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DEBATES

IN THE

MASSACHUSETTS CONSTITUTIONAL CONVENTION

1917-1918

VOLUME II

THE INITIATIVE AND REFERENDUM

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PREFACE.

For the benefit of readers not having access to the other volumes of the Debates of the Massachusetts Constitutional Convention of 1917–18, it may be explained that their arrangement is by topics. This permitted the publication of the debate relating to the Initiative and Referendum in a volume by itself. The formal record to be found in the Journal has not been here repeated, except as seemed necessary for understanding the bearing and progress of the discussion. It was not deemed that any important purpose would be served by including matter relating to procedure. If occasion to consult such matter should arise, it may be found in the verbatim transcript of the stenographic report that has been deposited in the State Library. In view, however, of the unusual nature of this particular debate, it will not be amiss to explain that the Resolution as reported by the Committee on Initiative and Referendum was taken up in Committee of the Whole August 7, 1917, where the discussion continued (save for a few days on other matters) until September 27, when the Committee of the Whole was discharged from further consideration of the Resolution, the discussion thereafter taking place in the Convention itself, ending November 28. There was debate of the subject on forty-five days. At the outset no limit was put on the length of speeches, and the general discussion, covering about three weeks, was without time restriction until near its close. The amendments offered were for the most part taken up in the order of the sections of the Resolution to which they related, and were discussed under a time schedule, meant to give reasonable opportunity for opposing arguments, forty minutes suitably divided being permitted for most of them. All told there were six drafts of the Resolution. The five that were debated will be found in this volume, inserted as they came under discussion, with the line numbers of the original documents, in order that the bearing of amendments as they were offered may be understood.

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THE INITIATIVE AND REFERENDUM

THE COMMITTEE ON INITIATIVE AND REFERENDUM.

John W. Cummings of Fall River, *Chairman.*
Joseph Walker of Brookline.
Charles F. Choate, Jr., of Southborough.
Sherman L. Whipple of Brookline.
Herbert Parker of Lancaster.
Samuel L. Powers of Newton.
Matthew Hale of Boston, *Clerk.*
Dennis D. Driscoll of Boston.
Henry T. Lummus of Lynn.
George W. Coleman of Boston.
George B. Churchill of Amherst.
William S. Youngman of Boston.
Nelson Sherburne of West Springfield.
Arthur N. Harriman of New Bedford.
Charles O. Bailey of Newbury.

XVI.

THE INITIATIVE AND REFERENDUM.

Messrs. Joseph Walker of Brookline, Ezra W. Clark of Brockton, Samuel W. George of Haverhill, Arthur N. Harrington of New Bedford and George F. Willett of Norwood presented resolutions numbered, respectively, 7, 183, 184, 186 and 187, which were referred to the committee on Initiative and Referendum.

On the 23d of July that committee reported the following resolution (No. 335), with Messrs. Choate of Southborough, Parker of Lancaster, Powers of Newton, Lummus of Lynn, Churchill of Amherst, Youngman of Boston and Bailey of Newbury, dissenting:

Resolution to provide for Establishing the Initiative and Referendum.

Definition.

Legislative power shall continue to be vested in the General Court, subject to the provisions of the Constitution; but the people reserve to themselves the initiative, which is the power of a certain number of voters to submit laws and amendments to the Constitution to the people for enactment, adoption or rejection at the polls; and the referendum, which is the power of a certain number of voters to submit laws, or any part thereof, enacted by the General Court, to the people for their ratification or rejection at the polls. The power of initiative and referendum shall be exercised as hereinafter provided.

Amendments to the Constitution.

If an initiative petition for any specific and particular amendment to the Constitution is introduced into the General Court, in the manner hereinafter provided, signed by not less than forty thousand qualified voters of the Commonwealth, and the General Court into which it is introduced shall fail to agree to such amendment in the manner provided in the ninth article of amendment to the Constitution, such amendment shall nevertheless be deemed to be referred to the next General Court and shall have the same standing therein as if once agreed to; and if such next General Court shall fail before the first Wednesday of June to agree to such amendment in the manner provided in such ninth article, and if such initiative petition is completed by filing with the Secretary of the Commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August not less than ten thousand additional signatures of such qualified voters, then the Secretary of the Commonwealth shall submit such proposed amendment to the people at the next State election; and if it shall be approved by a majority of the qualified voters voting thereon, such amendment shall become part of the Constitution of this Commonwealth.

Laws.

If an initiative petition for a law is introduced into the General Court in the manner hereinafter provided, signed by not less than twenty thousand qualified voters of the Commonwealth, and the General Court into which

it is introduced fails to enact such law before the first Wednesday of June; and if such initiative petition is completed by filing with the Secretary of the Commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August not less than five thousand additional signatures of such qualified voters, then the Secretary of the Commonwealth shall submit such proposed law to the people at the next State election; and if it shall be approved by a majority of the qualified voters voting thereon, such proposed law shall, subject to the provisions of the Constitution, become law, and shall take effect in thirty days after such State election or at such time after such election as may be provided in such law.

Initiative Petition.

An initiative petition shall set forth the full text of the proposed constitutional amendment or law which is the subject of the petition. Such petition shall first be signed by ten qualified voters of the Commonwealth and shall then be filed with the Secretary of the Commonwealth, who shall provide blanks for the use of subsequent signers. He shall print at the top of each blank a description of the proposed constitutional amendment or law as it will appear on the ballot and the names and residences of the first ten signers. All initiative petitions for a law or an amendment to the Constitution, with the first ten signatures attached, shall be filed with the Secretary of the Commonwealth not earlier than the first Wednesday of the September before the assembling of the General Court into which it is to be introduced, and the remainder of the required signatures shall be filed not later than the first Wednesday of the following December.

If an initiative petition, signed by the required number of qualified voters, has been filed with the Secretary of the Commonwealth as aforesaid, he shall, upon the assembling of the General Court, transmit such petition to the clerk of the House of Representatives, and the proposed constitutional amendment or law which is the subject of such petition shall then be deemed to be introduced into that General Court and pending in the House of Representatives.

Excluded Matters.

No law, the operation of which is restricted to a town, city or other political division of the Commonwealth, shall be the subject of such initiative petition.

Referendum.

No law passed by the General Court shall take effect earlier than sixty days after final enactment, excepting laws declared to be emergency measures and laws which may not be made the subject of a referendum petition, as hereinafter provided.

Emergency Measures.

A law declared to be an emergency measure shall contain a preamble setting forth the facts constituting the emergency, and shall contain the statement that such law is necessary for the immediate preservation of the public peace, health, safety or convenience. A separate vote shall be taken on the preamble of such law by a call of the yeas and nays, which shall be recorded, and

unless the preamble is adopted by two-thirds of the Senators and two-thirds of the members of the House of Representatives present and voting thereon, the law shall not be an emergency measure: *provided*, that no grant of any franchise or amendment thereof, or renewal or extension thereof for more than one year, shall be declared to be an emergency measure.

Submission upon Referendum.

In case of any law enacted by the General Court which is not an emergency measure as above defined, if, within sixty days after its final enactment, a petition is filed with the Secretary of the Commonwealth signed by not less than fifteen thousand qualified voters of the Commonwealth, asking for a referendum on such law or any part thereof, and requesting that the operation of such law be suspended, then the operation of such law shall be suspended, and the Secretary of the Commonwealth shall submit such law or part thereof to the people at the next State election, if thirty days intervene between the date when such petition is filed with the Secretary of the Commonwealth and the date for holding such State election; if thirty days do not so intervene then such law or part thereof shall be submitted to the people at the next following State election, unless in the meantime such law or part thereof shall have been repealed; and if such law or part thereof shall be approved by a majority of the qualified voters voting thereon, such law or part thereof shall, subject to the provisions of the Constitution, take effect in thirty days after such election, or at such time after such election as may be provided in such law; if not so approved such law or part thereof shall be null and void.

In case of an emergency measure or of a law which takes effect because the referendum petition does not contain a request for suspension, as aforesaid, if, within sixty days after its final enactment, a petition is filed with the Secretary of the Commonwealth, signed by not less than ten thousand qualified voters of the Commonwealth, protesting against such law or any part thereof and asking for a referendum thereon, then the Secretary of the Commonwealth shall submit such law or part thereof to the people at the next State election, if thirty days intervene between the date when such petition is filed with the Secretary of the Commonwealth and the date for holding such State election; if thirty days do not so intervene then such law or part thereof shall be submitted to the people at the next following State election, unless in the meantime such law or part thereof shall have been repealed; and if such law or part thereof shall not be approved by a majority of the qualified voters voting thereon, such law or part thereof shall, at the expiration of thirty days after such election, be thereby repealed.

Excluded Matters.

No law, appropriating money for the current or ordinary expenses of the Commonwealth or of any of its departments, boards, commissions or institutions, and no law, the operation of which is restricted to a town, city or other political division of the Commonwealth, shall be the subject of such referendum petition.

General Provisions.

Provision for the proper identification and certification of signatures to the petitions hereinbefore referred to, and for penalties for the forgery of signatures thereto, may be made by law.

Not more than twenty-five per cent of the certified signatures on any petition shall be those of registered voters of any one county.

Each proposed amendment to the Constitution, and each law submitted to the people, shall be described on the ballots by a description to be determined by the Secretary of the Commonwealth, subject to such provision as may be made by law, and the Secretary of the Commonwealth shall cause each question to be printed on the ballot in accordance with the following provisions: —

In the case of an amendment to the Constitution: Shall an amendment to the Constitution [here insert description] be approved?

YES.	
NO.	

In the case of a law: Shall a law [here insert description] be approved?

YES.	
NO.	

The Secretary of the Commonwealth shall cause to be printed and sent to each voter the full text of every measure to be submitted to the people, together with the description thereof as it will appear on the ballot; and shall in such manner as may be provided by law, cause to be prepared and sent to the voters information and arguments thereon.

The veto power of the Governor shall not extend to measures approved by the people.

The views of the dissenting members of the committee on the Initiative and Referendum, printed as Document No. 343, were as follows:

The undersigned members of the committee on the Initiative and Referendum dissent from the report of the majority recommending the adoption of the Resolution printed as Document No. 335, and submit for the consideration of the Convention the following grounds of their dissent:

The Nature of the Majority Resolution — a Substitution of Direct Action, by a Majority of those who vote, for the Action of a Representative Body, on both Constitution and Statutes.

This resolution provides for a partial change in the mode of amending the Constitution, and in the mode of enacting ordinary legislation. It enables the people to alter both the organic and fundamental law and the statutory law, by direct action, through a majority vote, instead of through or by the action of their representatives in the Legislature, or in a Constitutional Convention. All the reasons offered for or against such change rest ultimately upon underlying conceptions of government, and of the relations of Constitution and statute to this government.

I.

Effect of the Resolution upon the Constitution.

Unrestricted Majority Rule not contemplated by the Constitution and Unjustifiable.

The government desired by the people of Massachusetts is a democratic government. On this proposition all are agreed. A democratic government is one in which all power rests finally in the whole people, and which executes the will of the people. And we are not disposed to question the proposition that in a democratic government we must accept a majority vote as the final and decisive expression of the will of the people. This does not mean, however, that a majority vote taken under any and all circumstances, on any and all subjects of legislation, can be depended upon to

express the real will of the people; or that if it were so depended upon it would secure those blessings of good government which all the people seek.

It is not possible for every member of "the people" to take part in the government. The majority of the people of most States, if not all, are non-voters; in Massachusetts only one person in five is a voter, — there are about 775,889 legal voters, of whom 657,838 are registered, out of a population of 3,693,310. The total vote for Governor in 1916 was 526,421. These voters do not hold their great political power simply for themselves. They have a duty, as well as a right. They are representatives and trustees for the whole population, subject to a moral obligation to vote in such a manner as to preserve and secure the rights and liberties and welfare of all the people and of every individual.

It is also not possible for a democratic government to work save under an agreement that a certain number of voters may act for all the voters. A majority of the voters, — in a choice of officials, even a plurality, — must be allowed to govern. Their right to do so does not rest on power to compel the minority to obey. It rests upon a mere practical necessity. When the voters have discharged their obligation to the whole people, to consider fairly, impartially and intelligently the matters to be decided by their votes, their decision must be accepted as right, and submitted to by the minority; otherwise order and government cease. But if, in any case, the majority of voters act hastily, without deliberation; thoughtlessly, without a deep sense of responsibility; selfishly, without consideration of the rights or interests of individuals or of the minority; or ignorantly, without knowledge of the true grounds or of the consequences of their acts: — then, in that case, the justification of majority rule is swept away, and democracy becomes in that particular case a failure, — and possibly a means of tyranny, — the tyranny of the majority.

Restraints upon Popular Action imposed by the People Themselves.

That these views have been profoundly held by the people of Massachusetts from the beginning of the Commonwealth, — and before, — is an evident fact. They have desired not only a democratic form of government, but a democratic form which should be wise, just and effective. They have been unwilling to trust themselves, — the very majority that govern have been unwilling to trust themselves, — to act rightly by a mere majority vote, in legislation either statutory or organic. They have recognized that in times of passion and excitement men do not see their own duties and the rights of others as clearly and sanely as in times of calm; that majorities may be unjust, unwise and uninformed. They have realized that for a people to depend for their liberty and their happiness upon the mere decision of a temporary majority is as insane, as it is for an individual to depend for his own guidance to a successful life upon the whim, impulse or passion of the moment. They knew that there is no such thing as an "unchartered freedom," — that the lack of fundamental and guiding principles of action, of controlling restraint and checks upon impulse and desire, is destructive of all government as it is of men.

The Solemn Compact and Covenant to maintain the Rights of Minorities and Individuals. Changes in this Compact to be made only after Deliberate Action of Representatives of All the People.

When, therefore, the people of Massachusetts united to form our present government, they purposely imposed upon themselves certain permanent restrictions of their own action which they solemnly covenanted with each other to abide by; they emphatically declared certain rights of individuals and minorities, which no action of the majority should traverse; and recognizing that wise, just and intelligent legislation for the whole people is rarely possible by direct action of a majority, and that such a mode of legislation had led to the destruction of other democracies, they established a mode of legislation by elected representatives. Declaring in the Preamble of the Constitution that the body politic is "a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good," they asserted that "it is the duty of the people, therefore, in forming a Constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them; that every man may, at all times, find his security in them." When, in 1821, they established a mode of changing the Constitution, that no change might be made except as the result of a well-considered and well-settled conviction that such change is desirable, and except by as sure and clear consent as possible of substantially all the parties to the compact, they provided that alterations should require the affirmative action of two successive legislatures, comprising the

representatives of all the people, with a two-thirds majority in the House, and a subsequent majority vote of the people. The other mode of amending the Constitution, through a Convention, in like manner requires the precedent deliberate debate and action of representatives chosen from all parts and classes of the Commonwealth, without whose assent and recommendation no proposal of amendment is submitted to the vote of the people.

The Resolution would break this Compact and destroy Constitutional Rights.

The measure now presented by the majority of this committee provides for a fundamental and revolutionary change in altering this solemn compact between all the people and every individual citizen, in that by it a majority of the voters who may at any time vote upon a particular amendment, are permitted, in spite of the protest and the adverse action of the representatives assembled in General Court of all the people in the Commonwealth, to compel a change in the solemn compact or Constitution which determines the rights and liberties of all.

This fundamental change should be clearly understood. Under the resolution reported, an amendment to the Constitution initiated by petition, though twice rejected, disapproved and condemned by the representatives of all the people, may nevertheless be forced upon the people by a majority vote of those who cast their ballots at the next election, though that majority may be only a minority of the whole number of voters. An organized minority may change the compact by which all have agreed to be bound, may impose new and different obligations upon all, may take away from them rights which are cherished and have been preserved to them by solemn covenant.

The right of religious liberty; the right of property; the right of free speech; every right which our forefathers sought by the frame of government to preserve and protect from tyranny, will thus always be at the mercy and subject to the humor, not necessarily by any means of the majority of the voters of the Commonwealth, but of the majority who at any time, at the compulsion of certain initiative petitioners, may come to cast their ballots for a particular amendment.

Attempted Justification of this Destruction of Constitutional Rights and Our Answer. The Compact to be broken at Will and at Any Time by a Temporary Majority of Voters.

The foregoing statement we submit is incontestable; the only answer vouchsafed by the advocates of the initiative as applied to the Constitution is, that the majority may be trusted to exercise their power wisely and fairly, and that the majority ought to rule. If the experience of mankind had shown that this doctrine was either sound or safe, there would have been no need to establish a constitutional government in this country. But constitutions have been deemed essential to protect the minority and the individual against the passion and power of the majority. Tyranny of the majority *may* be unlikely; but the only protection of the others is to make it impossible. The right of the majority to rule must always be morally subject to the covenant and compact entered into by the majority with every individual citizen of the Commonwealth. That compact is the Constitution. The measure proposed by the majority of the committee is intended to bring about, and will bring about the change of the compact at any time and in any particular at the will of the majority of those who vote. It permits one party to the compact, at its own desire, to break and alter the compact to its own advantage. To illustrate: — The present Constitution guarantees to every citizen the right to worship God agreeably to the dictates of his own conscience; that right cannot be taken away from him under the present Constitution except by the action of the representatives of all the people assembled in General Court in two successive years, followed by a confirming and ratifying vote of the people themselves. The advocates of this measure propose that in spite of the refusal of the representatives of all the people, assembled in General Court, to deprive the individual of that right, a majority of the voters, not a majority of all the people, at any given election may so alter the Constitution as to take away this right of freedom of worship. Because the voters now might do this with the previous advice and approval of the sworn representatives of all the people in two successive General Courts, it is argued that a majority of the voters ought to have the same power without that advice and approval, but at the instigation of irresponsible petitioners.

Again, the advocates of amendment to the Constitution by the initiative openly avow and proclaim that it is within the purview of the measure they advocate to

permit by a majority vote amendments of the Constitution which will effect recall of judicial decisions and recall of judges; which may alter in a moment all that body of fundamental law which one hundred and thirty-seven years has built up to secure the individual in his property and personal rights; which may subject one class of the community and one geographical section of the Commonwealth to the domination of another.

Power of a Majority Vote to annul the Work of this Convention.

The members of this Convention, representing the people, are about to submit to the people certain amendments to the Constitution. These will be the product of the most careful and patient deliberation of some of the ablest and wisest citizens of the Commonwealth. Many proposals for amendment they will in their wisdom reject. By both actions they will have established new safeguards and preserved the old in matters pertaining to the most important and fundamental rights and liberties of the people. Are the members of this Convention willing to accept and recommend to the people a new and additional mode of amendment which makes it possible for a mere majority of voters, unchecked and unrestrained, to annul the work of the Convention and overthrow all these safeguards?

Against these possibilities, nay probabilities, as we shall show, the advocates of this measure offer only the suggestion that we may rely upon the good sense of the majority. Some of the advocates of the initiative urge its adoption with the soothing assurance that it will be seldom used and its effect will be quite innocuous and little to be feared. But others solemnly assure us, upon a knowledge which they advise is based upon an intimate familiarity with the facts, that labor organizations, and the socially discontented and unfortunate, must have the initiative or they will eventually destroy the government. If the first assertion is true, the measure is unnecessary; if the second is the fact, those who would destroy the government without the constitutional initiative would surely do so when its vast possibilities for destruction are placed firmly in their grasp.

The majority have no answer whatever to the proposition that their plan affords no protection to the people against the continued propaganda of persistent though unsuccessful minorities of initiative petitioners; against the perpetual pressing to popular vote of unnecessary and disturbing religious and social questions; against the enforced division of our people into adverse camps through the insistence of fanaticism, prejudice and sectionalism.

The assurances of some of the advocates of this measure that we may trust the conservatism and sanity of those who desire the initiative, that there will be few petitioners, that they will on the whole be content to possess the power without exercising it, are strikingly answered by the demands of others that they be given complete power, by their bitter denunciations of legislators who will not pass the many measures in whose necessity they so ardently believe, and by the number and the kind of measures which they have proposed to this Convention in alteration of the Bill of Rights and of those provisions in the organization of our government that were intended to secure the rights and liberties of the individual.

The Duty of the Framers of a Constitution to Safeguard its Stability and Permanence.

If a Constitution means anything as a fundamental and organic law, if it is to protect the rights of individuals and minorities, if it is to be the assurance of wise, deliberate, intelligent legislation, it must have stability and permanence. "It is dangerous to give power on the assumption that it will not be used"; and if the radical and complete use of the power given by this measure is unwise and undesirable, it is the duty of the framers of a Constitution to guard against the danger and not to recommend to the people the assumption of that power.

II.

The Resolution as applied to the Enactment of Statutes.

Here a Question not of Principle but of Wisdom and Expediency: Will the Majority Plan ensure a Truer Expression of the Public Will than the Action of Representatives?

Our objections to the majority plan in its application to the enactment of ordinary laws rest upon a different basis from our objections to it in its treatment of the Constitution. In the latter case it is a question of principle, of duty; in the former, if there be no amendment of the Constitution by the initiative, it is a question rather of

wisdom and expediency. Yet here, also, it must be kept clearly in mind that a successful democratic government requires real, deliberate, just and intelligent public judgments. Nothing else is entitled to the name of "public opinion" or of "the will of the people"; nothing else can be justifiably enforced upon minorities or individuals. The question is: Will laws enacted by the mode proposed in the majority plan express the real opinion and will of "the people" better than laws enacted by chosen legislative representatives, under their conditions of duty and responsibility, of time and opportunity for investigation, consideration, debate and amendment?

Grounds offered for the Change: The Asserted Faults and Failures of the Legislature. The Reply: the Real Character and Efficiency of the Legislature.

The burden of proof that the change will be an improvement rests upon the advocates of the change. They assert in varying degrees of emphasis and completeness, as the foundation of their demand, that the Legislature fails to represent and misrepresents the people; that it is not responsive to the will of the people; that it is exposed and submissive to sinister influences, — the influences of capital and "special interests." We are not inclined to deny that there are instances of misconduct on the part of individuals in our Legislature to-day, or to assert that the actions of all legislators can be freed from every unworthy influence. But we do assert, and in this we are supported by the testimony of many of the ablest and most trustworthy observers, of all shades of political opinion, that corruption and bribery of legislators in Massachusetts is to-day practically non-existent; that the large majority of our legislators are honest and faithful; that in character and intelligence they more than fairly represent the average of their constituents; that the illegitimate and selfish influence of capital and "special interests" is rapidly and steadily growing less, and rarely has to-day any decisive force upon our legislation. It is doubtful whether it has anything like the force of the influence of organized labor. Assertions of legislative misconduct are easy to make and likely to be credited; the eager advocate of social reforms is apt to mistake the honest adverse judgment of the representatives of the people for the result of sinister influences or a refusal to follow what he fondly believes to be public opinion. Even in cases where the Legislature refuses to pass new measures which a majority of the voters might approve, its very delay and reluctance become a means of ensuring a clear, deliberate and fixed public opinion: and what such an opinion demands, we unhesitatingly assert, the Legislature can be relied upon to give. An unwarranted impatience and impulsiveness are the cause of much of the criticism to which it is subjected. If there is any Legislature in the United States that is commendably fulfilling its task in our form of government, it is the Legislature of Massachusetts; if there is any Legislature that justifies the judgment of our fathers in establishing legislation by representation, it is the Legislature of Massachusetts. We agree with the published judgment of Professor Holcombe of Harvard and of Ambassador Reinsch, — men of somewhat radical tendencies, — that "the General Court of Massachusetts is in all respects nearest the people, and most responsive of any American Legislature to intelligent public opinion." Whatever its weaknesses and faults, they grow less, instead of greater; and the general use of direct legislation would but increase, if in some respects it changed, our difficulties.

The abandonment of a system which the fathers of this State regarded as so necessary to the success of democratic government, a system which has stood the test of one hundred and thirty-seven years, cannot be justified by any true and unexaggerated statement of its faults; nor can it be "assisted" or "supplemented" by any plan of direct legislation that does not secure an expression of the real opinion and will of the people.

Varying Opinions of the Advocates of the Majority Resolution as to the Desirable Extent of the Use of "Direct" and of "Representative" Legislation.

The advocates of the majority plan are not united upon the reasons for their advocacy of it, or upon its desired or probable effect. Some openly declare that it is "the gateway to everything we want;" that "it will reduce the Legislature to a secondary proposition, as it ought to be;" that "once we get our foot in the door we will break it wide open;" that frequent popular voting upon measures is the only means to public interest and education in government; that the presence of twenty or thirty or forty complicated measures on the ballot is normal and desirable; and that any precedent public interest in the various proposals submitted is wholly

unnecessary, because the people can be relied on to deal with any number of questions correctly when they come to vote.

Other and more discreet advocates of the majority plan admit the advantages of representative government, and say that had our Legislature really proved to be representative they would not advocate the initiative; that the initiative ought to be "the gun behind the door," to be used in emergencies when the people are really convinced that the Legislature is unrepresentative; and that the ideal effect of the initiative is to secure popular control of legislation without much popular participation in it. But those supporters of the majority plan who advocate it upon these grounds, are singularly unilluminating as to the methods by which they hope to restrict the use of the initiative to the classes of legislation or the particular subjects upon which the people as a whole are really convinced that the Legislature is misrepresenting them. On the contrary, their plan opens up the whole field of legislation to the initiative action of groups and factions, of visionaries and of selfish interests, without the slightest requirement of real interest on the part of the public or real conviction that the Legislature is misrepresentative; and any suggestion of a plan to make the operation of the initiative square with their own reasoning and their own grounds of complaint, they classify as a "joker" designed to make the initiative "unworkable." And by "unworkable" they seem to refer to any restrictions that will prevent the initiative from having the practical operation desired by their allies, whose ideals and objects differ so greatly from theirs.

We are more inclined to accept the expressions of these less discreet allies as truly representing the result of the majority plan than those milder advices which suggest that it will seldom be used.

The Initiative not Reserved to "the People" but to Small Groups.

The majority resolution declares that the initiative is reserved to "the people;" but that is wholly misleading. What is reserved to the people, by the plan reported, is the obligation, welcome or unwelcome, of voting upon any and every piece of legislation that may be referred to the people by a certain number of signers. The "initiative," by the majority plan, is in truth reserved to any organization, class, faction, group or individual even, who can, by the use of hired canvassers or otherwise, secure twenty-five thousand names upon a petition. To talk about a reservation to the people is to evade the issue.

Majority Votes under the Plan reported will not be a Real Expression of Public Opinion. The Text of a Proposed Law seen by Few Petitioners, and read by an Insufficient Number of Voters. Unfair Advantage of Certain Petitioners. Thoughtless Signing of Petitions. No Limit of Number of Questions on the Ballot. Legislation by Minorities: Legislation by Special Interests.

The majority plan assumes that the vote of the people will, in general, be a real and deliberate expression of that popular opinion which ought in a democracy to prevail. We see no assurance of that, notwithstanding the high general intelligence of the Massachusetts electorate.

The petition which carries the full text of the proposed law is seen by only ten petitioners. The blanks signed by the other thousands of petitioners bear only a *description* of the proposed law, and only the same description as will appear on the ballot. It is difficult to describe it fairly, intelligently and completely: in the case of long and complex measures it is impossible. This is proved by many instances in the western states, where numerous cases of deceptive and even fraudulent misstatements have occurred, and by instances in Massachusetts referenda.

The necessity for procuring a certain number of signatures gives an unfair advantage to organizations of various kinds, which have the necessary machinery for securing signatures with ease, and to those who have the money to hire paid canvassers. It will be as easy for certain organizations to secure the necessary signatures for twenty measures as for two. And this advantage is increased when it becomes necessary to push the same petition in successive years, — against which there is no provision in the measure.

Signatures to a petition will be given in the most casual and thoughtless way. This is notoriously true of petitions of every kind, and will be particularly true of petitions for legislation which on their face seem to advocate reasonable and popular reforms.

There is no provision to limit the number of questions submitted on the ballot, and if there were, the provision would tend to vitiate the entire scheme of the initiative and referendum. To limit the number to a reasonable maximum would act

to the prejudice of all other laws or amendments that might be proposed during the year, and might be unscrupulously used to hold up laws obnoxious to special interests.

The likelihood of imposing too heavy a burden upon the electorate is clearly indicated by the experience of western States. In Oregon, a State limited in population and with little variety of industry, with a higher requirement in percentage of signatures than the majority plan contains, where the initiative and referendum had been in force since 1902, the people had to vote upon 26 State-wide initiative and referendum measures in 1910, 31 in 1912, and 21 in 1914, to say nothing of many other questions submitted by the Legislature and many local questions. Yet the same assurances of moderation in the use of the initiative that we now hear were given in Oregon in 1902. Few men, however intelligent, can take the time from their daily work to form a real opinion upon any such number of important problems.

There is no assurance that the measures initiated will be within the scope of the interest or information of the average voter; they may be as abstruse, as complicated, as uninteresting, as full of tricks and jokers, as alluring a combination of what is popular with what is desired by selfish interests, as the proposers of the measures may choose. There is nothing to prevent the presence of conflicting bills on the same ballot, and no sufficient means of warning the voters that they do conflict. How can any one expect a real public opinion to be formed, not by the growing need and natural interest of the people, but at the sudden compulsion of some group? The voters, brought face to face with the duty of voting upon some subject theretofore of little interest or concern to them, must vote by impulse, according to the attractiveness of the title or the representations of the advocates of the measure. If the people happen to vote the proposition down the first time, experience shows that the advocates of it will present it at every election, until by dint of persistence the opportunity comes. The majority of the committee resolutely refuse to require that a majority or even a substantial percentage of the registered voters, or even of the total number of voters at the election, shall favor a measure before it can become law. Government by energetic groups and minorities, pushing their views upon an unorganized, uninterested or apathetic people, is the inevitable result of the plan reported; and that is what many of its advocates desire. But that is not popular government, or the reign of public opinion. Experience in western States shows that the majority plan will not prevent "special interests" from secretly influencing legislation. The numberless organizations, unions and committees in this State will furnish the machinery, hidden individuals will supply the money and the purpose. It is this possibility and the proved facts of experience in other States that lead some of the strongest advocates of "popular" government to oppose the initiative and referendum. It is "a two-edged weapon."

The Voters will not be Sufficiently Informed.

The majority expect, by circulating literature containing the texts of proposed measures, and partisan arguments for and against them, to arouse the interest of voters to the end that the vote may be expressive of public opinion. That undoubtedly would do some good. But the western experience is that practically no voters read and understand the text of complicated laws proposed, and only a small percentage read the arguments fully and attentively. To expect the entire electorate, with its manifold interests and duties, to spend its time so profusely upon governmental questions, is a Utopian dream. What influences most the popular judgment is the public press. But men as a rule read but one paper, and find there but one side of a question. In the multiplicity of questions, many of them receive scant attention in the press; and those that are mentioned are dealt with by assertion rather than argument. This very question of the initiative and referendum, supposed by many to be the burning question here in Massachusetts, has been the subject of a newspaper discussion which has sometimes been partisan and personal, and has always been wholly inadequate and ineffective for the enlightenment of the people.

Debate before the Legislating Body Impossible in Direct Legislation.

With all that is proposed as a means of information, one great means is lacking, namely, real debate. The open, oral discussion of measures by their advocates and opponents before the body which is to decide upon them has been a feature of every successful democracy. It is of the essence of the town-meeting, of the Constitutional Convention, of all legislating bodies. But the most important features of a true debate are missing in, and are rendered impossible by, the initiative, and there is no remedy for this lack. Official publications, which if good for anything will be too

long for most voters to read, private publications and newspapers can never supply the absence of oral argument *pro* and *con* in the presence of the deciding tribunal. Whatever debate on these measures takes place in the Legislature, is but slightly reported and never reaches the general public; and it is not debate before the deciding body, if it is the voters who are to decide.

No Amendment or Compromise Possible.

Voters have no choice save to pass or reject a measure exactly as framed by the petitioners. It may contain both good and bad provisions, but both must be accepted or rejected without amendment. It requires no argument to show that the general use of this mode of legislation would be vicious. Very few legislative measures are introduced in form or phrase deserving of final adoption. Whether one favors the initiative or not, he must face these objections; and the looseness of the majority plan emphasizes them.

The People Less Interested in Measures than in Men, Less Competent to decide on Measures than to select Worthy Representatives.

The advocates of the majority plan declare that the people can judge measures more easily than they can men; they distrust the ability of the people to select honest and competent legislators; and assert that the use of the initiative and referendum will prevent the defeat of good representatives because they have cast a few unpopular votes. This argument seems to us fanciful and visionary. The people always take more interest in men than in measures; the ballots of every State show that. The truth is that the people do not, they cannot or will not, form real and certain opinions which they will express at the polls, save upon great, simple, extraordinary moral and political questions, — questions which have become thoroughly familiar through long public discussion, which make deep appeal to the ordinary man, which present a clear and uncomplicated issue. To say that the people do not understand better the general opinions, tendencies and character of their neighbors, from among whom they choose their representatives, than they do the details of complex measures, seems to us absurd; and if they are now so uninterested and negligent that they elect incompetent and irresponsive legislators, as the majority assert, it is hard to believe that upon such measures they will legislate carefully and competently themselves.

The Effect of the Adoption of the Majority Plan upon the Character of the Legislature.

What will be the effect of this measure upon our Legislature? The extremist advocates say that it will become a "secondary proposition;" the others, that it will become more responsive and more faithful. Is it likely that good legislators, who have heretofore in Massachusetts included many of our most distinguished men, will be obtained under a system where they are invited to act under the threat of condemnation if they go contrary to the popular cry of the moment, where their responsibility is, at the best, greatly diminished? Is it likely that the voters will be as careful as now to select the most desirable men? We think not; and such evidence as we have been able to obtain as to the effect of the initiative and referendum on the legislatures of Maine and the western States, does not decrease our doubt. The best favorable testimony from the west is that it has not made much apparent difference, and there is some strikingly unfavorable testimony from leaders of the initiative and referendum movement, as to its effect on the Oregon Legislature.

Social Unrest and Discontent do not Justify the Adoption of the Majority Plan.

An earnest advocacy of this measure has been based upon what is called "social unrest." Besides the labor and industrial organizations, which are quite conscious of their desires and of the specific measures by which they are to attain them, and which regard the initiative and referendum as the handiest and most certain means of attaining them, there is, it is pointed out, a great body of the religiously, politically and economically "unorthodox," largely inarticulate, largely unaware of specific means or measures for the betterment of their conditions, but deeply discontented with their present state. Their needs must be met and their unrest stilled. A great change is taking place in society. It may come peaceably; it may come with violence. It is urged that the majority plan will help to make the transformation from the old era to the new peaceful and not violent, evolutionary, not revolutionary.

We are very far from denying either the existence of this unrest, or that it is natural and to some extent justified by present conditions. We do not deny that

industrial and social conditions can be bettered by legislation or that the power of direct legislation may ease somewhat the strain of conflict of political and social opinions. But we unhesitatingly assert that social and industrial discontent cannot be cured by any such means, because its real sources lie too deep, — in human nature, in character, in intelligence, and in economic conditions that cannot be changed by legislative fiat. The experience of those States that possess the initiative and referendum affords abundant testimony that social and industrial discontent and disturbance have in no appreciable degree been lessened by it. It is clear, also, that if this discontent can be allayed by the initiative and referendum, a large, "wide-open" use must be made of it, and not that limited use which the chief advocates of the majority measure urge, and would have us believe that they expect. Can any one reasonably expect that the discontented will not make the initiative and referendum as effective as possible to secure all that they desire? Can we reasonably expect that in that process they will not attack many of those safeguards which we look upon as fundamental necessities, and have therefore placed in our Constitution, or that in seeking their own rights and justifiable liberties they will not tend to forget, or be unconscious of, the rights and interests of others? There is a great duty laid upon the legislators of Massachusetts to know the conditions, the needs and the rights of the socially and industrially discontented, and to meet these needs and remedy just grievances by legislation where it is possible; but which body of legislators, we ask, is likeliest to do this with adequate knowledge and intelligence, with calm justice of disposition and purpose, with desire and will to serve impartially all the interests of all the citizens, — the General Court, subject to all the pressure of argument and opinion that can be brought to bear upon it, or a majority of the voters under the pressure of an eager, organized group of agitators, seeking their own particular and selfish, even if entirely justifiable, desires?

No Sufficient Evidence of a Real Popular Demand for the Majority Plan.

No sufficient evidence has appeared of any real popular demand for this measure. The votes which have been taken on the question in recent years in this State are neither impressive nor conclusive. The vote for the election of members of this Convention is inconclusive. The hearings before this committee presented no evidence of such a demand. The largest attendance at any hearing, — and that the first, — did not exceed twenty-five persons; and the attendance dwindled until not more than a handful of persons, — long time advocates of the measure, — were present. On no occasion was there any demonstration of public interest: the public did not, by letters or otherwise, communicate to the committee its demands or desires; the general newspaper press did not present to a great reading constituency detailed and reasoned views in favor of the measure, nor give any evidence of wide-spread interest on the part of their readers. That the amount of popular demand can be clearly estimated from these facts we do not for a moment contend. But it is plain to us that no advocate of this measure is warranted in urging it upon the Convention on the ground that there is a clear popular understanding of its meaning and demand for its adoption.

III.

Summary.

Amendments to the Constitution by the Initiative a Subversion of Our Form of Government, Destructive of its Principles, and of its Safeguards of Individual Rights and Liberties: Statutory Legislation by Initiative, as Proposed by the Majority Plan, Dangerous to Representative Government and to Individual Rights, and Ineffective to Express the Will of the People.

Finally, it may be said as the summary of our general views, that we regard the adoption of the initiative and referendum in any save the most carefully restricted form as in essence a complete subversion of our form of government and an abandonment of what the framers of the Constitution of Massachusetts and that of the United States held to be the absolute necessities and fundamentals of American democracy.

Amendment of the Constitution by the initiative would certainly be wholly destructive. It has been well said by David Jayne Hill that "The American solution of the problem of reconciling government with liberty consisted in the acceptance of four fundamental ideas, which constitute the corner-stones of the structure which we now call our National Constitution, namely, — "1. Representative Government; 2. Division of Public Powers; 3. Guarantee of Personal Immunities; and 4. Judicial Protection of Constitutional Guarantees." This is equally true of the Constitution of Massachusetts. To admit amendment of the Constitution by means of the initia-

tive as proposed by the majority plan would, in the view of us all, endanger all these four corner-stones, and in principle overthrow them. The plan offers only the slightest restriction to the operation of the initiative on the Constitution; and it requires no gift of prophecy to foresee that one of the first uses of it will be to loosen and broaden the operation of the initiative itself.

As applied to statutory legislation, the majority plan, even if there were no amendment of the Constitution by initiative, is subject to many of the same objections. It would add to representative government a new unrepresentative form, neither so adequate nor so effective for wise legislation or the welfare of all the interests of our citizens or the security of all rights. It would inevitably be applied to matters for which it is wholly unfitted, and it would tend to break down the value of the representative form. Only a plan so restricted in method and application that its sole use would be the expression of a real public opinion and a real public will, on subjects where no individual rights and liberties would be invaded, on subjects where the people can have a real opinion and will, and where their opinion would be a genuine "supplement and assistance" to the work of the General Court, without diminishing the value and the essential nature of that work, could be justified. The majority offer no such plan.

Charles F. Choate, Jr.
Herbert Parker.
Samuel L. Powers.
Henry T. Lummus.
George B. Churchill.
William S. Youngman.
Charles O. Bailey.

THE DEBATE.

The discussion of the measure was begun Tuesday, August 7, in the Committee of the Whole. The question was stated by the presiding officer and, as no delegate addressed the Chair, those who favored the proposition were asked to say "Aye." Then the negative vote was asked for, but before response could be made Mr. Walker addressed the Chair.

Joseph Walker of Brookline.

Mr. Walker of Brookline: I wish I knew how that vote was going to go. I was very much tempted to sit still and see. I do not suppose, though, that this Convention really wishes to pass on this question without some debate in order that we may understand clearly the great measure that is before us. I guess we all pretty well understand the principle that is involved. The question is whether this measure is an appropriate measure to submit to the people to carry out that principle.

Now, Mr. Chairman, I earnestly desire in this debate to contribute light and not heat, and I trust that this Committee of the Whole will really be that informal committee which it is intended to be. And as I stand here to argue this case and explain the measure I should be only too glad to have any member of the Convention ask questions of me, that I may explain the matter to him and to the committee.

There have been a great many amendments to this measure offered to our committee, a great many suggestions, and we have considered them and of course we have a reason for not accepting them. Some are amendments of minor importance which might go into the measure without hurting it, — in fact we might have put them in; we simply did not. Other amendments have been suggested which we believe are inconsistent with the principle involved or which, if adopted, would make the measure inoperative or very difficult to operate. It is my principal business, during this debate, to explain this measure, to explain why one suggestion has not been adopted, to explain perhaps why another suggestion has been adopted.

I want to say, generally speaking, that of course the measure that we submit to this committee is the initiative and the referendum pure and simple. There are no ifs and ands about it; there are no exceptions in it. The principle of the initiative and referendum in its purity means that the people of this Commonwealth may have such laws and may have such a Constitution as they see fit themselves to adopt. This measure simply provides the machinery by which the will of the voters of this Commonwealth may be made effective. That is the purpose of it; that is what the initiative and referendum is.

The initiative and referendum is a very simple bit of political machinery. When a substantial number of citizens petition the voters and when that petition is properly presented to the Secretary of the Commonwealth the matter is submitted to all the voters. That is all there is to it. Under the terms of the measure we present, after the petition is once started nothing can stop it, nothing can hinder it. It is, in other words, the initiative and the referendum as it is understood throughout the length and breadth of this country and such as has been adopted in many States in this country. It is the straight, pure initiative and referendum.

Now, having studied this matter for three or four years, having sat on other committees to consider it before this one and having sat through the long sessions of our own committee, having considered all the various phases of the question, all the various suggestions that have been made, I believe that I am stating nothing but the truth when I say that every safeguard that can be thrown about the initiative and referendum without violating its principles is to be found in this measure, — every one.

Of course, Mr. Chairman, the majority of the committee does not wish to be arbitrary; we wish to take no arbitrary stand in this matter. We do not propose to say to this Convention: "Here is a measure; we have got the votes to put it through and we intend to put it through and you may offer amendments if you want to, but we intend to vote them down." That is not the spirit in which we approach this matter or this Convention. On the other hand, we wish freely to discuss all these suggestions, all the suggestions that will be made, to look our friends in the eyes and to explain to them candidly and frankly and plainly why we think they ought not to be adopted, and then let the committee decide whether or not it is wise to insert them. That is the spirit in which we approach this question.

I have read with a great deal of interest, of course, as probably most of you have, the minority report. It is a very skilful document, as we might expect from the able men who drafted it. And they have said many things in that report; before this debate is over I intend to touch on a number of them. Among other things they have said that they could not discover in this Commonwealth any demand or any substantial demand for the initiative and referendum. Mr. Chairman, of course there are none so blind as those who will not see, but I take it that there not only is a very wide-spread but a very earnest demand for this measure throughout the Commonwealth. Some of you gentlemen may think that is no argument for submitting it to the people; very likely. I am not going to criticize any man who stands up here and says that he is going to look at this measure and going to decide for himself whether or not it is a wise measure and whether or not he will vote to submit it to the people. I am not going to quarrel with

any of those men, but I think it is fair to say that I believe there is a very great, very persistent, very determined demand that this question be submitted to the people of Massachusetts, that they themselves may decide whether or not Massachusetts shall have the initiative and referendum. That really is the question before us, of course.

How does that demand find expression? How could it find expression? In the first place, both of the great parties have asked for this Convention; and at whose suggestion? Mr. Chairman, was this Convention called, — was the question as to whether we should have such a Convention as this submitted by the Legislature to the people, — at the demand of those who opposed the initiative and referendum? Is it a Convention that has been held at the suggestion of the ultra-conservatives of the Commonwealth of Massachusetts? How can there be but one answer to that question? I suppose of the two great parties the Republican party is the conservative party in this Commonwealth and in the Nation. At whose suggestion did the Republican party put into its platform a demand for a Constitutional Convention? At the demand, — I will not say at the demand, excuse the expression, — at the suggestion and at the earnest plea of my friend Charles Sumner Bird and of my friend the Governor of this Commonwealth. It was at the suggestion of the forward-looking, if I may say, the more liberal, the more progressive, — with a small "p," — the more progressive elements in the community that demanded this Convention. And why? Undoubtedly there were various reasons. I do not believe it was in order that we might pass an amendment providing for biennial elections or biennial sessions. Much as we need to make the Governor more directly responsible to the people and increase his power, that really was not what led to this Convention. That we might increase the powers in some respect of the General Court was not the reason which led to the calling of this Convention. We all know that is so. None of these things, — which, now that we are here, we ought to face and accomplish, — none of these things furnishes reasons why we are here. This Convention is here, Mr. Chairman, I take it, in response to the progressive spirit that is surging in this Commonwealth of Massachusetts, and not here alone but throughout the country. It is felt not merely among those who call themselves Progressives, it is felt in all of the great parties, especially in the Democratic and Republican parties. We all know it. It is in response to that feeling, that progressive spirit, that this Convention is called.

Now in a word, may I characterize what that progressive spirit means? It means that this government shall be brought back to the real control of the people of the Commonwealth. That, in the first place, is what the progressives seek to attain, and this is the measure which does the trick.

The second thing that they seek to attain is the enactment of laws which will make for the social welfare, for the advancement and betterment of the rank and file of the people of this Commonwealth, those who work in our mills and our factories throughout the length and breadth of the Commonwealth; laws that will make for their health, their safety, their welfare, their general happiness. That is what we want to accomplish. I take it it is such things as these that constitute, broadly speaking, the progressive program. Therefore, I say, the very fact that we are sitting here proves the demand there is in the Commonwealth of Massachusetts for the initiative and referendum.

I notice that those who are most strenuously opposed to the initiative and referendum, before the election went before the voters with the statement that they were open-minded on this question; they had not made up their minds on it; they were ready to hear the arguments on it *pro* and *con* and to vote independently as, having listened to the arguments, their judgment dictated. I find no fault with that; I believe it is true. I, as I have associated with these men, have come to have a deeper respect for many of them than I had before. I believe that they earnestly wish to do that which is right, that they wish honestly to hear the arguments on both sides and then to decide what is best for the old Commonwealth of Massachusetts, because they love her as much as I do. I recognize this full well. But I notice that the great majority of the delegates to this Convention stated frankly to their constituents that they were in favor of the initiative and referendum, and in making that statement they believed that it helped their election and did not hurt it. And it is a significant fact that very few, if any, of the members of this Convention frankly went before the people and said that they did not believe in the initiative and referendum, that they would fight it, saying: "And therefore elect me to this Convention that I may fight it." No, that was not the attitude and therefore the issue was not clearly drawn. But I believe, in many cases, it was sufficiently clearly drawn, and I believe that accounts in a degree for the make-up of this Convention. I do not wish to overemphasize that argument, but it is an interesting fact.

Now some years ago the General Court of Massachusetts passed a public opinion law. It was passed, as I remember it, largely at the suggestion of the chairman of our committee on Rules (Mr. Luce). At least he favored it. I think it was passed for the reason that the Legislature felt the initiative and referendum gradually was coming and they thought that that measure might delay its coming or take the place of the initiative and referendum. I think that was the real reason, — one of the reasons, at least, — why that measure was passed. But what is its purpose? We find in our Constitution a provision in our Declaration of Rights that the voters have the right to instruct their representatives, — their agents, as they are called. And the public opinion law was designed to give them the necessary machinery under which they could exercise that right mentioned in the Declaration of Rights. That is the purpose of it. And those who were very earnestly of the opinion that the people of the Commonwealth of Massachusetts wanted the initiative and referendum took advantage of that machinery furnished by the General Court for the very purpose of ascertaining what might be the opinion of the people of this Commonwealth on this great question. I do not believe much in "straw votes," and after all our public opinion law provides simply for a "straw vote." The people in any district, senatorial or representative, may instruct their Representative or Senator, but the Representative need not follow their instructions unless he sees fit. And I do not believe that this question, as will be shown here, was very thoroughly argued in these various districts. But the result, nevertheless, without laying too much emphasis on it, Mr. Chairman, — the result, nevertheless, is extremely significant. The question was fairly put on the ballot and I believe that those who voted on it had a clear idea of what they meant by the initiative and referendum. There was not a single dis-

trict in this whole Commonwealth, not one, — and it was put on the ballot in districts in cities in the eastern part of the State, cities in the central part of the State, cities in the western part of the State, — it was put on the ballot in country districts made up of small towns, in communities made up of an industrial population, in districts made up of a farming population; and in not one of those districts was it carried by less than a two to one vote. My own town, Brookline, voted two to one in favor of the initiative and referendum. I suppose it is the most conservative town in the Commonwealth. Newton, perhaps equally conservative, voted more than two to one in favor of the initiative and referendum, and from that point it worked up until one ward in Boston voted for it six to one and most of the districts voted for it three or four to one. I do not wish to exaggerate that thing or try to show that it determines the fact that the people of this Commonwealth are in favor of the initiative and referendum. I do not claim that. I simply claim that it is an interesting fact, — that it is a straw, at least, that points very significantly to the fact that the people of this Commonwealth want it.

And why is it so bitterly opposed here, as it is? Because some men believe that it will destroy our Commonwealth, tear our Constitution into bits, reduce us to the condition of a people without a Constitution? They will argue that; they will take that extreme position. So they are fighting it, fighting against submitting it to the people, because they believe as I do, that if it is once submitted to the people it will be carried in this old Commonwealth by an overwhelming vote, and therefore it is essential that it be withheld from the decision of the people. I do not say that they have not a right, that it is not entirely proper for them to fight it, if they feel that it is such a wicked scheme, such a disastrous thing for the Commonwealth of Massachusetts. I do not criticize them for voting to withhold it from a popular vote. But I say I think that there are few of them who will state frankly that they do not believe, if it is submitted, that the people of this Commonwealth will vote for it, whether they ought to or not.

Now, Mr. Chairman, this is a very wide-spread movement. It is not by any means confined to the Commonwealth of Massachusetts. It is a thing that has been agitated for years and years throughout this country, from one end of it to the other. And so we find California on the Pacific coast, Maine on the Atlantic, Mississippi on the Gulf, Michigan at the extreme north, — all having adopted the initiative and referendum, and many States in between. Why is it? Why is it that not only have twenty-one States adopted it in some form or other, in part or in whole, but that it is a live political issue to-day in thirteen other States? Is there not any reason for it? Why do the people adopt the initiative and referendum? Why are they fighting for it? Why are they adopting it? Is it because representative government, unrestricted, uncontrolled, is a great success in this country and should not be modified but should be worshipped? We will hear a great deal said here about representative government and our opponents will hold before you an idealized representative government, but they will not show representative government as it is. That is what we are interested in. The initiative and referendum is intended, in part at least, to cure some evils that have grown up under representative government as it is, not as it ought to be, — a body of independent experts

elected to represent the people, meeting in an assembly of this kind, discussing matters on their merits, hearing both sides of the arguments and deciding solely in the interests of the people the questions that are presented to them. That is idealized representative government. If we had such representative government I venture to say that the question of the initiative and referendum would not now be mooted throughout this great country from one end of it to the other. No, my friends, we have not that kind of representative government, but under our unrestricted representative form of government very real evils have grown up. Fortunately I may join with those who say that Massachusetts on the whole is perhaps more free of those evils than any other Commonwealth or State in this country. But it is extremely interesting and important for us to realize the extent of the evils that have grown up under the unrestricted representative form of government.

Now let us keep our minds open for a little while and see what some of these evils are.

We had the representative Convention, under which grew up the political boss. We had the election of United States Senators by a representative body, under which many evils grew up. And now we have an unrestricted legislative body that passes laws, and evils have grown up in that unrestricted representative body. I want to remind you of what has been going on in other localities than Massachusetts, for the very reason that these evils have grown more mighty and are more apparent in other States, fortunately, than in Massachusetts.

If there is one man in whom all conservatives have confidence it is Elihu Root of New York, and I hope that every man of this Convention will realize the situation that has been developed in our great sister Commonwealth across the line, the Empire State of this country. Said Mr. Root in the Convention assembled for amending the Constitution of New York, — of course I do not quote him for the initiative and referendum; naturally he was opposed to it, but I quote him to show you the conditions that have grown up in New York State under an unrestricted representative form of government, due largely, in my judgment, to the fact that it was an unrestricted form of representative government. Said Mr. Root in the recent New York Convention:

> I am going to discuss the question now that goes back to the beginning of the political life of the oldest man in this Convention, and one to which we cannot close our eyes if we keep the obligations of our oath.

