, by the people and for the people as the fathers conceived it, not its perversion as we know it.

Swayed by prejudice and passion, oppressed by a feeling that injustice is being done, actuated by resentment at the arrogance of vested interests, sometimes men are vengeful and for a season error seems to dominate the public mind, but never yet in the history of any movement in which popular opinion has been given opportunity to express itself upon reflection, has the calm, ultimate judgment of the people failed to register approval of moral progress, or to array itself on the side of private and public faith and the maintenance of right.

Every effort thus far made to cure admitted evils of legislation has proven ineffectual because they have been movements away from the ideals of absolute freedom and complete popular control upon which the nation rests—movements away from the people, and not toward them.

The attempts to prevent the enactment of laws intended for private gain or aggrandizement, to restrict the privileges of monopolies, to destroy trusts, to limit the power of political machines and to dethrone bosses have been largely unavailing for the reason that under our present system the power which can manipulate primaries and carry close election districts can usually name the men it deems as candidates, and when elected these men too often prove truer to the influences which nominated them than to the people who elected them. Were the system changed, and all laws passed by congress or legislature to become effective only upon approval of the electorate, the trade of the politician would be at an end, men whose patriotism is measured by their own interests would cease their manipulations, the lobbyist would disappear, while the legislator would reflect the sentiments of his constituents and give support and countenance only to such legislation as he believes the people demand and will by their ballots sustain. Should legislative bodies fail to register the public will, the power of the citizen to institute legislation by petition would be promptly brought into operation, and the opposition of individual legislators would yield to a command none would ever dare to disobey.

I assume, briefly to illustrate, that it will be freely conceded that a great majority of the people of the United States are today, and for many years have been, in favor of the construction by the government of the Nicaragua canal, and that the opposition thereto of the great transportation companies has been the influence which has thus far successfully prevented a response to the popular demand. I presume, too, that it is an accepted fact that a large majority of the voters of the country would welcome a constitutional amendment providing for the election of United States senators by direct vote of the people—and yet every observer of conditions surrounding the upper branch of congress knows that little short of a revolution will bring that about. Who can doubt that under a system of direct legislation both these demands of the people would have long since been satisfied?

It is not an unusual thing in elections to find the beneficiaries of and seekers after special legislation supporting a candidate for mayor or governor to whose party and principles many of them are opposed, and whose election they realize will mean the domination in city or state of a graceless and pernicious political oligarchy, solely because they know that the opponent of such candidate is a man whose integrity and independence raise him above their influence, and who would, if elected, promptly veto the measures of council or legislature by which they expect to secure privileges and control franchises. Blinded by the yellow sheen of gold, and forgetful of civic duty, they ruthlessly bury their patriotism in the black mire of their avarice, and hail only the shifting flag of opportunism. Under our present system the schemes of men of this character, whose wealth and influence can turn the scale of a close partisan election, too often succeed, and will succeed until some improvement upon representative government as exercised in this country today is found.

Many illustrations might be given of desirable laws which would have been secured, and of bad legislation which would have been prevented, had the proposed method been a part of our legislative system. Every state has suffered from vicious laws foisted upon the statute books by mistaken party policy or powerful private influences, and retained there by the cry that there are vested interests involved which must not be disturbed—by the inevitable appeal to conservatism to protect the rights of property—which property is too often watered stocks

and speculative franchises. Property should be protected, but its interests in a republic must never be superior to those of the whole people. If this nation has no nobler purpose than the attainment of material prosperity, then the mystic handwriting, as at luxurious Babylon, is appearing on the wall, and the bells of doom are tolling.

There are, of course, objections raised to the plan proposed, but its pronounced success in Switzerland and in the amendatory provisions of the constitutions of the American states have taken it out of the realm of theory. Captious opposition finds expression in the usual trite arguments of expense, extent of the country, ignorance of a large class of voters, the domination of the saloon and the corruption of the ballot in the great centers of population, but these objections apply even more strongly to the present system, and indeed so far as machine control and the use of money are concerned, direct legislation would practically eliminate both, because the boss and corruptionist could never reach or influence enough of the people to warrant the effort or to make the investment safe.

Two objections have been offered by a distinguished British student of political science, at once familiar with both the Swiss and American systems of government, and their source renders them worthy of consideration.

He declares, first, that "direct legislation tends to lower the authority and sense of responsibility of the legislature," and, second, that "it refers matters needing much elucidation by debate to the determination of those who cannot, on account of their numbers, meet together for discussion, and many of whom may never have thought about the matter."

The first of these alleged demerits does not forcibly appeal to the American mind, for the reason that with us the primary object of government is the contentment, prosperity and safety of the people, not the dignity or impressiveness of representative bodies, and surely under any system the responsibility of the representative is theoretically the same—he is responsible for the highest good of those he represents.

The second is better grounded, and does, in fact, state a real objection, but it is not new, and has been successfully answered by the people themselves whenever important questions have been submitted to their arbitration. Even in earlier days, when newspapers were rare and facilities for public assemblage meager, they found means for discussion of public questions and usually determined them wisely. In this age of facile dissemination of information of every character, when press and platform reach in influence every hamlet, when men are accustomed to frequently gather in lodge and club for discussion of public affairs and social problems, there need be no fear but that when voters realize that upon them rests directly the responsibility for salutary laws and good government, they will appreciate the mighty power for weal or woe their ballot contains, and will cast it intelligently, conscientiously and patriotically. The broadest statesmen have always had the profoundest faith in the wisdom and rectitude of the whole people, and have never been afraid to trust them. We maintain the jury system because confident that the average judgment of twelve men drawn from varied walks of life is more likely to be just than the technical opinion of any judge or bench of judges. Men are favorable to the reference of laws to all the electors in the belief that the average judgment of the many is safer for the state than the biased judgment of the few.

Let us, then, in our own commonwealth, mindful of abuses patent to every observer, impressed with a personal responsibility and a belief in the exalted mission of the republic, examine this question as one too broad for party and too important for politics—as a measure of public moment entitled to the candid consideration of organizations of men educated and sworn to honor and sustain the law, to further public interest, to promote right and to maintain justice.

The hope of the nation may not be in its reformers, but it certainly is in its reforms.

Venerable and majestic as is a legislative system which has stood for a hundred years, neither age nor majesty is a guarantee that it ought not to give way to something better.

STEPHEN A. LOWELL.

The State of Oregon, and especially the cause of Direct Legislation lost a strong and good friend when Senator A. W. Reed, of Douglas County, was taken from this life by drowning last year. Many members of the last legislature were opposed to the Initiative and Referendum when they were elected, but their experience in the extra and regular sessions convinced them that, as Senator Reed said: "We have got the power too far away from the people; it is time to get it back to them."