That is the thing, my friends, — we, here in Massachusetts, cannot close our eyes to the real situation if we are going to keep the obligations of our oath, and therefore while we want to speak moderately and truthfully we must present the facts as they are, not as we wish them to be. Said Mr. Root:

> We talk about the government of the Constitution. We have spent many days in discussing the powers of this and that and the other officer. What is the government of this State? What has it been during the forty years of my acquaintance with it? The government of the Constitution? Oh, no; not half the time, or half way. When I ask what do the people find wrong in our State government, my mind goes back to those periodic fits of public rage in which the people rouse up and tear down the political leader, first of one party and then of the other party.

That is what came out of your unrestricted representative Convention, Mr. Chairman.

It goes on to the public feeling of resentment against the control of party organizations, of both parties and of all parties.

Now, I treat this subject in my own mind not as a personal question to any man. I am talking about the system. From the days of Fenton, and Conkling, and Arthur, and Cornell, and Platt, from the days of David B. Hill, down to the present time the government of the State has presented two different lines of activity, one of the constitutional and statutory officers of the State, and the other of the party leaders, — they call them party bosses. They call the system, — I don't coin the phrase, I adopt it because it carries its own meaning, — the system they call "invisible government."

Those are the words of Root, — "invisible government," in Root's opinion, existed and had existed for years in that great State of New York. Root goes on to say:

For I don't remember how many years, Mr. Conkling was the supreme ruler in this State; the Governor did not count, the legislatures did not count; comptrollers and secretaries of State and what not, did not count. It was what Mr. Conkling said, and in a great outburst of public rage he was pulled down.

Then Mr. Platt ruled the State; for nigh upon twenty years he ruled it. It was not the Governor; it was not the Legislature; it was not any elected officers; it was Mr. Platt. And the capitol was not here; it was at 49 Broadway; Mr. Platt and his lieutenants. It makes no difference what name you give, whether you call it Fenton or Conkling or Cornell or Arthur or Platt, or by the names of men now living. The ruler of the State during the greater part of the forty years of my acquaintance with the State government has not been any man authorized by the Constitution or by the law; and, sir, there is throughout the length and breadth of this State a deep and sullen and long-continued resentment at being governed thus by men not of the people's choosing.

Mr. WASHBURN of Worcester: I do not wish, Mr. Chairman, to interrupt the thread of the gentleman's discourse, and if he has any objection to my doing so I will withhold my question.

Mr. WALKER: Not in the least, Mr. Chairman; I welcome interruptions.

Mr. WASHBURN: I understood, Mr. Chairman, at the outset, that the gentleman began his remarks by inviting interruption and discussion. I am one of that little band of open-minded patriots to whom the distinguished gentleman referred, and I want to ask him, because I am seeking light, if he considers that the conditions in Massachusetts are now or ever have been, from a legislative standpoint, comparable with conditions which he relates as having existed in the State of New York.

Mr. WALKER: I do not. I shall have something to say about that in a few minutes.

I was educated at Brown University, in the State of Rhode Island, and at the time I was there that State was as completely, — no, more completely, — ruled by a similar boss, a similar kind of a boss to that described by Mr. Root. That gentleman, although he held no official position whatever, had an office off the legislative chamber, connected with a door. While I was in Providence at college, legislators went in to see him freely, although he was the attorney for many of the great interests, — went in to see him freely to determine how they should vote on matters that were coming before that Legislature. It was the most open boss rule that I ever saw or ever expect to see, although I had heard a great deal about boss rule. Such was the condition in Rhode Island for many, many years.

Have we not heard of the condition in Pennsylvania? Was it different from New York? What about Quay and his Republican gang?

Have we not heard about the conditions in Indiana? What about Taggart and his Democratic gang? Have we not heard of Cox of Ohio? Was not the great State of California in the actual control of a railroad corporation for years and years until they got hold of the initiative and referendum under the impetus of the progressive movement and unhorsed that railroad from its control of the California Legislature? No, Mr. Chairman, this is not a condition peculiar to any one State; it was a condition that was common in the United States under our representative form of government. We were ceasing to be a democracy in any true sense of the word, and I believe, Mr. Chairman, it is no figure of speech to say that we were fast becoming a plutocracy, an autocracy of wealth, which I take it is the most despicable kind of autocracy that could exist in the world. I do not believe in the face of these facts that we could help saying that we were becoming in some instances and to some extent a plutocracy. I do not believe that is a figure of speech or even an exaggeration.

I suppose one of the greatest students of government, one of the greatest authorities on that subject and a man who has had a great deal of experience in politics as well, is the President of the United States. And in this Convention I am tempted to quote a very short passage from President Wilson. President Wilson said in a speech delivered in Kansas City in 1911:

> The methods of our legislatures make the operations of political machines easy, for very little of our legislation is formed and effected by open debate upon the floor. Almost all of it is framed in lawyers' offices, discussed in committee-rooms, and passed without debate. Bills that the machine and its backers do not desire are smothered in committee; measures which they do desire are brought out and hurried through their passage. It happens again and again that great groups of such bills are rushed through in the hurried hours that mark the close of the legislative sessions, when every one's vigilance is weakened by fatigue and when it is possible to do secret things.
>
> When we stand in the presence of these things and see how complete and sinister their operation has been, we cry out with no little truth that we no longer have representative government.
>
> If we felt that we had genuine representative government in our State legislatures, no one would propose the initiative and referendum in America. They are being proposed now as a means of bringing our representatives back to the consciousness that what they are bound in duty and mere policy to do is to represent the sovereign people whom they profess to serve, and not the private interests which creep into their councils by way of machine orders and committee conferences.
>
> It must be remembered —

I press this upon this Convention at this time —

> It must be remembered by every candid man who discusses these matters that we are contrasting the operation of the initiative and referendum, not with the representative government which we have in theory, but with the actual state of affairs.

That is the real thing, and I trust —

Mr. WASHBURN: I understand the gentleman's argument to be that the initiative and referendum is a sort of panacea for evils which exist, and that if the functions of a representative form of government operate properly there is no need for the initiative and referendum; and I now ask him if, in his opinion, the form of representative government we have here in Massachusetts has fallen so far below the condition of effective operation that should exist as to make that panacea essential in Massachusetts?

Mr. WALKER: If there is one thing that I hate to have a man say, when a reform is proposed, is that it is a panacea. Now we know it is not a panacea, of course. Why call it a panacea? No one claims it would be a panacea. But it is an effective reform, Mr. Chairman, and the very fact that those who have exercised very sinister influence in the Massachusetts Legislature in the past are the most bitterly opposed to it, — the interests, — is convincing on this point.

I do not intend to say, — I could not say if I would and I would not say if I could, — that the Massachusetts Legislature has fallen so low as some of the legislative bodies which are fairly described by Elihu Root. I shall not at the present time say what I think of the Massachusetts Legislature. In this connection I feel that I speak with some authority and therefore I wish to speak with the utmost care. I do not wish to exaggerate, I do not wish to over-state, and above all things I do not wish to say that which is not true. But I do intend to say, Mr. Chairman, before this debate is over, what I believe to be true in that connection. [Applause.]

Continuing on the following day, Wednesday, August 8, Mr. Walker said:

When the committee adjourned yesterday I was pointing out to the members of this committee how, when the power or the control of legislation passed from the hands of the people, it passed inevitably into the hands of those who have some interest to serve other than the public interest. I have alluded briefly to the conditions that have grown up under unrestricted representative government in New York, Pennsylvania, Ohio, Rhode Island, California, and other States of this Union; and the gentleman from Worcester (Mr. Washburn) who was then sitting on the dais, and who I presume is present in the chamber somewhere, asked me whether that condition of affairs existed in the General Court of Massachusetts. I told him that, as I should speak with some authority on that subject, I wished to be very careful in what I said; and now I intend to reply to him directly.

For eight years, Mr. Chairman, I served in the House of Representatives. For four years I was a member of the committee on Ways and Means, and for one year I was chairman of the committee on Railroads, at a time when the fight over the Boston and Maine Railroad and New York, New Haven and Hartford Railroad Company was at its very height. For three years I was Speaker. I went through two speakership contests in this chamber. I served on an investigating committee to see whether improper means were used in the House to influence the members, and as a result of that investigation one member of the House was expelled.

Now, what shall I say in regard to the General Court in Massachusetts? What shall I say to my friend, the chairman of the committee on Rules and Procedure (Mr. Luce), with whom I have served many years and who has served in that body longer than I have, — a man whom again and again I have seen stand in his place, and, with the greatest courage, stand for the interests of the people as he conceived those interests to be, utterly regardless of how his stand might affect his political career; and I honor him for that independence which, again and again, he has shown.

What shall I say to my friend from Somerville (Mr. Underhill), who has fought many a political fight, many a legislative fight, side by side

with me? What shall I say to my friend from Springfield (Mr. Adams) or my friend from Clinton (Mr. Saunders)? What shall I say to other men who have served with me in that body, in regard to that matter, and to men who have served before me and since I served in that body? What shall I say to the gentleman from Boston (Mr. Lomasney), who for many, many years has served in that body, — one of the biggest hearted men and one of the most persuasive orators, as you have observed, who has ever served in that body?

These men are about me. They know whether or not I speak the truth. What shall I say?

Mr. Chairman, I shall say the exact truth, neither more nor less; and I say that the lobbyists who appear yearly on Beacon Hill, who are found in all or most of the legislative districts of this Commonwealth, — I will say that lawyers, with whom legislative practice is their principal business, and who are paid high salaries by the interests in this Commonwealth, — I will say that these men, and those who employ them, exercise at times an undue influence in the House and in the Senate, over certain matters, — at times a sinister influence. I say especially that when it comes to the election of a presiding officer in this chamber and in the Senate they exercise at times an undue influence, sometimes a controlling influence.

Now, my friends, that is the truth, and I say it before all those here who have served in the Legislature, men whom I respect, and respect very highly. I do not refer, of course, to such an eminent lawyer as the gentleman from Southborough (Mr. Choate), who sits in front of me, who for a time was counsel for the New York, New Haven and Hartford Railroad Company, — a man for whom I have the highest respect and a personal feeling of liking. I do not refer to any lawyer sitting in this chamber. But we all know the conditions in Massachusetts, the conditions that have existed in the past, the conditions that do exist to-day, in the Massachusetts Legislature.

Now, Mr. Chairman, the Legislature in Massachusetts, subject to the Constitution, is absolutely supreme. The people of this Commonwealth, as the matter now stands, must live under such laws as the General Court sees fit to pass, and they cannot appeal from the decision of the General Court to the people.

Mr. Washburn: I would like to say that if a question at this time will be at all disquieting to the gentleman I will not put it, but in response to his invitation of yesterday I will now put a third question which seems to me to be appropriately asked at this time. It is this: I would ask the gentleman to tell the committee what particular measure, passed as a result of these sinister influences which he says pervade the Legislature, is one upon which he would have the referendum operate if it were in existence?

Mr. Walker: I am very glad indeed to answer any proper question so far as I can, but I do not propose to permit any "red herring" to be drawn across the path of this debate. [Applause.]

Now, Mr. Chairman, I anticipated that question, and I made up my mind that I should not answer it; and for this reason. Not that there are not such questions, — many of them. I have them in mind, a number of them. But the minute I begin to discuss some particular question there will be a difference of opinion in this body as to the merits of that question, members will hold opinion one way or the

other. And so we will get to discussing, not the matter before us, which is the right of the people to have such laws as they wish, but we will be discussing some collateral issue. It seems to me, therefore, that I am not called upon at this time to specify such questions. Let each member of this Convention think for himself. Can he not think of any question that ought to have been referred to the people, that has been passed by the Legislature? I think he can. If he cannot, I can.

Now, Mr. Chairman, the initiative and referendum simply gives a method of appeal from the decision of the Legislature to the people. I know it will be argued by those who oppose the initiative and referendum that this is a dangerous power to grant to the people. They will say that if we grant this power to the people all the restrictions of the Constitution are brushed aside, that the liberty of the individual is in danger, that property will be taken away from the individual without due process of law. They will enforce that point. They will say that the Constitution is not safe in the hands of the citizens of this Commonwealth.

Mr. Chairman, is the liberty of the citizens in danger if we give them a chance to appeal from the decision of the Legislature to the people? I do not believe that argument would be made by any of the great students of government in this country. There are three men who, I suppose, rank as high as any other three men in this country on questions of government. They, each one of them, have taught government in the colleges to which they belonged. One of them, the president of Harvard, taught government before he was the president of Harvard. Another of them is the president of Williams College, who taught government at Princeton before he was made president of Williams College. Another one taught government in Princeton before he was made the President of the United States. And not one of these men would put up such an argument, such an extreme argument, as is put up in the minority report to this Convention on the question of the constitutional initiative, — not one of these men. I have talked with President Lowell of Harvard on this subject, and he appeared before our committee. Did he make any such argument as that? He knew better than to do that. That is not the experience in Switzerland or in any Commonwealth in this country that has the initiative and referendum. What he said was that he thought it was not the best way, and he thought that it was unnecessary in the Commonwealth of Massachusetts, — but he has not had so much experience in the Commonwealth of Massachusetts as some of the gentlemen who sit here with me.

The president of Williams College is still more open-minded on the subject and would not make any such statement as that, for I talked with him on the subject. I never heard him suggest that the rights and liberties of the people of this Commonwealth would be in danger if we gave an opportunity to appeal from the Legislature to the people.

The latest opinion of the President of the United States I have in my hand here. Recently an attempt was made in Colorado by the reactionaries of that State, in the Legislature, to overturn all the progressive legislation that had been passed there under the leadership of Senator Shafroth. All those plans were upset and overwhelmingly defeated in the Legislature of Colorado, but when that matter was

under discussion a great mass meeting was held at Denver, and a telegram was received (at the suggestion of Senator Shafroth) from the President of the United States, and this is what he had to say:

> May I not take the liberty of saying it is my earnest hope that no legislation will be enacted by the General Assembly of Colorado which will impair or repeal, directly or indirectly, the initiative and referendum or direct primary laws. They are the instrumentalities by which government is brought nearer to the people, and should be preserved.

That is an opinion of a man who for years taught government at Princeton College, who has had great experience in the political affairs of this Nation, and that is his latest opinion.

Now, as I say, not one of these men would suggest that there is real danger to the liberties and to the property of the people of this Commonwealth. On the other hand, if you do not give this power into the hands of the people there is real danger in regard to the liberty and the property of the people of this Commonwealth. What restrictions on the liberty of men and women and children are feared by this appeal to the people? It is laws directly limiting the hours of labor for men and women and children. It is laws that provide that young girls shall not be employed in our factories and mills at a wage which will not support them and keep the life in their bodies. It is said frequently by our courts that these people should have liberty of contract, that they should have liberty to work for such wages as they see fit, and that no law should be passed to prevent it. In the name of liberty they seek to create, or to permit our industries to create, a state of industrial slavery, and that is the kind of liberty that they seek to protect by preventing the people from appealing from the Legislature by the constitutional initiative and referendum. It is said that a man is king in his own house, that his liberty to do as he pleases in his own house should not be interfered with, and therefore the courts have held unconstitutional laws that seek to prevent tobacco from being manufactured in tenement-houses. Is it that kind of liberty of the individual that our forefathers sought to protect by the Constitution?

Mr. Chairman, that was not the purpose of our forefathers. They did not seek that kind of liberty, — liberty that leads to slavery. They meant real liberty when they put that article in the Constitution. It is these industrial conditions that have grown up since their day that have caused social welfare legislation to be passed. It is that kind of development which has taken place which has made such a provision as that, as interpreted by our courts, already obsolete; and it is time that the people when they pass a law, that kind of law, a social welfare law, — and it is declared unconstitutional, — it is time that the people have the right to amend their Constitution, and not come to the Legislature and see their will blocked year after year by those who can exercise undue influence in the halls of legislation.

Mr. William S. Kinney of Boston: I should like to inquire, if the rights vouchsafed to the individual by the Bill of Rights are to be left subject to the vote of a majority at an election, what necessity exists for a written Constitution?

Mr. Walker: I would say that it is my honest judgment that the rights of every individual citizen in this Commonwealth are safer in the hands of the majority of the citizens of this Commonwealth than they are in the hands of a minority. Now, Mr. Chairman, the Consti-

tution does protect the rights of the individual, and it ought to; and the majority of the citizens of this Commonwealth will see that such rights are protected. I tell you that the real protection of the citizens of this Commonwealth does not lie in a written document, does not lie merely in a "scrap of paper." It lies in the fact that back of that "scrap of paper" is a contented people, a majority of the people approving of those restrictions, approving of that Constitution; and the minute the support of a majority of the people is withdrawn from the Constitution of this Commonwealth then indeed will it become a "scrap of paper."

Now, Mr. Chairman, let us tell the people that they may have what our Constitution says they may have,— a right to amend that Constitution when their liberty and their happiness and their welfare require it; and then you get a body of public opinion, enlightened, educated by discussion, back of our Constitution, that will indeed make it secure, and make the liberties of every one of us more secure than they are to-day.

Let me say a word in regard to property. The same kind of question arises. It was declared by the State of New York that the Workmen's Compensation Act was unconstitutional. And why? Because it took property without due process of law. And therefore they would allow our industries to crush, to kill, to use up, and to cast out onto the heap, the discard, individuals, as they cast out their machinery. Now the cost of repairing machinery is on the industry, but the cost of repairing the individual, protecting his family, is on the individual worker and not on the industry. The workmen's compensation law merely sought to take the burden off the individual who was injured and place it upon the industry, where it belongs, that it might go into the cost of production, and all of us help pay for that wastage in industry. And yet that is the kind of law that is declared unconstitutional, to the end that property may be protected, that property may not be taken without due process of law.

My friends, it is that kind of thing which is making the people of this Commonwealth lose confidence in their Constitution, and, unfortunately, — because the courts have to give those opinions, — lose confidence in their courts. It is a serious proposition, and I say the remedy is before us. The remedy is to go to the people and say: You may make such laws and such amendments to your Constitution as you see fit, and we will argue before you the question as to whether any particular law or amendment to the Constitution proposed by any group of people is a wise law or amendment for you to adopt.

The measure which is before you amply protects this right. It takes, under this measure, 50,000 people to ask for an amendment to the Constitution, and after they have begun that process it takes two years and more before the matter can be put on the ballot. It must be submitted to the legislative body and there discussed for a year. It must be carried to the next legislative body and there be discussed for another year. Thus the people of this Commonwealth have ample notice, ample chance to discuss it; the legislators have ample chance to take the matter home to their constituents and inform them on the subject; and every little church society and debating society and every civic organization in this Commonwealth and every bar association, if the judiciary are concerned, would take up the matter and it would be

discussed for two years throughout the length and breadth of this Commonwealth and then written information and arguments would be submitted by the Secretary of the Commonwealth to the people. The measure itself and its description as it would appear on the ballot will be presented to each individual citizen of this Commonwealth.

Now, my friends, that is the way to go about it. Take time, cause delay, make the people think, give them the information. Let the argument go on for two full years, and then go before the people and ask them to pass judgment as to whether this particular amendment to the Constitution is one that conserves their interests and their liberties and their property and their rights, or whether it does not. And, incidentally to such a discussion as that, you are building up all the time an intelligent and clear public opinion on that particular question. I tell you that in a democracy the only safety lies in an educated electorate. There is nothing else that can save us. Let the electorate once understand that a legislative body, whether under influence or not, is standing deliberately year after year against those laws which they think are for their social welfare and that the Constitution is responsible for it, and you do not help, I assure you, my friends, you do not help or strengthen the Constitution, nor really protect the liberties nor the rights of the citizens of this Commonwealth.

Now, Mr. Chairman, at this point I am tempted to stop for just a moment and to ask you who it is that shall decide this question. Shall a majority of those who vote decide it? I think so. I think the political power of this Commonwealth is expressed always by the majority of those who vote. I know their decision is called a "temporary majority," but that phrase means nothing. Every vote, in the nature of the case, must be temporary. How can you take anything but a temporary vote? When the people have expressed their will, that is their will then; it cannot be their will at any other time. Therefore it is a mere fallacy to call it a temporary vote, the temporary will of the majority. Give them two years for consideration, two years for discussion, two years for debate, and then take their will. If you took it without this delay it might be, in a proper sense, the temporary will of the majority. But when you have given ample time for discussion, ample time for consideration, then it is not the temporary will of the majority. It is the real will of the majority.

There are those in the minority of our committee who have suggested that it should require a majority of the registered voters in order to pass a constitutional amendment, or even a law. Mr. Chairman, those men knew full well what they were doing when they made that suggestion. I have had the commission to collect data and give information to this body investigate the subject, and allow me to say to you that not one of the last fifteen amendments, — for that is as far back as they had the information and could give it to me, — not one of the last fifteen amendments to the Constitution of Massachusetts, not one of the measures that have been submitted by the Legislature to the people of Massachusetts, would have been passed if it had required a majority of the registered vote. And therefore that amendment is a suggestion to require a majority which would make the initiative and referendum on constitutional matters and on laws unworkable, impracticable, and they knew it full well when they made the suggestion. Moreover, there are only five measures, only five

measures out of the whole number of them, — only five measures that even got 36 per cent of the registered vote. There would not have been a Governor elected in the whole history of this Commonwealth, with the one exception of Wolcott in 1897, not one of them would have been seated, if it had required a majority of the registered vote. Of course not a member of this Convention would be sitting here, not the Convention itself, had such a majority of the registered voters been required. And so I say that those who suggest an impossible majority know full well that it is a hostile amendment intended to make the initiative and referendum inoperative.

I wish to detain you for just a moment that I may quote from Abraham Lincoln on this subject. In an opinion on the admission of West Virginia Lincoln wrote as follows:

It is a universal practice —

Of course it is universal. Is it not universal? Has it not been the custom in Massachusetts from the beginning? Every one of our amendments to the Constitution required only a majority of those who voted. Every law submitted by the Legislature required only a majority of those who voted. [Reading]:

It is a universal practice in the popular elections in all these States to give no legal consideration whatever to those who do not choose to vote, as against the effect of the votes of those who do choose to vote. Hence it is not the qualified voters, but the qualified voters who choose to vote, that constitute the political power of the State.

That is Abraham Lincoln. That is our practice; that is the Massachusetts practice. And I do not believe that if we adopt the initiative and referendum we are going to suggest or adopt any other standard for passing laws or amendments to the Constitution of Massachusetts.

There is one very fundamental objection to passing the legislative initiative without passing the constitutional initiative. Think for a moment how that would leave matters in this Commonwealth. Suppose under the legislative initiative a social welfare law, such as I have described, should be passed by the people of this Commonwealth and the courts of this Commonwealth should be compelled to declare it unconstitutional, and the people did not have the right then to appeal to their fellow-citizens as to whether they would so change their Constitution as to permit such a law to be passed. In New York they did declare the Workmen's Compensation Act unconstitutional and the Legislature in that State did immediately submit an amendment to the Constitution which permitted that law to be operative. But suppose the people of this Commonwealth should pass a law and then be compelled to go to the Legislature, and the Legislature should refuse to submit such an amendment to the people, in what condition would they be then? Here is a majority of the people of Massachusetts, a majority who have the right to set up a Constitution, who establish courts, the fundamental power of government, saying that they want a law, that they believe this law is in their interests and will protect their interests, if you please, and their rights; and then they find that their creatures, the legislative body and the courts, oppose themselves to their will. That is not a happy state of affairs and it would not stand for a moment in this Commonwealth, I assure you. If you pass the legislative initiative to-day the constitutional initiative

is just as sure to come as the sun is to rise, and it will be a fatal mistake, in my judgment, to separate the two or attempt to do so.

Now I know the line of argument, or I think I know the line of argument, that will be made by the very able attorneys who will argue this question on the other side. They will quote the Constitution of Massachusetts and they will say that this is a compact, a social compact, in which the people as a whole enter into an agreement with each citizen, and so forth and so forth. Well, that is very interesting, but after all, when we come to think of it, if properly understood, that is a mere form of words. The real thing is this: That Constitutional Convention sat in 1780 like this one, not different, elected by the people. They decided upon a Constitution, a Constitution drafted practically by one man, and then, for the first time in the history of the world, Mr. Chairman, they submitted that Constitution to the people for acceptance or rejection. And the majority of the people, — two-thirds in that case, — accepted the Constitution. And then it was established. Those who voted against it did not consent, yet they were compelled to live then under the Constitution as adopted whether they liked it or not. It was not by unanimous consent. There was no real contract entered into between the majority and each citizen. It was done exactly as this Convention would do it and is going to do it, if it does it at all.

There was no provision in that original document for revision of the Constitution, but it was provided that the people should be asked fifteen years later whether or not they wished another Constitutional Convention to be held. So the forefathers anticipated that there might be changes necessary to be made, just as we are discussing and are about to make changes in our Constitution, and the people decided that they did not want a Constitutional Convention at that time. But later, in 1820, they did decide that they wanted a Constitutional Convention, and then they submitted to the people among other things the ninth article of amendment, under which all subsequent amendments have been made. They submitted that article to the people and it was adopted, and forty-four less nine amendments have been adopted to the Constitution of Massachusetts since that time.

What, then, becomes of the contract you have? Was it by unanimous consent that these amendments were adopted? Did we have to get the agreement and assent of every citizen of the Commonwealth? Not at all. The majority of the Convention decided what measures should be submitted and the majority of the people decided what amendments should become effective. And so it is simply a question of judgment as to what amendments to our Constitution we shall submit. The majority of the people rule and ought to rule.

I am almost tempted to quote Lincoln again. It is popular to quote him, but I will not take your time. I could quote a passage in which he points out so clearly and so eloquently that the majority should rule and if the majority did not rule then it would be the minority which would rule, and among the American people it is the majority that should rule. Of course, Mr. Chairman, we can have no peaceful government unless the majority acts properly, unless the majority respects the rights of the individual citizen and protects those rights, gives him free speech, a free press, gives him a chance to own property and to hold it without having it taken away from him without com-

pensation; all these are safeguards which have been built up and which are safe in the hands of the people of Massachusetts. Those rights are properly protected and will be protected by the majority of the people of this Commonwealth. If they are not, then we are indeed in a bad way, and you cannot help the matter by attempting to force the majority of the people of this Commonwealth to the terms of a written document.

Now, my friends, we have been discussing the courts here in this assembly for some time. I have great respect for the courts of Massachusetts. I believe in our judicial system; I do not want it changed. I have voted and I shall continue to vote against any change in our judicial system. I do not believe it is the fault of the judges; I believe they have done as good a job as they could do, and they have done a much better job in Massachusetts than they have done in many another State. And fortunately the Supreme Court of the United States has been perhaps the most far-seeing and the most wise court of them all. And is it not fortunate that that is so? We could not live under our written Constitution if that were not so. It is not the fault of the courts. The fault comes in a hard and fast written document, written a century or more ago, when conditions did not exist that now exist, and when we find the courts interpreting the restrictions in regard to liberty and property applied at that time to different conditions. Thus they get into trouble. And I tell you the only way to bring back the Constitution and the courts and the Legislature into the confidence of the people of this Commonwealth is to allow the people to appeal from the decisions of the Legislature to the majority of the voters when it seems to be necessary. And there is no reason why we should not allow the citizens, a substantial number of citizens, to appeal to all the citizens.

Now this petition matter is in the nature of a motion and seconding. That is the real nature of it. Under our measure, when ten men make a motion that a certain law be passed and when that measure is seconded in the case of a constitutional amendment by 40,000 citizens, it is presented to the General Court; and if the General Court acts in a way satisfactory to them, — it does not have to act in the way petitioned for, — if it acts in a way satisfactory to those petitioners the petition is dropped. If it does not act in a way satisfactory to the petitioners, then by getting 10,000 more names on the petition the matter will go on the ballot.

What is the purpose of dividing the signatures in that way? It is to give a chance for the legislative body to act; that is all, that is the only reason. We give the petitioners a chance to drop their petition if the General Court does anything that satisfies them, either in regard to a law or a constitutional amendment. They propose a law; the Legislature discusses it and may find flaws in it and defects. If they are friendly to the principle they will pass a law that satisfies the petitioners, and that will have a great tendency to reduce the number of matters on the ballot, because I assure you that when 20,000 or 40,000, as the case may be, citizens of this Commonwealth come before the General Court and ask for a law or a constitutional amendment, the General Court is going to sit up and take notice. They are going to realize that there is a demand and they are going to realize that this matter is going before the people if they do not act, and so they will

give the matter their serious attention and consideration, and I believe in nine times out of ten they will solve the question and the matter will never get on the ballot.

Mr. MONTAGUE of Boston: I would like to ask the gentleman from Brookline if it is expected that these 20,000 or 40,000 signers of the petition will each understand what they are signing?

Mr. WALKER: They will understand more or less about it; some of them will understand all about it, some of them understand very little about it. It is comparatively unimportant, — comparatively unimportant whether they understand it or not. [Laughter.] I will elaborate that point in a minute.

Mr. MONTAGUE: I understand, — if I do not understand correctly I desire to be corrected, — that it is the opinion of the gentleman from Brookline that it does not make much difference whether any substantial number of these signers do understand what they are signing?

Mr. WALKER: I made no such statement whatever. I said that it was comparatively unimportant, — comparatively to what? What is the important thing? When a man seconds a motion does he necessarily know all about the subject that is going to be discussed? Not necessarily. It is not of supreme importance that those who second a motion should understand clearly all the provisions. They know the main subject, and these petitioners will know in a general way the thing they are petitioning for. They will know the main thing they want. I do not suppose all of them, — I do not believe all of them, — will understand it in detail, but I contend they will know the general thing they are aiming at. But the essential thing is this, — may I answer your question fully and then I will submit to another [Mr. Montague having risen], — the essential thing is this, that the people shall understand it when they come to vote on it. That is the essential thing, and therefore after this petition has been signed, then we provide that the thing shall be held in abeyance for two years in regard to a constitutional amendment, or one full year in regard to a law, taken to the Legislature, delayed, talked over the Commonwealth, literature sent, arguments *pro* and *con*. We do intend to see to it so far as we can that the citizens of this Commonwealth be instructed before they are called upon to decide the question. And that is the only reason, Mr. Chairman, I say it is relatively unimportant how thoroughly those who sign the petition understand the matter.

Mr. MONTAGUE: I desire to ask the gentleman if he thinks that a petition signed by 40,000 or 100,000 people who did not know what they were signing ought to have any great influence on the Legislature or anybody else.

Mr. WALKER: I think that you can all answer that question about as well as I can. You send a petition up to the Legislature, Mr. Chairman, with 50,000 signatures on it, and it does make an impression. I do not know how much impression it will make. Perhaps the gentleman can inform this body just how much impression it will make.

Mr. MONTAGUE: That was not my question. My question was whether a petition signed by 20,000 people or 40,000 people who did not know what they were signing ought to have and ought to make an impression on the Legislature.

Mr. WALKER: If the gentleman's premise is right, that they did not know what they were signing, I should say that it would have no

influence on the Legislature, not the slightest; but I do not make a claim that they will not know what they were signing. He asked me whether they would read the measure and understand its provisions. No, not many of them. A good many of them will, perhaps, but not all of them by any means. But the fact will remain that they will know the general purpose of the petition, and before the vote is taken the people will know.

Mr. WALSH of Fitchburg: I should like to ask the gentleman if, during his eight years' experience in the Legislature, it was the custom and practice for all the legislators to read the bills? Was not the practice in the Legislature the same as it has been among the people, of following the leadership and direction of public men and leaders who read and study the bills?

Mr. WALKER: I do not need to answer that question, Mr. Chairman. The chairman of the committee on Rules (Mr. Luce) in his speech only yesterday very clearly brought out that point. Of course no man reads all the bills. A few of them read many of the bills, but we know the general substance of the bill before we vote on it and we take, as I say, and follow to an extent the leadership of men, and if there are any jokers to be brought forth they are brought forth. The same would happen in regard to measures before the people. If the measure carried out the purpose there would be nothing said about the particulars of the measure; its purpose would be debated. And if there was a joker in it or if it was a defective bill in some particular, that would be pointed out quickly enough.

Mr. WASHBURN of Worcester: I desire to return for a moment to see if I correctly understood the answer of the gentleman from Brookline when he suggested that the 40,000-odd signers of the petition merely second the motion?

Mr. WALKER: That is it.

Mr. WASHBURN: I am right, then, in my conclusion that a very small number of people are interested in the proposition proposed, and then the 40,000 individuals throughout the Commonwealth without any knowledge second it by affixing their signatures?

Mr. WALKER: Why, Mr. Chairman, I do not believe I need, — I want to answer any questions that will be enlightening to members of this Convention, but I am not going to answer questions that are put up to me for the purpose of getting offhand the reply which may or may not strengthen my argument. What is the use of asking me that question? We all know the situation. Sometimes it will be the Chamber of Commerce in Boston that will want an amendment; they will get ten of their prominent members to sign it and they will file the petition, they will back it up and see that it is circulated. Sometimes it will be some real estate organization or it will be some great civic body; sometimes it will be a labor organization; sometimes it will be a grange, — various organizations. Sometimes it will be a group of reformers and sometimes it will be an individual, perhaps, who conceives a great idea and gets 50,000 or 20,000 people to back it up. That is the situation; we all know it. I cannot throw any light upon the subject by answering that question. The fact is that, as a matter of form, some one has got to sign the thing and start it, that is all; and so I provide, as is necessary, of course, that a certain number of petitioners should sign it. I do not care whether it is ten or a hundred. I said

ten; it is quite immaterial whether it is ten or a hundred. Sometimes I have thought that a hundred would be better, because if there were a hundred names they could be scattered about over the State and it would give a little more weight to the petition, because we would know what men stood back of it. Those names must appear upon every petition that is circulated, so we will know not only the measure but we will know the men who stand back of it. And if there are prominent men, men in whose judgment, whose probity and whose public spirit we have confidence, it will help the petition. So I am not sure that it would not have been a good idea if we had said a hundred instead of ten. But that is neither here nor there; ten is quite enough. They must sign it and then they must get these signatures. I do not believe that after this measure has been worked for a while in the Commonwealth and the people come to understand it, when they come to see further that there is a responsibility attaching to their signatures on these various papers, I do not believe they will sign them so easily as they now sign petitions.

Mr. HALE of Boston: I am still not quite clear in my mind as to the answer that the gentleman from Brookline gave to the gentleman from Boston (Mr. Montague). I should like to ask again whether I misunderstand his attitude. I understand from his answer and from the question that he means that not necessarily the great bulk, — in other words, not necessarily all of the people who give their signatures to this petition will understand thoroughly all the details of the measure proposed. Do I understand that in addition to that he means that the great bulk of the signers of this petition will not understand what the subject is about and will not be generally in favor of it?

Mr. WALKER: I am glad the gentleman asked the question if there is any doubt about it. I tried to be perfectly explicit. I believe that practically all the signers, even though there are forty or fifty thousand of them, will know what they are about. They will know, most of them, — at least there will be mighty few of them who will not know, — what the thing is about. They will know what they are seeking to attain. They simply will not know, perhaps, the details of the measure. Perhaps as these petitions are passed around they will not be adequately explained to them. But, Mr. Chairman, there is no other way of doing it. There is no other way of giving the people an opportunity to have the laws that they want. If any one has a better suggestion to make let him make it; I know of no other way. You might, if you wanted to, have a man allowed to file a petition if he pays a certain fee for the privilege. But I do not think that will appeal to the people of the Commonwealth.

Mr. MONTAGUE: I desire to ask the gentleman, knowing what he does of the custom of obtaining signatures in this vicinity at least, whether he does not believe that ten men with a thousand dollars apiece who are willing to put up that amount could go out and get 40,000 signatures and not have 100 of those men who signed those papers know what they are signing?

Mr. WALKER: I do not believe that. I want to say a few words in closing in regard to the question of amendment. At this time, Mr. Chairman, I will not go into a discussion of the various amendments that may be proposed. I suppose that I may be called upon later to defend the report of the committee against certain amendments that

may be proposed. I have talked now a long time and I think it is better for me at this time not to go into the question of amendments nor the question of objections that may be raised to this measure. There are only two things that I want to call to your attention; one is the question of amendment and the other is the question as to how the system works in other States. I will take the latter question first, because I intend to deal with it very briefly.

It will be argued on this floor that the initiative and referendum is a failure; that it is a failure in Oregon, that it is a failure in California, that it is a failure in Colorado, that it is a failure in this State and the other, and then they will bring forth evidence. They will read the remarks of Governors and they will read the remarks of prominent lawyers and they will read the remarks of private citizens. Now if that line of discussion were entered upon I could meet every one of their statements, every one, with a statement equally strong on the other side. Of course in all these States there are men who do not believe in the initiative and referendum and who would upset it if they could. But mark you this fact, that there is not a real attempt being made to-day in one of these States, — a popular attempt, I mean, — to upset the initiative and referendum. It is accepted and it is settled.

I am tempted to call your attention to this one letter that I have received. I call this merely an illustration, that is all, of how this thing could be argued. In this pamphlet, this remarkable pamphlet against the initiative and referendum, put forth by those who are opposed to it, Governor Norbeck of South Dakota is quoted at length. There are two pages in that pamphlet of his statement and then he is given the back of the pamphlet. Just out of curiosity I wanted to find out what the truth was in South Dakota, and I have this letter signed by R. F. Pettigrew, — and R. F. Pettigrew is the retired United States Senator from South Dakota. He is a gentleman out of politics and out of health and has no interest whatever, no political interest, in taking one side or the other on this question. And this is what he writes on this subject, in a letter dated as late as July 20, 1917, — that is only a few days ago:

> Notwithstanding the attitude of Governor Norbeck I am of the opinion that the initiative and referendum has been a decided success in this State and that if the question of repealing the law was submitted to a vote of the people it would be overwhelmingly defeated, and I am of the opinion that Governor Norbeck, who is a rather clever politician, would go down in defeat if he should advocate its repeal, and therefore, having sent out a feeler on the subject, he has now run to cover and you will hear nothing further from him in regard to the matter.

So, Mr. Chairman, I might multiply illustrations, but I am not going to take the time of this Convention to quote opinions from this State or that State as to whether it is a success or not. Let it be known that it is going from State to State and that there is no backward step being taken.

What shall I say about the amendments? Mr. Chairman, I am informed by those who have investigated the matter that there are 190 members of this Convention who said before the election that they stood for the principle of the initiative and referendum. I believe that this measure reported by the majority of the committee as it stands commands a clear majority of this Convention and I wish, — how I wish, Mr. Chairman!, — that a vote could be taken squarely on this measure unamended, because this measure embodies the initiative and referendum and there are no jokers in it. There are no ifs and ands

about it; there are no exceptions here. It has been drawn after years of study; it has been drawn in consultation with the authorities at Washington who are looking after this sort of legislation throughout the country. It meets their approval. And it has every safeguard that can properly be put upon the initiative and referendum without infringing its principles.

Now how is it to be defeated? That is the problem. Those who would defeat this measure will not allow a vote to be taken on this measure as it stands, but they will offer amendments, all the way from comparatively harmless amendments, simple things that we have not put in the measure that we could put in, up through amendments that would make it difficult to operate or would make it inoperative and so on to amendments which are inconsistent with the principle of the thing. Our opponents simply do not believe in it. I do not disrespect them for that; they do not believe in it and now they are attempting to kill it in this Convention and they are going to kill it indirectly if they can, — they are going to kill it by loading it down with amendments if we who believe in the initiative and referendum permit them to do that thing. Amendment after amendment will be offered here. They have instigated many men in this Convention, — I mean they have urged them and talked it over with them, not improperly at all, but just as I would urge them not to offer amendments, — they have urged that this amendment would be a safeguard; that that amendment would make a better measure out of it. This appeal to the judgment of members is a proper thing for them to do. It is perfectly proper for them to do it, and if they have persuaded many who favor the principle of the initiative and referendum to stand by these amendments they have defeated the initiative and referendum.

Now the people, I believe, in this matter are asking for bread and I trust we shall not give them a stone.

Mr. Chairman, I hesitate to speak of any particular amendments, but there are two amendments that will be offered by one of the best friends that the initiative and referendum has in this body, a gentleman whom we on the committee on Initiative and Referendum have not only come to respect but for whom we have learned to have a true affection, — a patient, courteous, considerate, honest, true man; and if he offers amendments to this measure, I shall hate to oppose them. He may decide to offer two amendments that he has suggested to our committee, and the minute he offers them those who are opposed to the initiative and referendum will rejoice, because they will think that they are going to set the other members, the other majority members, against the chairman of the committee. But they will not do it, Mr. Chairman. The chairman of the committee on Initiative and Referendum and I are going to work together hand in hand in this matter, because he believes in the initiative and referendum as I do. He may not look just as I do at some of these amendments. I believe that it is wise not to make exceptions. I believe that it is wise to go frankly before the people and put the Constitution and the laws in the hands of the people, and the minute we make exceptions we weaken our argument and our opponents will take advantage of that fact; you may be sure of it. And so I do not agree with him that these amendments should be adopted.

But I wish to say to you, Mr. Chairman, that if this Convention decides to vote them into this measure I shall stand for it and work for it after those amendments are adopted. And, Mr. Chairman, I take it, if I understand the gentleman's mind aright, that if for any reason this Convention should vote not to put those amendments into the initiative and referendum, that just as loyally he will stand for the initiative and referendum as we have reported it, — unamended.

Now we are not going to allow the opponents of the initiative and referendum, therefore, to pull us apart. We are going to stand as a rock together. If he offers those amendments there will be a vote taken on that. We shall vote as we see fit. If they are voted in we shall support the measure just the same.

Mr. Chairman, the initiative and referendum, let me say in closing, is only a part of the great scheme of government in the Commonwealth of Massachusetts. We are here reviewing our Constitution. It will be urged upon you that we increase the power of the executive and make the Governor more directly responsible to the people, and I, Mr. Chairman, intend to support that proposition. We shall divide our administrative work into administrative departments and put them under the Governor and make him responsible for the work of those departments and give him the power over those departments, a responsibility that he does not have now, and I shall support that proposition. It will be proposed here to allow the Governor to lay out a policy and to incorporate that policy in a series of measures that he will submit to the Legislature, and give him the power, if the Legislature refuses to pass those measures, to appeal from the Legislature to the people, — the executive initiative, — and I, Mr. Chairman, will support that proposition. Thus we shall deal with the executive. We shall allow him to submit to the Legislature a budget and allow him to veto items in that budget; and to that proposition I assent. Thus we shall have a real Governor, responsible to the people; and this Convention will have done a splendid work.

Mr. Chairman, the question will come then as to whether we shall unshackle and untie the hands of our legislative body, and I for one am going to stand for doing that thing. I believe the time has come when Massachusetts should be allowed to deal with these subjects of the social welfare. To that end we should enlarge, — carefully define, but enlarge, — the police power of the General Court, that it may deal adequately with these great questions of social welfare. I believe the time has come when the Legislature of Massachusetts should have power to deal adequately, unhampered, with the question of taxation. New York State has that power now, Connecticut has that power now, many States in this Union have that power. They are unshackled and may discuss, if they wish, the wisdom of the progressive income tax or other kinds of taxation if necessary. Our Legislature has been tied hand and foot since the beginning to an antiquated system of taxation. We have accomplished something after years and years of struggle. But I say the time has come now to untie the hands of the Legislature of Massachusetts and allow it to pass laws in the interests of the people of this Commonwealth, and I shall stand for that power.

Mr. French of Randolph: I should like to ask the delegate from Brookline if he assents to the suggestion that the initiative and refer-

endum is based, among other things, upon the proposition that the people cannot be trusted to elect legislators whom they can trust.

Mr. Walker: I suppose I can interrupt my argument to answer that question. It is very difficult to tell whom you can trust and whom you cannot trust. When the people of this Commonwealth see a law before them written out, they know what is in it; and when they vote yes or no they know what they are going to get. But who knows, Mr. Chairman, what is in the heart and in the mind of a politician who is running for office? I do not. [Applause.] Mr. Chairman, even the best of men are ambitious, and I assure you from experience that there is an atmosphere about the General Court of Massachusetts which means that the man who is conservative, the man who is good, the man who is safe, from the standpoint of those who are much interested in legislation from a selfish standpoint, — that man is pushed ahead for public office; and the man who shows independence in the interests of the people, as he conceives those interests, very often is checked in his career because he is dangerous, — to those interests. And that is a very insidious thing and it appeals pretty strongly to men who otherwise are pretty independent men, unconsciously sometimes. This atmosphere suggests: "Now this is a radical measure, this is a progressive measure, it won't please the powers that be," — that is the expression that is ordinarily used, — "and if you want to get ahead in politics you want to be mighty careful how you tread on the toes of those people." So I say that it is difficult really to know just what you are doing when you are electing a legislator. Moreover, you cannot possibly get a law that the people want on the theory that you are going to defeat every one who opposes it and elect only those who will vote for it. Why, Mr. Chairman, I have seen some of the best legislators in Massachusetts defeated because they opposed a certain law. They might have been wrong on that, but on all other matters they were strong and stalwart and good. Have you got to defeat such men as that in order to bring the will of the people to bear in favor of one particular measure or another? How much better to take that measure out of the Legislature, submit it to the people, let them pass upon it, and then they can express their will; but if you are going to make them express their will by defeating or electing men to the Legislature, according as they favor or do not favor a particular measure, you get into complications and difficulties which will render such a process impracticable.

Mr. Chairman, I was saying that I shall stand for the increase in the power and responsibility of the executive, I shall stand for unshackling the Legislature of Massachusetts, but going with those two things must be the control of legislation by the people, an appeal from the decision of these powerful agencies of government to the people as a whole. Therein lies our safety. Incidentally, as I have said, we will thereby build up a public opinion, intelligent, wise, educated, — the kind of a public opinion on which alone a true democracy can securely rest. [Applause.]

Sherman L. Whipple of Brookline.

Mr. Whipple of Brookline: I understand that the other day in this Convention I was publicly called upon by a distinguished gentleman to speak, — to let the Convention hear my voice. I felt then much

complimented and feel much complimented now that I was called upon to speak rather than ordered or called upon not to speak.

It was said that if I did not respond to the call I should be defaulted. I hope I am in time to prevent the default and I hope when I have finished the few brief remarks which I wish to address to this proposition that some one will still want to hear my voice and hear me speak rather than to say he never wants to hear me again.

The Walker measure proposes two distinct changes in our Constitution. The first proposes a change in the method of amending the Constitution; the second proposes a change in the method of passing our laws. The object and purpose is not to change those methods entirely which now prevail, either for changing the Constitution or for passing laws, but to add another and a new method to those which already are in vogue. The object and purpose, in regard to both these changes, is to give to the people of the Commonwealth a larger control and domination over legislation, to enable the people to have some say which now they do not have with regard to constitutional amendments and also with regard to the laws which shall be enacted.

Well, now, on the face of it those do not seem to be very dreadful propositions: That the people who create the Legislature shall have the right to have some say directly initiating changes in the Constitution, or that they shall have the right to have some say directly with regard to the laws under which they shall live or to veto laws passed by their representatives of which they do not approve.

But what do our opponents say with regard to those two propositions which seem so simple, so inoffensive on the face of it? Happily, they have told us in advance just what they say with regard to them. Not in that speech which comes with the enthusiasm of mental activity when a man is on his feet before a presence like this, but coolly and deliberately, in the study of the philosopher, of the professor, in the office of the lawyers, they have written out and stated the reasons for their opposition and the results which they believe will accrue if this apparently simple measure should be adopted. You have all received the document which the Convention has had printed in order to spread among you the reasons for the opposition, and let us for a moment consider what our opponents say.

In the first place, it is this: That if this measure goes into effect it threatens to destroy the right of property, the right of religious liberty, the right of free speech and all the other rights which have been guaranteed to us by our forefathers.

Let us refer to the paper itself lest I shall have stated too strongly the claim which these gentlemen make. Page 5:

The resolution would break this Compact —

which means the Constitution —

and destroy Constitutional Rights.

And what those rights are that would thus be destroyed are given us in the fine print lower on the page. Let me read them to see whether I have correctly quoted these gentlemen:

The right of religious liberty; the right of property; the right of free speech; every right which our forefathers sought by the frame of government to preserve and protect from tyranny. . . .

To be sure, they finish the sentence not with quite the drastic statement with which they head the paragraph stating the proposition which they intend to prove. They say there that they are menaced and endangered, but in substance and effect every right which we hold sacred this simple, apparently harmless and inoffensive measure is going to wipe off the statute-book and wipe out of our Constitution. That is not quite all that they say about it, because in the conclusion they summarize what is to happen. Page 20: "Amendments to the Constitution by the Initiative a Subversion of Our Form of Government," which, as I understand the professor's words, mean, turning it topsy turvy, — turning it over. "Destructive of its Principles, and of its Safeguards of Individual Rights and Liberties." Is that so? Is this measure which Mr. Walker proposes, a measure much more conservative than what has been adopted in some twenty-one States, and which is being considered favorably in others, a measure which has been adopted by our neighboring State of Maine, such a dreadful measure as is here described, — destructive of all liberties which we hold sacred?

Well, if it is it would make all of us pause. It would make me pause and my fellow-delegate and esteemed friend from Brookline (Mr. Walker) would pause if, in point of fact, we were engaged in putting through a measure which would effect the destruction of the constitutional liberties of the citizens in the Commonwealth of Massachusetts.

Do they really mean that? Do they really and sincerely, all the gentlemen who signed that paper, mean that? It is a pretty hectic statement and a pretty hectic state of mind for even this hot weather. [Applause.] Somebody sees red; somebody is seeing red. But is it not rather a bit of elocutionary and rhetorical hysteria? Must we treat that statement as the serious statement, the belief of the gentlemen who signed it, or are they statements like the scare headlines in the newspapers sometimes, intended to make an impression but which really are not justified by the small print that you read underneath? And, Mr. Chairman and gentlemen of the Convention, is it not possible that they have made a mistake as to the rights which are threatened? They say the right of property is threatened? Is it?

Continuing after the noon recess Mr. Whipple said:

Just before adjournment for luncheon I had called attention to statements in a printed pamphlet in which the minority of the committee had stated the grounds of their opposition to the initiative and referendum and had pointed out their claim that the adoption of the principle or the adoption of the Walker measure would result inevitably in the destruction of constitutional rights which we now enjoy and have enjoyed for more than a century under the Constitution.

I want to call attention now to just exactly what that means. The proposition is to give the people a right or a further right to initiate a change of the Constitution. They have the right now to change it, but they are to be given the privilege of starting the machinery which will bring about a change. They say that will destroy our liberties. How will it do it? Let them answer. How will it do it? How will giving the right to the people of this Commonwealth to start the machinery which will produce a change in the Constitution destroy the Constitution and destroy its liberties?

What they say, and must say, is this: That if you give the people the opportunity to vote upon it they will destroy free speech, they will destroy the rights of property, they will destroy religious liberty. That is what it means. Does that sentence in their reasons mean anything else or is it capable of any other construction? Does it not mean that they assert that the Legislature of Massachusetts stands between the people who desire the destruction of our ancient liberties and the liberties themselves? And that is the issue. Do you believe with them? Do you believe that is so? Do you join in that assertion which is an indictment of the people of this Commonwealth? Is it not an indictment of the whole people if you say that, if they are given the opportunity to do so by starting the machinery for a change of the Constitution, our liberties thereby are imperilled, or, as our opponents assert, our liberties and our ancient rights are destroyed?

But they have deliberately defined the issue thus: They have deliberately put in the written document which they have circulated among you that assertion which is capable of no other conclusion, — that the Legislature must hold in its hands the initiative of changes of the Constitution, or our government will be destroyed.

I believe the people are sane. I believe, and most of us believe, that the people will not commit folly.

And they say that they will do it by a "mere majority." That is an astonishing term, as it seems to me, to use. Please look on page 7. They are using it in another connection under the heading "Power of a Majority Vote to Annul the Work of this Convention." And they say, — I do not take the whole sentence: " . . . for a mere majority of voters, unchecked and unrestrained, to annul the work of the Convention . . ." What is a "mere majority"? How do we elect our Governors? Is it not by a "*mere* majority"? How do we elect our Legislature? Is it not by a "*mere* majority"? If the work done by this Convention is submitted to the people how do they pass upon it, adopting it or rejecting it? Is it not by a "*mere* majority"? Why, I understand that a majority, even if it is a "*mere*" majority our opponents concede, have the right to rule the affairs of the Commonwealth. And still, — and it throws a light upon what is in their minds when they speak of a majority of the voters of the Commonwealth as being a "*mere*" majority, — "*mere*" as compared with what? "Mere" as compared with a Legislature. On the one hand their ideal of a Legislature, on the other hand "merely" the people, — a "*mere*" majority.

Are they not mistaken in what really is threatened, in what really is imperilled? They say that it is the right of property that is threatened and imperilled. Let us see if it is not something else which has come to be considered in this Commonwealth a right, — a right to take property through legislation from people who do not know that it is being taken [applause], a right not to hold property, but a right, as they call it, by special legislative favor and by special legislative license, to take from those who cannot help themselves the honest fruits of their toil and industry. [Applause.] Is not that the real "right of property," — the right to *take* the property of another by legislative chicanery, — that is threatened? If it is, are we here, the representatives of the people, sorry that such a right and such a license and such a privilege is threatened with destruction? I should not have the fears

that I said this morning I should have if the ancient and sacred rights and liberties were threatened, if it be a fact, as I suspect it is, that these things that have come to be considered rights were the only things that are threatened by this measure of a popular initiative and referendum.

Let us see which it is that really is threatened; because if we follow in careful analysis the methods that now are in use for changing the Constitution and for instituting or carrying out legislation with those which are proposed, we shall see what evils and grievances may be corrected and the purposes and real significance of the change.

How do we now proceed if we desire a change of the Constitution? Well, we are all familiar with that. It has to start in the Legislature. The Legislature has supreme and exclusive control. Every person in this Commonwealth outside the Legislature might want a change of the Constitution and they cannot have it unless the Legislature can be moved to act. What then? Then the Legislature has to pass a resolution by a two-thirds vote in the House, — two-thirds or more, — and a half or more in the Senate. And then where are we? That Legislature may have done its duty upon its own initiative; then it is referred to the next Legislature and you wait a year. New men come to take the places of the old. Every one is apprised with regard to what is anticipated and the interests, if they desire, have the opportunity to get in their work with regard to representation in the Legislature which is coming. Then the proposition must be taken up by the Legislature again. They and they alone can put it through. And if it passes by a similar vote, then automatically it goes to the people. But what may happen? What may happen? In the Senate, which has been called, perhaps unjustly, "the graveyard of progressive legislation," twenty-one "wilful Senators" may, if they see fit, defy the will of all the rest of the Commonwealth. Not in two years in succession, but in one, — the last year, if you please, — if twenty-one of them say: "We will not permit this legislation to go before the people," the people of this great Commonwealth, no matter how meritorious the measure, are powerless to put it through, absolutely powerless to put it through; twenty-one men who may have been elected for the special purpose may put a negative upon a measure especially feared by certain interests or people who suppose that it may affect their interests. And there the interests of the Commonwealth are in the hands of a "mere majority" of twenty-one; and they say: Leave it that way, do not submit us to the mercies and the terrors of a mere majority of seven hundred and fifty thousand voters of the Commonwealth. Our ancient liberties are safer if you leave them in the control of that "mere majority" of twenty-one Senators who may defy the people of the Commonwealth if they please; but do not deliver us to that awful "mere majority" of seven or eight hundred thousand voters. [Applause.] Is not that their proposition? Is not that what it reduces itself to? Our rights and liberties can be better protected by twenty-one wilful men who may be Senators rather than by the majority of the people who vote at the polls at a State election.

But, *they* say, twenty-one Senators would not stand out against the whole Commonwealth. *I* say a "mere majority" of the people are not crazy or insane; and you have got to legislate upon the theory that they will act as upstanding, sane, conscientious and patriotic citizens.

Perhaps they are in the Legislature, as well. But we have a record of legislative action in these matters which I will not stop at this moment to consider or review even in general terms, which reflects light upon the future. It may be that evils which have been chased into seclusion at present are not now obvious, but I know of no way of judging of the future but by the past; and my observation has been that when it got a little safer, when it got a little dusk and things were not under observation quite as easily, those rodents that skipped for seclusion to escape the light of disclosure came back to the cheese. [Laughter and applause.]

Now what does the Walker measure propose as compared with the method we have now? And Mr. Walker has said, — I ought to say my fellow-delegate from Brookline, I suppose, but I am not accustomed to this sort of speech, so I make mistakes; so I will say that the Walker measure provides that instead of going to the Legislature for the initiative you may have an initiative instituted by fifty thousand, — or practically forty thousand voters. That is the first difference. It removes the initiative from the hands of the Legislature, — or rather from the exclusive jurisdiction of the Legislature, — and puts it in the hands of the people. Now when I say "puts it in the hands of the people" I shall be criticized. They say that it does not put it in the hands of the people, it puts it in the hands of a small section of the people. I agree. It puts it in the hands of a small section of the people, acting in behalf of the people, — or assuming to act in behalf of the people. But suppose they get their initiative petition, suppose they get it into the Legislature, suppose they start the machinery; that is all these people have done. They have done nothing except to start the machinery. No change in the Constitution can take place as a result of the vote of the fifty thousand or the forty thousand. It then goes through precisely the same steps as are used now. In the first place it has to go to the Legislature; the Legislature may pass it, then it is referred to a second Legislature and that may pass it. If so there is no need of the initiative and referendum. If the Legislature does not pass it, after this delay and after this debate which has taken place in two legislatures, it is submitted to the people. What is the difference? What is the difference? There is the delay for debate, the delay for thought, the delay for consideration, just exactly as you have it now. The difference is merely that the people may start the machinery instead of leaving the Legislature to do it.

And again, instead of making it possible for a small majority in the Senate or the House to prevent action, you simply pass over them and send the measure directly to the people.

Now how is it with regard to the enactment of laws? We all know now how the Legislature proceeds. But there is one feature of it that we do not all of us realize or quite understand. After you elect your representatives, the Senate and the House, the people have no further power over them except the power of personal influence. You have delegated your power to them absolutely for a year. There is no way in which, no matter how meritorious a measure arises, you can get their ear if they see fit not to give it to you. They are solely the persons to determine as to whether or not a measure shall be introduced. I will not say be introduced, because upon petition measures may be introduced into the Legislature, but you cannot control their ac-

tion. Furthermore, if during the year an obnoxious measure is passed by the Legislature the people likewise are absolutely helpless. They cannot veto it. They can ask, — you have seen them coming up by hundreds to the Governor to ask him to veto it, — but they have absolutely no power. The Legislature is supreme.

Well, now, what is provided in the Walker measure? Simply that if twenty thousand people representing the people want to have a measure introduced into the Legislature by petition they may do it and the Legislature has not the power to veto it. They may refuse to pass it and then it goes right on from them to the people. If the people do not want it they may reject it by a "mere majority"; if they want it they may pass the measure.

Now what is there so subversive of all government about that? What is there so terrible about the idea of twenty thousand people joining together and asking the Legislature to have a bill passed? What is there so radical and destructive after they have got it before the Legislature in submitting to the people the question as to whether or not the bill shall become law? And in case the Legislature has passed, in spite of protest, an obnoxious bill what is there of harm, let me ask, if you submit to the people the question as to whether or not they will have that law? To say that you will not do it is to deny the right of the majority to rule.

Otherwise than in these respects the procedure which is laid out in the Walker measure does not differ substantially from the procedure which we already have; and as I have pointed out, the procedure in the Walker measure does not supersede the procedure which we already have. You can continue to amend the Constitution through the Legislature in the same way. You can continue to legislate in the Legislature in the same way, and it is only when the Legislature is not responsive to the popular will that you have within your power to initiate and put through changes of the Constitution in spite of an unresponsive Legislature, or to initiate and put through legislation which the people want, to which the Legislature denies them the right.

That is the measure, gentlemen, that our opponents have described as destructive of our rights, — with changes so simple as those that I have outlined, — as I say, apparently innocuous, apparently harmless, but for some reason feared and dreaded by these gentlemen and by a large section of the Commonwealth which they represent.

But our opponents say that we present something new and that the proponents of the measure have the burden of proof, that they are bound to say that some improvement will take place in the administrative machinery or the legislative machinery of the Commonwealth. I agree with that. I agree that unless we can show that we are going to better conditions by the initiative and referendum it ought not to be adopted. That is a fair proposition. Therefore the first thing for us to do is to inquire: Are there grievances on the part of a large number of the people which the initiative and referendum may correct? Are there evils which have grown up in our present system which will be helped by the adoption of this measure? And then you have a right to know how these evils will be corrected and how the grievances will be removed.

I shall not attempt, even if I am asked so to do, to point out a measure here or a measure there that has been passed that perhaps

ought not to have been passed. We are not to attempt to determine here these great questions upon any isolated instance that any man knows of corruption in the Legislature, in passing a bill in the Legislature, or a constitutional change which ought not to have been made. We are dealing with a larger view of conditions which surround us, and the complaints and grievances which people make. I desire to call attention to things that you have witnessed and things that you now feel, — the social unrest that prevails among our people, the industrial discontent that is widespread throughout the country, a class hostility which has grown up as between those who enjoy great wealth and those of more limited means, a rankling sense in those who have been less fortunate in life as to the injustice under which they are suffering, a belief that the machinery of legislation has been used to make and to enhance the vast fortunes which we find in this country, and to the fact that those who have been unable, by influence or other means, to appeal to the Legislature have suffered; that their own, — things that are rightfully theirs, — have been taken from them, not by one legislative act but by a course of legislation, by a policy which has been adopted at the instigation and under the influence of those who have property rights. There exists a belief that special privileges and special favors have been granted to those who have had the influence to get them; a belief that much of our legislation has been framed by lobbyists in their own offices or by skilled and trained lawyers in the offices of the corporations or the offices of the attorneys themselves, and that that legislation has been directed not to promoting the general public welfare of all the people alike, but has been for the purpose of promoting the interests of those who stood behind, — secretly stood behind, — the measures and the legislators who put them through.

Again, the enormous disparity in the distribution of wealth has been a subject irritating. Think of it. Something over a hundred years ago we started with a Declaration of Independence that all men are free and equal, with equal opportunity for all; and it was true in a measure then, — as true as such a thing ever can be. Property comparatively equally distributed, no large fortune, with a simple people. What have we now? Fortunes on every side that are fabulous, fortunes that would make the fortune of Crœsus look like a ten cent piece. Millionaires we used to call them, and now we hear of billionaires. Not merely that, but enormous fortunes are combined together for purposes and in enterprises which result in doubling their importance and commanding influence.

These are the things which are going on. These are the facts which are being enacted all through the country, more or less also in Massachusetts, — and really to a great degree in Massachusetts. It is not so much that the legislation is now going on day by day which produces these results. The legislation has gone on, and all they need to do now is to stand back and hold on to what they have and the dollars roll in upon them. If they can preserve what they have, while perhaps they are not entirely satisfied with it, yet it is better than to have any part of it taken away. That is what they desire to preserve the status for.

There is a feeling among the people that these fortunes have not been gained honestly and fairly. No one begrudges another who, honestly and fairly, has gotten the money or the property which he pos-

sesses, and it is a tremendous help also to start with property to begin with to which you can add. But the criticism is this: When you have the tremendous advantage of money to begin with, is it fair to go to the Legislature and there by combinations, and coöperation, and influence, if not by bribery, put through measures which will add millions upon millions to what you have? Where does it come from? It comes from the people, and if it comes to these millionaires it comes out of the pockets of the people.

Are any of you prepared to deny that these complaints and grievances do exist? Are any of you prepared to say that you are satisfied with that situation? Indeed, gentlemen, is it not a situation that imposes upon this assembly a tremendous responsibility? What I have pictured is not the worst of it. As a result of this situation of affairs there has grown up among the people, whether justly or unjustly, a distrust in the Legislature, a belief that they lend themselves to predatory interests, to influence, and that they have betrayed their trust to the people, — and worse even than that, that it has gone to the extent of corruption! I shall say a little later in my remarks something further upon that subject, but it is one of the most painful, one of the most startling and one of the most serious symptoms, because if the people, or any large section of the people, no longer have the full measure of confidence in the Legislature of the Commonwealth, indeed we are upon bad days. Will you deny that such a feeling exists? You may say, if you please, that it is confined to certain sections, to the poor and the humble; I say it is not. Men of education; men of standing, thinkers, patriots, all join in the expressions of apprehension as to the dangers with which this situation confronts us.

What do our opponents say? They do not deny, or in the committee did not deny, the situation. They did not deny the danger. They say: "It is not as bad as you paint it. There is not the danger in it that a good many say." But they admit there is a grievance. They say there is injustice, rankling injustice, social injustice, and that the grievance is well founded. How long will the Commonwealth exist in prosperity and serenity when a large section of her people feel that they are suffering social injustice, that they do not have a square deal, that by methods they cannot understand, by legislative methods and legislative chicanery, or through the operation of laws the effect of which they cannot quite understand, their patrimony is being taken from them and piled into the coffers of these men? How long, I ask, can we expect our Commonwealth or our people to exist in its integrity if there is a grievance in any considerable section of our people to which we give no relief? We have said to our opponents: "Make your suggestion. Tell us what you offer as a remedy for this situation," and they have stood silent so far as constructive suggestion is concerned. They have said: "The measure which you propose is dangerous," but they propose nothing.

Are you going to let it go at that, gentlemen of this Convention? Are you going to say: "Yes, these grievances exist, social injustice exists, there is not a square deal for all the people, but we cannot help it. They have got the best of us. We cannot help it. The best we see is to continue with the old institution and continue to send up to the Legislature the best men whom we can find, in the hope that they will not be bribed, be influenced wrongly." Are you, men of Massa-

chusetts, sent here charged with this awful responsibility, willing to make that acknowledgment, — that plutocracy has become supreme over democracy; that you can offer no reply, no aid, no help to those who bring their grievances before you, — those poor men who toil day by day in silence, never articulating the grievances from which they suffer, but grievances which they feel and under which they brood, and brood, and brood?

Our opponents refer to the Constitution as the protection of the rights of property, the right of religious liberty and other sacred rights. Have these people forgotten the man whose voice is not heard in the legislative halls, the man who employs no lawyer to appear before the Legislature to plead his cause? Does the Constitution offer no protection for him? Must justice pay that price? Must justice go to those who can employ skilled lawyer and lobbyist to appear before the legislatures to plead their causes? Let us see what that memorable document says:

> The end of the institution of government is to secure the existence of the body politic, to protect it, and [note these words] to furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights and the blessings of life.

Does that apply alone to the plutocrat? Does that apply alone to the man who owns property? What are the natural rights of some of our citizens? Have they been infringed? They say that they have. The Constitution was intended to afford protection to these very men. There is much talk in this document about the protection of minority. Are they not minority? Have they not the right to protection? They say they have not. They say they have been deceived, and trimmed, and exploited in legislation, while men who are brighter minds have grown rich beyond the dreams of avarice as the result of their toil under the present industrial situation, and we cannot deny it. Gentlemen, do you believe that these enormous fortunes, gained in the way they have been, do not bring a menace to our Commonwealth and to our country? If not, gentlemen, then you well may say: "We will go home and do nothing." You will say with the opponents of this measure it is the dispensation of God; some men are born smarter than others, and their intellectual abilities will make them richer, and you cannot help it. That is true; that is true in a very great measure, but what we object to, and what we seek to correct is the dispensation of the Legislature. [Applause.] There will be differences enough, God knows, under a fair and a square deal, but the purpose for which this measure is intended is that there shall be no legislative favor, no special privilege, and that the poor, who cannot be heard in the legislative halls, shall have his cause taken care of by an appeal, if necessary, to the people.

Now, you well may ask, how can the initiative and the referendum correct this situation? Well, if I have made myself plain in what I have said the answer is perfectly obvious. Legislative favors cannot be gained if the people, when they suspect that a measure which has gone through the Legislature has gone through by improper means, can veto it. If they want legislation, too, that protects the interests of all the people alike and the Legislature refuses it, they have the power, through the initiative and referendum, to put it through the Legislature.

I apprehend, however, that there will be very little trouble in this

assembly in regard to the legislative initiative and referendum. I see evidences on the part of those who desire particularly to hold on to what they have got and the special privileges they already have acquired, to surrender that part of it, if necessity be, and stand steadfast on the method of changing the Constitution. Most of their argument is directed against that part of the proposition. To my mind, that part of the proposition is the one which is most essential to any real reform, any real benefit to the people at large.

Let us take a case to illustrate what I mean. Suppose a body of people impressed with the social injustice of some particular institution, or industrial injustice or some other injustice, attempt to correct it by means of legislation. Assume that they get a responsive Legislature, and they get through some bill, as they have so many, many times, which to their mind represents legislation which will be helpful to the general public as well as to themselves. It has gotten so now that that is practically but one step in legislation. Nobody seems to know whether to depend upon any legislation of that sort on public questions until it has been carried before our courts for them to determine whether or not it is constitutional. The court seems almost like a third House, so frequently are measures of this sort carried to the courts before they have really been put into effect. The most notable instance, of course, that occurs to our minds is the recent Adamson bill, where neither the railroads nor anybody else dared to do anything with it before it was passed upon by the Supreme Court.

Unfortunately, because the Constitution was established something like one hundred and thirty years ago, it is not adapted to dealing with the problems of a modern civilization. It frequently results, therefore, that, on account of its restrictive clauses, and more particularly on account of precedents laid down by courts in earlier decisions, our courts find themselves constrained to say that a measure is unconstitutional. That means simply that it is not permitted by the original compact that we have entered into; it is not in accordance with the Constitution that you have agreed to. What happens? The result is immediately an outburst of feeling against the courts, bitter, deep, resentful. These decisions usually have been with regard to the public interests and public questions; not ordinary litigation, where one man is on one side and another on another, but where two political parties or two classes in the Commonwealth have divided, where political feelings have been aroused, where feeling runs high. Immediately, therefore, those against whom the decision goes have said: "The court is prejudiced. The court is against labor. The court is against the people. It is as bad as the Senate." Gentlemen, within my knowledge those charges are not just. What would you have this court of honest, level-headed, highminded men do, — yield to clamor and stultify themselves and decide against their conscience? The example of the revered gentleman who sits here shows you the stock of which the court is made. [Applause.] The courts are bound and constrained by their oath. It is not for them to say whether a measure is wise. Every man on that bench may believe that it is politically just, fair, and for the benefit of the people, and yet he is constrained to say it does not accord with your original Constitution. But human nature is such the people do not discriminate. With all the bitterness that has been

aroused, without thought and with impulse they cry out against the court, — which after all has but fairly performed its duty.

What is the real remedy? "When a measure has been passed for the benefit of those of the people who have not had many measures passed for their benefit, and the court declares it unconstitutional," I said to a gentleman interested in those matters the other day, "suppose there was a method whereby within thirty days, or three months, the Constitution could be changed, so that that meritorious measure should be allowed, would you then criticize the courts?" and of course he said: "No, sir, of course not." The thing that ought to be done, when meritorious legislation is negatived by the Constitution, is to provide an easier way to make that legislation permissible. Our opponents say "No." Although we suggest waiting two years and appealing to two legislatures, they say: "No, do not allow the people to initiate a change under such circumstances. Keep the initiative in the Legislature," — which serves no other possible purpose than to make it possible for those who still want to hold these men in servitude to prevent the initiation of any change whatever. And therefore they prefer to sacrifice our splendid courts and hear them abused and criticized where they deserve only praise and encomiums, rather than to permit the will of the people to become effective by a reasonable method of changing the Constitution. They say: "Make it as hard as possible."

What effect does that have? When a great people by a majority want certain legislation, and they are told that they cannot have it, and they are told by a set of wilful Senators or some other set of wilful people they cannot have it, what is the effect on them? Do you wonder they get angry? Do you wonder they get impulsive? Do you wonder they get heated? Do you wonder that they say, as frequently they do, things that are fierce, things that are denunciatory? And that is what they do. But here, gentlemen, is a measure that will relieve our courts from that criticism and hostility which is unjustly directed toward them. It will permit the popular will upon these important matters to become effective. It will harm nobody, no one who ought not to be harmed. It will injure no man's property rights, no man's liberties. It will operate as a corrective merely and an aid of representative government and not as a destructive influence or force.

Mr. Chairman and gentlemen, the initiative and referendum will not bring the millenium, — apparently we have not struck anything yet that will, — but it will do something. It will be a step forward, a long step and an effective step, on the part of those who stand for a fairer and a squarer deal, who stand for social justice, who stand for the rights not only of the wealthy but of the toiler, — the forgotten man. [Applause.]

Charles F. Choate, Jr., of Southborough.

Mr. Choate of Southborough: You have listened to a most frank and fair and candid discussion of this issue from the gentleman from Brookline (Mr. Walker) who first addressed you. It was of the character that we always expect of him. You have listened to a most eloquent address from his brother delegate from Brookline (Mr. Whipple), in his best spirit and with his always splendid eloquence and tact, and it seems to me as if it ill became me to offer anything which should

disturb the harmony that seems to exist between these two splendid sons of Brookline. I cannot attempt to match their eloquence; I can only approach this subject and offer observations upon it which I trust will appeal to your reason, to your good sound sense, to the judgment of which the people who sent you here believed you to be possessed when they chose you from all the other citizens of the Commonwealth to sit in this Convention and frame a Constitution for them.

I am tempted to ask, in view of the remarks that have been made by the last speaker, why we should have any Constitution, why we ever should have had any Constitution, why that little band of patriots gathered in the cabin of the Mayflower and made that compact which is the germ and seed and root of the Constitution under which we have lived for one hundred and thirty years? What reason is there that that tradition even now should be preserved, and why should we not now and to-day recommend to our people, when we go back from this assembly, that the Constitution be done away with and that the rule of the majority be adopted as the rule under which we propose and desire to live? And so I ask you to stop a moment and reflect as to why we ever did adopt a Constitution.

As I understand it, we adopted a Constitution because those of our forefathers who first came to these shores came in search of individual civil and religious liberty. They saw here the liberty which had been denied them in the lands where they were born. They came here to seek in a new land that which centuries of oppression had taught them they never could obtain in the old world. And the first step which they took to secure that which they came so far and faced so many perils to win was to make a compact and an agreement between themselves that for all time should bind them, and every one of them, to the observance of a certain line of conduct in which the weakest might be sure of his protection from the strongest. Since that day, when they then resolved themselves into that little assembly which adopted that principle of government, constitutional government has been the corner-stone and the foundation of every liberty and every right and every happiness that we have enjoyed.

Countless thousands have flowed to these shores from other lands to enjoy that liberty which we have claimed and established here. Is it not so? Have they not come here to win the liberty of the individual which we have established and made sure? Is not that the reason why our land is looked to as the land of freedom, to which the oppressed have been invited these hundred years, and to which they have come and found freedom? It is because in our form of governmental freedom, freedom to worship God, freedom to speak without denial, freedom to enjoy one's own, freedom to lead the life that one desires to lead and to follow the avocation which he chooses, is guaranteed to him beyond the possibility of denial.

There were majorities then, as there are now. There was a majority in the cabin of the Mayflower. The rule of the many was recognized as a possibility. The right of numbers or the power of numbers to overcome the resistance of the few was as plain and as self-evident then as it is to-day. It is a proposition which was just as conspicuous to those men as it is to us. The same reasons applied then, if they were sound, why the majority of that little band should rule the rest as they saw fit, as apply now. If those reasons were sound then, they

are sound now. The difficulty with that reasoning was that those men with their clear vision saw that that proposition was unsound, that there was no safety for the few, for the single man, for the minority, if there could not be some agreement with the majority that should restrict them in the exercise of their power, the power that flowed from mere numbers.

Now, that is the reason why we have a Constitution. And what is a Constitution? It is a compact, is it not? Look at the first page of the little pamphlet that is furnished to each one of us:

> The body politic in the preamble of our Constitution is said to be just a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a Constitution of government, to provide for an equitable mode of making laws as well as for an impartial interpretation and a faithful execution of them, that every man may at all times find his security in them.

And at the very conclusion of the preamble we find these words:

> We, therefore, the people of Massachusetts . . . devoutly imploring His direction in so interesting a design, do agree upon, ordain and establish, the following Declaration of Rights and Frame of Government, as the Constitution of the Commonwealth of Massachusetts.

In other words, it is intended to be and has been recognized always as a contract, a compact, an agreement between the majority and every individual citizen, by which certain restraints are voluntarily placed upon their power by the majority in recognition of the feebleness of the minority or the individual to save himself or save anything he has if it may be trodden down and overrun by the mere weight of numbers. And it is a wise compact. Is it not the thing that has made our land prosperous and happy? Have we nothing in the Constitution to thank for the fact that we have prospered, that we have been a happy people, that we have gone on advancing from height to height, and that we have won a not ill-deserved reputation in this galaxy of States as being the most advanced and the most liberal and the most far-sighted of the Commonwealths in the Union, won it from observers of intelligence and breadth of view outside our land, who have studied our institutions and who have recognized in our frame of government and in the laws under which we live a frame of government intended to preserve and protect the happiness of the people who lived under it?

Now I ask your patience for a moment while I state again, not better than my friend from Brookline (Mr. Whipple) but state once more that you may have it freshly in your minds, the issue that lies between those who favor the amendment of the Constitution by the initiative and those who are opposed to it.

There are two methods now by which the Constitution may be amended, one that method which is here in operation, by the calling of a Convention of men elected from the people, who, in consultation and debate, reaction of mind upon mind, will adopt and present and recommend to the people the frame of government under which they believe the people should live. That is submitted to the people, and if they ratify it and approve it it becomes the Constitution of the State. The other method is that which was adopted in the second Convention, that a proposed amendment to the Constitution should twice pass both branches of the Legislature and then should be submitted to the people for their approval. Mark what it was that the

framers of our early form of government sought to obtain by each of those methods. They sought first to obtain for any change in the frame of government, in the compact, in the contract which we all had entered into with each other, as nearly as it was possible to obtain it, the consent of all the parties to it. It is clear, is it not, that if the form of submitting the measure twice to the Legislature be the form that is pursued, those who represent every class of our citizenship, every geographical section of our State, are represented in one or the other House of the Legislature? Every class in the community, the wage-earner, the capitalist, the farmer, the mechanic, every man has his representative here in this hall to speak for him. That body, representative as nearly as human fallibility can obtain a representation, discusses, argues, advises and agrees upon a change. Again that same process is repeated, and the representatives of the people, assembled in General Court, again agree that that change is necessary and desirable, and then it is submitted to the other parties to the contract, and, as nearly as machinery can be provided, the assent of everybody to that original form of agreement or solemn compact or covenant has been obtained.

In like manner, when the people elect their delegates to the Convention, as we have been elected, we come here to represent the people to the best of our ability, we debate and we consult with each other, we get the benefit of each other's views. The result of our deliberations, if we agree upon a change, is a change that we as representing the people submit to them with our recommendation that they adopt it. They need not adopt it. Nothing that we do not recommend is submitted to them. If we do agree upon it and recommend it, they then have the right to ratify or confirm it, and as nearly as possible every party to that contract has been consulted, has had a right to be heard and has agreed upon the change.

It is right there that I take issue with the advocates of this measure. The method of changing the Constitution which is suggested by those who favor the initiative is this: That notwithstanding that it is conceded that this Constitution is a compact, is a contract, is a solemn covenant and agreement between all the people and every individual citizen in the Commonwealth it shall be the right and within the power of the majority to change that compact whenever and however they see fit. That is where I take issue with them. I say that that is permitting one party to the contract to change it against the will of the other. And why do I say it? I say it for this reason:

It is the purpose of this measure that a suggested change in the Constitution which has twice been submitted to the representatives of all the people assembled in the General Court, twice debated, twice discussed, twice rejected, — mark you that, — twice rejected by a large portion of the parties to that contract, nevertheless may be engrafted upon the fundamental law at the wish and the will of the others. That is the fundamental evil of this change. It is not that the unanimous consent or as nearly as possible under our form of government the general consent of all the parties to the compact is obtained. It is that notwithstanding the opposition of one of the parties, that one of the parties which is represented in these halls by representatives chosen from all over the Commonwealth, from every class in the community, has said it does not desire that change, and twice has repeated

that assertion, nevertheless that a majority of the people who may happen to vote at the ensuing election may make that change against the will of those who have answered Nay by their representatives in the General Court.

It is not as if that majority which may make that law was a real majority of all the people. No suggestion by me will be made to amend the law or the resolve offered by my friend from Brookline (Mr. Walker) along the lines that he indicated this morning, but I want you to get into your minds clearly and appreciate that there never has been a time, and I venture to prophesy there never will be a time, when a measure will be adopted by a majority of all those who have a right to vote. It is not that proposition with which we are dealing. When my friend from Brookline on my left (Mr. Whipple) speaks of the will of the people and urges that they ought to rule, it is not as if the will of the people is expressed by a majority of all those who have a right to vote. It is the wish or the will of those who undertake to cast their ballots in favor of a particular proposition at any given election.

And right there let me pause a moment to call your attention to what experience has indicated with respect to the action of the people in such emergencies. It is notorious that the interest of the people on measures of that sort is small. The tests that we have been able to apply show that a vastly smaller number of persons will indicate a choice or a wish or an opinion when a measure is submitted to them than will indicate a choice when it is a question of selecting between one, or two, or three men. It seems to be inevitable from such experience as we have had that a very large proportion of our people do not care to express, are not sufficiently interested, not sufficiently educated on the topic, to express their wish or their will when those subjects are submitted to them. The result has been and, quoting from my distinguished friend on my left (Mr. Whipple), we can judge the future only by the past, that amendments to the Constitution under this measure will be adopted not by a majority of the people who have a right to say whether that compact shall be changed, but those changes will be produced by a majority of the voters who happen to vote at any election, notwithstanding those who may oppose, notwithstanding the large number who may express no opinion, notwithstanding the large number who may not go to the polls at all. Now, I am not here offering any plea for those who will not go to the polls, though it is a very serious problem in our civil and political life how to make our people take more interest in these subjects in which they ought to be interested; but I say when you find this as the phenomena at present, that practically always as many people who go to the polls and cast their ballots do not exercise their suffrage on these questions as do exercise it, you inevitably have this result, that a minority of the people are enacting into laws and engrafting upon the Constitution changes upon which the majority never have expressed their will.

Right there let me answer the suggestion made by the gentleman from Brookline (Mr. Walker) who first spoke this morning with regard to the test that this question has had before the public. He referred to the public opinion bill, under which questions regarding the initiative and referendum were submitted in various districts throughout the Commonwealth to find out what the views of the people were. Take, for instance, the First Barnstable District: 873 votes were in

favor, 332 votes were against, but 1,288 men who cast their ballot did not express any opinion upon the question. In the Second Berkshire District 841 votes were in favor, 237 votes were against, but 1,152 men who cast their ballots expressed no opinion on the subject. In the Ninth Bristol Representative District 2,051 voted in favor, 751 voted against, 2,105 did not express any opinion on it. In other words, taking those as illustrations, and I submit they are fair illustrations, of the result of the submission of that question to the people where it was submitted, those who expressed an opinion in favor of the proposition were much less than half of those who on that day came to the polls and cast their ballots.

If that fairly represents the working of this machine, it means that constantly changes in the fundamental law which governs us may be made by minorities in the face of the action of a Legislature, representing all the people, who twice have considered it and rejected it, and in the face of the apathy, if you please, of the vast majority, who do not take the pains to exercise their right to vote upon the question. It cannot be said that that majority who do not exercise their right are to be ignored. They are to be bound and governed by these laws as we are, they are as much entitled to be consulted in a change of this contract as the rest of us are, and if, because of failure to understand the proposition, or lack of instruction, lack of opportunity to learn, they are not able to express their views about it, does it give the rest of us, who have studied it, the right to impose our will upon them? That is the proposition of those who advocate this measure, — that the active, energetic, organized minority, if you please, intelligent, banded together, eager to carry through a resolution, or a law, or a change in the Constitution which has a purpose, ought to be able to impose their will upon all the rest. That is the way the thing will work. Now, I say that that is a fundamental and subversive change in our whole constitutional theory of government. I say when you have done that you might throw your Constitution into the waste basket, as my friend from Brookline (Mr. Walker) seems to be willing to do. It has become then nothing but a scrap of paper.

Now, gentlemen, with reference to the operation of the initiative in respect of the passage of laws as distinct from changes of the Constitution. It seems to me that there the question is not so much one of principle as it is one of expediency and wise judgment. We are confronted, in the first place, with these various difficulties which the law as framed by its advocates presents to us. A law under the initiative is to be framed by the first ten petitioners. Once framed it is not subject to amendment, or change, or alteration. It goes on its course then without the possibility of changing one word, no matter how essential or desirable such change may be. It goes in the language of those ten who desire to start that machinery in operation. It goes to a Legislature. It may or it may not be discussed, urged, presented, fostered, helped along by those who are behind it and believe in it. Indeed, the most effective way to get legislative initiative is to let it go by default in the Legislature. The Legislature, having observed that it was neglected, and uncared for, and not backed by any responsible persons who seemed to be interested in it, naturally rejecting it, its advocates could then go before the public with the cry that the Legislature had turned it down, and rejected it, and paid no attention to it. The most

effective way to get legislation by the initiative would be to neglect it in the Legislature.

But the fundamental objection to framing laws by that method to my mind is this: We every one of us know the advantage which each of us individually obtains from the discussion of subjects on this floor. We know the reaction produced upon our own minds by the views of other men. We know the light that comes to any body like this by the presentation of the views of many minds which look at a subject from many different viewpoints. Now, it is perfectly obvious that the people, who are to be made the legislators by this measure, will have none of that benefit which is the prime thing which we expect and hope will enable us, sitting here in this Convention, to present to those who sent us here a frame of government that is worthy of their favorable consideration. How is it proposed to bring to the ordinary man upon the street knowledge by which he may intelligently vote yes or no upon the subject that is to be submitted to him on his ballot in November?

In the first place, there is to be a summary description of the law. Who is to frame that description? Someone must. If not those who frame the law some public but still political officer, some officer who is chosen as the result of the ballot and who will belong to one party or the other, to one set of beliefs or the other. Some man, or set of men, has got to boil down and put into succinct phrase what that law is. Is there not immense opportunity for deception? Is the probability of safety in the long run as great as the probability of fraud and danger?

What after that is to be done to instruct and interest the man who has got to cast his ballot? A pamphlet is to be prepared and sent him. Who is to prepare the views that that pamphlet is to include? Why, the advocates of the measure on either side, it is suggested. Which of the advocates? Who is to have a right to have his argument in there? Who is to decide what arguments shall be included in the pamphlet to the voters? Who is to decide how many of them? To what lengths of absurdity that form of machine may lead us is well illustrated by the experience they had in the State of Oregon, where a pamphlet of some 252 pages went, as I understand it, to the voters, covering a multitude of subjects upon the ballot. Do you really expect, do you really and honestly in the bottom of your hearts and to the best of your judgment believe, that the man who has to drive the electric car or works all day with a pick and shovel, or the man who has to tend a machine, is going to sit down in his leisure hours and read through those pamphlets to understand how he is going to vote and to balance up the arguments *pro* and *con* and intelligently exercise his judgment as a legislator?

I submit that the thing is absurd on the face of it, and that it is absurd is well illustrated by one result that the people had in that very State of Oregon, which has been so eager in the promotion of this form of legislation. The illustration is familiar, I suppose, to all of you. It is that one with reference to the fisheries on the Columbia River, where one set of men at one part of the river caught fish, salmon, by one method, the weir I believe, another upon the upper reach of the river caught the salmon in traps or nets. Each wanted to stop the other from exercising the privilege he was enjoying. Each initiated a law. Both went to the people and both were passed. [Laughter.] When one considers the possibilities of absurdity, the possibilities of irrational

results, while my good friend from Brookline (Mr. Whipple) is initiating a law which is going to relieve all poverty and make all men equal and distribute the wealth not only of Brookline but of the rest of the Commonwealth, somebody else is going to initiate a law that will produce exactly the opposite result, and probably both laws will be passed, and then after all we will have to do as they did in Oregon, come back to that poor, old, much abused Legislature to get the problem straightened out. [Laughter and applause.]

Now, gentlemen, there are many of these details with respect to the imperfections in the working of the law that will be obvious to you on any consideration of it. The minority has attempted to point out some of them in its report. But there are certain larger aspects of the situation of which I want to speak to you a moment in the light of those things that have been said by my friend from Brookline in the fourth division (Mr. Whipple).

If I understand him right, and I want to state it with absolute fairness to him, but if I understand him right he believes that if a law which has been passed by the Legislature is declared unconstitutional in the courts, it then should be so provided by this resolution which is before you that the majority of the people who may happen to vote on it may immediately engraft some change on the Constitution so that such a law cannot thereafter be declared unconstitutional. Now I want you to follow that out just a minute.

As I understood the gentleman from Brookline in the third division (Mr. Walker), the wrong that appealed most to him was that some court had decided that the workmen's compensation law was unconstitutional. That may be so. It is not within my observation. All I know is that no Massachusetts court has ever so decided, and we have no such evil to deal with, we have no such problem to consider, we have no such danger to guard against. I want to give you an illustration of the kind of law that our court has declared unconstitutional, and as it is one which touches closely those members of our assembly who are interested in the welfare of the labor organizations I use it because I know it interests them. Perhaps it annoys them, perhaps it irritates them, perhaps they think it unjust; but look at it and scan it and analyze it fairly and see if it is unjust.

You know that for many years the courts have said in labor disputes that there were certain situations where the use of the injunction to prevent irreparable injury to property was proper and right, and injunctions have been issued to prevent destruction of property or interference with the use of property when the interference that was threatened was such as to be dangerously and irreparably destructive. Aiming at the exercise by the courts of that power to enjoin, the friends of labor obtained the enactment of a law which declared that the right to labor was not property, meaning thereby to accomplish the result that a court no longer could issue an injunction to protect it. Now, what is the first result of that enactment? It is that a man who does not belong to a labor-union finds himself deprived of the opportunity to earn his daily bread unless he joins that union. He comes to the court and asks for protection. The court is confronted with the law which has been passed by the Legislature, saying the right to labor is not a property right and shall no longer be protected, and that man, who has exercised his freedom and has decided that it is for his best interest to

stand upon his own two feet and depend upon the labor of his own two strong hands, appeals to the court for protection. Our court has said —

Mr. Brown of Brockton: I desire to ask a question, because I have an opportunity, of the learned gentleman. Will the labor man then be deprived of the protection he now has under a claim that he has a natural right to live and to work? Is he deprived of that if it is decided that labor is not property?

Mr. Choate: I will answer the gentleman from Brockton by running out my illustration to its end, I think.

The court held that the right to labor was property, and that no individual could be deprived of it. Now, if that is the kind of law which my friend from Brookline (Mr. Whipple) would argue should be upheld, if he would say that the court, having made that decision, should be immediately overturned by the passage of a law which should say: "Notwithstanding the Constitution as it has been, we will change the Constitution and say that the right to labor shall no longer be a property right" —

Mr. Whipple: The gentleman stated that he understood me to say that in case of a measure being declared unconstitutional by the court there should be an immediate change of the Constitution, so as to make such measure constitutional. I did not intend to be so understood. I cannot remember that I said that. But I would like to correct that misapprehension in the mind of the gentleman who is speaking and in the minds of other gentlemen here. All I said on the subject, as I remember it, was that I asked one interested in the subject whether he would have a feeling against the courts provided in thirty days or three months such a change could be made. That is all that I said that could possibly bear that interpretation. What I did say was that there ought to be a reasonably easy way to change the Constitution if the people desired to do it to have particular legislation, and that a reasonably fair way was provided by the Walker measure.

Mr. Choate: I do not understand that the gentleman's statement now differs from my apprehension of it when I first stated it, but if I am wrong as I restate it I beg he will set me right. It is this: That granted you have a Constitution which is a compact between all the people and every individual in it, and a law is passed which the Supreme Judicial Court says violates and is repugnant to that compact, the gentleman from Brookline believes that an easy way should be provided to change the Constitution to meet that situation, and that that easy way is to permit the majority of the people who vote at any election to change the Constitution upon the occasion of that single piece of legislation which may have for the moment aroused the antipathy or the excitement or the opposition of some who are opposed to it. Do I state you wrong, sir?

Mr. Whipple: The proposition is stated, but not completely stated, because my suggestion, — or our suggestion, — of a measure is not that a vote should be taken while the people are heated on the subject, but that after 50,000 signatures are secured it should be submitted to the Legislature, that it should then lie over, in case either of favorable or unfavorable action, until a year later, that it should then again come before the Legislature and in case either of favorable or unfavorable action should then at a subsequent election, nearly two

years after the proposal, be submitted to the people, and that if a majority after such discussion and deliberation should state that the Constitution ought to be changed, the change should be effected. They can do the same thing now if they could only get the Legislature to act. The only difference is that 50,000 people could initiate it, rather than leaving the people helpless in the hands of the Legislature.

Mr. CHOATE: I caught the gentleman in his original argument as saying that the change might be made in thirty or sixty days. Perhaps I was wrong, or perhaps he did not mean me to understand that it might be so quick as that; but it is not necessarily the speed with which the Constitution might be thus changed, though speed is one of the essential things which the advocates of this measure desire to obtain. The fundamental wrong of doing the thing which it is now argued by my friend from Brookline he wants to do is just as obvious if the change is made in six months or a year as if it is made in thirty or sixty days. It is the wrong of imposing upon the other party to the contract the change which you alone wish to make in it. It is the wrong of taking away from him the guarantee which you solemnly have agreed he should have. Whether you do that in thirty days or in a year matters not. You, because you are stronger, take away from him that which you guaranteed that he should have.

Are you ready to abandon the fundamental proposition that the constitutional form of government is a wise form of government to live under, and to say that it is better to substitute for it the right of the majority to rule? And when I say the right of the majority to rule I use it in the sense in which the advocates of this measure use it, not the real majority but a majority who may happen to vote in favor at any election. That is the proposition which you now have got to decide, whether you will throw overboard the constitutional safeguards under which we have thriven and prospered, whether you will substitute for them the right of a majority at any election to make the Constitution what they please. That is the question which you, sitting now and here, have got to determine, whether you will recommend to the people, in the language which the advocates of this measure have again and again used, in its true sense, the right and the power of the majority to rule without let or hindrance, the right of the majority to enact their will without any interference or any restriction upon their own conduct, because is it not self-evident that, assuming you start with your fundamental compact or Constitution, the moment you give one of the parties the right to change it whenever it wishes to you have got no contract or compact or Constitution left? If my friends on the other side can deny that proposition they have established their case.

Mr. BROWN: I should like to have the gentleman address himself on that matter of compact to the provision in that compact that you have the right at any time to alter or change the government completely. I should like to hear him on that.

Mr. CHOATE: I do not admit, Mr. Chairman and gentlemen, either that any such term is in the compact or that the spirit of any such term is in it, and of course the idea that it can be changed by one party to it is foreign to the whole nature of such a proposition.

Mr. QUINCY of Boston: I ask the gentleman from Southborough if he will not elucidate to my mind, and doubtless to the minds of the other

delegates, somewhat more fully the nature of this contract or compact. He has spoken of several parties to the contract. I should like very much for my own enlightenment to have his view as to these parties. Who are the parties to this contract?

Mr. CHOATE: Mr. Chairman, I will endeavor to do so. I quote you first the language of the preamble of the Constitution:

> The body politic is formed by a voluntary association of individuals. It is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good.

Now, I think that that very plainly presents to every man's mind the picture of a compact, a contract, with at least two parties to it, all the people upon the one side and the individual upon the other in any given case. The individual is protected by that guarantee that the majority will restrain their power to take away his right to free speech, his right to worship as he pleases. If it were not for that guarantee, if it were true now that it was within the power of the majority of the people to to-day pass a law taking away from the individual the right to worship as he saw fit, you then would have the situation which I submit will follow from the adoption of this resolution. You would have the individual deprived of the guarantee which that compact gave him, a compact by which the majority of the people had agreed not to exercise their power with respect to certain specific things, one of which is the right to worship.

Mr. QUINCY: Does the gentleman mean that it would not be within the power of the people under the Constitution, proceeding by the method prescribed by the amendment of 1820, namely, adoption by two legislatures and then by the people, to take anything, — any guarantee whatsoever, — out of the Constitution which they see fit, or to change the Constitution in any respect whatsoever which they see fit? Cannot that be done without a violation of the compact?

Mr. CHOATE: It certainly can, and as I tried to point out earlier in my remarks it is then done by as nearly as possible, as nearly as practicable, obtaining the consent and approval of all the parties to that compact. I say the theory upon which that method of changing the Constitution was adopted must have been this: That all the people, individuals, groups, classes, high and low, rich and poor, wage-earner, farmer, mechanic, all others in the community, in every geographical section of the State, were represented as nearly as human machinery could devise a means by their representatives in the General Court, and that when those representatives had given their sanction to a change you had obtained as nearly as possible the approval through their representatives of all the individual citizens of the Commonwealth. You then submitted it for ratification and confirmation to all the people by their vote, and as nearly as machinery could provide you had obtained the approval of all the people and every individual to the change that was proposed.

Mr. ANDERSON of Brookline: I should be very glad if the gentleman would address himself to the seventh paragraph, — I guess you call them paragraphs, — of the Bill of Rights, and tell the committee how he construes that in connection with the "Compact" language in the preamble. He will pardon me if I read and direct his mind to one or

two things on which I am particularly anxious to get his opinion. It reads:

> Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestable, unalienable, and indefeasible —

— three very long words —

> right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

My question is, if that means what it says, does that assertion of a fundamental right really mean that the government cannot be changed without the assent of the Legislature, which is a creation of the same instrument that asserts this fundamental right?

Mr. Choate: It seems to me that the answer to the gentleman's question is this: It is a familiar rule of construction, well known to all lawyers, that every part of a document should be so interpreted and construed as to be consistent with the rest. Here are two provisions, one of them that which the gentleman from Brookline (Mr. Anderson) has just read. Brookline is strong on this point, which is declaratory in a general way of the rights of the people. That which is found in the preamble is a voluntary restriction which the people have placed upon themselves for the common good. One cannot deny that it is essential; even the advocates of this measure do not deny the principle of the good of a Constitution, only it seems to me that while they are admitting that a Constitution is a wise form of government under which to live, at the same time they are asking us to adopt a method of dealing with it which, against their wish, sooner or later will destroy it.

Mr. Dean of Fall River: I should like to ask if the gentleman from Southborough is familiar with the statement which appears on the forty-eighth page of the Manual of this Convention, which sets out the discussion before the committee on Bill of Rights on this very matter of a social compact. I should like to ask him if he agrees, or if he will discuss the statement made there by Richard Henry Dana, who says:

> In our committee (Bill of Rights) we resolved not to attempt to rewrite the instrument, and only to make necessary changes. We discussed the principle of the "Social Compact" which is set forth in it, and we found not one man who believed in it. . . . It is a mere fiction, which served its turn against tyranny, but cannot stand examination.

Mr. Choate: I believe, Mr. Chairman and gentlemen, that a distinguished ancestor of mine was guilty of saying that the Constitution was nothing but a lot of glittering generalities, but we have lived long enough under it to know that that was but a mere rhetorical statement, and I judge that that statement of Mr. Richard Henry Dana's was rhetorical, and of about the same force and effect, and to be taken with about the same seriousness as that remark that the Constitution was nothing but a lot of glittering generalities. We know better. We know when we look back upon the things in which it has protected us, protected our forefathers, that it has been the most valuable thing that we have ever possessed, and we are not going to throw it away. Now, what I was saying when I —

Mr. Bennett of Saugus: There is one point that I do not exactly

grasp in the gentleman's argument. Who are these parties to this contract? Is it somebody who is dead and gone? Is it a contract which we have inherited and which we must fulfil, or is it [Cries of "Louder"]. — I am asking who are the parties to this contract to which he refers. Is it somebody who is dead and gone? I have been trying to find that out all this session, whether there is a contract of somebody who has passed away, or does he mean by the parties to this contract parties now living, the voters, the citizens of the present day, and all classes of citizens? I should like to get that plain, Mr. Chairman.

Mr. CHOATE: Of course I mean, Mr. Chairman and gentlemen, that the parties to the compact are all the citizens, those who have enjoyed its privileges and advantages heretofore and have passed beyond, and those of us who are enjoying them to-day.

Mr. BENNETT: Well, Mr. Chairman, I think that that answers my question very clearly and very satisfactorily, except for his concluding sentence. Is there anything in the Constitution which is in the nature of a contract with the past, or does he simply mean all the citizens? If he means all the citizens, Mr. Chairman, why, then it seems to me that is all we are contending for in this measure, and I should like to have that part made plain.

Continuing the discussion Thursday, August 9, Mr. Choate said:

Mr. CHOATE: You were very patient with me yesterday and I shall trespass on your time but a few minutes this morning, if you will permit me to conclude the remarks I wanted to address to you.

In presenting the argument in favor of the resolution, the gentleman from Brookline (Mr. Walker) urged that this Convention indicated a public demand for the passage of the initiative and referendum. Is that a sound argument? He said, as I remember him, that the Convention had been called at the suggestion of the Hon. Charles S. Bird and of the Governor. Now, while everything that he argues with reference to Mr. Bird's attitude is undoubtedly legitimate, does the fact that the Governor advocated the calling of the Convention indicate any change in the Governor's mind with reference to this subject? I have no right to speak for the Governor, but we all know that no man in this Commonwealth, or in this country, has written so strongly and so clearly and so plainly, or so convincingly, against the initiative, either with reference to the Constitution or with reference to the statutes, as our own present Governor. Have we any reason to suppose he has changed his mind? Is the fact that he has advocated the calling of a Convention indicative of any change of mind upon his part?

I think I may draw an inference from his conduct quite as legitimate as that drawn by my friend from Brookline. I submit that the reason that he called this Convention, or one of the reasons, was, as he said at the time when he convened us, that the wind might blow through and the sun might shine upon every proposition that was submitted to us, and that those that were threadbare or patchwork, as I believe this one is, would have its true character disclosed.

Now, it has been argued to you that there is a public demand, evidenced by some surging progressive movement, for this. Well, what is the fact with reference to our hearings, — the hearings of our committee, — on this subject? The committee, inspired by the suggestions of

those of our members who believed that there was a tremendous movement in favor of the initiative, demanded of the custodian of the State House the largest hearing-room that he could afford us, and we had our first hearing there. As I counted them, there were some twenty-five persons present outside the committee; and from day to day thereafter the numbers dwindled, until we had present at our hearings only some handful of those who always attended, who were eager advocates of the measure, and who wished to follow the course of the committee hearings. But there was an utter absence of any demonstration of public interest, of well-settled public opinion, in favor of it, an utter absence of any public demand for it, an attitude of indifference on the part of the public. We were neglected I think almost beyond any other committee of this Convention, in attendance at our hearings. We called forth no such crowded chambers as the committees which had to deal with the question of woman suffrage or prohibition, — big, simple, understandable questions, which the public have talked over and over and understand and have an opinion on. On this question there was not any public interest.

Now, if one may gather anything from that, it is not an argument that proves the existence of a surging, progressive demand for any such measure to be inserted in our Constitution.

Well, it is said again by the advocates of this measure that the vote with reference to delegates at large to this Convention is indicative of a public demand. Well, if so, it is a pitiable public demand. Not one of us, not even my distinguished friend from Fall River, Mr. Cummings, who at least as the result of the vote for this Convention has the right to claim that he is the most popular man in the Commonwealth, could claim that he had excited the interest of more than one in four of the persons who had the right to vote in the Commonwealth; and as for those who trailed along at the end, like myself, we were hardly observable except to one out of about seven.

That does not indicate that the people were electing those delegates on this issue, for or against this question, or that they cared anything about it. They were apathetic about it. There was no evidence of any public demand.

Again, would you not suppose that if there was a great, wide-sweeping and well-settled public opinion that demanded this, this committee would have heard from it by letter, by notice, by newspaper proclamation, or in some way that it would have been brought home to them that there was an overwhelming public demand to which it behooved them to listen? There was not anything of that kind. We did not get a letter. Not one of the 700,000 voters of the Commonwealth, to my knowledge, who did not have the opportunity to come in person, took the trouble to write us that they thought we ought to recommend the resolution that is advocated by the gentleman from Brookline.

I want to say a word also in reply to those arguments based upon what is claimed to be the public unrest. Bear in mind that the syllogism of these gentlemen is, in substance, this: That there is a public unrest; that to give the right to enact laws by direct vote will appease it and settle it and dispose of it; that therefore we ought to vote to give that right and to put it into the Constitution.

Ask yourselves for a moment what evidence there is in support of

the assertions of the gentlemen who say that there is a great public unrest in this Commonwealth. Just dismiss from your minds a moment all those illustrations drawn from other States. We are not making a Constitution for Rhode Island or for Pennsylvania or for Ohio. We are here charged with the duty of drafting a Constitution for the Commonwealth of Massachusetts. Has there ever been a time within the knowledge of any one of you gentlemen when wages have been higher? Has there ever been a time within the knowledge of any one of you gentlemen when, as now, every man who wanted to work could find a job, in fact, when there were many more jobs than there were men? Have you ever found a time when the public authorities were seeking with more vigor and with more promise of success to meet those social questions which at all times are with us, and which at all times have got to be dealt with and considered and met? If it is the question of the high price of food, if it is the question of the high price of fuel, has there ever been a time when the authorities of this Commonwealth have responded more quickly and more effectively to the demands of those who are suffering from those prices than now? How is it suggested by the gentlemen who advocate this measure that the direct vote will improve that situation? Do you believe that better legislation will be proposed to meet those problems than has been proposed heretofore? Do you believe that ten men in a closet, drafting up their private law, and putting it before the people in such a shape that it cannot be altered in word or syllable or punctuation, are likely to get wiser legislation than the legislation which has been found to be dealing with these problems?

It does not seem to me so. Why is it that these gentlemen assume there is this public demand for direct legislation to meet these problems when all authority outside of us, people who visit us from foreign lands, visit us from other States, point to us as having a Legislature that is closest to the people, point to us as the State which has been most progressive and efficient in dealing with the social problem?

Do not lose sight of this fact, in our particular situation. I do not say that there is not unrest. There is unrest everywhere, and in every population and in every State. As long as there is poverty and hunger and misery in the world there will be unrest. But do not be led away from looking at this matter just as it is. Is it unrest among the people in this Commonwealth who have the right to vote and who would participate in direct legislation? We have in our population in this Commonwealth something over twenty-five per cent of aliens. We are not proposing to extend the right of direct legislation to them; we cannot until they see fit to become citizens with us. Then they will share whatever rights and privileges we have. But when you look about you, and when these gentlemen talk to you about unrest or unhappiness or suffering or misery, do they mean that it is among our own people, our own citizens, the people who would exercise the right to legislate directly, or do they mean that it is among these others, who have decided that they would rather retain their allegiance to some other sovereign than to our own Commonwealth?

We have got that bigger problem to deal with, — how we will amalgamate with ourselves, and make homogeneous with us, this great fraction of alien population. We have got to deal with it. But are we dealing with it at all by the method that these gentlemen suggest?

Are we going to make the situation any better by that measure? It does not seem to me that it touches it at all.

It is said to you, it is argued to you, that all this great difference in wealth, the great difference in the enjoyment of the good things of the world, is going to be remedied by giving to the voters the right to legislate directly. Is that true? Is that sound? What is the likely thing to follow from it? Is not this the likely thing to follow from it? Bearing in mind that this direct legislation on any subject under the proposed plan may be initiated by any ten men, and in any private room, or in any closet or study or office, they may draft that law and then endeavor to obtain, and if successful obtain, the necessary seconding signatures of people whom the advocates say need know very little about it, measures of that kind can be initiated and presented, and, if not passed by the Legislature, can be presented to the people in any number.

Now, those are not subject to the critical analysis of debate and discussion. They go in whatever form they originate to the people. Is not that inevitably going to result, — if the measure is successful, if the plan works, — in the passage by the people of many laws which will be crude, which will be unwise, which will be undigested, which will be conflicting with other laws? They will have no advantages such as those gentlemen who advise our Legislature have, in committee work, in committee on Bills in the Third Reading, and the other committees, all those committees which perfect measures, which are able to find whether they duplicate legislation already on the statute-books or are in conflict with it. They will have none of those advantages. These measures, drafted in the closet, go straight to the people. What will be the result? Is it not perfectly inevitable that instead of diminishing the number of laws which must inevitably find their way to the Supreme Judicial Court to determine the question of whether they are in conflict with or repugnant to the Constitution, we will multiply them many-fold, and the thing which my friend from Brookline in the fourth division (Mr. Whipple) says is striking at the integrity of the court in public estimation will be aggravated many-fold, — many-fold the burden will be imposed upon the court to deal with statutes which never ought to have been passed.

Shall we be any better off then? Shall we have quieted unrest, if unrest is caused by the declaring of statutes unconstitutional? I think not. I think we shall have very much aggravated our situation.

Shall we not find ourselves also confronted with this? Is it not inevitable, if this resolution becomes a part of our organic law, that legislation will be constantly originated by organizations, by factions, by bodies of men who perhaps think alike, who have a common interest? Of course it goes without saying that those who originate it have a common interest, but have they the interest of the Commonwealth at heart, or have they the interest of their own organization?

Take as an illustration, — and I take it merely as an illustration, and without intending to say anything to offend any friend of labor, — take as an illustration of the kind of legislation that must and will be constantly before the people if this measure becomes a part of our fundamental law, that statute of which I spoke briefly yesterday, which undertook to declare that the right to labor was not a property right and should not be entitled to protection. That law was enacted,

plainly, to aid those members of organized labor who belong to organizations. It was to the disadvantage of the man who did not belong to an organization. I question very much whether that was wise legislation, even for those who asked for it. But will anybody question that it was unwise legislation for all the rest of the people of the Commonwealth who work with their hands? Will anybody question but what the court there stood, when it declared that law unconstitutional, for one of the great human rights that ought to be protected?

I say that is an illustration. Perhaps it will be some other organized body to-morrow. Perhaps the question will be not one concerning labor. It may be one that touches it even more closely than that. We are trying to deal here with a question that is coming up to-morrow.

We have got to deal to-morrow with a question that may come closer to us than any question that involves the welfare of labor. When we deal with that we are thinking that we are settling the question. But do you appreciate that if the resolution of these gentlemen who advocate the initiative be engrafted in our Constitution, at any time that question may be once more raised? Anybody can by petition initiate legislation or an amendment to the Constitution to settle everything that we propose and wish to settle now about that problem. Is that wise? Is that likely to result in the welfare of the Commonwealth?

There is just one truth about this situation, that I think you will agree with me is a truth. While I am not claiming that legislatures are immaculate, — none of us can claim that of ourselves, — our legislators represent us; they are just as good as we are, and many times they are better. They represent the fair citizenship of this Commonwealth. There is no denying that. If they are not as good as they ought to be it is our own fault. Those who indict our legislators indict us either of incompetence or of worse. But I say that the man who goes to the Legislature as a representative of the people, goes there at least with his conscience responding to a trust that is placed upon him, goes there not to represent his own interests but others' interests.

Now, gentlemen, is it not indubitably true that when you transfer the right to legislate from the man who is elected to represent others, who to at least a greater or less extent appreciates that he is sent there with a solemn obligation to other men to represent them fairly, — when you transfer the right to legislate from that class of men to the man who has got nothing but his own interest at stake, whose vote means nothing but looking after himself, who is subject to the obligation of no trust or responsibility to anybody else, then you inevitably change the kind of legislation that you get? Why should a man of that group of men which is organized to get through legislation for the benefit of his particular group look to the good of the Commonwealth? Is he not there with the instrument put in his hands, by this Convention, if you please, to legislate for his own benefit? That is as certain as that two and two make four. That is one of the things that makes this kind of measure inexpedient, — because you place in the hands of weak and fallible human nature an instrument to encourage them to act for their own interests and not for the interests of other people.

I have a very strong confidence that this Convention will not adopt the initiative with respect to alterations of the Constitution. I want once more to make a short statement with reference to my position

about that part of this proposition. One or two questions have been asked me by my friend from Cambridge (Mr. Hart) and others in the Convention, which I want to answer, to make my way of looking at it just as clear as I am able to; and if you will bear with me a moment while I repeat some of the things that I said yesterday I will try to put my point to you again.

I say that our Constitution on its face says that it is a compact between all the people and every individual, for the purpose of protecting the individual and the minority. Prior to the Convention of 1820 there was but one way to change that compact, and that was calling a Convention like this. After the Convention of 1820 there were two ways to change that compact. One was by calling a Convention like this, the other was by submitting for two successive years the proposed change to the Legislature and then submitting that to the people. Now, unless you change your Constitution in one or the other of those forms you have revolution. If you throw away your Constitution without adherence to those methods of changing it you have nothing but a revolution.

Now, I am not saying, I am not arguing, that changes made in 1820 were any breaking of the compact. On the contrary, they were alterations of the Constitution, amendments to it, in accordance with the spirit and purpose of the provisions of the compact. This Convention undoubtedly has got power within the Constitution, and constitutionally, to recommend to the people the adoption of the resolution presented and advocated by the gentleman from Brookline (Mr. Walker). But what I say is that if you do, this is the consequence that follows from it: That you will have then provided a method of altering the Constitution by one of the parties to the compact and then your Constitution might be just as well thrown away. There is nothing left to it, if any one of the parties to the compact, or the most important party to the compact, — that is, those who are larger in number, — at any particular election can change it whenever they want to.

One more thing, if you will bear with me. What is it that we were sent here to do? Were we sent here to look over various propositions that are submitted by anybody, and pass them along to the people to take their choice? I think not. Were we sent here to look over propositions that may have strong support and yet not meet our full approval, and pass those on to the people to vote on, adopt them if they choose or reject them if they choose? I think not. I think you will all agree with me that we were sent here to frame a Constitution. The responsibility to do that is ours; we cannot escape it. To the best of our judgment and ability it is our duty to frame a Constitution as we think it ought to be, and then submit the result of that work to the people for their approval or their disapproval. We cannot escape the responsibility of expressing, here and now, what we think. We cannot say: "It is all right, we will let it go," and turn it over to somebody else to approve. That is not what we are here for. Our duty here is to express our own opinion and go to the people with readiness to say to them: "This is our work, we approve it, we ask you to adopt it because we feel it right."

Now, the gentleman from Brookline (Mr. Walker) yesterday I understood to say that 190 members of this Convention were pledged to his proposition.

Mr. Walker: I suppose I ought to correct that statement at this point, although I dislike to interrupt the gentleman. I said that I was informed and believed that, before the election, 190 members of this Convention had declared themselves in favor of the principle of the initiative and referendum.

Mr. Choate: I feel very much relieved to be so advised. I regret that I misstated or misquoted the gentleman just now in what he said yesterday.

Then, gentlemen, you 190 men, if you are within the reach of my voice, I appeal to you, and every one of you, to take into consideration seriously and solemnly this fact. You came here without the opportunity very likely to hear discussion on this question, very possibly without having had the time or the occasion to make a thorough study of the question that is now before you. Before this debate is finished, before this discussion is closed, every aspect of this question will probably be discussed and talked over and torn to pieces and reconstructed again. I ask you to deal with this question, not on the basis of any preconceived ideas, but on the strength of the merits of this question as it comes to you upon the floor of this Convention, bearing in mind that it is our solemn duty, until we can find a better method to preserve those rights and liberties under which we have thriven and prospered for one hundred and forty years, to keep those which have served us so long.

I thank you, gentlemen, for your attention. [Applause.]

Frank P. Bennett of Saugus.

Mr. Bennett of Saugus: I am sure that I ought to have some diffidence in rising at this point, after the eloquent lawyers who have preceded me; but we have had three lawyers, and it seems to me that it is time for the agricultural interests to be heard from [laughter], and I do not think one farmer to three lawyers is a bad percentage of favors. Of course the ability is all on the side of the three lawyers.

I want to refer first to the allegation that the petitions would not mean what they said. I have had a good deal of experience, between forty and fifty years, on that subject, and I know something about what is said about petitions and against petitions, and where a man has a lot of signatures the other fellows always say they do not amount to anything. But John Quincy Adams I think secured higher reputation by his defence of the right of petition in the National House of Representatives than he secured perhaps as President of the United States or author of what is called the Monroe Doctrine; and in all the years that I have seen petitions I do not remember to have ever seen a petition in which any number of men signed what they did not believe or to which they were opposed.

Now, is not that true? Sometimes there is indifference, but it is not true that any considerable number of men ever signed a petition to which they were opposed. And if anybody thinks that a petition is of no consequence let him go once, even, to the House of Representatives, as a member, and see the respect which is paid to every petition.

Now, there are several directions in which I wish to execute the gentleman, — [laughter], — extricate the gentleman from Southborough (Mr. Choate) from his confusion of mind; and, as the first one I

recollect, let me call attention to his statement of what the Convention of 1853 secured. He repeated it; he emphasized it.

Mr. Chairman, my recollection is that every single proposition of the Convention of 1853 was voted down, we did not secure a single thing from that Convention, and yet the gentleman twice emphasized something or other which was secured through that Convention. Now that shows defective knowledge of the Constitution. [Laughter.]

Moreover, I shall apologize in his behalf for what he said about the inability of motormen and others to understand the propositions of the initiative and referendum. Mr. Chairman, the gentleman is to be envied for his social position, his wealth, his education, his high learning. He is to be commiserated because he never has had the advantage of serving in the Massachusetts House of Representatives, and because he has not run for the House of Representatives in some districts like the wards of Lynn or Boston, or the town of Saugus. [Laughter.] If he had, Mr. Chairman, he would know, first, that there are very few of those men who do not discuss these questions; that in the city of Lynn, where the old shoemaker element and its descendants in a large measure is still prominent, — descendants of the shoemaker who used to sit with his lapstone in his lap, and pound away on his leather, and discuss with his neighbors every question under the sun, and discuss it pretty thoroughly, too, — and if the gentleman had been there he would not believe any longer that there were any great numbers of people among the electorate in those sections who could not understand these questions.

Moreover, he would have avoided another error, and that is that anybody has come here without this subject being discussed, — and I think he emphasized that. Has anybody come here without this subject being discussed? I know there are certain gentlemen here so favored by fortune and by high capacity that they come tripping in here without any contest, — not many, very few, but some. But in almost all the cases that I know these questions have been thoroughly discussed. Let him come down and run for the Legislature in the city of Lynn, and have the advantage of going through a contest there, and he would be surprised at the extent to which he would be on his mettle to keep pace with the shoemakers, the workers in the Electric Light Company, and the farmers of that section. They know about these questions.

Is there any known way to-day in which public opinion can be ascertained upon a public question? Is there any known way? If so, I pause to be informed. You cannot learn from the newspapers. There are differences of opinion and differences of judgment. You cannot learn by the election of persons, because a variety of causes enters into that. And I see no reason why there is any greater assurance of knowledge of public questions here than in the State of Oregon previous to the adoption of the initiative and referendum, when the value of this method was shown, in 1904, when the first State law enacted by the people independent of any action on the part of the Legislature, the direct primary law, was adopted five to one, after it had been brought before the voters, and the statement had been made continuously in the Legislature that not three per cent of the voters were in favor of it.

There is not any way to ascertain public opinion on a public question except through the initiative and referendum. Take it in a town. One of the selectmen, one of the town fathers, says: "Oh, don't introduce

this, the people are opposed to it." "Well," I ask, "how do you know the people are opposed to it? Have you taken a census?" No; the people in the little coterie with which he moves, the particular club, the particular organization, the particular street corner, the particular train on which he as a commuter may ride, are not in favor of it; and then when he gets into town-meeting he finds that those who are not in favor of it are perhaps in a very small minority.

And now there is another and larger matter in which these gentlemen are very much confused, and that is their ideas of a Constitution, — and I have not seen this cleared up in this Convention yet, — their ideas of a Constitution as something which is handed down at the pleasure and good will of a King or a hierarchy or an autocracy or oligarchy or what not. That is, we read in the papers that the Sultan of Turkey was pleased to grant a Constitution, or that the Czar of Russia was pleased to hand down a Constitution, giving to the people a portion of the rights of which he had robbed them.

Now, what was Magna Carta, which all Anglo-Saxon people boast so much about? It was handed down by a very bad King, who therefore handed down a very good charter because he was a weak King; and our writ of *habeas corpus* and our trial by jury, and all those liberties of which we boast were handed down by King John, because he was God's anointed to rule, and he possessed them.

Take our Constitution. Begin with the compact in the Mayflower in Provincetown harbor, to which our friend referred with so much unction. Why, that was the initiative and referendum. There was no delegate body there. All those present initiated the covenant, and all those present adopted a referendum upon it. Our Constitution, the American Constitution, the Constitution of this Commonwealth, were not handed down by anybody who had usurped power; it came up from the people. And I must submit, Mr. Chairman, that while of course they are more familiar with these things than I am, yet that they are confused by the long period of human history in which constitutions have been regarded from that standpoint. The Constitution came from the people, and the people of Massachusetts put this into it, which has been read here two or three times:

> And whenever these great objects are not obtained the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

They have that right. Now, what is it that the gentlemen propose? They simply propose obstruction. Is not that all? Is not that a fair statement? The people say, — people who made the Constitution, — there are two parties to the compact. Yes. Who are the parties? All of the people as sovereign, and all of the people as citizens. The party of the first part and the party of the second part are identical. And in all the history of law, with which the gentleman is so familiar, he knows that the two parties to a contract have a right to amend it at any time; and the party of the first part and the party of the second part are the same.

What is it that he proposes? He proposes to put some obstructions in the way of the fulfilment of that contract, in the way of change; and I do not understand, it has not been made clear to me anywhere, just what the obstructions are to be, and just what obstructions now exist.

Now, take this Constitutional Convention; and I want to say that I never have been a member of any body of men anywhere which seemed to have so much moral purpose running through it as this Constitutional Convention, — and I say that not for the purpose of flattery, or even for good will, but simply as a passing comment on something I have seen. Take this Convention. What is the capacity, what is the function, of this Convention? Is it purely clerical? Is the function of the Convention purely clerical? If it is purely clerical, then we can understand it. If it is not clerical, if it is something more, then it is a part of the government of Massachusetts. It is either purely clerical or it is part of the government of Massachusetts. If it is a part of the government of Massachusetts, having the right to prevent submission of matters to the people, and so on, then the government is divided into three heads, legislative, judicial and executive. What does it come under? Of course, legislative. But if it at all does come under the legislative head, then it has a right to require the opinion of the Supreme Judicial Court. The distinguished lawyer who spoke upon this subject the other day said that we did not have the right to require the opinion of the Supreme Judicial Court. If we have not the right to require the opinion of the Supreme Judicial Court, then this Convention is not a part of the government of the State, because if it is a part its function is legislative, and if it has not the right to require such an opinion then its position and its duties are purely clerical. I think I am right about that.

Now, what are the obstructions which the gentleman proposes? Why, he is afraid, — he does not designate fully what they are, — and I think he speaks on this subject as though this proposition for an initiative and referendum was something strange and new, which had come up here without much thought. Well, I have shown you how it has been discussed thoroughly in almost every legislative district. Unfortunately, perhaps, the discussion did not come within the range of those who are on the State ticket, or within the knowledge of those who were on the State ticket; but it did come within the knowledge of a great many who were on the congressional ticket, and it certainly did in our district.

It was said here the other day, in regard to Mr. James Carey, that he was the originator of this proposition. Mr. Chairman, as a matter of fact the initiative and referendum was in the Legislature for years before James Carey was. My impression is the first year I was here, in 1891, I found the initiative and referendum here, and it has been here all these years. But that was not the origin of it. It was in existence before the American Revolution. It was in existence before the Revolution of 1688 in England. Before the Battle of the Boyne, when James the Second was King of England, the initiative and referendum was in use in some of the cantons of Switzerland. And what do we think of Switzerland? Why, it sets an example for us in many ways. There is nothing new about it.

Now there is a great war across the ocean, and we are beholding the appalling spectacle of a great nation, which was in the forefront of civilization with its poetry and philosophy and chemistry, and high intensive agriculture and manufacturing, — we are witnessing to-day the appalling spectacle of a great civilized nation reverting to barbarism, going back, much like the character in that tale of Rider

Haggard's entitled "She;" one moment full of life, vitality and seductiveness, and the next moment fading into extreme old age, and then passing into nothingness before the eyes of the spectators. That is what we are beholding in Germany. Would that have occurred if Germany had had the initiative and referendum? I do not mean before the war, just before the war; I do not mean in 1870; but I mean before this philosophy of German Kultur began. In 1848 there was a revolution in Germany. Some years earlier, thirty-five years earlier, Germany was conquered by Napoleon, and Napoleon occupied Berlin. But in 1848, if they had adopted the initiative and referendum in Germany, should we have had the spectacle which is now arousing and horrifying us in Germany? No; nothing of the kind. If they had had the initiative and referendum the world might have been at peace, and it certainly would have been freed from the spectacle which we are seeing at the present time.

Mr. Chairman, do not think you can accomplish anything by cutting this in two and taking the proposition for legislation without that for the Constitution. The Constitution is what we are talking about. It is where the people's rights should be guarded. I am very fond of lawyers, and they have done me a lot of good and saved me from a lot of trouble. But if one of my numerous grandsons, now moving smartly toward manhood, were going to be a lawyer, — I know nothing about the course in law, or scarcely anything, — but I should tell him to take those three chapters of the Gospel of Luke which refer to lawyers and read them the first of anything. You all remember that one of the chapters, after saying a great deal about lawyers, says:

> Woe unto you, lawyers! Ye entered not in yourselves, and them that were entering in ye hindered.

That was on high scriptural authority. But that was not the best thing that was said about lawyers in that Gospel. The best thing was where the question of a lawyer called forth the Parable of the Good Samaritan. The lawyer asked: "Master, what shall I do to inherit eternal life," and that brought forth the Parable of the Good Samaritan. Not ceremonial observance, not even knowledge of the law, but sympathy, divine sympathy; and that is one of the most emphatic and most valuable lessons in the Gospel according to St. Luke. And I want to suggest to the gentleman that he sit down in his closet, or in his office or chamber or what not, and examine the basis of his opposition to this great public movement, great public demand. He says there is no public demand. How does he know whether there is any public demand? Does he meet it down in Southborough? Does he meet it in the office of the New York, New Haven and Hartford Railroad Company? If he should come down to Lynn he would see how in the last campaign every man who was primarily opposed to this, as far as I can remember, got in under cover, and every man was for it before the campaign ended. I think I am right; if not, I desire to be corrected, — that every single man came in. Why? Why, some of them were conservative, and they were afraid, but they came in. Why? Because there was a public demand for it. That is the reason they came in.

Now, it is needed in this country. When I went to school they

used to have a science called political economy, — a so-called science. The term science I think has now been abandoned, and political economy has been abandoned, and they have substituted something they call economics. But I was talking the other day with the president of one of the mills. Why, years ago, before any of us knew about it, — but we have read about it, — what is called welfare work to-day was dominant in Lowell. A hundred years ago or so it was dominant. They had their debating clubs, and they had their care for housing, and they had their newspapers and their literary societies, and every possible thing for the welfare of the operators. Then came in, about the time I studied political economy or later, — or pretended to study it, — there came in the Manchester school, the *laissez faire* doctrine; the law of supply and demand was not to be treacherously interfered with, and the man who attempted to get up any general labor legislation was a wicked, deluded, misguided student of what was called political economy in those days.

Then later that is all abandoned, and now what they call economics includes a large measure of welfare work. Why, I do not believe, you take one of those old political economists of that day, Bowen or McCulloch or Adam Smith or John Stuart Mill, the whole of them, — I do not believe you will find a word about the distribution of wealth. To-day they are occupied largely with the distribution of wealth. Then whole books were about the acquisition of wealth, and there was not a word about the distribution of wealth.

Why, the gentleman says there is no unrest. What has been happening in this country during the past fifteen or twenty years? A revolution, — a revolution in this country. The question of the distribution of wealth is dominant in the minds of all thinking men. We are getting back to that portion of the Gospel of St. Luke about the Good Samaritan.

A great war is the Gethsemane through which a nation passes to a new birth, an awakening, a resurrection. It has been so throughout the history of the world, — the Battle of Waterloo, our Revolution, away back to the battle of Tours, when Charles Martel drove the Moors backward, back to the Battle of Chalôns, when the Consul Aëtius made the last great war, the last great battle of the Roman Empire, in driving Attila and the Huns out of Europe, and breaking their power. He did not drive them out, for they were scattered somewhat, but he broke their power.

A great war always has been of that nature. After our Civil War the moral purpose of this country was very great. It had been developed during the Civil War; but we became so prosperous that we eventually lost our heads. Right after the Civil War the first Pacific railroad was opened, and what used to be in the reading books when I went to school the "Great American Desert" was converted into fertile farms, smiling villages, with a great and happy population. Then came the inventions, — the telephone, the electric lights, the electric cars, later on the automobile, and all these many material developments, and there came with it the worship of wealth.

Last Sunday I went down to Newport to see some soldiers who are going away, and I was astonished to hear the comment everywhere about the disgusting exhibition of wealth by a few people, — wealth

which had been acquired by as disgusting methods as were manifested in its display.

Mr. Chairman, do not let anybody construe this into an attack upon the institution of property. I believe it has been one of the great factors in the development of the world; and I believe the owner of a great fortune, like Mr. John D. Rockefeller, — I know nothing about some of his methods, — but he can be a tremendous power for good, and he is, as a trustee for the wealth which he possesses; and that is the sense in which everybody should hold wealth.

Now, after this great period of material development, this period when we lost our heads, came this political unrest, which the gentleman says does not exist and never has existed. You all know the story of the lawyer whose client sent for him from jail and said: "Get me out." And the lawyer looked into the case, and said: "They can't put you in jail for that." "Well," he said, "I am here." The lawyer said: "I tell you they can't put you in jail for this." And so the man stayed there and suffered, and technically they could not put him in jail.

Now, this period of unrest does exist; it has existed. I said here the other day, — and I am not talking religion, and I am speaking with the aloofness with which I would speak of the cotton crop, — that the great fundamental issue before the people of this country and the world to-day is the value of the individual human soul. That is the issue to-day, and this is in line with the solution of this issue. If we do not adopt this to-day, if we do not adopt this at this session, is there a man here who believes that it will not be ultimately adopted? It is in the line of progress. The progress of mankind is onward and upward forever, and this is sure to be adopted some time in the future. Robert Burns said, in regard to another form of offence, — he said so many things that this slips my mind at the moment [applause and laughter], — he said:

> I waive the quantum of the sin,
> The hazard of concealing;
> But, Oh, it hardens all within,
> And petrifies the feeling.

And if my friends sit down in the quiet of their closets or of their offices, and say to themselves: "What is my motive, what is my motive in this? Is it to save my country, is it to save the people from a task for which they are incompetent, or is it to support and arrest the destruction of certain great special privileges?" — I hope, I wish, they might come to a correct conclusion; and then what I quote from Bobby Burns would be effective, — that it would not "harden all within and petrify the feeling."

But if they do not come to that conclusion, I will tell you why their judgment is defective. In all the world, in the two channels of endeavor and activity on which the world's progress is based, a man thinks he is on one side because of conservatism, and he is on the other side because of individual rights, — the rights of the individual. But neither side is perfect, neither side is infinite, and we no sooner get an opportunity than we are governed by selfish interest; on one side by special privilege, and on the other side by something which is pretty nearly the same.

Now, so far as I come in contact with people I find that they are in favor of this measure. I find they say it will do no harm. I find that they demand it everywhere. As I said, in the city of Lynn we started

in with a lot of dispassionate observers, men who were going to run for this Convention with an open mind, as they said. The people said: "We are not going to send you there with an open mind, any more than we employ a lawyer with an open mind. We send you there because we think you have seen the justice of this and have come to a conclusion." And, as I say, every man who was a candidate in that district came over for the initiative and referendum. There is a public demand for this. The opposition to it is ultra-conservatism or the defence of special privilege. And I hope, Mr. Chairman, that as time goes on some of these men will come in closer contact with the masses of the people and will learn to trust them to do what they have said they could do, what they had a right to do, and what they would do in this matter of the Constitution. [Applause.]

John D. W. Bodfish of Barnstable.

Mr. Bodfish of Barnstable: It is with some reluctance that I rise at this time and I feel that I must apologize to you by telling you a story. Two ministers were discussing the preparation of a sermon. One of them said: "Now, brother, the way I do it, I sit down and I write it all out, so that when I get through writing it and go into the pulpit I know just where to begin, and I know when I have finished." The other one said: "Now, brother, you are all wrong. When you do that way Satan can come and look over your shoulder and see just what you have done. Now I go into the pulpit without any preparation, and the Devil himself don't know what I am going to say."

But I am not a minister. I belong to that class called lawyers, — that class who, it is claimed, have gone into their profession because they have realized that where men will give a dollar to save their souls, and will give two dollars to save their bodies, they will give all they have to have their own way. But before I was a lawyer, Mr. Chairman and gentlemen, I was a citizen for many years, and I have given some consideration to public matters. I shall address my remarks here to answering the argument advanced by the delegate from Southborough (Mr. Choate). I am not so presumptuous as to think that I can match the oratory of those who have preceded me. I am not so presumptuous as to think, granting the premises of the delegate from Southborough to be correct, that I could argue in the same convincing manner that he has. But I think I can state to you, Mr. Chairman and gentlemen of the Convention, a few facts, which will sufficiently answer the most astute argument that any lawyer or other able advocate can advance. You will pardon me if in quoting I make any errors, because I must of necessity quote from memory.

I desire first to take up the question of contract in the present Constitution of Massachusetts. It is astounding to me that the delegate from Southborough should read only the second paragraph of the Preamble of our Constitution, and should base his entire argument that there is a contract upon that single paragraph. I call to his attention and to your attention the first paragraph of the Preamble, the one which precedes the paragraph where he alleges that he finds a contract which would be impaired and abridged by the adoption of the proposed amendment we are now considering. That first paragraph, if you will turn to it, you will find reads something like this:

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquillity their natural rights, and the blessings of life: and whenever these great objects are not obtained the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

That statement, that the people have a right to alter their government, sufficiently reserves to the people the right to alter any contract which may be set forth subsequently in that instrument.

But I call your attention to the last paragraph of the Preamble, where, omitting the statement of motive which is parenthetically thrown in, as it were, you will read:

WE, therefore, the People of Massachusetts . . . *Do agree upon*, ordain and establish, the following DECLARATION OF RIGHTS, AND FRAME OF GOVERNMENT, AS THE CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.

Mr. Chairman and gentlemen, if there is any contract in this Constitution, by that very statement it follows the Preamble and is not contained in the Preamble.

Now let us look to that Constitution proper. I direct your attention first to Article IV of the Bill of Rights, where you will read:

The people of this Commonwealth have the sole and exclusive right of governing themselves . . .

And in Article V:

All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

The people have the sole and exclusive right of governing themselves. Their legislatures, their executives, their judicial officers, are their substitutes and agents. By what new and strange theory or doctrine of agency does the astute lawyer from Southborough (Mr. Choate) determine that the people of Massachusetts have created agencies which they cannot control, supplement or revoke?

I call your attention again to Article VII of the same declaration of rights:

Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: *Therefore the people alone* have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

If there is any contract in this Constitution of Massachusetts, as the gentleman from Southborough contends, which would be infringed by the adoption of the proposed amendment we are now considering, he and those whom he represents will find ample protection in the Federal Constitution, where, — I now direct your attention to Article I, section 10, — you will find that no State has the right to pass any law impairing the obligation of contracts. And under the fourteenth amendment of the Federal Constitution you will read that no State has the right to pass any law infringing the privileges or immunities of any citizen of the United States. But if he still fears, as he assumes to fear, that the people will be so dull and so stupid that they will enact laws depriving him and those whom he represents as well as themselves of their natural rights and blessings, of life, liberty and property, he

will find himself again amply protected and the people themselves will be amply protected against their own stupidity and viciousness if they are so dull and vicious as he pretends to think they may be, in the first nine articles of amendment of the Federal Constitution. It is strange that he has overlooked these things, this protection of the United States Constitution. Neither the people nor our Legislature can pass any laws impairing these rights of religious freedom, of free speech or of a free press, or the right to peaceably assemble, the right to petition, the right to enjoyment of property. Those are all protected in the first nine articles of amendment to the Federal Constitution. It cannot be, Mr. Chairman and gentlemen of the Convention, that he with his great practice is ignorant of the Federal Constitution. It cannot be that he has given us his real reason for opposing this measure. That real reason lies deeper and he has not seen fit to disclose it.

It is strange, Mr. Chairman and gentlemen, to listen to his recital of the early history of our Pilgrim fathers. I am a descendant of one of the men who, in the cabin of the Mayflower, signed that immortal compact. I also find among my ancestors men from Ireland and men from Wales, and God only knows where some of the rest of my ancestors came from. I am not going to say anything to disparage the good that the Pilgrims did; I think they did far better with their opportunities and their enlightenment than we are doing in this Convention. But the fact remains, Mr. Chairman, that they did not give to us, as the gentleman from Southborough would have you believe, the representative system of government. The system that they gave to us was a pure democracy. That was what they intended, a government in which all the people should make all the laws and elect all the officers by direct vote. The scattered conditions of their colonial life were such that it was a physical impossibility for them to carry out their original design and it became necessary for them to adopt the representative system. But I call to your attention the fact that the representative system was not their original design; it was a makeshift.

The representative system worked well for many years and it would have continued to work well if the conditions had remained rural. But the conditions did not remain rural. Society developed, and as it developed different and antagonistic classes developed, and the wonder s not that the representative system showed the weaknesses that it has shown, but that it worked so well so long as it has.

It cannot be denied that we are all of us selfish, that we all of us approach every question from our own selfish viewpoint or from the viewpoint of the particular group in which we live and move and have our being. And the safety of democracy lies in keeping the laws out of the hands of any of these groups, and how shall you keep them out of the hands of these groups except you place them in the hands of the majority? So, Mr. Chairman and gentlemen, I call to your attention the fact that the representative system has failed at the very point where it became representative, at the very point where the people lost control; at that very point the selfish, — I will not call them sinister, — influences gained control.

One other aspect of this question I wish to consider before I conclude. Government is the people's business. It should be conducted on lines of business efficiency and honesty. You would expect disaster to swiftly overtake any private enterprise conducted as we have been

in the habit of conducting our public affairs. What do we find when we look to a private enterprise that is successful, that is efficient, that is honest? We find there, if it is an enterprise of any size, just as we do in the conduct of the people's business which we call government, that it is necessary to delegate authority to certain agents and representatives. But do we find, Mr. Chairman and gentlemen, that when that authority is delegated it is delegated without control or restraint? Far be it from that. Every agent and every servant of a private enterprise is subject to the direction of the owner of that enterprise, is subject to the control of the owner of that enterprise. The owner of the enterprise has the right to examine the work of the agent and to pass upon the work of the agent. He is not limited simply to discharging his agent at the end of a year So, Mr. Chairman, as a business proposition, if we would have the State business conducted as it ought to be conducted the people must have control of their servants in public office. How shall we give them that control? How shall the people have control over their legislatures? How shall we compel our Legislature to do what we want it to do? Simply by providing some means by which the people may themselves enact directly laws which the Legislature may persistently refuse or neglect to enact, and some means by which we may veto any wrongful act which the members of the Legislature may pass. I have no indictment against the Legislature. The Legislature of Massachusetts has done exceedingly well. But the Legislature of Massachusetts, good as it is, is not perfect, and it is for us, the people of Massachusetts in Convention assembled, to throw about their Legislature the proper protection so that those who are there, and who would do right, will not be subject to those who would not do right. It is for us, therefore, to supplement their work. It is for us, therefore, to give the people the control over their Legislature. This measure will not take anything away from the Legislature; it will hold something over it which will compel it to do its duty, and that is all we want.

The people of this Commonwealth have sent us here to improve upon the present Constitution. They expect that we will be able to do that. But we shall fail if we simply pass upon everything that comes before us and negative it. We have a duty to perform in the way of something constructive. And is there anything more constructive than this placing in the hands of the people the control of their servants in public office? We ought to give back to the people what they never intended to part with, namely, that control of their servants in public office. [Applause.]

George B. Churchill of Amherst.

Mr. CHURCHILL of Amherst: I am almost tempted to say that the deep feeling with which I rise to speak upon this question is a feeling of hopelessness. That sounds like a very dangerous admission, Mr. Chairman. Perhaps I can presently make it a little plainer that the feeling of hopelessness is a feeling dependent upon the impression which has been made upon me, and I doubt not upon many of the opponents of the initiative and referendum, by the general current of the discussion, both here and elsewhere, on the part of the advocates of this measure; and upon a sense that we are facing an assumption

which does credit to the purpose and desire of every man who cherishes it, but which, in my opinion, Mr. Chairman, does not do credit to his grasp of principles, to his grasp of the actual condition of affairs in the Commonwealth of Massachusetts, or of those ultimate necessities and fundamental safeguards upon which alone any successful democracy can be founded. We have in this Convention men who have come here, as has already been said this morning in discussion, with opinions largely made up, many with pledges given, to decide upon this question; and when one endeavors to offer an argument with the hope that it may have some little effect, cast some little light upon the question, he again has a feeling of hopelessness in the sense that what he has to say is largely academic and largely by the very nature of the case ineffective. But I am going to preface what I have to say with a few words about that situation which tempts me to a feeling of hopelessness, about the way in which the case for the initiative and referendum has been presented; and I am going to assume that there are men in this Convention who are still of open mind, who are still trying to see both sides of this question, and to see both sides clearly, accurately, truly. I hope that in what I have to offer there may be something which it is worth the while of these men, if not those who have already made up their minds fully, to consider.

I do not hope, Mr. Chairman, in anything that I say to be convincing. What I do hope for is that here and there a man may have possibly suggested to him a line of reflection, a line of consideration, a line of observation of the facts; and that this consideration and observation may mean something in his determination as to what is wise for our Commonwealth in this matter.

I listened yesterday, Mr. Chairman, to two exceedingly able presentations of the case for the initiative and referendum, the careful presentation of the gentleman who is the proponent of this resolution, the lucid, dramatic, sarcastic presentation of the delegate from Brookline in the fourth division (Mr. Whipple); and I had an impression from their speeches which I am sure every man in this Convention had, an impression which I want to answer if I can and repudiate if I can. From the start of the discussion by the advocates of this measure there has been steadily, — I do not say insincerely, I do not believe it was insincere, — but there has been steadily created by what was said here, and by what has been said and written in the past by the advocates of this measure, the impression that every man who stands against the initiative and referendum stands for special influences and special privileges, stands for the rights of property, — spelled with a monstrous P, — of property that has been stolen, that he stands against the just claims of those who ask for bread and toward whom every opponent of the initiative and referendum is to be supposed to take the attitude that he prefers to give them a stone.

Mr. Chairman, that is not argument, that is not fair as a basis of appeal to our judgment. It is an impression, an atmosphere, an emotional fog which unconsciously is spread over us all, and in the midst of which and out of which we listen to every word that is said. I have been thankful, Mr. Chairman, during the progress of this discussion, that a certain ambition of mine for years was changed and never realized, — that I never became a lawyer. I might possibly have been an attorney for some little up-country railroad, 20 or 25 miles

long; and if I had been, I should have been more hopeless than ever in handling this question, because I should know that you would be expected to believe that all of my impartiality, that all my love for the people had disappeared, had been swallowed up, had sickened unto death. Fortunately I have escaped that danger.

And I want to say for myself that as in their sincerity the gentlemen who are arguing for the initiative and referendum expect us to believe that there are no ulterior motives, no insincere attitudes on their part, but just the attitude of honest, able men striving to see what is best for our Commonwealth, — as they expect us to believe that, — I expect, Mr. Chairman, and I think I have a right to expect, that when I say that I oppose this measure because I am a progressive, I shall be believed to be sincere in that belief, however mistaken I may be. [Applause.]

Mr. Chairman, if you will pardon a personal way of putting it, much of my interest in State politics, in the problems of government, has been an interest based upon the feeling that there is a good deal in Massachusetts of wrong, of grievance, that needs to be righted. I respond from the bottom of my heart to the presentation that has been made by the advocates of the initiative and referendum as to the needs and rights of various elements in this community. But I do not believe that the impression given of those demands in relation to the total situation is a true presentation, that it presents the case accurately. I shall have something to say about that in a moment. I cannot deny, I do not want to deny, that there are many things which place a great burden, a great duty upon the Commonwealth of Massachusetts, and I want to see that burden lifted, I want to see that duty accomplished. But I do not believe, Mr. Chairman, even though this mode of legislation may effect here and there the righting of some of those wrongs, the removing of some of those grievances, that in the long run it will serve that end, will fulfil that purpose; or will be a better agency than the one we now have to secure the rights and overturn the wrongs, to secure the welfare and the interests of all our people impartially and justly. I regard the measure as really a reactionary and not a progressive measure; and because I want real progress I am against it. I will try to explain the reason why I think it is not progressive before I have done.

Mr. Chairman, all this debate throughout assumes that this measure is progressive. As a matter of fact, if you will analyze the arguments that are offered you will find that there has been very little offered in proof of its progressiveness, of its accomplishment. That has been assumed, quite largely. And it is assumed also, Mr. Chairman, tacitly, quietly, that because this is a new measure, because it puts directly into the hands of the people, whose interests are to be served, the determination of those interests, it is therefore progressive.

Now, Mr. Chairman, I am going to state an "ancient platitude." We need the ancient platitudes; we need to have them constantly in mind. Progress, Mr. Chairman, is to my mind clearly the product of two forces, one old as well as one new. If it is true that there is such a thing as history, if it is true that there is such a thing as the development of popular consciousness, the evolution of man in government and as a social being into something that is finer and greater, — if there is such a thing as progress in government, that progress is the

product of years upon years of both conscious and unconscious effort on the part of the people. It is a great current that grows and swells through the years. It is not something that you can turn your backs on, that you can dam, that you can destroy and say: "It has failed; let us now turn to something new." Progress demands tradition; progress demands the acceptance of what is old when it is good, and its development. It is an ancient platitude that one generation stands upon the shoulders of the generation before.

There are two forces; one is conservative and the other is radical. The conservative knows that if progress is to be had we must realize what there is in what has been handed down to us by our fathers that is alive, that is vital, that is good. No generation would progress beyond another, if it did not take from the generation before it.

On the other hand, Mr. Chairman, — again an ancient platitude, — there is no progress if any generation is willing to say: "All that is old is good, nothing that is new is good." It must turn to what brings fresh life in the new, and it must slough off what is dead in the old. It must preserve that which the generations have handed down to us of real life, and it must be equally ready to seize on what is vital and hopeful in that which is proffered us as new. But both those things are necessary; and it is my indictment, Mr. Chairman, of the general argument of the gentlemen who here and elsewhere favor the initiative and referendum that they have been so deeply impressed with the value of what is new that they have failed to see what is vital in the old, that they see dimly, mistily, what there is of vitality and truth in the past, and that they have gone, unconsciously perhaps, sincerely, I am perfectly willing to admit, far toward the feeling that it is necessary to maintain that the past and the forms of the past are dead and useless, or at least diseased and dying, that they are bringing disease to that which is still alive in the body politic, and that this dead flesh must therefore be cut out.

Mr. Chairman, that is not an argument, I know perfectly well; but I have stated it because I believe that is what every man who has an open mind will be thinking and about which every man ought to be thinking. He ought to have in mind what up to this time it has been hard for him to have in his mind. From the nature of the problem we ought to have in mind that question: Is it true, what the exponents of the initiative and referendum say, — what they make us feel, which is far more than what they say, — about the past? Do we realize what a solemn proposition has been so simply and easily put before us by every speaker about our representative government and about the work of our fathers? It is a solemn proposition, and it deserves and requires upon our oath a genuine study and a genuine consideration, and not an easy acceptance of the picture of the conditions which has been presented us by the speakers upon the other side.

I want to analyze, — I hope I shall analyze fairly, — the impression made at least upon me by the two presentations yesterday of the case for the initiative and referendum. What a picture of the state of affairs in Massachusetts was drawn for us in the words of the delegate from Brookline in the fourth division (Mr. Whipple)! Look at it verbatim. Estimate the impression that was given both by what was stated and by what was omitted. We had a picture of Massachusetts,

I do not say an intentional picture, but we had a picture of Massachusetts as a State in which there are two great bodies, two great forces,— the poor, the wronged, the socially discontented, on the one side, and on the other, what? Property. But not the property which you and I own. No thought of the little fortunes which are just as truly fortunes to us as if they were greater. Not at all. Massachusetts seemed to be composed on the other side of billionaires, of monstrous, swollen fortunes, and what was more, fortunes which had been taken from those to whom they really belonged. I do not deny that there are such fortunes, gentlemen. I do not deny that men have made fortunes here in Massachusetts by taking from other people money that belonged to them. But I ask you as men who look at the facts not to look to me but to ask yourselves if that is really a fair impression to give of the actual condition of Massachusetts, if that is the condition upon which it is fair to base a consideration whether we ought to adopt this measure. If that were true, it would be a simple and easy proposition, as the gentleman suggested that it is, — to adopt the initiative and referendum to remedy that situation.

I am not going to make any attempt whatever to picture to you what stands between, — the other men who stand between these two groups that were pictured to us. But that was the total picture, the total impression given of the condition of Massachusetts, and that is the foundation on which the demand for the initiative and referendum was to be laid. "Property rights," said the gentleman, "the property rights that are being defended are the rights to take money from those to whom it really belongs."

Is that true, gentlemen? Does a Constitution that defends property defend only the rights of the multimillionaires who, some of them perhaps, have stolen their fortunes? Is it true that if we defend the Constitution as a protection of property rights we are standing for those men? You can answer that question for yourselves. You know what you stand for and what there is to stand for.

Now the difficulty with such a presentation, Mr. Chairman, is not in the statement of fact that there is such property right or claim of it, — that there are such conditions; that is not the difficulty, I agree. The difficulty all along the line is the relation of these facts to other facts. How much do they mean in Massachusetts? *How* true is the pictured condition? How widely does it extend? How fully does it rule the Commonwealth? That is the question; and with regard to all these evils, to which I have to say frankly that I agree, there are such evils, the difficulty is to weigh them. There are men in this and that unhappy or evil condition; but what is the weight of that fact, what is the value of it in our total picture of conditions in Massachusetts upon which we have to base our decision, upon our estimate of which alone, a just, correct and complete estimate, can we decide how far, if at all, it is advisable to introduce the initiative and referendum?

I wish I knew how to make that more impressive, Mr. Chairman, than is within my power. What is the truth about the whole situation, what are these values? What do you really think as a whole is the complete Commonwealth of Massachusetts, — all its social and political conditions? That is the question and it is no simple and easy matter for any man to tell himself what he thinks.

And then the picture of our Legislature, Mr. Chairman. We did

not get any clear and complete statement on the part of the delegate as to his total feeling, his total estimate of the Legislature. No. But we had sundry sarcastic, ridiculing, able, perhaps just statements of a certain nature, all calculated to give a certain impression. It was the old policy of taking a part as if it were the whole. What was the picture? Only fragments; that picture of the twenty-one "wilful Senators" who may defeat the will of the people, "who may have been elected for the very purpose of defeating an amendment by the interests that are afraid of it." Quite true, gentlemen; there might be twenty-one wilful Senators. It is possible that twenty-one Senators of Massachusetts might be elected by special interests to defeat a particular amendment, but it is not probable. I submit, Mr. Chairman, that while that might be perfectly true, as giving an impression of the total truth about the legislative situation it is absolutely false. It is at least justifiable to call that "hectic" [laughter], if the attitude of the minority in their report about the effect of the initiative and referendum upon the Constitution is hectic. I shall try to insist that the picture of the other gentleman is hectic and endeavor to show you briefly by and by that we are not hectic, and you will decide for yourselves. [Applause.]

"Perhaps," said the delegate, "the majority in the Legislature will be upstanding and honest. We must," he said, "legislate upon the theory that the majority of the people will be. Perhaps the majority of the Legislature will be upstanding and honest. But my opinion is", — I believe I quote the words absolutely accurately, — "but my opinion is that the rodents will come back to the cheese. [Laughter and applause.]"

I do not want to utter "hifalutin," Mr. Chairman. But I must say, sir, without criticizing any other person, that I felt profoundly sick both that that statement could be made and that we could laugh and applaud. I say it with every fibre of my being in what I say, Mr. Chairman, that if that is true, if the impression that those words give and which we carelessly, laughingly accept, — if that is true, there is no political machinery upon the face of God's earth that can cure the rottenness in Massachusetts. [Applause.] If that state of affairs is inevitable, if it is really there, you cannot heal it by any form of government. And that is the fundamental difficulty with the initiative and referendum all the way through, in my opinion, — that it attempts to do by machinery what can be done only by the conscience, the will, the determined purpose of ourselves as citizens. [Renewed applause.]

The delegate said: "The initiative and referendum is apparently simple, apparently innocuous, but for some reason dreaded by our opponents and a large number of people whom they represent." I do not know what implications were meant; I know what impression is obtained. We are ridiculed for our fears, but I notice that the other side has fears too. We are all human. The gentleman from Brookline (Mr. Whipple) fears manifestly, — no, he is sure, — that the rodents will return to their cheese, but he has no fear apparently about what the people may or may not do. In the name of common sense, gentlemen, what is the truth about the action of the people? Ask yourselves that question. What is the truth about the way the people act? Sometimes well, sometimes ill; sometimes intelligently,

sometimes not; sometimes justly, sometimes unjustly, just like you and me, of whom the people is made up. The proposal is not simple and innocuous. Would that it were! No man can make that statement upon reflection and stick to it, it seems to me. We know that it is a big question, that it has occupied the minds and is occupying the minds of the most admirable, intelligent and devoted men in this country and in others. It is a complex problem, not a simple one; and the problem is tentatively settled in different ways by different people, all of whom have the same object.

Mr. Chairman, I hold here in my hand a book, entitled "Unpopular Government in the United States." It is written by Albert M. Kales, a professor of law in Northwestern University, and is one tremendous indictment in the same tone and attitude as those of the gentlemen who are advocating the initiative and referendum. But he does not think it is simple. [Reading:]

> Unpopular government in the United States will be secure until our present popular convictions about the science of government are reversed and popular and persistent opinions prevail that the ability of the electorate to vote intelligently is limited; . . .

Here is this man fighting this extra-legal, this unpopular government, and he says you will never overthrow it until you believe what the opponents of this measure are asserting, "that the ability of the electorate to vote intelligently is limited;"

> that the moment the voter is called upon to fill any other than a few offices which wield great power and are therefore conspicuous and important, he becomes politically ignorant, even though he be an unusually intelligent man; that it makes no difference that this may be his fault, for the fact remains and will remain; that it is this artificially stimulated political ignorance of the voter that delivers his vote to a permanent organization maintained for the purpose of directing him how to vote; that to prevent this artificially stimulated political interest on the part of the voter he must be called upon to exercise such a limited voting power as he is able to use with intelligence.

Now I do not say that that view is correct; but it is the argument of a man who is fighting just as these men are fighting, and he says: "You are dead wrong; your easy proposition is not only a difficult one but it is bound to produce the exact opposite of what you are desiring to produce."

Now, gentlemen, there is a picture. I have tried to sum it up as it impressed me, — the picture drawn of conditions by the gentleman in the fourth division (Mr. Whipple). Test all that for yourselves, and ask yourselves whether it corresponds to your picture as a picture of the whole. I think you will find that it may be partly true, but that as a picture of the total condition, upon which alone we can wisely base our action, it is wholly false.

Mr. Chairman, I have already talked longer than I meant to. But there are some other things that I want to say, and I am going to ask, Mr. Chairman, and move that the committee do now rise, and I shall ask the privilege of a few more words after the recess. [Applause and cheers.]

Continuing after the recess Mr. Churchill said :

Mr. Chairman, when the committee recessed I was endeavoring to analyze as well as I might the picture of the conditions in Massachusetts which, according to the advocates of this measure, make desirable

and necessary the adoption of the initiative and referendum. I must not take the time of this assembly to pursue to any very great extent that analysis in regard to the speeches of the other men. I am anxious to be absolutely fair in what I have to say about these pictures before us. I recognize the difficulty of being fair in making excerpts from their statements. I shall depend upon you to correct for yourselves my impression, if it is wrong. But very briefly now, too briefly perhaps to be entirely fair, — the picture drawn for us by the proponent of this measure was like the other pictures in essentials, at least in the essential impression which it conveyed to me. There were such statements as this: "When power passed from the people it passed into the hands of men who had special interests to serve."

Now that is a typical statement, gentlemen, of the kind to which I am desiring to call your attention. That is a true statement, one must admit it, — up to a certain point. Its value, its power, depends precisely upon not whether it is true or not, but how far it is true, how generally it is true, how correct a picture that is of the total situation in our Legislature.

The speech of the proponent of the measure was exceedingly careful. There was manifest a desire to be absolutely just, but the impression that was left upon me was that it came down to the fundamental statement, — I presume he will agree with me in that respect, — came down to the fundamental proposition that from our Legislature the rights of the people, or at least certain rights of certain people, cannot be obtained; that certain wrongs of certain people are maintained by our Legislature, and upon the basis of that condition the initiative and referendum is necessary. "There is real danger," said the gentleman, "to our liberties if you do not give this power to the people."

"Men are seeking to create an industrial slavery. That is what we need the initiative and referendum for." And that at least expresses the impression that his picture of our social and industrial conditions made upon me.

And then, if I may be pardoned, Mr. Chairman, for quoting from an energetic, enthusiastic and able leader of discussion in favor of this measure, whose little pamphlet is the *vade mecum* of the advocates of the initiative and referendum, — if I may read a paragraph from his statement we shall have, I think, in perhaps its extremest form the impression of our conditions upon which the advocates base their claim of desirability and even necessity for the measure.

"To-day," says Professor Johnson, "after the lapse of a century and a quarter, combinations of power have grown up under these institutions in the face of which, for multitudes of our population, life is precarious, liberty practically despaired of, and happiness, except of a kind enjoyed by the Roman proletariat or plantation slave, unknown."

Gentlemen, in spite of the extremity of expression I do not deny that statement. I believe it is true of certain people in certain places. I want to see those conditions remedied. But I ask you this question, as I have done it over and over again: Is that a fair picture of the total conditions, the total interests which a Constitution of the Commonwealth of Massachusetts must take care of? Shall we determine what our Constitution shall be upon the basis of the necessity of overcoming certain wrongs and removing certain grievances, considering those things alone and deciding upon our method of all our govern-

ment upon the basis of those demands and necessities alone? That is the one thing, Mr. Chairman, which I am trying to ask of this assembly.

Well, now, Mr. Chairman, we have these things which every one of us is obliged to admit. Where there are wrongs and grievances they must be met; and it is the proposition of the advocates of this measure that this easy, handy method, so sure ostensibly, should be adopted.

I want to ask this question: Is that remedy so sure, is it so free from evils certain and evils possible in itself, that we should adopt it before we are thoroughly convinced that we cannot use the form of government which we have had so many years to remedy these wrongs, to remove these grievances? That may be true; if it is true we should adopt the initiative and referendum. But am I too solemn, Mr. Chairman, when I say that every man in this assembly, whatever his present feelings with regard to the initiative and referendum, or with regard to these wrongs and grievances, ought to pause long and ought to review thoroughly the ground on which he stands before he is ready to say that the representative form of government in Massachusetts cannot be made to right these wrongs and remove these grievances? That is the proposition which these gentlemen offer us.

Mr. HART of Cambridge: Assuming that the gentleman proves to his satisfaction and that of everybody else that there is a good government in the Massachusetts Legislature, is that a conclusive reason why there should not be another additional form of good government added to the legislative system?

Mr. CHURCHILL: No, sir. [Applause.] The purport of the gentleman's question must be met. At present I am not trying to meet that. I agree with the gentleman in the opinion which he indicates by his question.

Now in certain States of this great country, Mr. Chairman, this proposed remedy has been adopted. It is a remedy for evils existing in a State in our government, which form of government was adopted deliberately, Mr. Chairman, by our forefathers as a remedy for the evils of the initiative and referendum. The wheel has come full circle. It was deliberately to remedy the evils inherent in a form of government by direct legislation that our forefathers adopted the representative form of government, and to-day we are asked to adopt direct legislation as a remedy for the evils inherent in representative government.

Now do not think that I cannot see straight enough, gentlemen, to acknowledge that both those things may be proper and desirable, that one may remedy the troubles of the other. I do not believe it, but I am not arguing that question now.

But we have heard, — we have heard from Professor Johnson, we have heard from a gentleman who spoke this morning, — that the adoption of representative government was a mere accident, — a mere accident; "lack of steam and electricity," writes Professor Johnson, "was the obstacle to direct legislation at the outset." "One must conclude," he says, "that the only reason why the fathers did not then and there establish direct legislation for the State and for cities as they might develop, was that it was at that time physically impossible." And that argument has been repeated in the Convention this morning.

Now, gentlemen, I am not going to take your time to answer that;

but anybody who will read the statements, the discussions, the speeches of men like Jefferson and Adams and Hamilton, of the men who were busy with the ideas incorporated in that Constitution, will know that that action was deliberate, and that it was not conditioned upon physical necessities. And if that is so, it does not follow for a moment that it may not be changed to-day; but it does follow that every one of us is obliged before he settles this question in his own mind to know thoroughly why they thought that representative government was the salvation of democracy, why they thought it a necessity if democracy was to be successful and enduring. Why, as they looked back upon the unsuccessful democracies of the past, they declared to themselves that it was pure democracy and direct legislation that was the cause, so far as any form of government could be the cause, of the destruction of those democracies; and highly resolved and successfully asked the people of Massachusetts to highly resolve that they would not adopt a form which had those dangers, — dangers that had always worked out to destruction. The people accepted their view and pledged themselves to a form of government that should remedy and prevent that evil. And it is that form of government, thus adopted for the purpose, that we are to-day asked, as yet somewhat hastily, to overthrow at least partly; and partial overthrow is in my opinion bound to lead to greater overthrow, as was acknowledged yesterday by the proposer of the measure. We are asked to substitute the old danger and evil for the thing which was regarded as itself the security and life of democracy, the assurance of an enduring republic. [Applause.]

I am not arguing the case. One very clear-headed gentleman has said in regard to what I said this morning that I did not offer an argument. I am not arguing, gentlemen; I am not aware that I have offered a single argument. But what I am trying to do, — pardon me if I repeat it too often, — is to ask you solemnly, honestly, whatever your opinions, to ask yourselves: Can we in the face of these facts view the initiative and referendum in the light, in the atmosphere, that the advocates of this present measure are creating for it? [Applause.]

Is it, gentlemen, honestly, a simple and an easy question? We are asked to make now the head of the corner in our form of government the stone which the builders of that form of government rejected. It has been adopted as a corner-stone in twenty-one States. I am not going to take one minute of your time to discuss the effect of the initiative and referendum in those States; but you must do it for yourselves. You must ask yourselves: What are we entitled to conclude from the experience of America with the initiative and referendum?

There are some very pertinent questions that may be asked. Are you convinced that those States to-day have settled more grievances, remedied more wrongs, produced a better state of affairs, this better state that we are seeking, by this measure, than Massachusetts without the initiative and referendum? Are the rights and liberties of men securer or more fully attained in Arizona or in Colorado to-day than they are in Massachusetts?

Now there can be offered plenty of testimony on both sides of the question whether the initiative and referendum has been a success in these States. I do not propose at this time to argue about the fact,

but what I do say is this: Until you can honestly answer to yourselves this question in the affirmative, you cannot take the experience of those States as an adequate ground of argument for the establishment of the initiative and referendum in Massachusetts. The question is: Can we as we look at the experience of those States honestly say to ourselves that these debatable points, these questions which we are raising here for ourselves, have been answered and settled by the short experience of these States? I do not believe, Mr. Chairman, that any truly intellectually honest man, whatever his opinion about the desirability of this measure, can really investigate and look at that measure and look at the testimony on both sides and say to himself: "I am truly satisfied; Oregon and California and Arizona and the rest of them have answered the question that the honest legislator is raising in his mind. I am satisfied and I think Massachusetts upon the basis of experience should have it. It has proved itself in America."

Whatever, Mr. Chairman, shall be the ultimate conclusion of the experiment, that it has proved itself, I personally absolutely deny. It is an experiment still. It is an experiment wherever it has been tried here in America. This experiment has been tried under conditions that in certain respects are very different from those of Massachusetts. Can we upon that basis advise the people of this Commonwealth to start at this time upon the same uncompleted, unsolved experiment?

Mr. Chairman, I intended when I began to speak to do what is perhaps another hopeless thing, attempt to say a few words in defence of the Legislature. I am going to omit that, at least until perhaps some future time. I wish I could say fully, exactly what I do think about the situation in our Legislature. I cannot; there is not time. I might begin upon the strain that we have heard here from the advocates of the initiative and referendum, and I think I could be of help to them. I think I could offer some very pertinent, admirable illustrations of the points they have made. I do not deny that. But the one word I want to say to-day about it, Mr. Chairman, is that when the advocates of the initiative and referendum in Massachusetts declare that our representative form of government has broken down, they have some task, in the face of the testimony of impartial and able observers of all parties and of all kinds of political opinion. [Applause.]

This is the question. Though there be evils there, if it is a matter of fact that the Legislature of Massachusetts has steadily grown nearer to the people, steadily more responsive to the public will, steadily keener to know what is the public will, — and I believe all those things are true, — it is a solemn question that we need to ask ourselves, whatever shall be the answer, whether it is not our first duty, before we try an experiment with a new form, which was itself a danger that the representative form was intended to kill, — it is a solemn question whether we ought not first to try a little harder and a little longer to make our Legislature so worthy that the advocates of the initiative and referendum cannot say what it has been possible for them to say to-day and yesterday.

I feel tempted, gentlemen, to act the thundering prophet of denunciation, of indignation against myself and all of us, that with this form of government, and its known dangers, and its known evils, and

its known faults, we have not been able ourselves to put, or to get these gentlemen who are fighting so hard and have fought so long for this great measure to put some portion of the effort that they have been giving to secure a piece of machinery to cure our evils, instead of that into an effort to make untrue and impossible the faults which they have found. [Applause.] If what they have said is true, it is an indictment of every one of us. Are we ready to say that we must feel it really impossible to secure a Legislature which is satisfactory, within the possibility of human nature and subject to those faults which never can be absent where men are concerned, either in the people or the Legislature? Is it impossible for us to make our Legislature sound where it is not? Not until every man can honestly say that to himself is he, in my opinion, justified in saying: "I won't try. Away with it. There is nothing to be done except to substitute a new form of machinery."

Mr. Chairman, I have already taken a great deal more time than I ought to. There are one or two things still that I want to say. I want to say, very briefly, that we need to bear in mind, gentlemen, what has been clearly indicated to us in the proposal of the measure, that this measure does not stand by itself, that it is a part of a great cry, "a great surging in the heart of the people," as it was put; is a part of a great movement that has been under way for a number of years to bring the government of our States and the government of the United States closer to the people. All praise to such an effort. But the endeavors to bring it closer to the hearts of the people and to their will have been pieces of machinery. Some of them have worked well for a time or in certain things. Some of them have not worked well. It is fair to say, I believe, in general, that these attempts: The popular primary, which in my judgment at least, gentlemen, should be called the unpopular primary [applause], the recall of judges, different methods that have been adopted, have not one of them yet proved satisfactory instruments actually to bring the government close to the people. You can test that statement for yourselves. But what I want to say is, if it is true, does it not give us additional reason for pause before we accept this ninth, tenth, if fundamental, plan of another piece of machinery which shall bring to us, not a millennium, — let us not be unfair, — but which shall bring to us a remedy for these grievances and evils that have been spoken of? It is my profound conviction, Mr. Chairman, that no piece of machinery, as said this morning, will cure these evils, and that the machinery that we have now, if we will only trust it and care for it, will do its proper work. It will do only what a machine with a competent tender will do, if he has the will and spirit to keep it in order, repair it, to put it in shape, and keep it there. It will not do it without that spirit, and the initiative and referendum will not do it without that spirit, and no machinery will do it without that spirit. The new machinery may be good so far as it goes, I am not now arguing that; but one thing is clear, that the promise of it, the accomplishment of it that is promised us, does not depend on the nature of the machinery, it does not depend upon the right of the majority to rule, it does not depend upon the power of the majority to make direct legislation, it depends on what they are and what they will do with it. And what I want to ask of every man in this assembly is that he ask himself: What do I

really think upon the basis of my observation and knowledge the people will do with it? Your answer may be one thing, it may be another, but it will be your answer, and until you get it you have no right to say: "I am for the initiative and referendum."

Now, Mr. Chairman, I come to the last thing that I want to say to-day, the effect of the adoption of this measure upon the Constitution. I do not wish to enter, and I am not competent to enter, into a legal argument as regards the exact nature of the social compact or that covenant and compact which the Constitution is; but I want to raise this question: Are there not certain things which our fathers intended to do, and did do, when they established that Constitution? They did not deny, Mr. Chairman, that in a democracy the ultimate power must be in the people, that they had a right to change their form of government if necessary, that in a democracy the majority must rule. But is it not true, gentlemen, that they were perfectly clear that in a just government, in a successful democracy, there were certain things which ought not to be subject to the prevalent opinion of a majority of the voters? They felt, and we feel, that the Governors hold their power in trust for all the governed, and that in any good government all men must feel secure that certain rights and liberties will not be, — not that they cannot be, not that they may not be by legal right, — but that they must feel that there are certain rights which will not be invaded by the will of the majority. Therefore, among other reasons, lest these should be invaded, did they not deliberately adopt a written Constitution, with a Bill of Rights, which at least so long as that Constitution lasted no majority vote of either people or Legislature could overthrow? Did they not say, further, that no majority of the people or of the Legislature, so long as that Constitution lasted, should have the power to determine whether a given law did invade the rights of the people, the rights that they wished to guard? Did they not declare that this power should belong to the courts, so long as that Constitution lasted? They said, further, at a later date, that though the Constitution might be amended by the people, so long as that Constitution lasted, it should be amended only through the previous proposal and affirmative action of the Legislature. And then they laid all this before the people, who alone could decide, and asked the people to accept these restrictions of their own free will, and the people saw that it was good, and they did accept these restrictions on themselves, and they have lasted to this day.

Now come the advocates of the initiative and referendum, Mr. Chairman, and say that we should do away with these restrictions, that it is essential to the initiative and referendum that it should be operative upon the Constitution as upon the statutes. They advocate the acceptance by the people of a system whereby the majority vote directly, with some good but inadequate provision for consideration and deliberation, shall be the sole dependence for these rights. A majority vote may alter anything and everything in the Constitution, be it what is included in that magnificent Bill of Rights or what is in the frame of government. And if that is so, gentlemen, I ask you is the heading on page 5 of the minority report a "scare heading?" I am going to ask you to believe that while it possibly may be incorrect it certainly is not insincere, and it was not intended to state more than the fine print below states. "The resolution of the majority

would break this compact and destroy constitutional rights," says the heading. If you make this new compact, the old compact is gone, the old restrictions upon a prevalent majority opinion are gone, the Constitution with which we are dealing as it is to-day is gone, the compact is broken. We have a right to make a new one, certainly. The question is: Shall we? Can we? And "destroy constitutional rights?" Yes, because the Constitution no longer in any adequate degree is security to the citizen. What security have I for my individual rights? Over the Constitution, through it, I have to go to the momentarily prevalent majority opinion and depend upon it. It may be dependable, gentlemen, and the covenant which was made in the old Constitution *might* be safely overthrown; but the question for us is, is it not, which is the greater assurance, which is the more dependable, a written Constitution with restrictions such as our present Constitution has or a Constitution which puts the decision upon the prevalent majority opinion of the voters?

Yesterday, Mr. Chairman, reference was made to the supposed opinion of a certain gentleman of high standing as an authority upon the government. It was stated that in the opinion of the speaker this gentleman, President Lowell of Harvard, would not agree with the minority of the committee that the Constitution is imperilled by this measure. I want to read you one little passage from President Lowell's book, which he laid before our committee as the expression of his present views. On page 44, paragraph 20, "Benefit of a Written Constitution," he says:

> We may remark in this connection that one of the merits of a written Constitution, imposing strict limitations on legislative authority, consists in laying down in definite terms the "presupposition of all democratic government," in the words of Mr. Dickinson, "that certain principles . . . will in practice be observed by any party that may be in power." . . . This is not the sole object of such a document, but it is certainly one of its chief advantages.

"A written Constitution, imposing strict limitations on legislative authority," — the Legislature, as our frame of government now stands, — "consists in laying down in definite terms the presupposition of all democratic government, . . . that certain principles will . . . be observed by any party that may be in power." And if this definite statement of principles that will be observed, this definite limitation upon prevalent majority opinion, — if these are taken away, as they will be by the initiative and referendum, we possibly may have just as many rights as before, and have them, possibly, just as securely, but it certainly is not true that we may call these, in the sense in which we have up to this day used the term, any longer constitutional rights. We have to face the question which assurance of our rights we prefer.

In conclusion, Mr. Chairman, may I say that I have not attempted to make any argument. I have not been trying to argue; I have devoted myself, very imperfectly I am sure, to one task, — to endeavoring to put before you this question: Whether the grounds upon which this measure is offered have been fairly and adequately stated; whether we have in sober earnestness and honesty of purpose sufficiently asked ourselves whether we have a fairly complete view of all the conditions of our state of society, of industry, of the various elements in our body politic, of the operation of our present form of government, of the operation of the initiative and referendum in other States; whether we have an honest, impartial, unprejudiced and fairly complete view of

all these things. I do not believe, Mr. Chairman, that many of us have. It is perhaps impossible that we should have. It certainly is unlikely that many of the people will have.

If, when we face the future, when we go before the people we say to them what John Adams and his colleagues came to the people and said: "We trust you," we shall be accused by the advocates of this measure of not trusting the people. The framers of our Constitution said: "We trust you so far, we trust your wisdom, your judgment, your character, so far, that we are willing deliberately to ask you to refuse to do certain things which you have the power to do, that we ask you to distrust your own ability to do certain things under certain conditions, in order that you may be just, in order that you may be impartial, in order that you may be dispassionate, in order that you may be what every man wants to be, fair to his fellow." When our fathers went before the people and trusted them thus, what was the answer? The people accepted the trust. They imposed these obligations and limitations upon themselves. To-day the question is: Are we going to take the position absolutely opposed in principle to that position? Shall we go before the people and say to them: "We ask you to remove the restrictions that you have placed upon yourselves. We ask you to make it possible for all the narrownesses and selfishnesses and limitations of factions and sections and classes in future to become largely effective in law. We ask you to withdraw all the solemn promises and covenants with the rest of the people, and to take upon yourselves the solemn and responsible position of saying to everybody: 'You must trust us, trust a majority of the voters, upon any constitutional amendment or upon any law.'" If that is trusting the people, it may possibly be true that they will accept that trust, but for myself, Mr. Chairman, with as earnest a determination as I am capable of to advise the people of Massachusetts as wisely as I can, — for myself, Mr. Chairman, I would rather go, as John Adams and his colleagues went, to the people, and say: "Accept still the restrictions on the exercise of your power. Trust yourselves wisely. Admit that you are human, and in your desire," — that is where the trust lies, trust in the character and purpose of the people, — "in your desire to be impartial and just, recognize those things which in human life prevent us all from being wise and impartial and just, and exhibit, as you have exhibited for all these years, the same reliance upon the men you choose to frame your laws and the men appointed to interpret them." For myself, Mr. Chairman, and I trust it will be the feeling of the Convention, I would rather go to the people and ask them to do that, ask them to keep the form of government deliberately adopted by a wise and self-knowing people, to the end of the common good, to the end that we may "in the heat of conflict keep the law in calmness made, and see" for another one hundred and thirty-seven years, please God, "what we foresaw." [Applause.]

Matthew Hale of Boston.

Mr. HALE of Boston: As the gentleman from Amherst (Mr. Churchill), said, one of the most difficult things in handling this difficult problem is the existence of this emotional atmosphere which the professor decries. I think, however, that if I had the eloquence of the learned professor

I should be inclined to take a chance and use eloquence, as he did, even at a slight sacrifice of the clarity of the situation and even in spite of a slight creation of that very emotional atmosphere which he deplored in the beginning of his speech. The unfortunate part about this emotional atmosphere is the liability of all of us to see things a little bit differently from what they really are; in fact many of us advocates of the initiative and referendum feel that when we get this amendment passed we are going immediately to enter upon a golden age. Of course any sane man knows that that is not true, and yet when some of us get carried away by the speeches of some of the advocates we are inclined to think that it may be true and that we are going right into Paradise next week. And, on the other hand, many of the opponents of the initiative and referendum look at it as if it were a bug-a-boo with which to scare children. I really believe that some gentlemen are almost afraid to go home on a dark night for fear that some initiative may be lurking behind a corner and run at them to steal their pocket book and their watch and chain.

What we ought to do in this deliberative body which is trying to decide whether to amend the Constitution of Massachusetts is not to look at this problem emotionally but to look at it as clear, hard thinking individuals trying to reach a proper solution of the question. We ought to study the facts, — just facts, plain, hard, cold facts, — and then we ought to make up our minds in the light of reasoning whether we are going to vote for or against this amendment. I think probably that the first thing that ought to be done in discussing this question without any emotional atmosphere is to find out just exactly what subjects are not involved in this question and just exactly what fundamental principles in government we are all agreed upon. After we have found that, possibly it will be easier to determine just what principles we disagree upon. And in finding out what we do agree upon we are very fortunate in having, each one of us, this minority report that the gentleman from Amherst and his six associates filed with us, because I think in this minority report we shall find almost all of the great fundamental principles of government on which we are all agreed.

I should like to have you look at page 1 of this report to ascertain what is the first great, big, fundamental principle on which we are united. At the top of the page the minority report says:

> The government desired by the people of Massachusetts is a democratic government.

That is the first great big proposition. It is not a question between an autocracy on the one side and a democracy on the other; we are all agreed that it is a democracy.

The next big principle involved is how shall this democracy, which we all agree we should have, exercise its sovereignty; and here again we are in agreement. On this same page of the minority report the minority members say:

> We are not disposed to question the proposition that in a democratic government we must accept a majority vote as the final and decisive expression of the will of the people.

That is the second great proposition upon which we are all agreed.

The third proposition is how must that majority act; and here again I can do no better than to refer once more to the minority report. At the end of the second paragraph they say, — and I will read their words:

These voters, — that is, the majority, — do not hold their great political power simply for themselves. They have a duty, as well as a right. They are representatives and trustees for the whole population, subject to a moral obligation to vote in such a manner as to preserve and secure the rights and liberties and welfare of all the people and of every individual.

That is the third great proposition; and I do not think there is a man on the majority of this Initiative and Referendum Committee who does not uphold that principle with the same fervor as the minority members.

And now what is the fourth great proposition? That the majority in exercising its power as trustee for the whole people must act deliberately. Let me read what they say there, because there again we are in accord with them:

But if, in any case, the majority of voters act hastily, without deliberation; thoughtlessly, without a deep sense of responsibility; selfishly, without consideration of the rights or interests of individuals or of the minority; or ignorantly, without knowledge of the true grounds or of the consequences of their acts: then, in that case, the justification of majority rule is swept away, and democracy becomes in that particular case a failure, — and possibly a means of tyranny, — the tyranny of the majority.

We subscribe fully and heartily to that doctrine.

And finally, the fifth great principle. In order to accomplish this purpose, in order that the majority must act thus deliberately, we of the majority advocate and approve and uphold a written Constitution. There has been great talk among some of the opponents of the initiative and referendum as though these advocates of the initiative and referendum were proposing to do away with constitutional government. We are not. I therefore subscribe, — we all do, — to what the minority says:

They knew that there is no such thing as an "unchartered freedom", — that the lack of fundamental and guiding principles of action, of controlling restraint and checks upon impulse and desire, is destructive of all government as it is of men.

And finally, gentlemen, is the sixth great principle upon which we are united: That the people as a whole cannot directly conduct their affairs. The learned gentleman from Amherst (Mr. Churchill) has devoted a large part of his argument to pointing out the dangers of direct legislation. I ask each member here to remember that the advocates of the initiative and referendum are not proposing to do away with representative government. I ask them, if they have not read the resolution reported by the majority of the committee, to read it and to understand exactly what it is, and to see that we do not advocate the abolition of representative government.

So much for the principles upon which the majority and the minority of the committee agree. Now let us continue one step further and find out just what we differ upon, just what this whole question which has called forth so much eloquence and created such an emotional atmosphere covers. What the advocates of the initiative and referendum advocate is a change in the relationship between the people, the majority of the people, whom we all admit are sovereign, and their agents, the representatives, the Legislature, and let us see just what the change is that we advocate.

Under the present system the principal, the people, the majority of the people, elect certain delegates to act as their representatives, and they say to them: "We will give you a free hand for a year, and if we don't like what you have done during that year we will call you back

and choose other agents and other representatives." What do we propose? We propose merely that the principal, the people, should retain to themselves the power which a principal in all other walks of life retains over its agent. That is all that the advocates of the initiative and referendum are advocating, nothing more than what every one of us who have offices in the conduct of our business do when we appoint agents to carry out certain things. We do not undertake to do them all ourselves. Neither do we undertake to appoint superintendents or general managers and say to them: "We will not change anything that you do. We will give you a free hand for a year, and if we don't like the way you conduct our business we will appoint another general manager." That is the whole principle involved.

And now, how do we make that effective? In other words, how can a principal retain his power over the agent, because of course the people as a whole cannot constantly get together and say they do not like what the agents are doing? There has got to be some mechanism for carrying out that principle. The initiative and referendum is the mechanism which we suggest to carry out that principle, and it is a very simple mechanism when you look at it without this emotional atmosphere. It consists of three steps. It first provides that a certain proportion of the population of the State, — if it is dissatisfied with the acts of the representatives, and if it thinks that the principals if they had a chance to vote upon this question would reach a different conclusion from what the agents have reached, — shall have a right to take an appeal from the agents to the principals. That is the first step. We provide that a certain number of petitioners shall have that right. And the next step is the debate, the discussion on this appeal. There, again, I think it is very important for each one of us to bear in mind the exact nature of that debate, the chance for a debate on that question. You must remember that the matter must first go before the Legislature and must be discussed in the Legislature, and that the appeal when it comes is made effective only after that discussion before the Legislature. And then finally there is the determination of the appeal by the majority vote of the people.

But the opponents of the initiative and referendum are almost willing to concede, — they did in their minority report, — that the legislative initiative and referendum is not so terribly dangerous, and they are basing their arguments primarily upon the constitutional initiative and referendum. I therefore would like to go into a little bit closer analysis of the method of changing the Constitution by the initiative.

In the first place, I think we ought to clear away, if we can, this idea that there is being introduced some new principle in the method of changing the Constitution. Our learned brother from Southborough (Mr. Choate) has talked a great deal about the social compact that was made in the early Colonial days. If, when he talks about the social compact, he is referring to that doctrinaire theory given birth to in France in the eighteenth century, and some of his words sounded as if he were referring to that, why, of course that theory has long been exploded by almost every thoughtful constitutional lawyer, and in fact by the men who made up the Convention of 1853. I do not believe personally that the gentleman from Southborough meant that; I think that he meant what the gentleman from Amherst (Mr. Churchill) brought out, that when we change our Constitution we must act more

deliberately, we must act respecting those certain grave, moral obligations which are laid upon the majority, and which the gentleman from Amherst referred to, in President Lowell's book. If he meant that, why, then the majority of the committee on the Initiative and Referendum are with him on that. We should change the Constitution more deliberately, more carefully, and with every respect for the rights of the minority. In other words, gentlemen, this question of changing the Constitution is not a question of principle but a question of method, because if the rigid theory of the social compact existed we should not have our present method of changing the Constitution, because we all ought to bear in mind that this method of amending the Constitution which now exists, and which is spoken of as a safeguard of our Constitution, was not in the Constitution when it was originally framed. It was adopted as an amendment to the Constitution in 1820, and during the discussion and the debates in 1820 the whole question discussed was whether this particular method which they were suggesting would carry out this broad fundamental piece of constitutional government so ably set forth by the professor. In other words, in considering the relative value of all proposed methods of amending the Constitution and the existing method of amending the Constitution we must not get carried away by this talk about a social compact; we must bear in mind all the time the fundamental principles that we want to live up to and then we must judge these two methods in the light of those fundamental principles.

Let us take a constitutional amendment under the present method, which the professor (Mr. Churchill) and the gentleman from Southborough (Mr. Choate) say is sacred, and the proposed method, and see just what the difference is. I am purposely taking the two that come the closest together, so as to show the exact width of this awful gulf that separates the professor and me.

In the first place, under the present method a constitutional amendment is submitted by one proposer, to one of the Houses of the Legislature. Under our system, instead of one proposer, 40,000 proposers submit the constitutional amendment. Let us assume that an amendment in each case is submitted to the House of Representatives first. Under our method it goes to the appropriate committee; under the professor's method it goes to the appropriate committee; and it is discussed in each case before the appropriate committee. After that the committee reports to the House either favorably or unfavorably in each case, and in each case the House considers and debates and argues the value of that constitutional amendment. Now let us assume that in each case the House passes these two amendments by two-thirds vote. The amendment then goes to the Senate and goes through the same procedure there. Let us assume that the same result takes place in the Senate, and that the amendment gets a majority vote in the Senate in each case. Then it comes back for a second year in each case, and it goes through the same procedure, with the same chance for discussion, in each case. It goes before the committee of the House, it goes through the House, and then it comes up again in the Senate for the second time and is acted upon favorably by the Senate.

Now we come to where the lines diverge. Let us assume, with the professor's method, that the Senate votes 21 to 19 for this constitutional amendment; and let us assume in our case that the Senate

votes 20 to 20 for this constitutional amendment; in other words, a difference, an increase in the affirmative vote for the constitutional amendment, of one vote. Under the present system, where the vote is 21 to 19, that amendment is submitted by the Legislature, after that vote of 21 to 19, to this majority of the people, this uneducated mass of voters, these street car conductors who do not have time to read because they are so tired when they get home, — under the present system this amendment is submitted to those people to determine finally and ultimately whether it shall become a part of the Constitution of Massachusetts, and it is submitted under the most unfavorable circumstances. There is no requirement for a pamphlet giving the arguments on both sides, no requirement for publicity; not even the text of the measure appears upon the ballot. In its worst, rawest form it is submitted to a majority vote, a mere majority vote, of the people of Massachusetts.

The learned gentleman from Southborough (Mr. Choate) was much distressed in regard to the pamphlet, because he wondered who would write the arguments for and against any particular measure. I do not see how the gentleman from Southborough can be worried on that particular point in view of this minority report. The minority of this committee, as you probably will see before you finish the speeches in this debate, differ fundamentally in their position on the initiative and referendum. One member of the committee is firmly in favor of the principle of the initiative and referendum. He even had the indiscretion in this connection to tell his constituents that he was strongly in favor of the principle of the initiative and referendum, and he is still strongly in favor of the principle of the initiative and referendum. He does not like our particular form of the initiative and referendum; I understand that he is working on an amendment, a hand-made product of his own, which I understand he is intending to keep in a glass case on his mantelpiece at home in order that he can show his constituents the particular form of the initiative and referendum which he advocates. [Laughter and applause.] And on the other extreme are the two gentlemen who have spoken for the committee, who would not touch the initiative and referendum with a ten-foot pole. And yet those gentlemen have succeeded in getting together on one report. It is true that anybody who knows the gentlemen can pick out certain features that have a familiar ring. We can tell easily that it must have been the professor who wrote those glowing tributes to the judiciary of Massachusetts, and that it must have been the judge who wrote the wonderful eulogy of the Massachusetts Legislature, and we can see all through the report that wonderful courtesy and graciousness which has characterized our friends on the minority, — that Lancastrian courtesy [laughter and applause], — which really has made it one of the pleasures of my life to have sat on that committee with those gentlemen, even though I disagreed so fundamentally on this question with them. How can the learned gentleman from Southborough (Mr. Choate) say that it is impossible to get the opponents of any constitutional amendment, no matter how varied they may be, to sign one argument, after this has been done? Why, in any constitutional amendment there will be some other Luther Burbank like our friend from Lancaster (Mr. Parker) who will be able to join them. [Laughter and applause.]

There is another thing that is bothering some gentlemen, and that is the question of debate. They say that we will not really have a debate. I want to read you what they say. I ought to explain before I read it that this argument of the minority is not original with the minority; it was one that was given to us by an ex-mayor of Boston, and as all these gentlemen in the minority, with one exception, come very far from this city, they do not realize that our ex-mayors are not necessarily infallible. [Laughter.] Here is what they say about debates:

> The open, oral discussion of measures by their advocates and opponents before the body which is to decide upon them has been a feature of every successful democracy.

And then at the bottom of that same paragraph they repeat these words of wisdom:

> And it is not debate before the deciding body, if it is the voters who are to decide.

Gentlemen, think what that means! It means that what we are going through now, the learned professor's argument, the argument of the gentleman from Southborough, all the other arguments that have taken place on this question, after an affirmative vote is obtained in this Constitutional Convention, so that the voters are to decide, all this discussion becomes, — what? I do not know. It is not debate, because the voters are to decide. Whereas if it is a negative vote, so that the final decision is cast by this Convention, then these same speeches, these same words, these same arguments, become debates. Think of what that means. They say that under our proposed system (and this course that I have just outlined step by step) the discussions before the committees, the discussions before the Legislature, the discussions before the House, the discussions before the Senate, are not real discussions, because, after the final vote of the Senate, 20 to 20, it is the people who finally determine; whereas under the present system we may go through just the same course, committee after committee, and House after House, and Senate after Senate, and if the vote is 21 to 19 then all that talk before those committees, and all that talk before the House of Representatives and the Senate, is debate. In such case the Legislature has not the final determination, because where the Legislature passes a constitutional amendment it has got to be passed on to the higher tribunal, the people of the State, to cast the finishing vote. In other words, the whole difference between our two amendments, the whole gulf that is so worrying the professor and is not worrying me at all, because I know I stand very close to him, is, while the debate is the same, the period of time is the same, that in one case the vote in the Senate is 21 to 19 and there is only one proposer, and in the other case the vote is 20 to 20 in the Senate and there are 50,000 proposers.

I ask you in fairness in considering this question to consider which one of those two methods comes closer to those fundamental principles which have been outlined by the minority report, as showing the method by which the Constitution should be changed. Just remember those tests again. The majority vote should not act hastily, should not act thoughtlessly, should not act selfishly, and should not act without knowledge of the facts. Is it not as clear as can be that the 50,000 petitioners are going to give more chance for the voters

by simply having the question discussed before the Legislature convenes? And is it not clear that the pamphlet sent to every voter, though not by any means a perfect instrument, is going to make the people more intelligent than under the present system? Do they think that that difference between 21 and 19 and 20 and 20 is going to be the thing that is going to make the constitutional amendment more deliberate and more careful and more just and more unselfish? But they say so. The gentleman from Southborough (Mr. Choate) talks about the social compact and expresses grave worry as to what would happen if our system was adopted, and the gentleman from Amherst (Mr. Churchill) pleads with us to hold fast to that which is good in our institutions and not adopt this initiative and referendum just because it is new.

They say that our fathers, when they made this Constitution, rejected the initiative and referendum and established a proper framework of government which, in their opinion, would make that government permanent, lasting and stable. The same thing has been said almost as eloquently by some of our grandfathers. This is in the Constitutional Convention of 1820. I am going to take the liberty of reading the remarks of one or two of them, because they have such a familiar ring.

Leverett Saltonstall was one of the delegates in 1820, and the debate in which his speeches and those of other delegates which I will quote were made was on an interesting question. In the old days the Senate, the body which ought to be proud to have among its members the gentleman from Amherst (Mr. Churchill), was not elected on the basis of the number of voters in each district; it was elected on the basis of the amount of property owned in each county. That was the old system, before this debate took place. It was in advocating this old system, and in denouncing the dangers of a representation in the Senate, to be based on population, that this gentleman, Leverett Saltonstall, used arguments which, if I did not know that the gentleman from Amherst (Mr. Churchill) was not a plagiarist, I might have suspected he had used before the debate:

> And now the foundation of a great branch of the government is attacked, as unjust and aristocratic. Is the Constitution to be thrown by as an old-fashioned piece of furniture, that answered well enough in its day, but is now fit only to be stowed away in the lumber-room with the portraits of our ancestors?

Of course forty years is not half as long as one hundred and thirty-seven years, but it is a good long stretch of time.

> Experiment is worth everything upon this subject. We should be unwilling to touch what is made venerable by age. We should cautiously advance any theory of our own, against a system that has been in operation half a century. The situation of Massachusetts is a proud one. She has braved the storm which has overwhelmed so many old governments. They that laughed us to scorn are now looking to us with admiration and studying our systems.

I ought to add that about fifteen or twenty years after this debate this particular provision which was going to uproot the Constitution, tear down the pillars of our government, was passed by a vote of almost four to one, and we have not yet collapsed.

Now let me read from another gentleman there (Mr. Story):

> The Constitution has gone through a trial of forty years in times of great difficulty and danger. It has passed through the embarrassments of the Revolutionary War, through the troubles and discontents of 1787 and 1788, through collisions of parties

unexampled in our history for violence and zeal, through a second war marked with no ordinary scenes of division and danger, and it has come out of these trials pure and bright and spotless. No practical inconvenience has been felt or attempted to be pointed out by any gentleman in the present system, during this long period. Is it then wise, or just, or politic to exchange the results of our own experience for any theory, however plausible, that stands opposed to that experience, for a theory that *possibly* may do as well?

The gentleman who made these particular remarks that I have just read had another very interesting part of his speech, which I will also read, although I do not think that the exact words that I am now going to read will appear in any of the speeches against the initiative and referendum:

Gentlemen have argued, as though it was universally conceded as a political axiom, that population is in all cases and under all circumstances the safest and best basis of representation. I beg leave to doubt the proposition. Cases may be easily supposed, in which, from the peculiar state of society, such a basis would be universally deemed unsafe and injurious. Take a State where the population is such as that of Manchester in England, (and some States in our Union have not so large a population) where there are five or ten thousand wealthy persons, and ninety or one hundred thousand of artisans reduced to a state of vice and poverty and wretchedness, which leave them exposed to the most dangerous political excitements. I speak of them, not as I know, but as the language of British statesmen and parliamentary proceedings exhibit them. Who would found a representation on such a population, unless he intended all property should be a booty to be divided among plunderers? A different state of things exists in our happy Commonwealth, and no such dangers will here arise from assuming population as the basis of representation. But still the doctrine, in the latitude now contended for, is not well founded.

He did not know even what the slums of a great city were like. And that leads me, in further reply to the talk of the gentlemen opposed to the initiative and referendum, to advocate the maintenance of the system established by our fathers. It leads me to what I think is the fundamental question involved here. Gentlemen who have talked have talked as though the Constitution were something up in the air, as if it did not have to have any foundation, as if it were a beautiful puzzle to work out and put together, like blocks. They seem to forget that institutions and constitutions must have an economic substructure, which is just exactly as fundamental, — or more fundamental, — and just exactly as sacred as the superstructure of these corner-stones so sacred to the gentleman from Southborough (Mr. Choate) and the gentleman from Amherst (Mr. Churchill); that those foundations cannot rest on quicksands, cannot rest up in the air, but must have a firm economic basis if our government is to be stable.

Fortunately it is not necessary for me to give my own idea as to what the ideas of the fathers might have been upon this important fundamental question, because it was all gone into with a great deal of detail and a great deal of eloquence by a gentleman whom no one of you would characterize as hectic, a gentleman who already has been described by one member of this Convention as a man more thoroughly familiar with the early history of the Constitution of the United States than most men, a man thoroughly familiar with the spirit that imbued our fathers and grandfathers. I refer to Daniel Webster, and I am going to read at considerable length his analysis of the fundamental basis upon which our republican institutions rest:

It seems to me to be plain, that, in the absence of military force, political power naturally and necessarily goes into the hands which hold the property. . . . Governments like ours could not have been maintained, where property was holden according to the principles of the feudal system.

Now listen particularly to this:

Our New England ancestors brought hither no great capitals from Europe; and if they had, there was nothing productive in which they could have been invested. They left behind them the whole feudal system of the other continent. They broke away at once from that system of military service, established in the dark ages, and which continues, down even to the present time, more or less to affect the condition of property all over Europe. They came to a new country. There were, as yet, no lands yielding rent, and no tenants rendering service. The whole soil was unreclaimed from barbarism. They were, themselves, either from their original condition, or from the necessity of their common interest, nearly on a general level in respect to property. Their situation demanded a parcelling out and division of the lands; and it may be fairly said, that this necessary act *fixed the future frame and form of their government.* The character of their political institutions was determined by the fundamental laws respecting property.

Then he goes on at considerable length to discuss how in the early days subdivision of property continued:

The consequence of all these causes has been, a great subdivision of the soil, and a great equality of condition; the true basis, most certainly, of a popular government. "If the people," says Harrington, "hold three parts in four" —

Bear in mind those figures, because I shall use them later:

"If the people," says Harrington, "hold three parts in four of the territory, it is plain there can neither be any single person nor nobility able to dispute the government with them; in this case, therefore, *except force be interposed* they govern themselves."

The history of other nations may teach us how favorable to public liberty is the division of the soil into small freeholds, and a system of laws, of which the tendency is, without violence or injustice, to produce and to preserve a degree of equality of property. It has been estimated, if I mistake not, that about the time of Henry the Seventh, four-fifths —

And I want you to bear in mind that figure:

— four-fifths of the land in England was holden by the great barons and ecclesiastics. The effects of a growing commerce soon afterwards began to break in on this state of things, and before the Revolution in 1688, a vast change had been wrought. It is probable, perhaps, that for the last half century, the process of subdivision in England has been retarded, if not reversed; that the great weight of taxation has compelled many of the lesser freeholders to dispose of their estates, and to seek employment in the army and navy, in the professions of civil life, in commerce, or in the colonies. The effect of this on the British Constitution cannot but be most unfavorable. A few large estates grow larger; but the number of those who have no estates also increases; and there may be danger lest the inequality of property become so great, that those who possess it may be dispossessed by force. In other words, that the government may be overturned.

Then he discusses France at considerable length. Then he goes on to say this:

The true principle of a free and popular government would seem to be, so to construct it as to give to all, or at least to a very great majority, an interest in its preservation; to found it, as other things are founded, on men's interest. The stability of government requires that those who desire its continuance should be more powerful than those who desire its dissolution. This power, of course, is not always to be measured by mere numbers. Education, wealth, talents, are all parts and elements of the general aggregate of power. But numbers, nevertheless, constitute ordinarily, the most important consideration, unless indeed there be a *military force* in the hands of the few, by which they can control the many. In this country, we have actual existing systems of government, in the protection of which it would seem a great majority, both in numbers and in other means of power and influence, must see their interest.

Here is possibly the nub of the whole thing:

But this state of things is not brought about merely by written political constitutions, or the mere manner of organizing the government; but also by the laws which

regulate the descent and transmission of property. The freest government, if it could exist, would not be long acceptable, if the tendency of the laws were to create a rapid accumulation of property in few hands, and to render the great mass of the population dependent and penniless. In such a case —

Now listen to this, because this is Webster and not one of us radicals:

In such a case the popular power must break in upon the rights of property, or else the influence of property must limit and control the exercise of popular power. Universal suffrage, for example, could not long exist in a community where there was great inequality of property. The holders of estates would be obliged in such case, either in some way to restrain the right of suffrage, or else such right of suffrage would ere long divide the property. In the nature of things, those who have not property, and see their neighbors possess much more than they think them to need, cannot be favorable to laws made for the protection of property. When this class becomes numerous, it grows clamorous. It looks on property as its prey and plunder, and is naturally ready, at all times, for violence and revolution.

This is Webster's parting advice to us, to the men who were ruling Massachusetts at that time. This is his parting advice:

It would seem, then, to be the part of political wisdom to found government on property; and to establish such distribution of property, by the laws which regulate its transmission and alienation, as to interest the great majority of society in the protection of the government. This is, I imagine, the true theory and the actual practice of our republican institutions.

That was in 1820, less than a hundred years ago, and Webster said that the true theory and basis of our Constitution, the one thing necessary in order to maintain our Constitution, was to maintain by our laws of distribution that equality of property which we then had, and to prevent the accumulation of property as it then existed in England, so that four-fifths of the property should be in the hands of a few people. That was his warning. That was his injunction to us in order to preserve the Constitution. And what have we done? What has the Legislature done?

I do not know how many of you realize that in the Commonwealth of Massachusetts at the present moment two per cent, — two per cent, — of the entire population of the State own sixty per cent of the property in Massachusetts. I do not know whether you realize that eighty per cent of the people of Massachusetts own less than ten per cent of the property. In other words, these gentlemen who for the last one hundred years have been advocating the sanctity of our written Constitution have been allowing to go on the undermining of the foundations of that written Constitution, without which Daniel Webster and our fathers recognized that the Constitution could not last.

Why is it that we talk about any particular laws, any particular abuse of the Legislature? Why, it is a matter of very slight consequence. The Legislature, which should have led the people of this State, which should have remembered the injunction and the advice of our fathers in regard to the substructure of our government, have been so busy about other things, about elaborating theories and some of them about making money, that they have failed to see the process going on, they have failed to take steps to stop it. We all know how it grew up. There is no use in my reviewing that history. We all know that we applied absolutely the doctrine of *laissez faire*, that we were all so busy making money that we just let these properties accumulate in a few hands, so that now this condition, which was a

thing that Daniel Webster was more afraid of than anything else, has come to pass.

Why, it is not only that the property is in the hands of these few men, but it is true also that 80 per cent, or large numbers, not necessarily the whole 80 per cent, but that large numbers of our population now do not have even the bare necessities of life; that over 100,000 men in Massachusetts are earning less than $520 a year, — 100,000 of them earning two-thirds of what we are getting for the few months that we spend here amending the Constitution; and that there are 60,000 women who are getting less than $8 a week in this great Commonwealth; and statistics show that where a man is earning less than $500 a year his children do not have a decent chance to grow up to be decent men and women. All this was foreseen by our fathers.

What we who advocate the initiative and referendum mean, what we want, what we hope, is that this Convention will recognize that Webster was right when he said that the only permanent foundation for representative and republican institutions was to have the great majority of the people feel that they had an economic stake in the government. You have not got that now, because we, who have been exercising this power as trustees for all the people, have not fulfilled that trusteeship. I am not talking about whether or not there has been graft in the Legislature or whether all the Legislature is as able as the gentleman from Amherst (Mr. Churchill); I am saying that our representative system in its present form, without any check, without any direct control by the principals over these representatives, has absolutely neglected this fundamental doctrine laid down by Daniel Webster, this fundamental substructure of our government, and that we are now face to face with that very alternative which Webster laid down in 1820. I am going to read that once more to you, because that is the problem we are up against, and all this talk about the wonderful superstructure does not come down to the real substance:

> Universal suffrage, for example, could not long exist in a community where there was great inequality of property. The holders of estates would be obliged in such case, either in some way to restrain the right of suffrage, or else such right of suffrage would ere long divide the property.

That is the problem with which we are now face to face.

Continuing the debate Wednesday, August 22, Mr. Hale said:

It is so long since I said the little that I did have to say on this subject that I have almost forgotten my own remarks, and I am quite certain that all of you have forgotten what I said. Therefore, with your permission, I am going to review somewhat briefly the points that I tried to bring out when I was speaking to you before.

The first point that I think is very essential for us all to bear in mind is that we are discussing a specific measure, and in order to discover what that specific measure is we should eliminate those matters on which the majority and the minority of this committee are agreed. I found by a careful study of the minority report that on the great fundamental principles of government there was no difference of opinion between the majority and the minority. We find in their report that they favor a democratic form of government. We find in their report that that democratic form of government must have as

its ultimate sovereign the majority voting at an election. We find in that minority report that this majority cannot undertake to conduct the legislation for the Commonwealth directly, but must act through its agents or representatives, the Legislature. I think it is essential for us all to bear in mind that both the majority and the minority are agreed on that form of government, a democratic form of government, in which the majority of those voting are the sovereigns and in which the Legislature is to conduct the business of the sovereigns. In addition to that, we find laid down in the minority report a principle that this majority, acting through its representatives, is acting not in its own capacity but as trustee for all the voters, for the minority as well as for the majority. We finally find in their report that in exercising this trusteeship, which we of the majority feel just as sacredly as the minority, the majority acting through the Legislature has imposed upon itself certain voluntary restrictions in the form of a written Constitution.

Mr. Lummus of Lynn: I should like to call to the attention of the gentleman from Boston a passage on page 13 of a document which has been distributed to members of this Convention, signed "Union for a Progressive Constitution, Committee on Publicity, Granville S. MacFarland, Chairman," and I believe the gentleman from Boston belongs to that union. The passage to which I desire to call his attention is this:

> It is not true, moreover, that the fathers were unwilling to trust themselves to act rightly by a great majority vote.

referring to a quotation from the report of the minority. It continues:

> There is no authority for this statement anywhere in the Constitution, either expressed or implied. The Constitution is not a limitation upon the power of the people; it is a limitation upon the power of the people's representatives. When the people established the Legislature, the office of Governor and the courts, they gave them certain limited powers, prescribing these limitations in the Constitution. To say that they feared or mistrusted themselves is absurd.

I should like to ask the gentleman from Boston whether he subscribes to the doctrine that our present Constitution was in no wise intended to protect individuals and minorities from the power of the majority of the people.

Mr. Hale: I was just on the point of explaining to the members of this committee these very restrictions which I do believe, — entirely regardless of the phrasing of certain particular sentences picked out of a certain particular pamphlet, — are imposed voluntarily upon the majority for the protection of the minority, and I shall read those restrictions upon which I think the majority of the committee agree fully from the report of the minority. And I will say that in this whole discussion these principles laid down by the minority report, by the opponents of the initiative and referendum, should be borne in mind by every delegate to this Convention, because it seems to me that they bear the essence of the whole question. These principles were laid down by our opponents, and I will read them once more:

> But if, in any case, the majority of voters act hastily, without deliberation; thoughtlessly, without a deep sense of responsibility; selfishly, without consideration of the rights or interests of individuals or of the minority; or ignorantly, without knowledge of the true grounds or of the consequences of their acts: — then, in

that case, the justification of majority rule is swept away, and democracy becomes in that particular case a failure, and possibly a means of tyranny, — the tyranny of the majority.

I want every member of this Convention to realize that the majority of this committee is standing flatly on those principles laid down by the minority of this committee, and that in our opinion those restraints mentioned by the minority of the committee in their report are the true restraints laid upon the majority in the exercise of their powers and their sovereignty in a democracy, and it is in applying those general principles to the question now before this Convention that the difference of opinion between the majority and the minority arises, as I shall undertake to show presently.

Does that answer the gentleman's question, Mr. Chairman?

Mr. LUMMUS: If the gentleman from Boston has asked me whether my question has been answered, I cannot conceive that it has.

Mr. HALE: If I could help the gentleman any further I should be very glad to do it.

So much for the things that the minority and the majority are agreed upon. Now let us see just exactly what they disagree upon.

What we disagree with the minority upon is the relationship between the sovereign, the majority of the people, and the agents, the representatives in the Legislature; and I think that disagreement between us and them cannot be borne too carefully in mind by all of us. Under the present system the relationship is simply this: That the principals, the majority of the people, have authorized their agents or representatives to act for them with a free hand for one year, with the idea that at the expiration of that year if they have not carried out the wishes of their sovereign principals those agents can be got rid of. All we propose is to change that relationship in this way: So that the sovereign, the majority of the voters, whom the minority admit are the sovereign, shall have the power, through a method of appeal, to reverse the action of the agents, the representatives, when they see fit. In other words, we apply to the government the same principles, the same powers, that the principal has over his agent in every ordinary business. It is just exactly the way that we, in our law offices, authorize a man to do a particular job. We do not say: "You can go ahead and do this job, and if we don't like the way you have done it we will fire you." We say: "Go ahead and do the job, and keep in touch with us. Take it off our hands. Do the work. But of course we reserve our right to change what you have done at any time." That is the way that buildings are built. You do not give a contractor and architect a free hand to go ahead and build the building, and then say you will get another builder if you do not like the way he built the building. You maintain always the right of the principal to change the act of the agent. That is the difference in theory that we are discussing in this amendment.

As applied to legislative matters the minority have very little to say. In fact, they practically concede the legislative initiative and referendum. They point out certain objections which they think are valid, but they say there is no question of principle and they concentrate their effort, both in their minority report and in their speeches, on the constitutional initiative. I therefore am going to devote most of my time in discussing this principle to the constitutional initiative.

I think it is extremely important to bear in mind what they say about this proposed constitutional initiative, because I am perfectly free to admit that if one-fifth of what they say is true I do not believe there would be a man in this Convention advocating this amendment. Here is what the minority report says about the constitutional initiative:

> The measure now presented by the majority of this committee provides for a fundamental and revolutionary change in altering this solemn compact between all the people and every individual citizen, in that by it a majority of the voters, who may at any time vote upon a particular amendment, are permitted, in spite of the protest and the adverse action of the representatives assembled in General Court of all the people in the Commonwealth, to compel a change in the solemn compact or Constitution which determines the rights and liberties of all.

In other words, "a fundamental and revolutionary change," — and the gentleman from Southborough (Mr. Choate) in his speech rests his entire case upon this fundamental violation of the social compact. And the gentleman from Amherst (Mr. Churchill). Well, Mr. Chairman, when I was young I was taught always to save the best till the last. Although I differ with the gentleman from Amherst in what he said, I do not think that any of us, no matter what our opinions may be, can fail to realize that his presentation the other day was the most earnest and the most sincere and the most able presentation of the argument against the initiative and referendum that could be given, and I hope to take up the gentleman's speech at a later moment. The attitude of the minority in regard to this constitutional amendment is that it is subversive of our form of government, that it is overthrowing and uprooting the foundations of our constitutional government.

Now let us just analyze that. Let us just cast aside the emotional atmosphere that has been created by the opponents of the initiative and referendum. Let us cast aside the beautiful words about our forefathers and the beautiful denunciation of the ancient government of Greece and Rome, and let us really study the thing that is before us. We are all plain, ordinary men, with a given amount of commonsense. We are all able to judge this amendment ourselves. We are not going to get carried away, any of us, even by the eloquence of the gentleman from Amherst. We want to look at this matter as it actually is. We want to see, stripped of all emotional atmosphere, stripped of all eloquence, the exact proposal in regard to changing the constitutional amendment which we have and which the other side declare is subversive of our Constitution. Now let us see just what it is.

We propose that instead of a constitutional amendment being introduced into a Legislature by one proposer, forty thousand men shall sign a petition asking that this amendment be submitted to and passed by the Legislature. Then in each case the two amendments go before the Legislature for one year, through the appropriate committees, first through the House and then through the Senate, or *vice-versa*. Then the second year each of the two amendments, under our proposal and under their present method, goes through the Legislature. Just exactly the same opportunity for debate on these measures as they go along side by side takes place before the committee, before the two Houses of the Legislature, for two successive years, and then at the expiration of the second year comes the difference, comes the possible difference. In their case and in the present method nothing can be submitted to

the final sovereign majority of the people to be voted upon that has not obtained for these two successive years a two-thirds majority in the House and a majority in the Senate; whereas our method provides that irrespective of the vote in the Legislature, but after the same period of time, the same opportunities for discussion and deliberation, the matter shall be submitted to the people to vote upon.

Bear in mind once more, when we are discussing this constitutional amendment, that the test by which we want our amendment judged is the test laid down by the minority report. We want to make sure that in amending the Constitution in our method, and I submit that this is the only question of controversy in regard to this constitutional initiative, we want the people not to act hastily, we want them not to act thoughtlessly, we want them not to act selfishly, and we want them not to act ignorantly. In other words we accept the very tests which the minority have laid down in comparing this present method and the proposed method of amending the Constitution.

Their opposition to our amendment must, in the nature of the case, be based upon one of two reasons. They either must say that no change in the manner of amending the Constitution can take place because there is a sacred social compact which prevents our changing the method; in other words, that the present method is sacred not because it carries out certain fundamental principles, but because it is sacred in itself, and that comes as near as I can make out to the position of the gentleman from Southborough; or else their position is that their amendment better carries out those fundamental principles which have been laid down by the minority report, and as far as I can make out that is the position of the gentleman from Amherst. It seems clear to all of us, I think, that it cannot be that this present method is sacred in itself, that we cannot touch this thing, entirely irrespective of the results upon the general principles of constitutional government, merely because this amendment exists. I think the most conclusive answer to that is the fact that this amendment did not exist at the time the Constitution was formed, that it was put in as an amendment in 1820, and I think it is perfectly, — well, to me it is perfectly, — clear that it is impossible to say that the method of amending the Constitution adopted as an amendment in 1820 is sacred merely because it exists. No, gentlemen, the minority cannot mean that. They cannot mean that this particular form of amending is sacred in itself. They must mean what the gentleman from Amherst I think means, that their amendment comes more nearly to fitting the general principles which should govern the changing of the Constitution than ours does; in other words, that the people who finally vote would be able under their methods to act more thoughtfully, more unselfishly, and with more knowledge than under our method.

Every one of us here is a member of this majority, and I am simply going to ask you to consider the question as to which method you really would be able to exercise more care and more thought and more unselfishness under.

I have here a ballot of the year 1915. On it appeared three constitutional amendments, two of which you adopted and one of which you rejected. In two cases they write out the amendment, the text; in the other case they simply state the substance of it. I want to ask each one of you, when you went into the polls to mark your cross

against or for either one of those constitutional amendments, what went through your mind. I want to compare the two methods, so that I can get what you would think of under their method and under our method of amending the Constitution, because under their minority report, and in the opinion of the majority, that is what is finally going to decide; that is, whether under our method or under their method you can get the best thought on a particular constitutional amendment. Under their method, when you go into the polls you know the majority of the Legislature, possibly 21 in the Senate and 19 against, voted for this particular amendment. In our method, taking the place of that majority vote, that possibly great majority vote in the Senate, what do you have? You have, in the first place, the fact that before the Legislature has acted on this matter at all you have a petition of fifty thousand names. What does that mean? It means that in every city and town in this State circulars have been distributed asking you to sign a particular measure that has been discussed by people all through the State. We are not saying that the petition is anything wonderful, but we do say that it is a means of education of the people on this particular constitutional amendment, that it gives them a chance to discuss it more than they have under the present system, and I do not think that that would be disputed even by the minority. And in addition to that what have you got? I do not know how many men when they go into the booth and look at this ballot feel the way I feel and the way that I think almost all of us feel, that we wish we had had a chance to have submitted to us before we had to vote the arguments for and against each measure. I, for one, and I think almost every one feels the same way, would rather really be able to have a brief argument for and against a particular measure than simply to say: "Well, the Legislature passed it, it must be all right" or "The Legislature passed it, it must be all wrong", — which is more or less the tendency now. That is the whole question in regard to the constitutional initiative. We say that where fifty thousand names have been signed to a petition, where that petition has been circulated from one end of the State to the other, where the legislative discussion is just exactly the same, and where this pamphlet giving the arguments for and against every measure is submitted to every voter in the State, that under our method the people are going to act more deliberately, more conservatively, more unselfishly, than they do under the present system, and it seems to me that we have got to ask the minority, the opponents of this measure, to come away from generalities and to show conclusively, specifically, definitely, how that is not true.

And now let us go a little beyond this matter of the constitutional amendment. Let us look a little further underneath. Let us get down to something that in my opinion is far more fundamental, — that the change which we submit is a change for the better and a change that will better carry out the very principles contended for by the minority. All through the minority report, and all through the speeches made by members of the minority, it has been assumed that there is no connecting link between the frame of government and a set of human beings. They have assumed that there is no economic basis on which our Constitution rests. As I said the other day, I am very glad that I do not have to point out in my own words

what I think is the economic foundation of our democratic or republican form of government, because we have it in the words of Daniel Webster in the 1820 Convention, when he went into a great deal of detail in regard to what he thought was the economic foundation of our government and the foundation on which alone our republican institutions could survive. Now I am going to read merely the conclusions that he reached. I am not going to read all that I read before. After discussing it in great detail and describing the economic systems in England and France compared with the Colonial system, he goes on to say this:

> In this country we have actual existing systems of government, in the protection of which it would seem a great majority, both in numbers and in other means of power and influence, must see their interest. But this state of things is not brought about merely by written political constitutions, or the mere manner of organizing the government; but also by the laws which regulate the descent and transmission of property. The freest government, if it could exist, would not be long acceptable, if the tendency of the laws were to create a rapid accumulation of property in few hands, and to render the great mass of the population dependent and penniless. In such a case the popular power must break in upon the rights of property, or else the influence of property must limit and control the exercise of popular power.

And now listen to this:

> Universal suffrage, for example, could not long exist in a community where there was great inequality of property. The holders of estates would be obliged, in such case, either in some way to restrain the right of suffrage, or else such right of suffrage would ere long divide the property. In the nature of things, those who have not property, and see their neighbors possess much more than they think them to need, cannot be favorable to laws made for the protection of property. When this class becomes numerous, it grows clamorous. It looks on property as its prey and plunder, and is naturally ready at all times, for violence and revolution.

And here:

> It would seem, then, to be the part of political wisdom to found government on property; and to establish such distribution of property, by the laws which regulate its transmission and alienation, as to interest the great majority of society in the protection of the government. This is, I imagine, the true theory and the actual practice of our republican institutions.

In other words, Webster lays down the broad principle that in our republican institutions a great majority of the voters of the republic must have what I should term an economic stake in the government, the great majority of the people must feel that it is to their economic advantage to continue the institutions of their government.

And now what have we done as trustees, as the majority acting as trustees for the whole community? What have we done since 1820 to follow out Webster's advice and Webster's warning? What has the Legislature done? What have we all done, — because the responsibility rests on all of us just as much as on the Legislature? We have allowed that fundamental economic basis of our Constitution, that basis which Webster says is essential for the continuance of our institutions, to slip away. I do not want you to take my word for it; I simply want you to take facts. I want you to realize that in Massachusetts, as I pointed out the other day, two per cent of the population own 58.8 per cent of the property, and that in England the condition that Webster pointed out as terrible, was that four-fifths of the property was owned by the ecclesiastics and barons. Think of two per cent owning practically sixty per cent of the property in Massachusetts, and over eighty per cent of the population of Massachusetts

owning less than ten per cent! Of this eighty per cent we have statistics showing that over one hundred thousand men in Massachusetts are now working for less than $520 a year, less than two-thirds of what we get now in this Convention for these few months' work that we are doing.

Mr. WILLETT of Norwood: I should like to ask where the gentleman gets those figures. Where can we find the statistics?

Mr. HALE: Do you mean the ones about the 100,000 or the ones about the two per cent?

Mr. WILLETT: The ones on the rate of wages.

Mr. HALE: I got them from Mr. Gettemy's Massachusetts report.

Mr. WILLETT: In what year?

Mr. HALE: I think 1916. I have not them with me, but we can find out very easily. The report is for 1916 or 1915.

Mr. WILLETT: I think it would be well if those figures could be substantiated before they are allowed to stand.

Mr. HALE: I shall be very glad to hand the official pamphlet to you and to put it upon the records, if that is your request. If you, Mr. Chairman, request that, I will have somebody go and get it immediately.

In addition to those 100,000 men who are earning their $520 a year we have the further information that over sixty thousand women are earning less than $416 a year, — and for the benefit of the gentleman from Norwood the authority is the same. When you realize that, when you look at that in all seriousness, you see that we are face to face with the very situation against which Webster warned us, and I do not believe any member of the Convention would want to accuse Daniel Webster of being hectic or of overdrawing the situation, or of exaggerating. That is the situation that we, the Constitutional Convention of 1917, are face to face with, and what are we going to do about it; because we have got to do something? We either have got to say that Webster is wrong in his analysis of the situation, or we have got to say that facts are not facts, or we have got to do something.

Now, we of the majority suggest the initiative and referendum. Do not let any member of the Convention go home with the idea that we think the initiative and referendum is going to cure this situation entirely. We know that it is not a panacea. We do not expect everything to change over night when we pass this amendment. We do say that it is a step in the right direction; that it is a step, not toward something new, but toward the restoration of that economic foundation which Webster said was so essential to the preservation of our institutions.

Mr. LOWE of Fitchburg: I should like very much to ask the gentleman a question upon this particular point. I should like him to bear with me just for a moment to call attention to the fact that Massachusetts has no natural resources practically, — no coal, iron, oil, lumber, agriculture. With that in view, and also the fact that Massachusetts to-day leads the industrial States, I should like to ask the gentleman if he thinks that the initiative and referendum would encourage the bringing of new industries into Massachusetts or would encourage the enlargement of the industries that are here, thereby giving employment to more working people at better wages. Now, I represent what has been styled the interests. I do represent the interests of more

than a thousand hard-working, industrious people, and I do not want to see anything done in this State that will curtail the development of our industries or drive any out of the State, for the reason that I do not want such people as I represent driven into other States to get employment. Anything that embarrasses the industries of Massachusetts embarrasses the basis on which the State has been built and embarrasses the development which has taken place in the State. I came to this Convention hoping that some way would be found whereby this principle of the initiative and referendum could be worked out. I must confess that I am in doubt whether that is going to be done, and I wish before the gentleman leaves that point that he would develop a little further what effect he thinks the initiative and referendum will have upon the industries and the encouragement of more to come.

Mr. Hale: It is rather difficult to answer that question yes or no, because it seems to me its whole essence lies right at the root of the question of the gentleman from Fitchburg. I can say that I heartily agree with everything that the gentleman said, and that if it were not my profound belief, — it is not an argument, but merely an assertion, — that it would not have the effect described by the gentleman from Fitchburg I should not favor it. I think that when I come to discuss in a little more detail what I mean by an economic stake in government the gentleman from Fitchburg will say immediately that that economic stake ought to exist. I do not know, — I have never studied the record of the gentleman from Fitchburg as an employer, — but I have not the slightest doubt from my knowledge of him personally that I think the gentleman from Fitchburg in handling his own labor questions, — and this, as I say, I say not from a knowledge of the way he has done it but from my own impression of him, — would coincide entirely with my ideal of an economic stake, and that he would be the first to advocate the result which I hope can be accomplished through the initiative and referendum.

Mr. Willett of Norwood: I would like to ask the gentleman from Boston if he will give us the substance of any bill which has failed to pass the Legislature, which would have been a subject for the initiative and referendum, which would have increased substantially the wages of the 100,000 men who he would claim to-day in this State are making less than $520 a year.

Mr. Hale: That question will be answered in detail by other advocates of the initiative and referendum. I should be glad to have — Well, I shall take that up later. I was going to ask the gentleman a question in return, but I cannot do it at this present point.

I should like to say for the benefit of the gentleman from Norwood that in view of the situation existing at the present moment, where you have got Webster's analysis of the economic foundation of our government, and the existing facts, that I submit that the failure to pass any specific bill by the Legislature is a very slight and unimportant argument. As I say, that argument will be brought out later in detail by us. But the problem is not what specific measures to remedy this situation now would have been passed by the initiative and referendum; the problem is what constructive measures now are going to be taken or have been taken by the Legislature in recent years to get the government back to the situation which Webster

described as necessary; what constructive measures are now put in by the opponents of the initiative and referendum to bring back the situation which Daniel Webster and our fathers thought essential for our institutions. I say that these failures on the part of the Legislature to pass specific legislation, and also the evidences of graft and corruption which have been shown in the past to have existed in the Legislature, are important merely as symptoms but are not important as contrasted to the failure of the Legislature in its present form to meet the economic situation of the day, to carry out the warnings given by our forefathers and to maintain a majority of the community, a great majority of the community, which has an economic stake in the government. That it seems to me is the real question which the other side, the opponents of the measure, have got to face with us. They either have got to deny that we have departed from the economic foundation on which our government rests or they have got to produce something in place of the measure which we suggest will help.

And now let us see for a minute why we think the initiative and referendum will help, and I want to repeat again that we do not think it is going to accomplish everything; we think it is a step in the right direction.

We say in the first place that theoretically it is good, and for two great reasons. These reasons will be gone into in much more detail by subsequent speakers; I merely want to give them in the barest outline. We feel, in the first place, that the ultimate success of a democracy lies in the education of the voters, and we feel that this process of circulating petitions and of sending pamphlets and of the greater interest which we expect will be aroused in the community will be of great educational value in the community. And in the second place, we say that the very fact that a great group, 50,000 people, who have a feeling on any economic question that they are not getting a square deal, can bring their grievances first before the Legislature and then, in case the Legislature does not give them what they think is a square deal, can then, after the lapse of two years, and as I said, after this same method of procedure which I outlined to you, can then submit them to what the opponents say must be the final tribunal, is going to act as a safety-valve for those people in the community of one kind or another who feel that they have an economic grievance and feel that they have not their economic stake in the government.

And we say again that not only theoretically is it correct, but that on the whole in other States where it has been tried it has worked well. Here, again, this question of the experience in other States is going to be gone into in detail.

Mr. Cox of Boston: As I have listened to the argument my understanding is that the gentleman in the second division (Mr. Hale) is making the point that the initiative and referendum should be adopted so that we may secure in Massachusetts a redistribution of wealth among its citizens. And I should like to ask him if that is the purport of his argument, and to ask him if it would not be desirable, if my supposition is correct, that he should state to us some specific way in which he hopes to accomplish this redistribution through the initiative and referendum; and if there has been any specific bill before the Legislature to accomplish such redistribution which has not been favorably acted

upon by the Legislature, and if there has not been any such bill before the Legislature, and if there is a demand for such a redistribution of wealth, why such legislation has not been urged to be passed by the Legislature.

Mr. HALE: I should prefer to answer that question when I come to describe in a little more detail what I mean by the economic stake. If the gentleman would like to have me anticipate my argument now I should be glad to do so, but I should prefer to wait. Would that be satisfactory to the gentleman?

Mr. COX: I do not ask the gentleman to anticipate his argument in any way. I should feel satisfied, however, at the present time, if he should say that I had correctly or incorrectly understood him to be making an argument that the initiative and referendum is necessary to cause a redistribution of wealth in this Commonwealth.

Mr. HALE: I should like to assure the gentleman that we intend to leave what he has with him and what he owns entirely untouched. I shall go into the matter in more detail when I come to discuss that question of the economic stake.

In regard to the experience of other States in the initiative and referendum I want merely to point out that none of the other States which has tried it has really thought seriously about going back to the other system. I think it undoubtedly will be brought out to you as an argument against the initiative and referendum that some legislatures in the western States are pretty poor legislatures. I am not going into that as an argument; I simply want to point out that unless it is accompanied by the additional argument or by the additional fact as to what the Legislature in that particular State was, before the initiative and referendum was adopted, it is entirely irrelevant to the question before us. I also want to point out that probably it will be shown us with great eloquence that they do have I. W. W. troubles in some of the western States. Of course they have I. W. W. troubles in the western States. I submit that until it is shown that these same western States had no labor troubles or fewer labor troubles before the initiative and referendum it cannot be proved that the initiative and referendum has failed in these States. In other words, we do not claim, as I have just said, that the initiative and referendum is going to cure all economic evils. Nobody but a born fool would claim a thing like that. We simply say that it has a tendency to work in that direction.

And now another reason why we advocate it. Or one more thing about the other States before I depart from them. I think that one thing that the experience in the other States proves pretty conclusively is that those States have not broken down, that the Constitution of those States has not been subverted, and that the whole framework of their government has not gone to pieces, as has been prophesied in Massachusetts in case we should adopt that same method.

Mr. SHEA of Dalton: I should like to ask if the gentleman has any figures on the distribution of wealth in other States, where this initiative and referendum has been in existence for some time, as compared with the figures which he has given us on Massachusetts.

Mr. HALE: I think that this same book from which I read the figures for Massachusetts contains statistics about the other States. I shall be glad to give the name of that book, and then the gentleman can look it up. I cannot answer that question, because I have not

studied it. "The Wealth and Income of the People of the United States," by W. J. King of Wisconsin University. I suggest that either I can get a copy of the book for the gentleman after the Convention adjourns, or he can look it up for himself.

Mr. WILLETT: It seems to me that the gentleman in his argument has brought out two distinguishing lines of argument. One has been that the initiative and referendum might be used as a measure of appeal, a safety-valve, something which would help to safeguard the interests of the people of the Commonwealth. With that theory I have great sympathy, and that is the basis of my belief in a useful initiative and referendum. On the other hand, he has brought out the fact that the initiative and referendum is going to do constructive work in the way of raising wages in this Commonwealth. Now, with that argument I can have very little sympathy. I think that, as it is one of the most important questions before the Commonwealth, it ought to be discussed at very considerable length; but there are two distinct lines, and I would like to know from the gentleman before he leaves this question as to whether he has any substantial belief that the initiative and referendum really would have any influence in changing the economic conditions in the Commonwealth of Massachusetts.

Mr. HALE: Before I answer that question I should like to say that the pamphlet which the gentleman from Norwood asked for has arrived. That gives the statistics in regard to the men and women of whom I spoke.

Now, in regard to the gentleman's question. I am afraid that I did not make my point clear, because if I did it becomes evident that the two theories are not distinct but are tied up absolutely to each other. My idea is this: That the initiative and referendum as a form of machinery will enable those with economic grievances to bring more forcibly to the attention of the Legislature the various economic ills which exist in the Commonwealth; thus giving them a chance to feel that they have some power to cure their own troubles and to remedy their own evils, and at the same time safeguarding the minority by the conservative, carefully worked-out, deliberate method of carrying the wishes of the majority into effect which are provided in our resolution. In most cases, I have sufficient faith in the Legislature when this thing is in operation and when the Legislature really realizes the need of economic action, I have sufficient faith in the Legislature to feel that when these matters are brought to their attention in this forcible manner they will sit down and put more constructive work into their work and will help to remedy these evils which we all know exist; and when the Legislature fails to do it then a majority, acting deliberately, unselfishly and on just the same lines as laid down by the minority, can take the matter away from the agents and take it into their own hands.

Mr. WILLETT: One more question. I should like to ask the gentleman if he thinks that you can make a State prosperous purely by legislation, — whether by legislation you can make a State prosperous.

Mr. HALE: I think that if we had followed out Webster's advice, — and I just want to read that particular sentence to the gentleman from Norwood because it expresses my ideas far better than I could express them myself, — it contains the answer to what the gentleman says. He is speaking about the situation, the economic situation in the State. He says:

But this state of things is not brought about merely by written political constitutions, or the mere manner of organizing the government; but also by the laws which regulate the descent and transmission of property.

In other words, he says, and I agree with him entirely, that although of course you cannot create prosperity simply by the passage of a law you can help in that direction. I do not believe there is any member of the Convention who would deliberately take the position that there is no use in passing any legislation or change in their form of Constitution in order to better economic conditions.

Mr. CREED of Boston: I thought I understood the gentleman to say that perhaps prosperity might have been obtained if we had followed Mr. Webster's advice. As I understand the situation, in the speech from which he has quoted, Mr. Webster was attempting to demonstrate that representation in the Senate should be based on property, and that was the tenor of his argument. Now I ask the gentleman if he also takes that position which Mr. Webster then took.

Mr. HALE: I suggest that the gentleman from Boston have a copy of the minutes of the Constitutional Convention of 1820 sent for, and read what Mr. Webster was advocating, because he is entirely wrong in regard to what Mr. Webster was advocating. I am glad to say, however, for the benefit of the gentleman, that on the particular point at issue, when Mr. Webster was making his dissertation on the economic substructure of the government, I should not advocate what Mr. Webster then advocated, which as I explained to the Convention when I spoke before, — and I am sorry that the gentleman did not understand what I said, — was a refusal to change the distribution of men in the Senate, so that it should be based not upon the amount of taxable property in any particular county but on the number of voters within the particular county. Does that answer the gentleman's question, Mr. Chairman?

Now let me go back to what I was saying before I began yielding. I had shown that in the other States, — at least, I think I had shown, — constitutional government had not broken down, that on the whole the system had worked pretty well. As I said, it will be gone into in much greater detail by others who advocate the initiative and referendum.

We find in looking over the people who have advocated the initiative and referendum men who I am sure the members of this Convention would not think were trying to uproot the Constitution of this government. No matter how much you may disagree with either President Wilson or Mr. Roosevelt, I do not believe any man here would seriously think that they were attempting to demolish republican institutions, — and they both favor the initiative and referendum.

But the main reason that we advocate the initiative and referendum is the very thing that seems to bother some of the opponents of the initiative and referendum. While the Legislature and while the rest of us who have represented what you might call the governing class, if you want to use that obnoxious phrase as used in the past, have been neglecting our duties as trustees, while we have been failing to carry out Webster's warning and to see that the great majority of people in this Commonwealth had an economic stake in the government, a very curious economic phenomenon has been taking place.

The very people who have been deprived by our carelessness, our lack of constructive thought, of their economic stake, have been gradually waking up to a realization of that fact. They have been able gradually to articulate better and more clearly their economic grievances. They have been realizing gradually that what they want more than anything else is the return to this very foundation of our government which Webster laid down; they have been wanting, through what they consider and through what we consider constitutional, carefully worked out methods, to become a part of the economic community, and they have been trying to work out this very thing. Now, do not make any mistake in regard to what they are asking, what they are suggesting, and what we are suggesting. They are not asking to take away the property of those who have property. You know what they are asking. They are asking merely that the economic grievances which the gentlemen on the other side admit, should be righted. They are asking, roughly, that the special privileges which have been given to men in the past should be eliminated, so that every man can have what he earns, but cannot have what he does not earn in special legislative favors which have been granted in the past. They say that the rich man has no right to any special legislative favors, any special privileges; not that he has no right to his property. And then they simply ask the right to be able to bring up their wives and their children in a decent economic condition. That is the whole thing. That is the economic stake that these people are asking us. They are not asking to have the government take all the property. They are not asking to confiscate wealth. They are asking only for what I should think every one of us would feel they ought to have. And when they are advocating that, they are advocating also the initiative and referendum. As I tried to explain a minute ago in answer to the question of the gentleman from Norwood, they believe and I believe that when the initiative and referendum is worked out, is adopted, so that they can bring these economic grievances in a forcible way before the Legislature, the Legislature will realize more clearly their trusteeship, which has been made so much of by the minority, and will work out some method with them of bringing our economic condition back to where a great majority of the people have an economic stake in the government. That is why we suggest as a means toward that end, as a means toward the restoration of that very fundamental economic substructure of our government, the passage of the initiative and referendum.

And now what do they do? What do the minority do? Do they deny, is there a single gentleman here who has asked me questions to-day who denies, do any of them deny, the reasoning of Daniel Webster as set forth in the 1820 Convention? Does any one of these opponents of the initiative and referendum deny the actual facts now existing in the Commonwealth?

Mr. WILLETT: I object to being classed among the opponents of the initiative and referendum. I think that the other gentlemen have stated their position as having minds that are looking for light. I know that is my position, and that is why I ask the questions. I hope it is not going to be interpreted as being unfriendly, but it is as bringing out certain facts which all of us are seeking to get.

Mr. HALE: Mr. Chairman, my phraseology in my last sentence was

very careless, because I knew well from conversations that I had had with the gentleman from Norwood that he was not unfriendly and that his questions had been asked in the most friendly manner, and I very humbly apologize for having classed him with the other questioners.

Mr. Lowe of Fitchburg: I think the gentleman might also include me with Mr. Willett, for I do claim to be very seriously anxious to get some light upon this subject, as I believe all the delegates do.

Mr. Hale: Mr. Chairman, I take very great pleasure in including Mr. Lowe in that group. I am only sorry that I cannot shed more light on his question.

As I was saying, what have the opponents of the initiative and referendum produced of a constructive nature in this Convention? What do they propose to do to remedy these conditions, which they admit, and what do they propose to do to restore the condition which Daniel Webster said was so essential to our institutions? I have gone through the minority report from end to end, and I have failed to see a single constructive suggestion in that report. I have found plenty of generalities, plenty of vague denunciations and warnings, but I have not found a single constructive suggestion in that minority report.

Now, what has the gentleman from Southborough (Mr. Choate) done? The gentleman from Southborough has given us a very clever legal argument in favor of the social compact theory of government. What has he done in regard to any constructive suggestion to remedy the situation which now is facing us? We are not in here to display academic wit. We are not here as a debating society. We are in here to solve certain economic problems now facing the Commonwealth of Massachusetts, and we submit this as a thing that may help toward an end upon which we all must agree is a desirable end, and I say that it is up to the opposition to produce something constructive which this Convention can pass if they do not like the suggestion which we make.

I said earlier in the afternoon that I was going to say something about the speech of the gentleman from Amherst. Before I begin I want to make a confession, Mr. Chairman. Unfortunately I have a very emotional nature. As I sat here the other afternoon and listened to the gentleman from Amherst, his eloquence, combined with my friendship for him and my knowledge of his sincerity and his earnestness in his opposition to the initiative and referendum, almost made me doubt the wisdom of our position. He almost made me feel as if, after all, possibly the gentleman from Brookline in the fourth division (Mr. Whipple) when he described the conditions in Massachusetts, — the gentleman in the fourth division, the twentieth century rat catcher of Brookline, who has succeeded in enticing away from the cheese the rodents who had been causing so much trouble, — had got intoxicated by his success with the rats and was now trying to entice us and our children and our grandchildren away from those institutions, those great estates and those small wages, which had been so carefully brought over for us by our ancestors in the Mayflower. I almost felt as if probably I had been too close to all these conditions and possibly spent too much time in this big industrial city and in other industrial cities, and I almost felt inclined to call up on the telephone my friend from Amherst and ask him

whether I could not come up to spend Sunday with him and sit down in his study and listen to more of his calmness and his eloquence, and possibly get a clearer view of the whole situation, so that I might really think that there was not very much injustice, and that perhaps we had exaggerated the situation a little bit, and that perhaps this initiative and referendum was the awful thing described by the gentleman from Amherst; and I felt if I could only get up there and listen to his voice a little longer and listen to what he said a little longer that I might be persuaded to change my vote on this measure. But, gentlemen, I have had experiences before with getting carried away by speaking, and I decided not to take that chance. I decided as a matter of self-protection to get a typewritten copy of the speech of the gentleman from Amherst and to read it where I would not be disturbed by my friendly feeling toward him and by his wonderful power of oratory, and I did get a copy of this speech, and I have read it, and I have re-read it and I have studied it, and I am going to give you the result of my study.

In dealing with the speech of the gentleman from Amherst I am going to bear in mind, and I am going to ask all of you to bear in mind, the three big questions involved in this discussion. The first is: Is our form of constitutional amendment so bad, so dangerous, so terrible, that we ought not to adopt it, no matter how much good it may do or no matter how bad the conditions are, because that in substance is the position of the opponents of the initiative and referendum? And the second point I am going to bear in mind as I go through the speech of the gentleman from Amherst is: What are the present conditions? Are they as bad as the gentleman from Brookline has described? Are they as bad as has been set out by me? And the third point that I am going to ask you to bear in mind as I analyze the speech of the gentleman from Amherst is: Even if the conditions are as bad as we describe, will the initiative and referendum help to remedy those conditions? Because I submit that every single statement of every single speaker in this Convention in this debate has got to bear on one of those three questions or it has nothing to do with the matter under discussion.

Now let us see what the gentleman from Amherst has to say to prove that the Constitutional amendment proposed by us is subversive of our form of government. On pages 6 and 7 of this typewritten manuscript that I have, the gentleman from Amherst bemoans the fact that we are turning toward something new, and he gives some very good general statements to which we all subscribe, that there may be a great deal of good in the old and that there may be a great deal of good in the new, but he thinks that we of the initiative and referendum are too much inclined to jump at something because it is new. And on pages 20 and 21 of this same document, not being satisfied with having denounced us as favoring the initiative and referendum because it is new, he denounces us because we are trying to dig up from the past something which our great grandfathers rejected as being unsound. Gentlemen, I submit that it may be fair to denounce us for advocating something that is new, and it may be fair to denounce us for advocating something that is old and has been rejected, but I do not think it is fair to denounce us for doing both in the same speech. I submit that neither one nor the other, neither one

point nor the other, proves in any way, shape or manner, or even attempts to prove in any way, shape or manner, the point at issue on this constitutional amendment question. Not in a single paragraph on these pages that I have told you about does the gentleman from Amherst bring forth a single argument to show that his present methods of amending the Constitution will enable the voters of Massachusetts to act more deliberately and more unselfishly than under our method. In fact, he re-emphasizes the very fundamental principles which we agree with. On page 27 of his document he says this:

> They did not deny, Mr. Chairman, [— this is our fathers —], that in a democracy the ultimate power must be in the people, that they had a right to change their form of government if necessary, that in a democracy the majority must rule. But is it not true, gentlemen, that they were perfectly clear that in a just government, in a successful democracy, there were certain things which ought not to be subject to the prevalent opinion of a majority of the voters?

Absolutely we agree with him on that. We have said again and again that we agree with him on that general principle. But where does he produce any argument that our method is not going to carry out those principles just exactly as well as his method? I submit that we are not in an academic discussion: "Resolved, that the government of Greece is a better government than the government of the United States." We are not advocating the adoption of the government of Greece. The system that we are advocating was not even in existence until fifty years after the fathers framed our Constitution. And yet the gentleman from Amherst tells us that this plan that we are now suggesting to you was rejected by our fathers. I do not know whether the gentleman is a professor of history or not, but I submit that we must stick to historical facts in this discussion.

Mr. Luce of Waltham: Is the gentleman aware that in the Colony of Rhode Island this plan was in effect about 1654?

Mr. Hale: The initiative and referendum?

Mr. Luce: The referendum, Mr. Chairman.

Mr. Hale: If that is true, Mr. Chairman, — and I have not the slightest doubt but that it is, if Mr. Luce says it is, — I did not know it, and it makes an exception to what I said.

Mr. Luce: Is the gentleman further aware that the referendum was in practice in the Colony of Plymouth about 1640?

Mr. Hale: Mr. Chairman, I was aware that the referendum in a form somewhat different than the one suggested was in operation at that time. But I want to make perfectly clear, Mr. Chairman, in view of the interruptions that I have just had and which I am very glad to have had, that neither the gentleman from Amherst nor I was referring to either, — at least unless I misquote the gentleman from Amherst or unless I misunderstood him, — was referring to those limited uses of a modified form of the referendum, but we were both referring to direct government as practiced in Greece and Rome.

Now let us see what else the gentleman has to say. We find at the end of his speech, still dealing with the constitutional amendment, a great deal of assertion that our method throws away all the restraints imposed upon the majority. But he does not specify in any way, shape or manner throughout his speech how those restraints are thrown away. He does not controvert in any way, shape or manner the argument which the majority makes when it says that it accepts

the restraints which the minority suggest in their report are necessary. I say that we have got to be shown specific arguments as to why our specific form of amending the Constitution will not carry out those principles just exactly as well as the present method. And not a word from one end of the speech to the other do I find in connection with that particular point. And I shall be very glad to pass around this document so that every member of the Convention can study it and judge for himself as to whether the gentleman from Amherst has used one single argument or given one single fact to prove that our method is not as likely to carry out the principles laid down by the minority and accepted by the majority in amending the Constitution.

Now what is the second point that I should like to use in analyzing the speech of the gentleman from Amherst? The second point is: What are the conditions? Is there any need of any change, — no matter how innocent the change may be, no matter how slight the change may be, is there any need of any change? And here the gentleman from Amherst, I find in reading his speech, is even more unsatisfactory. In describing the general condition he gives a great deal of time to wondering whether the picture drawn by the gentleman from Brookline (Mr. Whipple) is complete, whether all the facts are there. There is a very interesting and characteristic paragraph on page 9 of his speech which I am going to read to you. This is discussing the analysis of the gentleman from Brookline:

> Now the difficulty with such a presentation, Mr. Chairman, is not in the statement of fact that there is such property right or claim of it, — that there are such conditions; that is not the difficulty, I agree. The difficulty all along the line is the relation of these facts to other facts. How much do they mean in Massachusetts? How true is the pictured condition? How widely does it extend? How fully does it rule the Commonwealth? That is the question; and with regard to all these evils to which I have to say frankly that I agree, there are such evils, the difficulty is to weigh them. There are men in this and that unhappy or evil condition; but what is the weight of that fact, what is the value of it in our total picture of conditions in Massachusetts upon which we have to base our decision, upon our estimate of which alone, a just, correct and complete estimate, can we decide how far, if at all, it is advisable to introduce the initiative and referendum?

Now what is that grave doubt? Does he dispute the facts? No. He admits that the conditions are bad, but he simply says: "Are we entirely satisfied that that is the whole picture?" I do not know what he will say in regard to the 2 per cent owning 58.8 per cent of the property and the 80 per cent of the people owning less than 10 per cent of the property. I should say that was enough to make us think pretty seriously that something had to be done. And I should prefer to stand with Daniel Webster on that proposition than on vague doubts as to whether we have shown the whole of the picture.

And the same way in regard to the Legislature when he discusses that. He says that probably there will not be 21 senators who would block the wishes of the majority, but he does not advance a single argument other than the mere assertion that there will not be what there have been in the past. He says that it makes him "profoundly sick" to think that the rodents may ever come back to the cheese, and it makes him profoundly sick because we laughed at that remark of the gentleman from Brookline. But I submit, Mr. Chairman, that the profound sickness of the gentleman from Amherst is no argument and no proof that these facts which have been submitted by us as facts, and not as rhetoric or eloquence, do not exist.

And now what does he say in regard to the third point, in regard to whether the initiative and referendum is going to help toward this end which we, the majority, think must be attained? We find here again one assertion after another. In one case he says: "We assume." He admits that it may help in certain cases, but he says it will not in the long run. But he brings no facts and no argument to prove that it will not.

On page 11 he tells the Convention that it is a big question. Well, he cannot get up any argument with any of us on that. We all agree that it is a big question.

Then, three or four pages later, he discusses at considerable length the proposition that the people are like you and me. Well, we all agree with him that the people are like you and me; but how does that rebut the argument that we have advanced, that the initiative and referendum is going to tend toward that end?

Again, he says:

> The machinery without the spirit behind it, is no good.

Why, of course that is true; we all agree to that.

There are one or two other things that I want to read because they characterize the whole attitude, in fact the whole characteristic attitude of those sincere and earnest men, — and I want to emphasize again, Mr. Chairman, my belief in the sincerity and earnestness of the gentleman from Amherst, — if I were going to write a book upon what has been called in recent years standpatism, I should like to have inscribed on the title page of that book these two extracts which I am now going to read. The first appears on page 24:

> But when the advocates of the initiative and referendum in Massachusetts declare that our representative form of government has broken down, they have some task, in the face of the testimony of impartial and able observers of all parties and of all kinds of public opinion.
>
> This is the question. Though there be evils there, if it is a matter of fact that the Legislature of Massachusetts has steadily grown nearer to the people, steadily more responsive to the public will, steadily keener to know what is the public will, — and I believe all those things are true, —

Here is the part that I want to inscribe:

> — it is a solemn question that we need to ask ourselves, whatever shall be the answer, whether it is not our first duty, before we try an experiment with a new form, which was itself a danger that the representative form was intended to kill, — it is a solemn question as to whether we ought not first to try a little harder and a little longer to make our Legislature so worthy that the advocates of the initiative and referendum cannot say what it has been possible for them to say to-day and yesterday. . . .
>
> Are we ready to say that we must feel it really impossible to secure a Legislature which is satisfactory, within the possibility of human nature and subject to those faults which never can be absent where men are concerned, either in the people or the Legislature? Is it impossible for us to make our Legislature sound where it is not? Not until every man can honestly say that to himself is he, in my opinion, justified in saying: "I won't try. Away with it. There is nothing to be done except to substitute a new form of machinery."

In other words, gentlemen, instead of producing a single constructive suggestion from beginning to end of his address, — and the same applies to the address of the gentleman from Southborough and to the minority report against the initiative and referendum, — instead of suggesting to us a single constructive move, instead of arguing to show that the economic conditions which we have described do not

exist, instead of trying to point out that Daniel Webster and our fathers were wrong when they said that this economic stake was essential to the continuance of our republican institutions, instead of doing all this or any of these things, they simply fall back on the old ground of "Let us not move, let us go slow," — just the same attitude that everybody took when horse cars first came in, the same attitude that everybody took when electric cars came in.

I submit that we are not advocating the initiative and referendum because it is new, any more than we may have approved of horse cars or electric cars because they were new. We submit that this question has got to be judged, not by glittering generalities and not by eloquence and not by emotional atmospheres, but we have got to come down to actual, hard, clear facts and to actual arguments advanced on those three big questions. And I am going to repeat those big questions before I sit down because I hope that every time any man gets up in this Convention during this debate we will all bear this in mind and will not be carried away by generalities or by vagueness or by our emotion.

The first question is: Is this constitutional amendment going to violate the principles which we all agree should govern the amending of our Constitution? Is it going to make it result that the majority, when they exercise their power of amending the Constitution, are going to do it more thoughtlessly, or less thoughtlessly than they do now? Are they going to do it more selfishly or less selfishly than they do under the present system? Are they going to do it more ignorantly or less ignorantly than they do under the present system? The opponents of the initiative and referendum have got to take that issue up and meet it.

And second, they have got to discuss the economic question. They have got to make clear to us that our forefathers were wrong and that Daniel Webster was wrong in what he said was so necessary to our institutions, or they have got to show that the economic facts laid down as facts by the gentleman from Brookline and by me and by others of the initiative and referendum advocates are not facts. Or third, they have got to show that our proposed method will not lead in that direction, will not help to remedy those evils, and in that case they have got to submit some other constructive suggestions which, in their opinion, will be better fitted to accomplish those results. And I submit that at the present moment the members who are opposed to the initiative and referendum have not done any one of those things. [Applause.]

Henry T. Lummus of Lynn.

Mr. LUMMUS of Lynn: A few days ago I admired with you the vividness and power of the picture of Massachusetts that was painted by the gentleman from Brookline in the fourth division (Mr. Whipple). Like most painters, he took the liberty of painting out that part of the landscape that might brighten his shadows and soften his contrasts. He painted out the contented families of workers, the middle-class comforts, the thousands of homes of plain living and high thinking and simple cheer in this Commonwealth.

It was a striking picture, — I might almost say Impressionist, possibly Futurist, — though God grant that the future may hold nothing like it. But it was not the Massachusetts that I thought I knew. I

thought I knew a Massachusetts with a Constitution, not the lengthy and restrictive miscellany common in western States, but a Constitution brief, simple, strong, with but few restrictions, and those for the most part wise and just; a Constitution that never has prevented this Commonwealth from being the leader, without a peer, in all labor and social legislation, from showing to the world a legislative system, as well as a Supreme Judicial Court, that, all impartial observers declare, cannot be equaled in any State on this continent.

The gentleman pictured our highest court, enmeshed in an outworn but hampering State Constitution, compelled time and again, when the people strove to burst their bonds, to decline its aid, and to send them back to industrial slavery. I was curious to learn how frequently our court had in fact been compelled to declare progressive social and labor legislation to be contrary to the provisions of our State Constitution, and I have made some attempt to learn the facts about the decisions of the last quarter century.

In advisory opinions, the court has ruled that the word "proportional" still restricts our system of taxation (220 Mass. 613, 208 Mass. 616, 196 Mass. 603, 195 Mass. 607); but that is not purely a labor matter or one of social justice. The use of money raised by taxation for the development and sale of house lots was held to be prohibited until the forty-third article of amendment was passed (211 Mass. 624); but there was hardly a great popular demand for such a measure. The use of money raised by taxation for the purpose of engaging in the coal and wood business, except in times of famine, has been held impossible (182 Mass. 605, 155 Mass. 598); but every one knows that the principal factor in oppressively high prices for coal lies outside this Commonwealth and beyond our effective control.

Turning now to the actual decisions of the court, I can find no case in the last twenty-five years in which any labor or social legislation has been held contrary to the provisions of the State Constitution; for the case of *Bogni* v. *Perotti*, 224 Mass. 152, as to the property right of a man in his own labor, and the decision upon the nine-hour law for brakemen (*Com.* v. *B. & M. R.R.*, 222 Mass. 206) rested upon the prohibitions of the Federal Constitution, which no power in this Commonwealth can remove. [Applause.]

A little more than twenty-five years ago we find one case, — and that the only one for twenty-five years before, — the weavers' fine case (*Com.* v. *Perry*, 155 Mass. 117) dealing with a matter obviously hard to settle with justice to both sides; a matter which has been the subject of later legislation.

This, I think, Mr. Chairman, is the whole story. Does it justify the picture of the gentleman from Brookline in the fourth division? He said nothing of the great mass of social and labor legislation that our court has sustained and protected against attack, or that has passed unchallenged. And if there is wrong, if there is injustice, in the limitations of our Constitution as interpreted in these few cases I have recited, the very purpose of this Convention is to remove them.

As I listened to the gentleman from Brookline in the fourth division (Mr. Whipple), I could not help wondering, what *is* his idea of constitutional government? Is the Constitution a structure of sounding phrases, to be overturned hastily by ballot, as the Mexican or South American overturns his by arms? Is it mere legislation, distinguished from the rest

only by being bound in the front of the statute-book? Is it a scrap of paper to be torn up, after the Prussian manner, whenever it causes inconvenience to those who have the power? And as I listened I recalled the statesmanlike words of one who uttered them many years ago. He said:

> Why do we want any Constitution at all? Why are we here to make a Constitution? Sir, it is to protect the minority against the acts of the majority; otherwise we have only to pass one general act that the majority of the people shall, through their Representatives and Senators, or in any other way, make any laws they please, and be omnipotent. We want a Constitution for a check, for a safeguard, for a framework of society, which even the otherwise almost omnipotent will of the majority can in no wise transcend and pass over.

The gentleman may say: "That is hopelessly out of date. Those must be the words of some convicted Tory like Alexander Hamilton, — some suspected aristocrat like John Adams or Daniel Webster."

No, indeed! Those are the words of Benjamin F. Butler, speaking on June 23, 1853, in the Constitutional Convention of that year (Vol. II. page 149).

Does any gentleman here claim to be more of a democrat than General Butler? Yet apparently if he were alive to-day, General Butler would have to go to school to the gentleman from Brookline in the fourth division and be instructed in this modern cult of purest democracy.

Gentlemen seem apprehensive that some one may put the breath of life into the old doctrine of the social contract, — the doctrine that governments originated because people living in a state of nature came together and surrendered certain of their natural rights in exchange for governmental protection. That doctrine defied history; it is dead, and none of us would disturb its slumber.

But the trouble with those who have worried so much about the social contract is that they fail to make the proper discrimination. The doctrine that our written Constitution is a compact between all the people and every individual expresses an historical fact, a vital fact which no one can successfully deny. It is not an irrevocable compact, not a compact that the majority cannot change, but a compact that in sound morality they cannot repudiate, save after long deliberation, grave consideration, and the fullest hearing of all the individuals and minorities who are the very parties to the compact for whose benefit it primarily was intended.

The existing method of constitutional amendment insures a hearing in two legislative assemblies, or in one Convention especially called for the purpose, subject to a solemn duty to investigate the effect of any proposed change upon the rights of the humblest individual citizen, with full power to draft and phrase the proposed amendment so as to make secure the rights of every one.

What safeguards are left, Mr. Chairman, under the proposed method of constitutional amendment by the initiative?

The submission of the proposed amendment to two legislatures is a futile and empty formality. The petitioners need pay no attention whatever to any changes the Legislature may wish to make in the proposition. The petitioners can sit quietly by, unconcerned at what the Legislature may do. The Legislature, under this resolution, is only a conduit, and the mere lapse of time will cause the original

draft prepared by the petitioners to go to the people for final adoption. The petitioners, Mr. Chairman, have the Legislature nailed down, and can laugh at its struggles.

The people will have no more opportunity for study or reflection than they have now in the case of an ordinary law submitted on referendum. They probably will know nothing about the debate in the Legislature, if indeed the Legislature should indulge in idle debate where it has no power of decision.

When election day comes near the people will suddenly find the question on the ballot. There may be a little campaign, but only the same that there would be upon an ordinary law. Does not this resolution, Mr. Chairman, invite hasty, thoughtless, radical, selfish, unwise changes in our fundamental law?

The result will be substantially the same as the result of the constitutional initiative in Oregon, because the difference which is pointed out, namely, the submission to two legislatures, is, as I have said, a futile and empty formality. In Oregon we have the testimony of Professor Barnett, the holder of the chair of government in the State University of Oregon, a State official obviously not prejudiced against the institutions of his own State, the author of the leading book on the working of the initiative in Oregon. He says (pp. 182–3), quoting from the Portland Oregonian, the leading newspaper of the State:

> It is clear that so far as initiative legislation is concerned, there is practically no Constitution in Oregon. "The Constitution of Oregon is only a check or restriction on the Legislature. The people's will rises above it. . . . It is an evil of our initiative and referendum that a slender majority can on the exciting impulse of a single election now ride roughshod over all the rights of a minority, even to sweeping away any or all of the elementary constitutional safeguards which the experienced wisdom of ages has established as supposed permanent guarantees of the rights of individuals and of minorities, against sudden encroachments of majorities."

Is it not true, Mr. Chairman, that under this resolution the Constitution is reduced substantially to the level of a statute? What real difference is there?

Mr. Anderson of Brookline: I understood the gentleman from Lynn to say that the submission of a constitutional amendment to two legislatures would be a futile and foolish performance, — that the Legislature would give it no attention. I should like to ask the gentleman if he thinks a Legislature that would pay no attention to the petition of forty thousand voters for an amendment to the Constitution and would not seek to sift the merit or demerit of the proposition and to educate the people of the Commonwealth to the merit or demerit of the proposition, is a fit body to have a veto upon any kind of measure that the people want? [Applause.]

Mr. Lummus: I have not succeeded, apparently, in making my position clear to the gentleman who has just asked the question. I did not say and did not mean to say that the Legislature will pay no attention to an initiative petition. I did say and did mean to say that whatever the Legislature may do with it, whatever changes the Legislature may propose in the original draft, whatever attention, even the most careful attention, the Legislature may give to the proposition will be useless because the petitioners can laugh at the Legislature and its proposed changes and insist upon the original draft, and the Legislature has absolutely no power to make any

changes in the draft except at the will and by the consent of the initiative petitioners. [Applause.]

Mr. ANDERSON: I should like to ask, Mr. Chairman, another question: If the Legislature be a fit representative body is not the fair presumption that any suggestion of amending the Constitution will receive the most careful and deliberate attention, that if the proposed constitutional amendment needs amendment, that it will obtain amendment in the Legislature, and then be submitted to the people? In other words, is not the fair presumption if the Legislature be anything like as representative as the gentleman from Lynn argues, that it will perform its duty as a representative body, of sifting and making effective the initiative and referendum as he claims it now sifts and makes effective propositions for legislation?

Mr. LUMMUS: I agree that the Legislature doubtless would give the proposed amendment consideration. It might adopt and pass on to the people for enactment a substitute proposition. The point that I am making, which the gentleman who has questioned me does not meet or answer, is that when the Legislature has done all that, it is still open to ten citizens of the Commonwealth, the fathers of the particular initiative proposition, to decide whether that careful work of the Legislature shall be accepted by them or not. And I have not the same confidence which the gentleman may have that the initiative always will be in the hands of those who are so much more to be trusted than the Legislature. [Applause.]

Mr. CREAMER of Lynn: I should like to ask the other gentleman from Lynn in this division if the Legislature does not have its final appeal to the voters of the State? Is not that the place for it to take its appeal in case it is not satisfied with the nature of the initiative petition?

Mr. LUMMUS: It is the only appeal that the majority resolution gives it, and it puts the elected representatives of the people on precisely the same footing as any ten men who choose to get up an initiative proposition and get the signatures for it. Both, it is true, as the gentleman from Lynn suggests, have to appeal to the people; but ten men, whoever they may be, in charge of the initiative petition, have precisely the same rights and precisely the same standing under the constitutional initiative that the elected representatives of all the people have.

Mr. CREAMER: I should like to ask the gentleman from Lynn if the ten men would have naturally the same weight with the people?

Mr. LUMMUS: I suppose experience alone can determine that. The gentleman from Boston (Mr. Hale) suggests that there are those who vote against propositions submitted by the Legislature because they are submitted by the Legislature, and he so said a few minutes ago. How far that policy extends in this Commonwealth I leave to the gentleman from Lynn to say.

Mr. HART of Cambridge: May I ask the question whether it is not competent for the Legislature at all times to submit to the people a rival amendment, which would be a notice that if they will wait another year they can act on the superior amendment supported by the wisdom of the Legislature?

Mr. LUMMUS: I agree that it is possible; but the answers that I have already made suggest to the gentleman from Cambridge, I hope,

the fact that it is wholly within the discretion of the initiative petitioners to say how far the fairest and most just suggestion of change made by the Legislature shall be accepted or shall be rejected and the petition sent to the people in its original form.

Continuing his argument Thursday, August 23, Mr. Lummus said:

When my remarks were interrupted by the adjournment I had endeavored to show how few were the cases in which the courts had been compelled to hold social and labor legislation to be contrary to the provisions of our State Constitution. I had quoted from that great radical, General Benjamin F. Butler, a statesmanlike utterance as to the purpose of our Constitution to protect the rights of individuals and minorities against the power of the majority of the people. I had endeavored to point out that the criticisms which have been leveled at our minority report, in stating that our Constitution is a compact between all the people and every individual, have been founded upon a confusion of that doctrine with the ancient and exploded doctrine that all governments, even absolute monarchies, were founded upon some social contract. I had quoted from Professor Barnett, as to the effect of the Constitutional initiative in Oregon, that: "It is clear that so far as initiative legislation is concerned, there is practically no Constitution in Oregon."

Another quotation from Oregon I wish to read, this time from the opinion of the Supreme Court of Oregon in the case of *State* v. *Schluer*, 59 Oregon Reports, 18, where the Court says:

> Under the system now prevailing, a clause in the organic act appears to control only the legislative assembly, since it requires no more effort nor any greater care to amend a clause of the Constitution than it does to enact, alter or repeal a statute, — for a majority vote is required to give sanction to a bill, and no greater vote is required to amend the fundamental law.

What safeguards, Mr. Chairman, have we in the present resolution that do not exist in Oregon, that, it is contended, will prevent our Constitution from sharing the same fate that attended the Constitution in Oregon?

First, they say, the submission to two legislatures of proposed amendments by initiative. But the petition will be drafted by partizan enthusiasts, with all the narrowness and want of consideration of the rights of others that such draftsmanship usually implies. The petitioners will be convinced of the untrustworthiness of the Legislature, — that is the very justification of their initiative action, — and probably they will be convinced that they themselves more truly represent the virtue and public spirit of the Commonwealth.

The gentleman from Lynn (Mr. Creamer) suggests that the people will prefer some substitute offered by the Legislature. But can that be asserted, or can we imagine that the petitioners will accept that substitute, where the whole proceeding is based upon the vigorous assertion that the Legislature is unrepresentative? Is not the probability rather that the petitioners will insist upon the submission of their own draft rather than that of the Legislature? With ten thousand additional signatures in their pockets, in addition to the forty thousand originally required, the whole matter is within the control of the ten signers who are the fathers of the initiative petition.

Suppose the Legislature favors the general principle of the amend-

ment. It must either accept the draft made by the initiative petitioners or it must propose a substitute; and in proposing a substitute will not the Legislature be accused of trying to break the back of the proposition with "jokers?"

We in this Convention have become very familiar of late with that mode of argument, if it may be called argument, that seeks to discredit in advance all changes or amendments by denominating them "jokers."

Suppose, on the other hand, the Legislature opposes the principle of the proposed amendment. It has the option then to take no action, to let the original draft, crude and unjust and unworkable as it may be in form and substance, go to the people for final adoption, or else to draft a new form of amendment in which it does not at all believe, and submit to an even greater danger of accusation before the people that it is trying to defeat the entire proposition by "jokers."

Am I not right, Mr. Chairman, in declaring the submission to two legislatures to be a futile and empty formality, where the initiative petitioners have such a whip over the Legislature, and can submit their own draft, in their own form and accomplishing their own purposes, at their own discretion, to popular vote?

It may be suggested that the collection of signatures will arouse some popular interest in the proposition and furnish some safeguard. But we know how signatures are collected in this State, and how they are collected in Oregon, and how little they represent any real and true public opinion. Will the collection of forty thousand or fifty thousand signatures, in the manner in which they will be collected, do much to form a sound public judgment upon a matter that is coming to popular vote two years later? The proposition before us provides for fifty thousand signatures on a constitutional amendment, instead of twenty-five thousand on an ordinary law; but we are told that the signers of the petition need know very little about the matter, and will the addition of twenty-five thousand signatures give any further assurance that during the two years in which the matter will be pending there will be any real public interest in it?

It may be said that there will be debate in the Legislature. But, as I endeavored to point out yesterday, that debate doubtless will not reach the people so as to have a decisive effect in forming a sound public judgment. When the proposition comes before the people it will come with the same force, the same interest, the same impressiveness, as a referendum upon an ordinary law, and no more. The Constitution will thus be reduced to the level of a statute, the most sacred rights of individuals will be subject to the hasty vote of the majority after a brief popular campaign, the Constitution as such will be abolished, and our statement on page 5 of our minority report, that the resolution will "destroy constitutional rights," as we have known constitutional rights in the past, will certainly be proved true.

I agree, Mr. Chairman, that even now there ought to be more information in the submission of constitutional amendments to the people, but we do not need to adopt the constitutional initiative in order to provide for that.

What would happen to the minority, whatever party happened to be the minority, if such an amendment as that which we voted on yesterday, relating to State aid to sectarian and private institutions, were drafted and submitted to the people by the enthusiastic adherents

of one side? Would the rights and feelings of others be fully respected? Suppose the constitutional initiative had been in force in the 50's, when the Know Nothing wave was at its height, would not religious liberty have been swept away? And who will say that human passions and prejudices are now tamed and forever subdued? Massachusetts is a State particularly liable to religious controversies. Do we wish to invite them by the adoption of the constitutional initiative?

What protection, Mr. Chairman, have the minority? They cannot even get a hearing before any body having any power to adjust their rights or to concede their claims. The heavy hand of the ten petitioners is over all. The people can only say Yes or No to a proposition drafted by partizan enthusiasts.

The resolution omits even the restriction advocated by Professor Holcombe of Harvard, himself a member of the Union for a Progressive Constitution, in his recent book on "State Government." Professor Holcombe insists that the constitutional initiative should not be used to broaden and loosen the operation of the initiative itself. He says (p. 442):

> It is natural for all persons, voters as well as those in more conspicuous places of authority, to strive for greater power. The electorate, if permitted to define its own powers, cannot be expected to resist the temptation unduly to enlarge them. . . . The electorate is not the people, and under our system of government it is just as improper for the electorate directly to define its own powers as for the Legislature or the courts to define their own powers.

What answer have the majority to our proposition that constitutional rights are practically destroyed by their resolution, that the Constitution is reduced to the level of ordinary legislation, and that it amounts to much the same thing as having no Constitution at all?

The majority have been very silent on this question. They asked and received permission to print their views, but we still are waiting for them. Their silence is profound. But a champion of their resolution has arisen in a pamphlet entitled: "A Reply to the Report of the Minority," signed "Union for a Progressive Constitution, Committee on Publicity, Granville S. MacFarland, Chairman."

What is the answer given in this pamphlet to our contention that this resolution tends to destroy the constitutional rights of individuals, and to subject them to the hasty action of majorities? The answer is frank and bold and startling. It is, in substance, that there are no such rights that the majority are bound to respect. The Declaration of Rights, according to the doctrine of the pamphlet, is misnamed. It should be entitled: "A List of the Privileges which the Inhabitants of the Commonwealth of Massachusetts hope to be permitted to enjoy until the Next Election." [Applause.]

The pamphlet says:

> The Constitution is not intended to limit power of the people. . . It is not true, moreover, that the fathers were unwilling to trust themselves to act rightly by a mere majority vote. . . . The Constitution is not a limitation upon the power of the people. It is a limitation upon the power of the people's representatives. . . . To say that they feared or distrusted themselves is absurd. . . . The only limitation of power which the people of Massachusetts have ever imposed upon themselves is that which they delegated to the Congress of the United States.

I am glad, Mr. Chairman, to have the issue thus clearly defined. It comes between those who believe in constitutional guarantees to the individual, in constitutional rights which the majority cannot

lightly disregard, and those who do not believe in constitutional government at all, but in the right of the majority to work their will whenever they choose to vote. On the side of constitutional government, as the issue is thus defined, are to be found not only those great men in our history whose names stand for stability and conservatism, but also great radicals, as we thought them, like Benjamin F. Butler. He, in his innocence and guilelessness, never thought of distinguishing between the restrictions on the Legislature and the restrictions on the majority of the people. He had not learned the jargon of modern so-called democracy, which terms the Legislature an "elective aristocracy," and implies that it is a ruling class foreign to the people. He innocently assumed that the majority of the Legislature might represent the majority of the people, and he asserted that the Constitution was intended as a restriction on the majority in favor of the individual.

Will the members of the majority of our committee on the initiative and referendum say that General Butler was wrong and that the MacFarland Reply Pamphlet is right? Will the gentleman from Fall River (Mr. Cummings), who endeared himself so much to us all by his service as chairman of our committee, say that the MacFarland Reply Pamphlet represents his views? I think not; and I think that the same is true of the gentleman from Brookline in this division (Mr. Walker). But that is the only answer which the minority have received on this point, except that of the gentleman from Brookline in the fourth division (Mr. Whipple), who seemed to agree with the MacFarland Reply Pamphlet; for the gentleman from Boston (Mr. Hale) who spoke yesterday, when I pressed him with the question, very smoothly, and with a multitude of pleasant words, avoided committing himself on the matter.

If the MacFarland Reply Pamphlet is right, if the Constitution is not intended to limit the majority, why does the present resolution attempt to hamper and limit the power of the majority by the provisions for fifty thousand signatures and submission to two legislatures, futile though those restrictions are? Why does it not adopt the logical consequence of the doctrine, and permit the Constitution to be changed by majority vote at any election? Why, indeed, unless the gentleman from Brookline (Mr. Walker), the proponent of this resolution, in those happier days before his peregrinations led him to the paths of pure democracy [laughter], and the gentleman from Boston (Mr. Hale) as well, learned the principle of constitutional government, — a principle that, much as they may try, they cannot wholly forget. Like some stubborn, unlaid ghost, it will not down. Like conscience, that does make cowards of us all, it disturbs their hearts. Hence the pitiable compromise embodied in the majority resolution, by which the quondam friends of constitutional government solace themselves with fine theories and futile restrictions, while the enemies of constitutional government, with keener insight, obtain the practical results they seek. [Applause.]

What is this power that the majority resolution proposes to put into the hands of the first ten signers of the petition, which they say is just like making a motion?

First, it is the power of drafting. Does any one think that a little or petty power? Does not every lawyer in this Convention, when a document has to be drawn in a controverted matter, try to draw that

document himself rather than let his adversary draw it? Does not that put his adversary at a great disadvantage, and make his objections seem like quibbling and carping criticisms of the expression of a plain purpose? And yet that is a case where the adversary has the fullest power of criticism and suggestion.

Suppose we add to that power of drafting the power to refuse any suggestion of change, to insist upon every word and syllable of the original draft. Under the resolution the petitioners can do just that. Suppose we add to those two great powers a third, — the power of initiative, the power to say that this draft, so drawn and settled, shall inevitably go to the people for final adoption.

Is all this merely making a motion? Are these powers unimportant? If they are, then this Convention is unimportant, for we have no power whatever here except to draft amendments and submit them to the people. Yet three ex-Governors of Massachusetts, a former Justice of the Supreme Judicial Court, and many other distinguished men, hold seats in this Convention. Did these eminent gentlemen give so lavishly of their time and effort to come here merely to make a motion? They came here because they recognized that these powers were tremendous powers, which should be exercised by the best ability and the most loyal public spirit that this Commonwealth can furnish.

To whom does the majority resolution give these great powers as to constitutional amendments? Who under the majority resolution are made the full equals of this Convention in every respect? Any ten men in the Commonwealth, unchosen, unsworn, self-appointed, representing no one but themselves and their own interests, provided with the aid of paid canvassers they can secure the signatures of fifty thousand men, who, we are told, need know very little about the matter.

Can the people be said to have control of constitutional changes made in this manner, when they have only the power to say "Yes" or "No" to changes the form of which has been fixed and settled, not by the representatives of the people, but by private interests?

Does this scheme find any support in Article VII of the Declaration of Rights, quoted with such unction by the advocates of this resolution, — the Article, I mean, — which says that the "people alone" have power to change the frame of government? Do the people "alone" make the change, when they act under the compulsion and under the guidance, even if not under the control, of unrepresentative private individuals holding no mandate from the people?

Mr. Bodfish of Barnstable: I should like to ask the speaker if he subscribes to the sentiment of the eminent visitor this morning, when he said that the people should have the right to change their Constitution; and, if he does subscribe to those sentiments, I should like to ask him if to-day the people have any right to amend their Constitution except they get the consent of their agents, the Legislature, over whom they have no control except a possible moral obligation?

Mr. Lummus: The gentleman has asked me rather a long question. I do subscribe most heartily to the doctrine that the people have a right to change their Constitution. That is why we are here. But I insist that the majority resolution makes constitutional changes less within the control of the people than the method of change in which we now are engaged. [Applause.]

Mr. BODFISH: I do not understand that the gentleman has answered the second part of my question: If the people to-day have the power to amend their Constitution except with the consent of their agents, the Legislature, over whom they have only a moral control?

Mr. LUMMUS: I am not sure that I heard all of that question because my attention was distracted; but, if I understand it, I can repeat only what I said before: That a change coming through the elected representatives of the people, and drafted by them, either in the Legislature or in a Convention such as this, puts the power of constitutional change more fully, more securely, more justly, into the hands of the whole people than any such proposition as is contained in this majority resolution. [Applause.]

Mr. ANDERSON of Brookline: I should like to ask, in order that I may be sure that I get the full benefit of the delegate's argument, whether he regards the present method of amending the Constitution as entirely satisfactory; whether the fact that 34 per cent of the House of Representatives, in one of two Legislatures, now has a veto power on any proposed amendment, or any submission of any proposed amendment, leaves the system now provided, in his judgment, adequate for a proper expression of the people's will? And, if not, what alternative he has to suggest to the method proposed in the initiative and referendum plan? And then if he will permit, after he has answered that, I should like to ask him one further question.

Mr. LUMMUS: I am informed, although I do not know the facts, that there is to come before this Convention a proposition making a change in the present method of amending the Constitution, and what my attitude will be when that proposition comes before the Convention I cannot say in advance of the argument upon it. I do not hold a brief for the present method of amending the Constitution as contrasted with all others. I simply say that the method which is here proposed puts the amendment of the Constitution into the hands of private interests rather than into the hands of the people as a whole, and that is why I oppose this present resolution as to constitutional amendments. [Applause.]

Mr. ANDERSON: I should like now to supplement my former question by this: Is it not a matter of common knowledge, not capable of proof under the rules of evidence in court, but proved by the moral evidence upon which we base most of our political and social action, that, during practically the entire past generation there never has been a time when three or four law offices in this city have not controlled, for the purpose of a negation, at least 34 per cent of any Legislature that they undertook to control? [Applause.]

Mr. LUMMUS: Perhaps, as a countryman, I am not as familiar as the gentleman who has questioned me with the intricacies of the law business in Boston, but I may say that I never have thought the Commonwealth of Massachusetts has fallen so low as that. [Applause.] And so far as my service as a member of the committee on the Initiative and Referendum is concerned, there has been presented to our committee not the slightest evidence of any such condition, beyond the assertions of one or two gentlemen made in the manner in which the gentleman who has just questioned me has made this accusation.

All will agree, I presume, that the law-making power of the Com-

monwealth was vested by our ancestors in the General Court, where it has remained for one hundred and thirty-seven years. If there is any dissent from this proposition, I will yield while it is expressed.

Mr. HART: I beg to record my dissent from that statement, inasmuch as constitutional amendments, which are the fundamental law of this Commonwealth, have required in every case the assent of the people of the Commonwealth, and the part of the Legislature therein was incomplete without that consent.

Mr. LUMMUS: I accept the gentleman's suggestion, because although perhaps my statement was loosely phrased, I intended to refer only to the law-making power of the Legislature to pass statutes under the Constitution.

Mr. HART: May I ask the gentleman, then, how he disposes of numerous acts submitted by the Legislature of this Commonwealth which had no validity until they were accepted upon a referendum, — both general acts affecting the whole State, and local acts affecting subdivisions thereof?

Mr. LUMMUS: Those acts to which the gentleman refers were based upon peculiar and local conditions, and I understand that until a constitutional amendment was passed the constitutional validity of some of those acts was seriously open to question. But, again, I am not seeking a controversy upon those minor details. I am suggesting merely what I suppose is the undoubted fact, that the power to pass general and State wide legislation under the Constitution was vested in the General Court, and has remained there all these years. And if any one desires to dissent from that proposition I now will yield while he expresses his dissent.

Hearing no dissent from that proposition, I assume that to be conceded. In the exercise of that law-making power, the General Court considers the needs of the people, drafts and redrafts and amends the laws required for the common good, and gives them their final form. The laws then come to the Governor for the exercise of his veto power, which is the power to decide whether the laws so framed by the law-making power shall or shall not go into effect. When I speak of the power to make the law I mean the power to frame it in concrete and final form, for that is all that the Legislature can do, except in the unusual case where a law is passed over a Governor's veto.

What is the situation under the initiative plan proposed? Who exercises the law-making power now vested in the General Court, to consider the needs, draft and redraft the proposed law, and make it into final form? Who, indeed, but the ten first signers of the initiative petition?

To whom is given the veto power now vested in the Governor, of deciding whether the law thus made shall or shall not go into effect? The people are given that veto power. Do the people make the law? No, indeed, — no more than the Governor now makes the law. Is this popular law-making, or law-making by the people, as it is represented to be? No; it is law-making by ten irresponsible private citizens, subject only to popular veto. Can any one deny the truth of this? Are the people given any power of direct legislation by this resolution? No; they are given only a veto.

I do not deny that occasional emergencies may justify such private

law-making. Emergencies may justify dictatorships, confiscation of property or revolution itself. But the majority resolution makes such private law-making an easy, common, every-day thing, and tries to justify it by comparing the initiative to a motion with seconders. Is that a true comparison? Did you ever hear of an unamendable motion, — a motion to which the proposer was authorized to give final and conclusive form, and, at his own will and from his own narrow and perhaps selfish standpoint, to refuse to change even upon the strongest proof of necessity? No; the action of initiative petitioners is not a motion, — it is legislation; and if we are to adopt the principle, let us not do so blindly, in a fog, but with a clear comprehension of its meaning and results.

The initiative is not a true corollary of the referendum. In both it is true that the action of the people is by way of veto, of deciding whether a law already made shall or shall not go into effect. But under the referendum the laws have been made by the people themselves, through their elected representatives, while in the initiative the laws have been made by a perfectly irresponsible, self-appointed, private law-making body.

Mr. HART: By the courtesy of the gentleman, I should like to read some extracts from the Constitution, which I had not at hand at the moment when he issued a challenge a few minutes ago, upon the question whether it is the normal method of legislation in this Commonwealth that the Legislature should pass the laws. Let me read four brief extracts, and then ask the gentleman how he reconciles them with his doctrine that legislation by the Legislature is the ordinary, normal, legal method, and that it is not simply one of two methods:

> All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive or judicial, are their substitutes and agents, and are at all times accountable to them.

Again:

> No subsidy, charge, tax, impost or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives in the Legislature.

Again:

> The people of this Commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign and independent State.

Finally:

> The people alone have an incontestable, unalienable and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

Mr. FRENCH of Randolph: May I ask the gentleman who has last taken his seat if he would substitute for the word "people" wherever it occurs in anything that he has read, the word "majority?"

Mr. HART: I have no authority to substitute any words for the words in the Constitution.

Mr. FRENCH: I assume that the gentleman has no such authority, but I ask him if he would substitute the word "majority" for the word "people," and still contend for the proposition which he is asserting?

Mr. Hart: I trust to have the opportunity, before this debate is over, to express *in extenso* my views upon the subject of the rights of the people; but I will here say, Mr. Chairman, that there is no known method of eventually ascertaining what is the will of the Commonwealth of Massachusetts except a vote of the majority of the people participating in a legal election. [Applause.]

Mr. Lummus: My difficulty in answering the gentleman from Cambridge lies in my inability to see where the provisions that he has quoted from the Constitution bear against my proposition that the law-making power of the Commonwealth has resided hitherto under our Constitution in the Legislature. In fact, I had supposed that the present agitation resulted from objection to the continuance of that exclusive power in the Legislature, and I think that it must be agreed that the suggestion of the gentleman from Cambridge that the Legislature hitherto has not had ordinarily the exclusive law-making power of the Commonwealth vested in it is a rather novel suggestion, concerning a practice which no one up to a few years ago ever questioned or doubted. And so I am unable to answer the question of the gentleman more fully, because I cannot see in these constitutional provisions that he has quoted anything to militate against my proposition.

To resume the argument, the majority resolution provides, in substance, that wherever any ten men in the Commonwealth come together, there will be a Legislature. Have we fallen so low that any ten men in the Commonwealth are frequently more to be trusted than our elected representatives? And if it be answered that the work of the ten men must be reviewed by the people, so must the work of the Legislature, if we adopt the compulsory referendum, as we may do without coupling it with the initiative plan proposed. As I have endeavored to point out, the initiative and the referendum are founded upon different principles and have been unequally yoked together.

A few days ago a distinguished gentleman from Fitchburg (Mr. Walsh) on this floor was horrified at a proposition that, it was said, would create a hundred legislatures. The resolution under discussion would create, not a hundred, but a hundred thousand legislatures, each subject to the call of any individual in the Commonwealth.

Ever since our Commonwealth was founded the people have guarded with jealous care their exclusive right, through representatives chosen by themselves, to make their own laws. The majority of our committee, while professing to give more power to the people, in reality are proposing to strip from the people the exclusiveness of their power to make laws, — not in emergencies, but commonly, — and to transfer part of that right to private, special, perhaps selfish, interests, reducing the people's power meantime to a mere veto; and the Union for a Progressive Constitution itself, on page 32 of the MacFarland Reply Pamphlet, truly says that a veto power, — and I quote its words, — "is the smallest part of a right to amend or change anything."

As plain, ordinary citizens of the Commonwealth, perhaps we should be grateful to these gentlemen that they still are willing to leave us the poor right of veto.

Coming now to the practical use of the initiative in ordinary legislation, this time, when the Convention desires to hear discussed the majority resolution and that only, is not the appropriate time for me

to give in detail my views as to how far the initiative, with its obvious disadvantages for general or common use, may yet in emergencies correct the faults of representative government without impairing it.

I had thought to speak to-day without burdening the Convention at all with my recorded views on this matter. But the gentleman from Boston (Mr. Hale) a few days ago made certain remarks about a member of the minority keeping his views in a glass case on the mantelpiece for the benefit of his constituents, — remarks which I learn were intended to apply to me, for after adjournment the gentleman hastened to tell me so. I hope you will remember his thrust and the laughter and applause with which it was received. I assure the Convention that no views of mine will repose in any glass case. My views will be presented here in the open, in the hope that the gentleman from Boston may see the light before the darkness of the majority resolution settles round and engulfs him. [Laughter.] I enjoyed his delightful ridicule of my proposed plan as a "hand-made product." Humbly I confess the truth of that characterization. But I thank the gentleman from Boston for his clearly implied admission of what some of us have long suspected, that the resolution he advocates is a "machine-made product." [Laughter and applause.] And the only way he can aid us further is to disclose the exact location of the factory. [Laughter and applause.]

My letter, which he calls an "indiscretion," although I do not recognize it as such, expressed my "belief in an initiative and referendum plan, carefully drawn for the purpose of realizing the settled purposes and convictions of the whole people."

On the very same day that my letter was published, and in the very same edition of the Lynn newspapers, appeared a speech of mine in which I said:

> The first essential of rational popular action by the initiative is that the mass of the people should have a deep conviction on the particular matter to be acted on, and a strong desire to vote on it directly. Such a conviction and desire are not proved by a few thousand signatures secured by paid canvassers. . . . In order to make the initiative conduce to the rule of the people, rather than the rule of factions and minorities, the particular plan to be adopted must be safeguarded against that sort of abuse.

Other published speeches of mine, both earlier and later, denounced a loose form of initiative, and declared that the initiative must be limited to "occasional emergencies when the public is really aroused." My position remains to-day exactly what it was then.

Surely the gentleman from Boston will agree that the extended and slightly acid correspondence which the Union for a Progressive Constitution conducted with me, betrayed no ardor on my part to enlist under its banner or to follow its leadership.

I refer to the correspondence reported in full in the Lynn Item for January 23, March 26, March 30, March 31, and April 27 last, in which I refused utterly to become a pledged delegate and denounced all attempts to pack this Convention for or against any measure. [Applause.]

No man in Lynn who read the papers could have voted for me in the belief that I would support anything like the present resolution, which violates the very principles that I have constantly and publicly declared to be essential. No one has expressed any doubt of my

position except certain outside propagandists, who, to give them credit for common honesty, must have been as ignorant of my recorded statements as they were reckless in describing them, — propagandists who are trying to make it appear that there is no genuine remedy by way of the initiative and referendum, except that remedy which is compounded at old Dr. Progressive Union's Laboratory, with the name of the gentleman from Brookline (Mr. Walker) blown into the bottle, and duly registered as a political nostrum under the Food and Drugs Act.

But were the fact otherwise, were my position other than it always has been, had I committed an "indiscretion" in stating my views, and later found myself impressed by opposing views presented in this Convention, must I pay no attention to the debate here? Is this debate merely an exhibition of verbal pyrotechnics upon a matter already prejudged and foreclosed? I am not speaking of the right to instruct delegates, for no delegate comes here instructed; but will the gentleman from Boston suggest that he himself, with all his long expressed views, is bound to vote against his convictions if the debate here should change his convictions? Does honor compel, — nay, does honor permit, — a delegate to vote to offer to the Commonwealth he is sworn to defend that which he has come honestly to believe a poison to the body politic, merely because, with equal honesty but without the advantage of argument and reflection, he once expressed the opinion that it was a soothing remedy? And that merely to save some of his constituents from disappointment?

The initiative is presented by its responsible advocates as a check upon the Legislature, as a right in emergencies to cure possible legislative unresponsiveness to solid and settled popular convictions, — a presentation, Mr. Chairman, that is attractive to every man who believes in good government; but when we examine the instant resolution we must agree that never did the performance so far outrun the promise. We were promised the initiative as the medicine of our government, to be cautiously administered when the people as a whole believe that our government is ill; but we find that it is to be our daily bread, and that many a volunteer cook stands ready to share in the baking.

If I were to try to put my finger on the most vital defect in the proposed plan I should put it on the provision permitting the circulation of petitions and the employment of paid canvassers. Most of the practical abuses of the initiative result from that. Surely a rational use of the initiative must be founded upon a precedent and pre-existing popular interest and conviction. [Applause.] Signatures collected by canvassers do not prove any such interest or conviction, and we are told here that the signers are not expected to know much about the matter. Professor Barnett says this as to the experience in Oregon (p. 56):

> The number of signatures does not, even in the absence of fraud . . . give any true indication of public opinion in regard to the measures submitted. . . . There is much evidence for the proposition that anybody will sign any kind of a petition. Persons approached with petitions very seldom have time to read the measure, sometimes of great length, and the circulators are anxious to have the business over as soon as possible.

We must remember, Mr. Chairman, that the collection of signatures for measures will be much easier than the collection of signatures for

competing candidates, for a man may sign as many petitions for different measures as he pleases.

How will the voters obtain the information to enable them to deal intelligently with the miscellaneous mass of questions that this petition circulating will bring before them? The advocates of the resolution say that the voters' pamphlet will furnish the necessary information. Let us see what Professor Barnett says about that. He says (p. 95):

> The size of the document as well as other difficulties certainly discourage many voters and keep them from reading it at all. Probably not one person in hundreds reads the whole of the pamphlet or any considerable part of it even in a cursory manner, much less makes a thorough study of much of its contents. . . . Probably very many voters read nothing else in regard to the measures except the ballot title.

Professor Barnett adds (p. 94):

> Downright misstatements of fact in the pamphlets constitute an abuse which it seems impossible to correct.

How, then, can the voters form their opinion? Professor Barnett says again:

> By far the most influential source of information for the voters is the public press.

Yet the Union for a Progressive Constitution, in its earlier pamphlet (p. 17) says: "Newspapers do not meet the need", and the Union for a Progressive Constitution is right. Look to-morrow at the account of to-day's debate as reported in the daily papers; remember that most men read but one paper, and rely upon it for the basis of their opinions. Observe for yourself, Mr. Chairman, where in the daily press you find this debate reported fairly, impartially, without distortion, without misrepresentation, in the conscientious effort to state the facts, in the exercise of that respectful and responsible leadership that is willing to state the facts and let the reader decide. Judge for yourself, sir, how many of the hundreds of thousands of newspaper readers in this Commonwealth will have found in their favorite paper such an account of this debate, or such a discussion of this important subject, as will aid them in forming a sound and unbiased opinion, an opinion that they may justly seek to have enacted into our fundamental law.

What is the effect of the inability of the voter to obtain the facts upon which to form a real opinion? The Portland Oregonian, at first an advocate of the initiative, says:

> The truth is that the initiative and referendum have developed in Oregon into a representative system of law-making. . . . The ordinary voter pins his faith to the judgment of some society. . . . Each newspaper gives its advice and each has a large clientele that accepts its decisions. On questions like prohibition, capital punishment, or woman suffrage, the voter thinks for himself, but on the piffling laws with which theorists, schemers and some honest but misguided enthusiasts burden the ballot somebody else does the voters' thinking for them.

Twelve or thirteen years ago, the delegate from Lancaster (Mr. Parker), then the Attorney-General of this Commonwealth, was engaged in a great capital trial (*Com.* v. *Tucker*), important in itself, but doubly important because it came to involve the question whether the ancient and venerated system of trial by jury should give place in this Commonwealth to a system of trial by newspaper. We are

now confronted with the question whether we shall introduce into this Commonwealth a system of legislation by newspaper, a system by which the procuring of legislation through the initiative will be the crowning triumph of the advertising manager, excelling even a beauty contest in a campaign for increased circulation and more profitable advertising.

I can understand the advocacy of this resolution by a believer in the Jacksonian democracy of years ago, that conception of democracy that held that the public will could be determined infallibly by frequent voting, that held that the more officers, important and unimportant, to be elected, the more the people ruled, — that democracy that laid upon the electorate such a burden of voting that bossism became a political necessity. But, strangely enough, the most prominent advocates of this resolution are believers in the short ballot. Can they not see that the overburdening of the electorate is the inevitable result of their initiative plan, and that the evil results which the short ballot seeks to cure as to men will be duplicated as to measures by their own plan?

The gentleman from Brookline who presented this resolution (Mr. Walker) made much of the fact that an easy form of initiative, once adopted, never has been abandoned. Why is that? Is it not for the same reason that one finds it hard to induce the voters to adopt the short ballot, and to give up voting for a multitude of officials? Both the long ballot and the easy initiative tend to flatter us all into the belief that we are deciding matters which really are being decided for us by others.

It has been said, Mr. Chairman, though not upon this floor, that the opponents of this resolution do not trust the people. That is an ancient accusation. Rufus Choate had to meet it in his great speech in the Convention of 1853. That accusation has often been made in our history by those self-appointed advocates who loudly demand all power for the people, but who take good care while power is being handed over to the people, dexterously to slip into their own pockets the substance of that power, leaving the people to enjoy the possession of the shell. [Applause.]

Do we doubt the intelligence or capacity of the people, or do our opponents, who say they are incapable of selecting good representatives [applause], who will not trust the people with an initiative plan that requires a real showing of public interest and conviction, but who insist on putting the people constantly under the whip and spur of paid petition circulators? Let us see how the MacFarland Reply Pamphlet speaks of the voters.

On page 24 we find this assertion: "You cannot get twenty thousand signatures in this State by volunteer work." What does that mean? If it means anything, it means that the voters of Massachusetts are so indifferent, so supine, so abject in their submission to the great wrongs alleged and feared by the advocates of this resolution, that not one in forty of them will have the manhood voluntarily and freely to sign his name to lift him from his bondage. I cannot believe that to be true; but if it is true, then I agree that the voters ought to be put under the guardianship of some one, even of the initiative petitioners as provided in this resolution.

And on page 25 of the same MacFarland Reply Pamphlet we have

a picture of these unknown volunteer guardians who are so much more to be trusted than our elected representatives. Listen to their description: "A large number of responsible men with the resources to pay the cost and the intelligence to administer the details." Oh, what a perfect picture, Mr. Chairman, of democratic bliss [laughter and applause], the gentle sheep, herded by the faithful canvassers; and the tender shepherds, — you can almost identify them [laughter], — "responsible men with the resources to pay the cost!"

We do not doubt the intelligence or capacity of the people, but we do doubt their willingness knowingly to undertake, not for one year, but year after year, the arduous task proposed for them; to withdraw from their business or their recreation the time needed to form a sound opinion upon a multitude of complex problems; to fight year after year against pernicious doctrines persistently pressed by selfish interests, which expect with good reason that the voters ultimately will be overwhelmed by the mass of measures to which they must give their honest but I fear hasty and flagging attention. These doubts apply to all kinds and conditions of men, the rich and the poor, the learned and the unlettered, the banker as well as the bootblack. As President Wilson said in his book on Constitutional Government, — and note that he was speaking in particular of well-to-do people in cities, — and these are his words:

> In those hot centers of trade and industry where a man's business grips him like an unrelaxing hand of iron from morning to night, and lies heavily upon him even while he sleeps, few men can be said to have any opinions at all. They may bury their heads for a few minutes in the morning paper at breakfast or as they hurry to their offices, may dwell with dull attention upon the afternoon paper as they go wearily home again or drowse after dinner; but what they get out of the papers they cannot call their opinions. They are not opinions, but merely a miscellany of mental reactions never assorted, never digested, never made up into anything that can for the moment compare in reality and vitality with the energetic conceptions they put to use in their business. (Page 120).

Our doubts are founded, not upon any lack of public intelligence, but upon the limits that every honest man knows exist, beyond which his attention, his interest and his study cannot be forced. They are no more a reflection upon the intelligence of the voters than a doubt whether the head of a great business ought to stand at his factory door, ready to settle any question that anybody might choose to bring before him, would involve a reflection upon his ability and capacity to carry on the business.

I had thought to speak, Mr. Chairman, of the abuses which the frequent use of the initiative has produced in western States, — and we cannot hope that its use under this resolution would be less frequent here, — but already I have trespassed too long upon your patience. I must leave the books and other speakers to tell you of the multitude of complicated measures with which the voters have to deal, of the monstrous omnibus bills drafted by theorists and schemers, who insert some one simple and popular idea as bait for the voters, to induce them to swallow the whole; of the class, sectional and selfish legislation which an easy initiative invites; of the opportunities to circulate petitions, and then to be bought off before filing the required number of signatures; of the advantages over the ordinary citizen that are given to wealth and organization and power.

In brief, the result of an easy initiative, like that proposed in this

resolution, is that the activities of the agents of invisible government become wholesale rather than retail, while the rule of the people, instead of being brought nearer, fades farther and farther into the distance. [Applause.]

Walter H. Creamer of Lynn.

Mr. CREAMER of Lynn: I have followed with much interest the argument of my colleague from Lynn, my supposed fellow-co-worker in some form of the initiative and referendum. It is true that I have been unable to make up my mind for a long time just what form of the initiative and referendum he believes in. It always has seemed to me that it might be best described by the advice of the mother in the nursery rhyme:

> Mother, may I go out to swim?
> Yes, my dearest daughter.
> Hang your clothes on a hickory limb,
> But don't go near the water.

[Laughter and Applause.]

But seriously, his whole argument is based on what? On a serious distrust of the voting majority in the last analysis, because none of the evils that he portrays can exist without the consent of voting majorities. And let me tell him that if the time ever comes that we cannot trust voting majorities in this Commonwealth to deal equitably and fairly with minority rights, we shall need something more than a paper constitutional restriction to protect them. [Applause.] Let me tell him that he fails lamentably to understand the temper of his fellow-citizens, and he woefully misinterprets the spirit of this Commonwealth.

Gentlemen, much has been said in this whole debate about the great benefits inherent in a representative form of government, but little has been said either to prove or even to indicate that we have such a form of government in Massachusetts to-day. Its ghost may haunt this chamber, but ghosts are impalpable things. Indeed we may have the shadow of representative government, but have we got its substance? In other words, is our General Court as at present constituted really representative of the public will or sufficiently responsive to it? It is because some of us believe that it is neither of these things that we look with so much favor on the initiative and referendum, and that we are willing to consider the somewhat radical changes therein involved in order that we may get representative government.

The individual legislator, generally speaking, is not very much at fault. He is the victim, not the creator, of the conditions which surround him. The tools with which he has to work are out of date and ineffective. For, gentlemen, we have not yet learned the value of the scrap-heap for outworn political machinery as we have learned its value for similar industrial machinery. No matter how good the workman, he can do very little with tools that belong in the scrap-heap. Let me be specific. We have in our General Court to-day 280 individuals. What are their chief functions? Primarily those of so many errand boys from certain sections of Massachusetts, whose first duty is to their district if they hope to be reëlected, and that is a very human desire. The interests of the State as a whole are from very necessity secondary. Do you wonder that there is so much of this log-rolling, so called, pulling and hauling for local benefits? I only

wonder that there is so little. And to make all this worse these legislators have no accurate and effective means of knowing the public will on specific public questions. Does such a legislative authority as this make either for efficiency or equity? I do not think that any man within the sound of my voice can justly claim that it does. And yet we must have a government both equitable and efficient or we must go the way of all the unfit. That is an inexorable natural law, and we cannot escape it, for it is self-enforcing.

So much for the absolute inability of our General Court to properly represent public interests under present conditions, and, anybody to the contrary notwithstanding, the fault is neither in the legislator nor in the voter; it is in the system we compel them to make use of.

Now I want to say a few words about a more serious defect in our representative form of government, so called, and with an abounding charity, even if somewhat at the expense of clarity, I am going to call it legislative obstruction. It has to do with twenty-two Senators, not the twenty-one so valiantly and feelingly defended with so much righteous emotion the other day by my good friend and neighbor the delegate from Amherst (Mr. Churchill), who sits on my immediate left.

About the year 1909 the Boston Chamber of Commerce started an agitation, — perhaps it would be better to call it a propaganda, — for a certain tax reform requiring a constitutional amendment. By the year 1915 that reform had found such ready acceptance that it was passed by the Legislature of that year, in the House by a vote of 202 to 6, in the Senate by a vote of 35 to 2, and under our Constitution went to the next Legislature for its consideration and approval before being submitted to the people. A special commission on taxation, sitting that summer and fall of 1915, of which I had the honor to be a member, a commission composed of five Republicans, two Democrats and a Progressive, unanimously recommended to the Legislature of 1916 that this amendment be again passed for submission to the people. The Tax Commissioner of this State, who now sits in this Convention as a delegate from Marblehead, also indorsed it. What happened? It passed the Legislature of 1916 in the House by a vote of 179 to 49, but it was beaten in the State Senate by a vote of 22 to 15, and, gentlemen, fifteen out of those twenty-two Senators had voted for it in the previous Senate. What had happened in the meantime? Had any public campaign been made against this amendment? None whatever. Had a single Senator been elected to oppose it? Nothing so simple, so straightforward, or from a certain standpoint so stupid.

Mr. William S. Kinney of Boston: I should like to ask the gentleman if what had happened in the meanwhile had not been the adoption by the people of a constitutional amendment permitting an income tax law in Massachusetts, and the passage of such a law by the Legislature, and therefore there had been created a new law, untried, and an opportunity for the Legislature to await its trial and digestion by the people before continuing and passing the constitutional amendment to which he refers.

Mr. Creamer: The two amendments were not synonymous in any respect. One permitted the classification of personal property for taxation at varying rates. It permitted the classification of that kind of property invested outside of this State, and gave no relief to property

invested inside of this State. The two amendments had nothing in common. I said this amendment had been whispered to death, — persuasion I believe is a perfectly polite word. Senators had been pursuaded. Why, Mr. Chairman, I was told two weeks before it happened, by an eminent corporation attorney of this State, not a member of this Convention, that this amendment would be killed in the Senate and that I should never know how it was killed. He told the truth. This amendment was killed on the 21st day of March, 1916. Reconsideration was moved and action on that reconsideration was postponed till the following Monday. Meanwhile I interviewed some of these Senators, and I am going to tell you what they said to me as an exhibition of the superior wisdom of delegated authority. One man said: "Why, I don't know anything about taxation, Mr. Creamer. It is too deep a subject for me. But so and so asked me to vote against this amendment, and I am going to do so." Another man said: "I should like to vote for the amendment, I believe in it, but if I vote for it I will probably lose a local bill in which my district is very much interested." Another Senator said to me: "Under this amendment it might be possible to overtax the rich", and he thought they paid too much already; and another Senator said under this amendment it might be possible to overtax the poor and his heart warmed for the poor. A fifth Senator said to me: "Creamer, get wise. You are wasting your breath." [Laughter and applause.] This thing which I have somewhat feebly attempted to portray is not a pretty thing, but it was the official act of one of the component parts of our State government, of our representative government, the State Senate, the corner-stone of our dearly beloved system of checks and balances. The process was part of the social compact so deliciously described by the gentleman from Southborough (Mr. Choate) as the very palladium, — the essence of our liberties I suppose he means. God save the mark. Well, I want a little less palladium and a little more equity. This travesty on representative government made me profoundly sick [laughter and applause] as it did my neighbor on my left, the only difference being that when I recovered from my nausea I had become a convert to the initiative and referendum.

Mr. William S. Kinney of Boston: I understood the tenor of the gentleman's argument to lay the burden for the rejection of this amendment at the hands of the Legislature entirely upon the personal whim of certain members of the Senate. I want to ask the gentleman to state to you, in all fairness, whether or not it is not true that some few years previous to 1916 this same amendment to which he refers had been passed by both branches of the Legislature, and that when it then was in its second year the real estate interests of Massachusetts, ranging all the way from the little farm and the little homestead up to the large real estate holdings, came to this State House, with their representatives by the thousand, and said that the real estate of Massachusetts could not bear the burden of taxation which might be imposed if this constitutional amendment were adopted; and if the same interests, the real estate interests of Massachusetts, did not again rally in 1916 and come to the Senate and say to the Senate that the real estate of Massachusetts could not bear the burden, and that the amendment that had been passed and approved by the people under which the income tax law was framed would meet all necessary

requirements? And therefore, Mr. Chairman, is it not fair to say that the burden of defeating this amendment was not the personal whim of Senators but in the interest of Massachusetts real estate holders.

Mr. CREAMER: All I can say in answer to that is this: That if the real estate interests approached the State Senate in the spring of 1916 in the fashion which the gentleman from Boston describes, they must have done so very quietly, for nobody else knew anything about it. [Applause.] If I may be a little personal I will say that 90 per cent of my income is derived from real estate, and I am not afraid of the amendment. I do not recognize the right of any half a dozen real estate men to speak for me or for other real estate owners in this State, simply because they are the officials of some real estate association.

Now, Mr. Chairman, it is not my contention that any one remedy will cure the evils that I have portrayed, but the initiative and referendum are at least a partial remedy. They provide an unquestionable test of the wishes of voting majorities in this Commonwealth, and you must have faith in and encourage such majorities or our form of government is a failure. Either have that faith, or an autocracy at some time will be inevitable. Any middle course spells continued inefficiency, with great possibilities for corruption, and this is not the time for either. Instead of that, it is the time to set our house in order. The world is in flames because of popular rights disregarded, is it not? What better insurance policy can you have than frequent appeals to the popular will? What better safety-valve for the pent up emotions and desires of humanity than that afforded by the initiative and referendum? Or do some gentlemen here prefer to sit on that safety-valve and await the inevitable consequence? It seems to me that it is vital that we get our electorate to consider public questions more and the petty political ambitions of individuals less. Otherwise our elections will degenerate more and more into scrambles for power and the spoils of office.

What are some of the arguments used by our friends the enemy against the initiative and referendum? They seem to me either specious or trivial, or Tory arguments that might have fallen with much better grace from the lips of the so-called Loyalists of Revolutionary days than from those of patriots either then or now. [Applause.] Remember that those Loyalists were the so-called conservatives of their day. Some present day Tories advance the purely Prussian argument that the people ought to be protected against, — what? Against themselves, that otherwise they might make mistakes. Well, what of it? They have a right to make mistakes. I know of no better way of learning, either for individuals or communities, than the making of mistakes. Those who never make any mistakes never do anything else. [Laughter and applause.] Others advance the argument that the people are too lazy or too uninterested to properly inform themselves on public questions. If that were true, it would be a sad and a severe commentary on our public system of education, — even our collegiate system, — and on our college presidents; but it is not true. The initiative and referendum in any event should cause a greater interest to be taken in public questions, because by means of them more concrete results can be obtained by the voters. No longer would they have to vote in the air. Still others advance the argument

solemnly and sapiently and in a rather silly manner, in my vision, that voters who cannot be trusted to elect proper agents cannot pass on public questions themselves intelligently. Is there a business man here who does not know that it is hard to select agents to do what he could do himself? How much harder to select those agents when the selection is complicated with party prejudices, personal popularity and local situations?

Why, gentlemen, there is but one real argument against the initiative and referendum, and that is the possible danger to minority rights. No man here will go further than I will go in the protection of minority rights; but I submit to the intelligence of this committee that minority rights are in much greater danger from a majority suppressed or repressed, which believes itself beguiled and defrauded, than from a majority intrusted with real power. Responsibility is best for us all. Authority brings responsibility. Not to have faith that it would do so in this case is to mentally indict the people who sent us here, and to impeach the judgment of our constituents in so doing, — possibly a justifiable impeachment in some cases, but who is willing to admit it?

And now, in conclusion, why not be really conservative, and wisely radical? Why not build our government on the broad, the secure and the strong foundation of the direct consent of the governed? We are engaged in a great world war for the avowed purpose of making the world safe for Democracy. Safe against what? Against voting majorities? Oh, no, safe against powerful minorities. Why not do our bit in Massachusetts to make this State safe against powerful minorities by clothing majorities, voting majorities, if you please, with real power? [Applause.]

Continuing his argument after the noon recess Mr. Creamer said:

I should like to occupy two or three minutes more in finishing the argument I began this forenoon.

I simply want to take up briefly the argument of my able friend from Lynn (Mr. Lummus) in regard to the great powers vested by this majority report in ten men. It seems to me that he vastly overestimates those powers and vastly under-estimates any powers that might be possessed by and in the hands of the Legislature to guard against any evils that might grow out of the authority vested in ten petitioners. I have not brought myself to believe that the Legislature of this State ever had so little standing in the community as not to be able to get a hearing before the people of this State in opposition to a petition of ten private citizens. I would call the attention of this committee to this fact, that any amendment, either under the proposed process or under the present process, has to go before the people of this Commonwealth for final decision, and that if trivial amendments, unfair amendments or improper amendments are petitioned for by ten people it is a very sad impeachment of the voters of this State to think that such amendments would receive consideration at their hands and no consideration be given to a legislative amendment submitted by the Legislature. The authority of the ten men is really little in the last analysis. The final authority, — and I cannot lay too much stress upon this point, — the final authority is in the people of the Commonwealth, who have the privilege of voting.

Charles L. Underhill of Somerville.

Mr. Underhill of Somerville: I have listened to the debate on this subject, — the academic debate, — with a good deal of pleasure and profit to myself, but with rising indignation at the creeping in from time to time of innuendo, insinuation and direct attack upon the Massachusetts Legislature and upon Massachusetts indirectly through that means. Perhaps, sir, no defence is necessary of the Legislature of Massachusetts. Perhaps I am not the one best qualified to defend it if it needs defence. But on the other hand, I may be as well qualified as any member of this Convention because of my association with the Legislature over a period of many years.

There are but three men in this body whose records in the House exceed or equal my own: The gentleman from Brookline (Mr. Walker), the gentleman from Waltham (Mr. Luce), and the gentleman from Boston (Mr. Lomasney). Those three men are representative men who have been sent here year after year by the people who trusted them. Those three men represent the safety of republican government. Why? The first gentleman I mentioned came from a district of wealthy men and wealthy estates. During his service, although I do not claim he neglected any other class, he naturally represented their views and represented them on the floor of the House of Representatives. My mentor and friend (Mr. Luce), who taught me so much when I first came to the House, has given freely of his time representing a large body of unorganized people of the Commonwealth who made no mistake in trusting their affairs to his hands. The gentleman from Boston (Mr. Lomasney) has a different environment from either and in spite of the criticisms, in spite of the personal attacks which have been made in the press during his public career, I maintain that no man who ever sat in the Legislature represented more honestly or more fairly the views of his *constituents* than the gentleman from Boston in the third division (Mr. Lomasney). [Applause.] It is through differences of opinion expressed by men in debate in the Legislature that we get the kind of government Massachusetts has had for the past twenty years at least. I will not go beyond that period, for I am not familiar with legislative affairs previous to that time, nor with the men who composed the Legislature.

The gentleman who introduced this measure (Mr. Walker) has been a warm friend of mine. I have followed his political fortunes through many windings, and when I found at last I had to seek relief, instead of adopting the harsher method of osteopathy, as did my friend from Mansfield (Mr. Barnes) who spoke earlier in the session, I turned to Christian Science; and found their faith was that everything was good and error existed in mind only. And so I have retained my friendship and my admiration for the gentleman, although he has forsaken the God of his fathers and turned to false gods. During his service in the Legislature he was looked upon as possibly not an ultra-conservative, but a conservative, and in support of that statement I will read something he wrote soon after his retirement from the Legislature. This was in June, 1912:

> The Republicans of Massachusetts are truly progressive. Under the control of the Republican party Massachusetts has already adopted the direct primary system. She was the first State in the Union to ratify the constitutional amendment which

provides for direct election of United States Senators. I believe that Republicans generally are ready to accept the direct nomination of United States Senators and to place upon the statute-books an effective corrupt practice act. With the adoption of these measures the people will have secured the freest possible hand in the selection of their representatives, and will have established that direct responsibility which is so essential to true democracy.

We have already accomplished much in Massachusetts. Much more can be accomplished in the direction of sane progressive legislation, if Republicans stand together.

Massachusetts, however, must stand firmly for representative government under constitutional restraint and for the independence of her judiciary.

The expression of the deliberate will of the people in law is a fundamental principle of democracy. Yet no government can endure which is founded on the changing will of the majority alone.

It must also be founded on right and justice and on a due respect for the rights and the liberties of the individual. To this end constitutional limitations are established and must be upheld by an independent judiciary. Massachusetts still believes in the Anglo-Saxon freedom of the individual.

[Signed] JOSEPH WALKER.

[Applause.]

One other article, a part of which I will read, is from an editorial published in the Boston Herald about the same time this letter appeared, and reads as follows:

Not every man holding public office by the suffrage of the people has the courage to discuss the question of legislative inefficiency and to relate cause and effect as candidly as did Speaker Walker in his address before the Intercolonial Club this week.

He declared (these are his own words):

Massachusetts is entitled to demand from every legislator that he act on his own convictions and not yield to every outburst of public opinion.

Now, sir, the gentlemen who have been attacking the Legislature of the Commonwealth of Massachusetts have perhaps been influenced in their attitude on this particular proposition by the fact, — and I believe this obtains with regard to every man who thus far has attacked the Legislature, — that at one time or other he has been a candidate to represent the people of this Commonwealth in some capacity or other and has not convinced the people he was the man they wanted for their representative. [Laughter.] And so, sir, I challenge those men, either at the present time or when I have concluded, to name one single solitary piece of legislation which has been asked for by the people, — and when I say the people I mean any considerable majority of the people, — that has not been granted them in the last few years. That is, legislation that had a public demand back of it. For, let me tell you, the men of the Legislature are human and they have their ears to the ground and they notice the difference between popular approval and the cry of the few who make a lot of noise, but the presentation to the Legislature or to me as an individual of a lot of names secured at five or ten cents apiece is no indication of a *popular* desire for legislation. [Applause.]

Mr. MORRILL of Haverhill: I will take time to mention just one measure, one which has been approved in every district where the question of instructing the legislators has appeared upon the ballot and by a ratio of from two to one up to five to one. That is the initiative and referendum. [Applause.]

Mr. UNDERHILL: I particularly specified any *popular* measure. I heard of the initiative and referendum fifteen years ago, when it was introduced into the Legislature by the colleague of the gentleman from

Haverhill, Mr. James F. Carey, a prominent Socialist. [Applause.] And, sir, he came before the Legislature and asked for the initiative and referendum in behalf of that party.

Mr. CREAMER of Lynn: I should like to ask the member from Somerville how he knows that there has been no popular demand for the initiative and referendum? If my memory serves me right the initiative and referendum has had a majority in the Legislature a good many times in the last ten or fifteen years in the lower House, but because of the requirement of a two-thirds vote it has gone no farther. And I should like to say to him that the reason we want the initiative and referendum is because at present there is no specific means by which the legislators can know what the people want. [Applause.]

Mr. BROWN of Brockton: I should like to ask the gentleman from Somerville if that is any more ridiculous than the building of the Hampden Railroad by this Legislature. [Laughter and applause.]

Mr. UNDERHILL: The Legislature of this State did not build the Hampden Railroad and I do not believe anybody believes it unless the gentleman from Brockton does. [Applause.] The presentation to the Legislature or to me as an individual of a lot of names secured at five or ten cents apiece is no indication of a *popular* desire for legislation. [Applause.]

Now, abler men than I have addressed the Convention along academic lines of discussion of this question. But I am reminded of an incident of my youth when I was visiting in the city of Worcester. A joint debate was arranged between the Hon. George Fred Williams, who was one of the original advocates of the initiative and referendum, and the Hon. Joseph Walker, the "Gray Eagle of the Quinsigamond," the father of our member. The Honorable George Fred with his usual fluency got up before that audience and he spread it all over and into the atmosphere. At the close of his remarks his opponent, without waiting to be introduced by the presiding officer, jumped to the front of the platform and exclaimed: "Working-men of Worcester, do you want rhetoric or do you want bread?" And the working-men of Worcester showed conclusively by re-electing him that they wanted bread rather than rhetoric. [Applause.]

And so, sir, from memory, I wish to present some of the measures which have been passed by the Legislature during the past few years. Massachusetts was the first State to provide free schools, the first to provide free text-books for her pupils, the first to build great asylums for the reception of her insane, the first to build great sanitaria for her consumptives, the first to build great public parks and playgrounds, the first to stretch from one border to the other great public highways, the first to pass a corporation law, the first to regulate her public service corporations, the first to say to the employers of women: "You must so employ those women that they may fulfill their duties as mothers and wives;" and the first to say to the employers of children: "They are to become our future citizens and the safety of the Republic is dependent upon them, so their protection must be our first consideration."

Massachusetts was the first State to provide effective birth registration. Her health laws and pure food laws antedated by several years the national health and pure food laws.

She established the first probation system for the unfortunate.

She was one of the first States to pass a workmen's compensation law.

I will place these under different headings, to designate how they stand in my mind.

Social Legislation.

Massachusetts was the first State in prison reform;
The first to establish a board of charities;
The first to establish a probation system;
The first in health laws;
The first to provide sanitaria for tuberculosis;
The first to provide pure food laws for the protection of her people;
The first State, I believe, to pass a bar and bottle bill;
One of the first to establish savings bank insurance.

Humanitarian and Educational Legislation.

Under this heading I have placed:
The first State to provide free schools;
The first to provide free text-books;
The first to provide asylums for the insane;
The first to provide public parks, playgrounds and highways.

Labor Legislation.

Massachusetts has been the first to pension her employees;

The first, or among the first, to provide a mothers' pension or a mothers' aid bill;

A minimum wage law for women;

A maternity law.

Massachusetts was one of the first, if not the first State, to establish an eight-hour day for her employees; and my mind goes back to the time, sir, when the presiding officer of this Convention, ex-Governor Bates, who sat in the office over there and vetoed the first bill on the ground that it was class legislation and unconstitutional, was defeated for reëlection the next year and one of the best men Massachusetts ever had went down to defeat on a principle. [Applause.] I would rather stand with him in defeat on a principle than accede to a popular public demand which is not justified by the facts.

Another measure, — and here I wish the labor men of this Convention would listen carefully. Massachusetts has a one-day-in-seven rest law for the employees of this State and those working within her borders. Such a law was defeated by thirty-three thousand votes in California on an initiative and referendum petition, and in Oregon the Sunday closing law was repealed in like manner.

Massachusetts has the full train crew law, and I have been credited by some with being responsible for that piece of legislation. That law, sir, was defeated in the State of Missouri on an initiative and referendum petition. It was not only a labor proposition but a humanitarian measure, protecting limbs and lives, and yet a majority of the voters in the State of Missouri said that it was not a fair and equitable law and turned it down by a large majority.

Our child labor laws are recognized all over this country as the very best child labor laws not only in this country but in the world.

The fifty-four hour bill for women, urged by me and passed during my service in the Legislature, brought about a strike in Lawrence, created a great deal of disturbance, but has been copied since by many other States.

Corporation Legislation.

Massachusetts was the first State to pass a bill for the registration of counsel for corporations;

One of the first to establish a stock transfer tax;

One of the first to establish the income tax.

When I hear a man talk as one member did the other day and say something after this fashion: "There is a popular belief that the Legislature has yielded to the predatory interests and betrayed the interest of the people. This belief is not confined to the poor; men of education and influence join in the apprehension of danger in legislative partiality. Is the plutocrat the only one to have his right to life, liberty and property?" My answer is that if Wall Street or State Street could have killed the income tax or the stock transfer tax they would have done so. If Wall Street or State Street could have killed a lot of this legislation which I have brought to your attention they would have done so. They were unable to do so, — why? Because the representatives of the people in the Massachusetts Legislature heard the demand, saw the necessity and stood up like men and voted for the proposition. There may have been evil influences at work; there may be in a large body of men like the Massachusetts Legislature, and there may be even in this Convention, men who are not honest, men who are not upright, men who are corrupt; but, sir, the only time I ever saw during my service in the Legislature any indication of that was when the "Bar and Bottle Bill" was up for its final vote; then the corridors outside these doors were filled with men who had in their hands rolls of money, and without any effort to conceal it were offering all kinds of bribes to members to stay away, to change their votes, to do anything to defeat the bill, and nothing was said about it. Why? Because those men were poor, deluded men who made their living through the sale of intoxicants and got their ideas from the yellow press and the traducers of the Massachusetts Legislature that the only way to get legislation was through the use of money. Not a vote was changed. But those men had instilled into their minds through false channels the idea that the Legislature was corrupt, and because of their ignorance it was considered better not to notice the incident than to bring them before the bar of justice.

Now, sir, with regard to corporations, I want to call your attention to this fact: Massachusetts, years ago, established a law for the control of her corporations and the Legislature has very little to do with the great public service corporations of this State. We have a Public Service Commission; we have a Gas and Electric Light Commission, and every one of our public service corporations is obliged to go to one or the other of those commissions to receive permission to issue stock and the commission places the price at which it shall be issued. The same thing prevails with regard to bonds and the same provision prevails with regard to the raising or the lowering of their prices. And so, sir, this talk we hear about the corporations influencing the Legislature of Massachusetts has little or nothing back of it, because the Legislature

has little or nothing to do with their privileges, restrictions or control.

Whence *does* the trouble come? It has come not because of the lack of laws but because the laws we had were violated; violated by the Boston and Maine Railroad, the New York, New Haven and Hartford Railroad Company and, perhaps, by other corporations. But the violation of the law was not because of the Legislature nor through the fault of the Legislature.

I want to impress upon your minds that these are facts. I will agree with every one who has spoken here on the opposite side of this question that there are a lot of measures that do not get through the Legislature. There is a vast difference between passing a law for the benefit of the people of this Commonwealth and passing a law so those on the outside looking in may get on the inside and look out.

But to give every one an equal chance before the people, the Legislature has passed:

A direct nomination bill;

A corrupt practice act;

The popular direct primary;

And two years ago submitted to the people woman suffrage, — which was supposed to be popular, but was defeated by a vote of two to one and only two small towns in the Commonwealth registered their approval of this measure.

When the gentleman from Brookline (Mr. Walker), retired from the Legislature after his long experience there, he made a speech before that body which was very commendatory of the Legislature and its work. I have heard him over and over again praise the work of the Legislature in which he had a part and in which he did not have a part. But, sir, after several years of honorable legislative service, succeeded by several years of disappointing political defeat, he asks for this change.

And now I come to drawing my distinction — I have here the platform of the Progressive party and its candidate for Governor, which says:

> We repeat our pledge to establish the rights of the people on the sure basis of the initiative, the referendum, the recall, the direct primary, and adequate corrupt practices act. *We denounce the present system of party enrollment and demand its repeal.*

A former Governor of the Commonwealth who sits in this Convention (Mr. Walsh of Fitchburg) appropriated the thunder of the Progressive party, and made his campaign on the issue of the abolition of party enrollment in this State, and he was elected on that issue. The Legislature, hearing the voice of the people, submitted a referendum: "Shall party enrollment be abolished?", and the people in their wisdom accepted the provisions of that act. And, sir, before one year had elapsed the first God-given piece of legislation ever enacted in Massachusetts had to be repealed by the Legislature because of fraud and corruption committed under it. [Applause.] Is there any reason to suppose the initiative and referendum may not be just as dangerous as the abolition of party enrollment?

It is not a question of public opinion that should concern the members of this Convention. That is the last thing which should be in

their minds. It is a question of public interest that should influence every man in his vote. Public opinion is a Will-o'-the-wisp. It is here to-day and it is there to-morrow and you never know where it is going to light; the public interest is always present and the public interest is the one thing we should consider in this debate, and in our votes.

Nearly every one of those who has spoken on this question before has been careful how he handled the people and their ability to carry on direct legislation. I may not be as discreet as the others, but I would present to you facts which prove that the people are not always right, and that they are as prone to make mistakes as the Legislature is prone to make mistakes at times. Public opinion made Hobson one of the greatest heroes this country ever knew, and he deserved it. He sailed into that hell of shot and shell at Santiago and came out a hero. He remained a hero until some sentimental, foolish girl kissed him in public. [Laughter.] What did it do? Ridicule through the public press made that man a private citizen when he was the first man in Congress to prophesy what is taking place to-day and to urge the United States to put itself in a position of preparedness to meet what has come. But, sir, because of ridicule public opinion discredited him and public opinion almost ruined the man's life.

It did ruin the life of Dewey. He was a great hero. When he came home from Manila he might have had any office in the gift of the people. Public opinion was so strong that they would have elected him President, King or Emperor. Dewey was presented a house by the grateful public. He had a new wife, and to meet the requirements of the law transferred the house to the new wife in order that it might go (although he did not explain it at the time) into the hands of his son and heir. What happened? Public opinion condemned him and public opinion ruined the remaining years of his life.

I could go through recent history and mention among others the name of Roosevelt. You know what public opinion has done for him and to him. But I want to call to your attention one result of public opinion which occurred in Massachusetts, down in the little old town of Salem. Public opinion and human nature were the same then as they are now; and the same thing might prevail in a different way to-day that prevailed at that time. It was the trial of the witches, so called, and it was distinctly a popular court that tried them; and it was controlled absolutely by popular will. Not one of the judges was a lawyer; two of the judges were clergymen, two were physicians and three were merchants. The common law was thrown aside, rules of evidence were ignored and judges and juries were left untrammeled by any quibble of the law to follow their own feelings and the popular will.

Washburn, in his "Judicial History of Massachusetts," said:

> The trials were but a form of executing popular vengeance. Juries were intimidated by the frowns and persuasions of the court, and by the outbreakings of the multitude that crowded the place of trial, to render verdicts against their own consciences and judgment.

And he cites one case which is familiar to all of the readers of history, that of Rebecca Nurse, who was acquitted by the jury in the first place, but because of the outcry from the public in and surrounding the court they reversed their decision and she was executed. That occurred in Massachusetts not many years ago.

Go back to the bloodshed, the unnecessary bloodshed of the French

Revolution. Yes, follow me, if you will, through the pages of history down to that great, great tragedy of Calvary; when the political judge Pontius Pilate said to the people of his day: "Whom will ye have released unto you, Barrabas the robber or the meek and lowly Jesus?" With one voice they cried: "Release unto us Barrabas; crucify Christ." And so the people of that day made a mistake which the ages have condemned. And the people of to-day are as likely and as liable to error.

There never has been a time when the majority of the people, when given the power, have not been more cruel, more arbitrary and have given less consideration to the minority than any King or Emperor or potentate that ever lived.

Mr. KNOTTS of Somerville: I should just like to ask my colleague from Somerville what Pilate, who was a representative of the government, did to Jesus?

Mr. UNDERHILL: I did not get the question, Mr. Chairman.

Mr. KNOTTS: The question is, since Pilate represented the government, — conservatism, — what did Pilate do to Jesus when he appeared before him? [Applause.]

Mr. UNDERHILL: I know I have not the familiarity with the Bible that my colleague the reverend gentleman from Somerville has; but my religious teachings, sir, were that Pontius Pilate released unto the people at their demand Barrabas and delivered up Christ for crucifixion. Those were my teachings; they may be wrong, but they were the teachings of reverend gentlemen like himself.

Mr. KNOTTS: I agree heartily with the gentleman, but in that case if the people were weak, Pilate, who should have been strong and performed his duty, was just as weak as the people.

Mr. UNDERHILL: Mr. Chairman, I agree absolutely with the gentleman and perhaps I have not the ability to impress upon this Convention the position I take. I say that it is not public opinion but public interest that should sway us, and it was not duty but public opinion that swayed Pilate. [Applause.]

I want to present a few more facts. I will show you, — some of you have seen it, some have not, — the "short ballot" they had in Oregon in 1912. [Exhibiting a paper.] This is a copy of the "short ballot" they had at that election. The upper half is filled with the names of candidates for office and in the lower half, sir, there are 37 initiative and referendum petitions for the people to vote upon. Six of these were referred to the people by the Legislature; and thirty-one were upon the initiative petition. Out of these 37 matters there were 12 that had no arguments at all printed in this book [holding up a book] which antedated the election and the ballot, this book consisting of 261 finely printed pages, a copy of which was sent to each voter. This is what our friends the initiative and referendum people want us to do, — to send to all of the voters pamphlets or books like this, informing the people how they ought to vote on great questions. But, sir, in that volume of 261 pages, of these 37 measures, 12 had no arguments at all, *no* arguments, — submitted to the people without an argument in that book. Six had arguments on only one side of the question; the other side was left absolutely without argument, and the balance had arguments.

I will read just one or two of the questions submitted to the people. This one was submitted on the initiative and referendum:

For an amendment of Article IV of the Constitution of Oregon, abolishing the State Senate; providing none but registered voters be counted on initiative or referendum petitions; increasing State and municipal referendum powers; House of Representatives to consist of 60 elective members, and the Governor and unsuccessful party candidates for Governor to be ex-officio members; Governor to introduce all appropriation bills, Legislature not to increase the amounts thereof; four year terms; annual sessions; proportional election of members; proxy system of voting on bills, and those introduced after 20 days to go to the next session; control and revocation of franchises. Vote Yes or No.

[Laughter.]

Mr. Sanford Bates of Boston: I want to ask the gentleman if it would increase his respect for the people of Oregon if he knew they rejected that amendment by a vote of 40,163? [Applause.]

Mr. Underhill: Why, Mr. Chairman, I should have no disrespect for the people of Oregon, whether they rejected it or whether they accepted it. The thing in my mind which is ridiculous is that anything of this character could possibly be submitted to the people for their time and their consideration.

Here is one other matter, and this may interest the gentleman from Brockton (Mr. Brown):

A bill for an Act prohibiting boycotting or picketing any industry, workshop, store, place of business or factory or any lawful business or enterprise and prohibiting, enticing, persuading or attempting to persuade or induce any persons working therein from continuing such employment and providing a penalty for violations of the Act.

When I tell the gentleman that that bill, known as the "Peaceful Picketing Bill", in Massachusetts, was defeated by only a few hundred votes in Oregon on an initiative and referendum petition, perhaps he will see that it is a two-edged sword and cuts both ways. I believe, sincerely believe, in course of time labor, — which has had during all my experience on the hill here the most efficient, the strongest and most successful lobby in the Legislature, when labor has secured from that body time after time its demands, through its organization, sometimes, rather than through its arguments, — organized labor will not be as safe under the initiative and referendum as it is under our present form of representative government. Another body of people are dissatisfied and uneasy. Another class of people are discouraged with conditions. There are the people with fixed salaries or income who are trying to make homes, there are the people who are trying to get repairs done to their little property which they are working hard to save, and it makes them pretty sore when they have to pay six dollars and more a day for mechanics to work on that place who do not work but five days a week and sometimes will not work that. It is making the people sore who are doctors and lawyers and teachers, those people who are salesmen and clerks and bookkeepers, those people who are little tradesmen and storekeepers and small manufacturers, those people who are the medium class, if you please, the middle class of the people of this Commonwealth who, because of lack of wealth or organization, are being ground between capital on the one hand and labor on the other. [Applause.]

Mr. Brown: I should like to ask the gentleman from Somerville if he has not made a powerful argument for the initiative and referendum

in order that the great lion of labor may be chained by the people. [Applause.]

Mr. Underhill: Mr. Chairman, I would chain neither the lion Labor nor the lion Capital. Rather would I prevent the sacrifice to either of the defenceless lamb generally called the common people. I am a man of the people. There is not a working man in this Convention who has worked any harder than I. I started at a very early age, without even a full grammar school education to make my way in this Commonwealth of Massachusetts. I surprised some of you members the other day when I stated that I was a loyal son of Virginia. Well, sir, I do owe that State my birth, but I owe everything else I have in this world to Massachusetts. She took me in at an early age, she mothered me, she nurtured me at her breast. She has given me all the opportunities she gave any one of her own children. And, sir, all I ask is that equality, which she gave me then, for my children who are to come after me. I had nothing but ambition to start me along; I had nothing but ambition to carry me when I did get started. But, sir, Massachusetts by her equitable laws, by her protection of the weak from the strong, by her protection of the minority from the will of the majority, has made it possible for me and for thousands of others like me to make a home in this grand old State. [Applause and cheers.]

Mr. Chairman, I arose in defence of the Massachusetts Legislature. I have been a member of that body for many years. I am proud of it and I am proud of the State. I am proud of the work both have done; and I am proud of the fact that there is not a State in this American Union to-day that has not copied from her statute-books some beneficent law which was placed there by our Legislature. It ill becomes any member of this body to cast a sneer or a slur at the Massachusetts Legislature, for when he does so he besmirches the white flag of Massachusetts itself. And I submit to you, sir, that in spite of the heat of argument which I may have shown, in spite of the fact that I may have been a little hard on my friends, — not former friends, but present friends, — in spite of the fact that perhaps I have not had a complete grasp of the situation, my only excuse is that devotion to Massachusetts has the first place in my heart. Massachusetts has been a mighty good State to me. It has been a mighty fair and honest government that I have lived under in this State, and, sir, it is the fear as to what a majority under passion, under prejudice, under the leadership of a demagogue may do with the possibilities of this resolution that moves me to oppose it with all the strength of my being. [Applause.] I am not talking for labor. They are able to take care of themselves; they always have been and I pray God they always will be. I am not talking for capital; they have plenty of it, to look out for themselves. They have money; they can circulate petitions, they can advertise in the papers and they can protect their interests. I am not talking for corporations, although I believe the business interests of this State have helped to make Massachusetts what it is. But, sir, I do hold a brief for the great body of the people. They may be in the majority, sir, but without organization, without capital, without wealth, they are in grave danger. And I tell you, gentlemen, you will make a serious mistake if you change our form of representative government for this kind of law, unnecessary in Massachusetts, unsuccessful in other States,

which you know well enough will bring in the future great troubles and great trials and great injustice. [Applause.]

Mr. WILLETT: Yesterday, I questioned the statement of the gentleman from Boston (Mr. Hale) in regard to the average rate of wages paid in the Commonwealth, which I understood him to say was the present rate of wages. I find that the statistics he quoted were for 1915 and that they were correct as given in the statistics of manufactures in the State. I should like to add to those statistics, if I may, that in 1907 the average rate of wages paid to every worker in the Commonwealth of Massachusetts was $512; that in 1911 the average rate of wages paid to every worker in Massachusetts was $532; that in 1915 the average rate of wages paid to every worker in Massachusetts was $580.

Mr. ANDERSON of Brookline: I should like to ask the gentleman from Norwood (Mr. Willett) if he will supplement the figures which he just gave of increase of wages by the accepted figures from statistics showing the increase of cost of living and cost of commodities, and inform the Convention whether the actual earning power of the wages has not decreased in Massachusetts and elsewhere since 1906 and 1907. If he should do that at some future day I think it would be informing to the Convention.

Mr. WILLETT: Mr. Chairman, I will, if I can get it.

Francis J. Horgan of Boston.

Mr. HORGAN of Boston: I confess that it is with some reluctance that at this particular period of the discussion I crave the indulgence of the delegates to this Convention. And I am particularly reluctant to speak at this time because I apprehend that the gentleman from Somerville (Mr. Underhill), out of the fullness of his emotion and the sincerity of his heart, when he suggested in his opening remarks that those who attacked the Legislature were generally those who had been defeated for elective office, may perhaps have overlooked the fact, which I think it may seem wise at this time to call to his attention, that, if my recollection serves me aright, he was defeated for the Senate owing to his opposition to the pension for scrub women of Massachusetts. [Applause.]

Mr. UNDERHILL: May I correct the gentleman? It is true I was defeated for the Senate on account of the women; not on account of the poor scrub women of the State House, but because ardent, active, militant suffragists came into my district and distributed broadcast a circular which was anything but just or fair to my record. [Applause.]

Mr. HORGAN: It may be true that the militant ladies, the fair advocates of justice from their point of view, felt that the gentleman ought to have gone down to defeat because, I assume, he opposed woman suffrage. But it does not lessen the fact that he was opposed, so far as my memory serves me, to the pensioning of scrub women in Massachusetts, and that at least contributed materially to his defeat for the Senate of Massachusetts. If I am in error I will be perfectly willing to yield the floor that the gentleman from Somerville may correct that impression which exists not only in mine but in other minds.

Mr. UNDERHILL: I thank the gentleman for the opportunity, and although the Convention is not interested particularly in my political

fortunes or misfortunes, I should say his statement is only partially right. I did oppose the pension for the scrub women. I was advocating a general pension bill. The bill for pensioning scrub women was put in for the purpose of defeating the general pension bill. Had the general pension bill been accepted or had the scrub women been placed upon the general pension bill instead of upon the special bill, they would have secured fifty cents a week more under my method than they did under the pension bill which was drawn for their special and particular benefit. The pension system had become a disgrace in the Commonwealth of Massachusetts and it was through my efforts to reform it that I went down to defeat. [Applause.]

Mr. HORGAN: I do not doubt that the gentleman from Somerville was actuated by the highest and most worthy motives not only in that particular act but also in the other various acts which he, as a Representative in the General Court of Massachusetts, has committed during his legislative career. But I rather prefer to emphasize this fact, — that the mere fact that people who attacked legislative conditions have been or may have been candidates for office and defeated, is not the criterion by which to test the contention that the legislative system, as it now exists, may and ought to be improved; not, as the gentleman from Amherst (Mr. Churchill) suggested in his speech, by replacing worn pieces of machinery by new parts, because we have been doing that for 137 years in vain, but by substituting and reinforcing that worn-out machinery by new, adequate and more powerful machinery which will compel recognition of the fact that the Legislature is not the master but the servant of the people of Massachusetts. [Applause.] And, Mr. Chairman, as one humble delegate to this Convention, I desire at this time to emphasize the fact that, as much as any member of the Convention could, I entered this Convention absolutely unpledged upon this or any other proposition. I made no speech prior to election; I made neither verbal nor written promise upon this or upon other propositions. Consequently my conscience, if such a thing could trouble any of us [laughter and applause], does not worry me with the same fear that affects others either, in their anxiety to satisfy a personal ambition, that they may have made some rash promise prior to election, or that they may have perhaps, in a district which they represent, an indication of the mind of the people of that district, evidenced by a vote taken in the district upon the initiative and referendum, as stumbling blocks to present action. Consequently, though others may flounder in a sea of doubt, because one or other embarrassment confounds them, I believe that I, as well as, I feel, many other delegates to this Convention, have entered the Convention and have considered this and other propositions with open minds, without restrictions and without pledge, with such knowledge as it was possible to obtain and with a desire to represent the will of the people as nearly as, in justice, it may be possible to do. That, Mr. Chairman, is my attitude and I believe the attitude of other delegates to this Convention, upon this and the other problems which we must determine. [Applause.]

Mr. Chairman, I desire to emphasize, again, what I said once before, that there is no man in this Convention who respects more than I do the framework of our government as written by those great patriots of the year 1780. There is no member of or delegate to this Conven-

tion more reluctant to suggest that it might be wise to amend or change that structure than am I. But, Mr. Chairman, there is no delegate in this Convention who is justified in refusing to act, if confronted with one or two propositions, namely, either that necessity or public demand requires us to act. Nor ought we to hesitate in the discharge of our duty, because we hold sacred an instrument which not only provided marvelously well for conditions as they then were, but also with wisdom and foresight unheralded and unbelievable, provided for many future generations. They could not foresee the economic and social changes which now exist to demand constitutional changes. I again emphasize, Mr. Chairman, that no man is infallible. Neither man nor set of men has ever lived who has been able to write into a Constitution or a law, for the guidance of humanity, a direction or a mandate which is not susceptible of improvement or which must not be transposed or changed or strengthened as time shows changed conditions may require. Therefore, Mr. Chairman, I believe, and I wish at this time to emphasize more clearly in the language of another man than I, that it is not unjust, that it is not unpatriotic, that it is not lack of appreciation, and that it is proper to suggest that we now strengthen that instrument, which has operated successfully in many respects, it is true, but which has shown so many weaknesses in other respects. And I desire to call the attention of the Convention at this time to the fact that Madison, in the Federalist, Letter 43, explaining the purpose of the United States guarantee clause, says: "Whenever the States may choose to substitute," — and the word "State" in these cases invariably means people and not the legislative branch of government, — "Whenever the States may choose to substitute other republican forms (of government), they have a right to do so and to claim the Federal guarantee for the latter."

Not to burden this presentation with citations —

This is a brief on the Oregon case; by the way I want to say that I am simply now quoting the language of the attorney for the respondents —

which relate to current opinion at the adoption of the Constitution, one resolve is submitted which is monumental in its character and spoke the unanimous judgment of Massachusetts in the definition of free government:

Resolved, unanimously, that the government to be framed by this Convention shall be a FREE REPUBLIC.

Resolved, it is of the Essence of a free Republic, that the people be governed by fixed laws of their own making.

Adopted in the Convention on September 3, 1779.

Mr. Chairman, I think it is a truth, that is not controvertible, that there is no legislative sovereignty, that the sovereignty lies exclusively in the people and that the power of the Legislature as delegated to it is limited absolutely to the letter of the constitutional privilege afforded and accorded them in that instrument, and no further. Webster described the unlimited power of sovereignty in his reply to Hayne in the following language:

The people, sir, erected this government. . . . Gentlemen do not seem to recollect that the people have any power to do anything for themselves.

George Washington said in his Farewell Address:

The basis of our political system is the right of the people to make and alter their constitutions of government.

Following are the words of James Wilson, taken from the Journal of the Massachusetts Convention in 1788, page 364:

> For I insist if there are errors in government, the people have the right not only to correct and amend them, but likewise totally to change and reject its form; and under the operation of that right the citizens of the United States can never be wretched beyond retrieve unless they are wanting to themselves.

Hence, Mr. Chairman, the great truth which was promulgated by the Declaration of Independence, established by the Revolution and made a distinguishing characteristic of our nationality, was that all legitimate power resides in and is derived from the people. This sublime truth was before that measurably undeveloped in the history of the world. Philosophers in their dreams had built ideal governments. Plato had luxuriated in the happiness of his fanciful republic; More had reveled in the bright visions of his Utopia; Milton had uttered his sublime visions of freedom; Locke had published his speculations on the true principles of government. But never, until the establishment of the American Declaration of Independence, except in imperfect modes, was it acknowledged by a Nation and made the corner-stone and foundation of its government that the sovereign power is vested in the masses. James Wilson, of Pennsylvania, one of the great men in the United States Constitutional Convention, as one of the Justices of the Supreme Court of the United States, in the case of *Chisholm* v. *Georgia*, 2 Dall. 419, 457, gave a definition of republican government which is unexcelled:

> My short definition of such a government is one constructed on this principle, that the supreme power lies in the body of the people.

Therefore, Mr. Chairman, it applies, I think, with equal force that whether it is in the Nation as a government or in the State, the same rule holds true. In the language of Webster: "State governments, however sovereign, are not sovereign over the people."

Again I want to quote James Wilson. He made this statement:

> The truth is that, in our governments, the supreme, absolute and uncontrollable power remains in the people. The people may change the Constitution whenever and however they please. That is a right of which no positive institution can ever deprive them.

Rawle, in his treatise on the Constitution emphasized that point with this statement:

> The people may . . . at any time, alter or abolish the Constitution they have framed.

In the language of Webster in 1820:

> Gentlemen do not seem to recollect that the people have any power to do anything for themselves. They imagine that there is no safety for them only under the close guardianship of the State Legislature.

I also want to call the attention of the Committee, to emphasize the power of the people over the Constitution, to the statement of Mr. Greenleaf in the Convention of 1853:

> All power emanates from the people and is exercised in such a manner as the people themselves designate.

Nor was this viewpoint unsupported at that time. It was strongly maintained by Hallett, in the same Convention, in the following language:

The Legislature is not supreme. It is only *one* of the instruments of that absolute sovereignty which resides in the whole body of the people. . . . It acts under a delegation of powers and cannot rightfully go beyond. This delegation of powers has been made by a fundamental law, which no one department of the government nor all the departments of the government united have authority to change. In the words of the Federalist, of Madison, approved by Hamilton and by Jay, I will say that "the people never concede anything which they may not resume in political power."

Therefore, as in the Nation so in a State. As Webster so aptly puts it:

State governments, however sovereign, are not sovereign over the people.

Mr. Chairman, it follows, it seems to me, that the people, the source of all power, have an inherent right in their own way to change a law and to reconstruct the Constitution itself and to limit the frame of government and the power and the authority of the Legislature itself, and, to make this point as clear as possible, I again quote Mr. Hallett from the Convention of 1853:

The people possess governmental power, — the Legislature, legislative power plus limited, delegated power to start the machinery to submit amendments on fundamental law to the people.

James Burgh, in his "Political Disquisitions", which were commended to the American people by Washington, Jefferson, Hancock, Sherman, Rush, Silas Deane and all the Revolutionary worthies, beautifully expresses it in this language:

It is this, — that the people are the authors and not the incidents of government. Having made the government, they do not thereby become the mere "incidents" of government so that they can never alter or change it without consent; and therefore there is meaning in the seventh article of our Bill of Rights, where it is declared that the people alone have the right to institute government and the people alone have the right to reform, alter or totally change the same.

And I want now to emphasize a point, which already has been dwelt upon, perhaps sufficiently, and that is this: That when the Convention of 1820 was in session there was not, as far as I have been able to ascertain, any question as to the authority and power vested in the Convention to so alter the Constitution, subject to the approval of the people, as to materially change the fundamental law, if they so desired. The fact that they felt that there was necessity to amend the Constitution in respect to future amendments of the constitutional law itself, was evidenced by the submission to the people of the amendment to permit the Legislature to initiate constitutional amendments and submit them to the people of the Commonwealth of Massachusetts. Surely, Mr. Chairman, it is not absurd nor irrational to contend that, if that Convention had that power and that right to give to a delegate and agent, the Legislature, authority to represent its principle in a limited sense, those delegates to that Convention, as the direct representatives of the people, had the greater right to say that the people, as we desire now to say by the provisions of the initiative and referendum, shall themselves say when and where and how constitutional amendments may be adopted. If that Convention, with those great men in it, with the careful thought and deliberation given by them to each and every proposition submitted to them, felt that not only in that but in several other matters it was necessary to amend the Constitution of this State, surely no man has the right to criticize us, who, as the delegates of the people, are endeavoring to dis-

charge our duty as we see it, if we say that it ought to be clearly written into the fundamental law that the people of Massachusetts desire and intend to act directly, that they are not sacrificing any of the rights which they enjoy or possess, and that they are not delegating to an inferior body any authority or power except such as is distinctly delegated to them in the written language of the Constitution not as a right but as a revocable privilege. And it is not absurd to contend, Mr. Chairman, that this Convention not only has a right, but ought, in justice, if it is convinced of the necessity or demand, to recommend to the people that they consider and pass upon the desirability or advisability of a constitutional amendment, such as is now being suggested, namely, — the initiative and referendum.

Mr. Chairman, it has been suggested, and I think I have indicated that I agree, that the real situation which confronts us is: Is it either necessary or is there such a demand for this initiative and referendum that, in all conscience and with proper appreciation of our responsibilities, we ought to submit this proposition to the people of Massachusetts? I maintain that there is both necessity and demand. And, to maintain my contention that there is necessity for this amendment, I am going first, Mr. Chairman, to take up the challenge thrown out by the gentleman from Amherst (Mr. Churchill) the other day, and the gentleman from Somerville (Mr. Underhill) this afternoon. The test which they placed before this Convention, in their language, was: Has representative government failed? I deny absolutely that that is the real test, because, after all, in my humble judgment the real test is not whether representative government has failed, or whether the people of Massachusetts demand that this proposition be submitted to them, but, for the sake of argument, I am willing to meet them upon that issue. The question is this: Has representative government in Massachusetts, by acts of commission or omission, failed to express the will of the people of Massachusetts in such a manner that the people of Massachusetts believe they ought to reinforce themselves by additional safeguards such as are outlined in the initiative and referendum, in order that such conditions may not again arise? And I believe, Mr. Chairman, that that is the fair test to make.

We all know that though generation after generation may pass away, human nature does not change. It is the same to-day as it was twenty, forty, sixty, eighty, one hundred and one thousand years ago. Man is naturally selfish. Man is naturally desirous of benefiting and advancing himself. Man is weak when temptation confronts him, and man, in a legislative capacity, must be reinforced against his own evident weaknesses by such machinery as it may be possible to build, in order to assure, not that he does not commit an error against himself, but that he does not commit a great wrong against a large number of people whom he is supposed to represent.

The gentleman from Amherst (Mr. Churchill) indicated, and the gentleman from Somerville (Mr. Underhill) clearly emphasized, the honest conviction, no doubt, that the Legislature of Massachusetts, as far as representative government may, has been the panacea for the evils that have existed in Massachusetts. Mr. Chairman, with all respect to the gentlemen, I must disagree with them, for the weaknesses and evils of that system are obvious, and I am going to use the

language of a famous English statesman in expressing the opinion which animates me at this present moment. Lord Chatham, in speaking of representative government and its frailties, indulged in this language:

> Who, then, can wonder that you should put a negative on any measure which must annihilate your power, deprive you of your emoluments and at once reduce you to that state of insignificance for which God and nature designed you?

I think, Mr. Chairman, that I may also emphasize this point, that the same elements that have been in operation for the last twenty-five years, during which time I have been somewhat familiar with political conditions and activities in Massachusetts, and that have had baneful influence for as many years as this government has existed, are to-day working and operating to the detriment of public interest, not always because one or the other is corrupt, not always because one is more selfish than is the other, but because conditions themselves, the different environments in which we live, cause men to have different viewpoints of life and of opportunity and of the rights of their fellowmen. And I want to call the attention of this committee to the fact that the conditions which existed, that caused the defeat of John Adams for election for a second term as President of these United States, — the clashing of the classes against the masses, — and resulted in the election of Thomas Jefferson, who was considered then the mouthpiece of the popular will, exist to-day in this Commonwealth and in every State in this Union and in the Union itself.

Massachusetts is no more troubled, in my humble judgment, with the clashing of those two classes than is any other section of this country; but the fact exists, and the fact is, that, as long as the wealthy people fail to appreciate that the poorer classes, the so-called middle classes as described by the gentleman from Somerville (Mr. Underhill), also have, not only a right to live, but have the inherent right and are entitled to the opportunity of earning a fair and reasonable living, and that the wealthy classes ought, in justice, to be satisfied with a fair and reasonable return upon the capital invested, just so long will that clashing exist between capital and labor. That capital is selfish is best evidenced by the statement made by Senator Lewis in the United States Senate yesterday that there is in the possession of the Secretary of the Treasury sufficient evidence to prove that three hundred millions of dollars represented by invested wealth had deliberately evaded the income tax laws of this country, and while they were willing to sacrifice the lives of the people they did not believe in conscription of the wealth of the capitalists of this country. In other words, Mr. Chairman, they fail to appreciate the fact that they have not vested rights, sacred to themselves alone. They may have been given privileges, privileges to discharge certain functions of government, as long, anyway, at least as they are fair, but privileges, Mr. Chairman, which may at any time be taken away from them if they violate fundamental law or justice itself.

And yet we find, despite the assertions of the gentleman from Somerville, that we have no control over certain monopolies in this Commonwealth because certain commissions, to whom certain powers have been delegated, supervise largely those corporations and their governmental administration; that they do control legislation and demand legislative action. I want to emphasize the fact, first, that the gentle-

man erred in stating that the delegation of power from the General Court of Massachusetts to those commissions was only a temporary delegation and only a temporary surrender of rights of administration. They had no authority, as I understand the fundamental law of this Commonwealth, to delegate to those commissions a right to make law. In the second place, I wish to emphasize the fact that the telephone companies, the electric light companies, the water power companies, the street railway and the railroad companies of this Commonwealth to-day are fearful that the privileges, which they feel now are rights which they have obtained, are jeopardized if the initiative and referendum is in operation, and I think that in their judgment is the real test and the real issue.

I want to read, Mr. Chairman, because I think it is unique, from one of the gentlemen who always has been an advocate of what are termed by some as vested interests, in relation to the creation and existence of monopolies in Massachusetts. Moorfield Storey presented an argument on *Massachusetts* v. *Monopoly* during the discussion of the attempt to get the Grand Trunk into Massachusetts, and, at the risk of tiring this Convention, I am going to read some of his pertinent remarks. I believe that they are now pertinent to the issue that we are discussing. I do not believe that, outside of one or two others, there is any man better qualified than is Moorfield Storey to tell the truth about conditions in Massachusetts. Among other things he makes this statement:

> But they say our policy is "regulated monopoly." Gentlemen, there is no such thing as regulated monopoly. Do you suppose the State of Pennsylvania regulates the Pennsylvania Railroad? Or is the Pennsylvania Railroad the corporation that chooses Senators and Governors and governs the State? Do you suppose the Boston and Maine Railroad was regulated by New Hampshire? Do you suppose the New York, New Haven and Hartford Railroad is regulated by Connecticut? Was New Jersey called the State of Camden and Amboy? Or was it because the Camden and Amboy regulated the State?

Mr. Horgan continued his argument Friday, August 24.

Mr. Horgan: At adjournment yesterday, in emphasizing that in my judgment there was necessity for the recommendation to the people of the adoption of the initiative and referendum, I had emphasized the fact that according to the viewpoint of Moorfield Storey, the railroads not only were a monopoly, but largely, Mr. Chairman, when their interests were at stake, controlled not only the Legislature of Massachusetts but also the legislatures of other States. I want also to emphasize the fact, without delaying any further with the statement made by Mr. Storey in his argument before the Legislature when the Grand Trunk proposition was under consideration, that the same may be and is equally true, in my humble judgment, of the street railway interests of Massachusetts, and the best evidence of that is the history of street railway legislation in Massachusetts. Mr. Chairman, it seems to me that one evidence perhaps of possible weakness of our system, — of the commission system, — which has been lauded here in its control of public service corporations, is the fact that the Public Service Commission, for example, agrees to an increase in fares, and approves the cancellation of contracts entered into solemnly with street railway corporations and by street railway corporations with the State, because these corporations claim that they are suffering from financial

distress, without proper investigation and protection of public rights. Those corporations are not entitled to greater consideration than are the people of Massachusetts. There is an equitable rule that those who seek equity must do equity; and if those street railway companies were acting honestly, and if the interests of the people of Massachusetts were properly conserved, there would be an investigation into the assets of those corporations, into the expenditures of those corporations, into the stock manipulations of those corporations; restitution would be demanded and compelled, and then, if they were in distress, surely the justice and good faith of the citizens of Massachusetts would see that their financial investments were properly protected. But, until that has been done, neither the Legislature nor any subordinate body of that organization, nor any commission, has any right to relieve those companies, and they certainly should not do so without due regard for the interests and protection of the people who use the lines, to say nothing of the Commonwealth itself.

It is evident, in my humble judgment, that privilege is now protected, and that it is fearful that some of those privileges which it has obtained by doubtful methods, to put it mildly, may be taken from it. Are the experiences of a simple Colonial yeomanry to gauge our armament against monopoly and legislative injustice?

I want, Mr. Chairman, to answer that question in the language of Thomas Jefferson, and I pray the indulgence of this committee while I read from the utterance of that distinguished statesman:

> It is now forty years since the Constitution of Virginia was formed. Within that period two-thirds of the adults then living are now dead. Have, then, the remaining third, even if they had the wish, the right to hold in obedience to their will and to laws heretofore made by them, the other two-thirds, who, with themselves, compose the present mass of adults? If they have not, who has? The dead? But the dead have no rights, they are nothing, and nothing cannot own something. Where there is no substance there can be no accident. This corporeal globe and everything upon it belongs to the present corporeal inhabitants during their generation. They alone have a right to direct what is the concern of themselves alone, and to declare the law of that direction, and this declaration can only be made by their majority.

Mr. Chairman, it seems to me that it is obvious that the Legislature should be the voice as well as the servant of the people, and that has been the tendency and the belief of our fathers to the present day. At the risk of tiring this Convention I am going to emphasize the truth of that contention in the language of other and greater men at least than am I, and at least as equally great men as are any members of this Convention.

John Adams in "Thoughts on Government," Vol. 4, page 194, says:

> As good government is an empire of laws, how shall your laws be made? In a large society, inhabiting an extensive country, it is impossible that the whole should assemble to make laws. The first step, then, is to depute power from the many to a few of the most wise and good. . . . This representative assembly should be in miniature an exact portrait of the people at large. It should think, feel, reason and act like them.

In *Van Horn's Lessee* v. *Dorrance*, 2 Dall. 304, Mr. Justice Patterson describes the source and extent of legislative power:

> The Constitution of England is at the mercy of Parliament. Every act of Parliament is transcendent and must be obeyed.

In America —

a Constitution is the form of government delineated by the mighty hand of the people, in which certain first principles of fundamental law are established. It contains the permanent will of the people and is the supreme law of the land; it is paramount to the power of the Legislature, etc. The legislatures are creatures of the Constitution; they owe their existence to the Constitution, they derive their powers from the Constitution. The Constitution is the work or will of the people themselves in their original, sovereign and unlimited capacity. Law is the work or will of the Legislature in their derivative and subordinate capacity. The one is the work of the creator, and the other of the creature. The Constitution fixes limits to the exercise of the legislative authority and prescribes the orbit in which it must move.

Hamilton, in his "Works," Vol. 2, page 322, recognized the exact limits of legislative power:

Happily for this country the position is not to be controverted that the Constitution is the creature of the people; but it does not follow that they are not bound by it, while they suffer it to continue in force; nor does it follow that the Legislature, which is, on the other hand, a creature of the Constitution, can depart from it on any presumption of the contrary sense of the people. All the authority of the Legislature is delegated to them under the Constitution; their rights and powers are there defined.

James Wilson, in "Elliot's Debates," Vol. 2, page 447, says:

The supreme power resides in the people; they can delegate it in such proportions, to such bodies, on such terms, and under such limitations as they think proper.

Another interesting evidence of the truth of this contention is found in this. The town-meeting in Boston, in May, 1764, after electing four representatives, proceeded to instruct them as follows:

By this choice, we, the freeholders of the town, have delegated to you the power of acting in our public concerns, in general, as your prudence shall direct you; reserving to ourselves the constitutional right of expressing our minds and giving you such instructions upon important subjects, as at any time we may judge proper.

Madison says, in the "Federalist," No. 49:

The people are the only legitimate fountain of power.

John Quincy Adams in his first message to Congress said:

Our political creed is, without a dissenting voice that can be heard, that the will of the people is the source, and the happiness of the people the end, of all legitimate government upon earth.

James Wilson, in the Massachusetts Convention of 1788, gave utterance to this opinion:

In the United States the supreme power "remains and flourishes with the people, and under the influence of that truth we at this moment sit, deliberate and speak . . . that the supreme power, therefore, should be vested in the people is, in my judgment, the great panacea of human politics. It is a power paramount to their Constitution, inalienable in its nature and indefinite in its extent."

George Mason of Virginia, in "Elliot's Debates," Vol. 5, page 352, said:

The legislatures . . . are the mere creatures of the State constitutions and cannot be greater than their creators. Whither then must we resort? To the people, with whom all power remains that has not been given up in the constitutions derived from them.

Abraham Lincoln, in a speech at Peoria in 1854, said this:

According to our ancient faith the just powers of government are derived from the consent of the governed. . . . Allow all the governed an equal voice in the government, and that and that only is self-government.

Charles Pinckney, one of the delegates to the Philadelphia Convention, spoke in the ratifying Convention of South Carolina as follows:

> We have been taught here to believe that all power of right belongs to the people; that it flows immediately from them, and is delegated to their officers for the public good; that our rulers are the servants of the people, amenable to their will and created for their use.

Therefore, Mr. Chairman, convinced as I am that the Legislature acts solely in a subordinate capacity, is authorized so to act simply and solely for the purpose of expressing the will of the citizens whose servants they are, I approach the test which has been submitted by the gentleman from Amherst (Mr. Churchill), and reiterated by the gentleman from Somerville (Mr. Underhill), with no intent or purpose to criticize any individual, but to deplore a method and a system which, in my humble judgment, is reprehensible. Not only has it been sufficiently dangerous, but it has been sufficiently menacing to justify and demand not only that it may be limited but that the power of the people may so direct them that, in large measure, they will be powerless to do wrong to the people. And yet, Mr. Chairman, it is with some hesitation, perhaps, in view of the laudation of the gentleman from Amherst, reinforced by the argument of the gentleman from Somerville, that I even dare suggest that there may be in the existing legislative system reprehensible methods and perhaps dangers which ought to be guarded against for the future at least; and, consequently, I hesitate to ask the gentleman from Amherst, whose political experience and knowledge I assume is as great as mine, and to ask the gentleman from Somerville, whose political experience and knowledge is at least as great, and I agree greater, if either of those gentlemen has ever heard of the fact that Speakers of the House of Representatives have been appointed? And I say "appointed," Mr. Chairman, deliberately; not elected by the members of the Legislature, but appointed by the representatives of vested interests.

I should like to ask the gentlemen, also, if either of them in their innocence and guilelessness has ever heard the assertion made that Presidents of the Massachusetts Senate, at times, also have been appointed by the same power, rather than elected by the votes of the Senators of Massachusetts. It may be, Mr. Chairman, that neither of those gentlemen believes that such a condition has ever existed in Massachusetts. I congratulate them, Mr. Chairman, upon their innocence. But I want to emphasize this fact, Mr. Chairman, that while I have been active in political life I hope that my eyes have not been closed to existing weaknesses or frailties. I know that I, too, possess weaknesses and frailties; I know that all humanity possess weaknesses and frailties. And I know further, Mr. Chairman, that there are men sitting in this body who have served in the Legislature, as well as men sitting in this body who have not served in the Legislature, who, if they told the truth, would agree that such conditions have existed in Massachusetts. And they would further agree, Mr. Chairman, that those same powers behind the throne have had repeatedly submitted to them, before the appointments of committees by Speakers of the House and Presidents of the Senate have been made, lists of the committee membership of the committees on Mercantile Affairs, Banks and Banking, Public Lighting, Taxation, and Street Railways, at

least. I want not to be misunderstood, Mr. Chairman. I again emphasize the fact that I am criticizing not individuals, but systems. I am not condemning the great mass of men who have honored and distinguished this Commonwealth by service in those exalted and important positions, because I honestly believe that the system to which I have referred, the methods which have been indulged in, do not apply to many of the men who have occupied those exalted positions, and who have been faithful public stewards of the people's interests. But we cannot gainsay the fact that that condition has existed. It existed when I was a member of the Senate of Massachusetts, and I know whereof I speak, — and that is only one of many incidents.

Mr. KELLEY of Rockland: I would like to inquire through you, Mr. Chairman, of the gentleman, if there is any objection to telling this Convention the name of the Speaker of the House, the name of the President of the Senate, and the name of the interests which nominated and elected them. [Applause.]

Mr. HORGAN: I appreciated fully when I deliberately made the statement that I did, that some innocent and guileless gentleman, whose faith in the stewardship of the servants of the Commonwealth of Massachusetts was so great that he could not see error, would ask that question. And my reply to that question is this, Mr. Chairman: If the gentleman who sits in a judicial capacity in the third district court of Hingham is not aware that there is more truth than fancy in what I have said, I do not propose to further enlighten him. Not only because I do not believe it would change his attitude upon this particular question, but also because I believe that it is unfair to men who either may have passed away or have already sunk into political oblivion. [Applause.]

Now, Mr. Chairman, there are many other reasons why the legislative system may be condemned. There are many reasons why the will of the people has not always been properly expressed. And it is not necessarily an indication of corruption or bribery, by any means. There are many influences brought to bear upon men whose minds have not been devoted to the study of specific propositions, and who in the midst of twenty-six hundred or twenty-eight hundred or three thousand propositions are easily convinced that a proposition is good or is bad. But there is one reprehensible method, Mr. Chairman, which has brought its ill effects in Massachusetts as well as it has in other States; and that is the eleventh hour attempt to rush bills through the Legislature. And because it is descriptive of conditions in Massachusetts I am going to quote that condition in the language of Dr. John Randolph Haynes of Los Angeles, who in a published statement of February 27, 1917, condemning the conditions in California prior to the establishment of the initiative and referendum, used this language:

> Thousands of bills are introduced at the convening of the Legislature; hundreds are sometimes passed in a few hours on the last night of the session, amidst the most indescribable excitement and chaos, members voting wildly for or against bills which they have not read and of whose character they have only the vaguest conception. Another friend told me that in the 1913 Legislature . . .

And this applies to every legislative session, almost, in Massachusetts —

. . . although he worked all day and until two o'clock in the morning regularly, and was an attorney and a very rapid worker, he was able to gain a fair knowledge of only about one hundred bills and an exact knowledge of only a very few. Of the seven hundred others which passed both chambers, not to speak of the thousands of bills which failed to pass, he was compelled in voting to depend entirely upon the judgment of others.

These men were unusually able and honest, but it is humanly impossible for representatives under the conditions prevailing in representative bodies to give the masses of legislation precipitated upon them careful or thorough investigation. The "calm deliberation" of representative assemblies is a figment of the imagination.

I repeat that, — that it is true: "The 'calm deliberation' of representative assemblies is a figment of the imagination." And the gentleman who stands on the floor of this Convention in the discussion of this proposition and says that the assembly does give thoughtful, deliberate, intelligent consideration to each and every proposition, knows not whereof he speaks. Because, if for no other reason, it is a mental and physical impossibility for every member of either branch to do his duty to that extent.

Now, Mr. Chairman, the gentleman from Amherst (Mr. Churchill) in his laudation of the Legislature of Massachusetts, from his viewpoint, no doubt, has presented a powerful array of facts, sufficient to convince the gentlemen whose minds are open upon this particular proposition that the Legislature has wholly and satisfactorily discharged its duty to the Commonwealth of Massachusetts, that, consequently, no injustice has been done to the community, and that, therefore, it is not only unwise, but unnecessary, to amplify that system or to weaken, as they argue, that particular method of caring for public interests and welfare. Mr. Chairman, I am going to answer that gentleman by extracts from the legislative record of 1917, in which he so ably and intelligently and progressively helped to care for the public interests of Massachusetts. And I am going to answer it, Mr. Chairman, further, by saying in relation to that record that it is a fair criterion of legislative action, not only of 1917, but of practically every legislative year during the past generation, at least, in Massachusetts.

The bill to break the contract of the Boston Elevated Railway Company with Boston was adopted in the House in the closing hours without a public hearing, without one word of debate. The only reason that it was not rushed through finally was that on the following day Mr. Sherburne of Brookline moved reconsideration, and the distinguished sage from our ward 5 in Boston (Mr. Lomasney) led the fight in opposition to that proposition.

The eight-hour day for workers in paper mills was killed in the Senate. Why? There is no record to show why. It was in the platform for two years, at least, of the Republican party of Massachusetts, and yet it was killed without a word of debate, apparently, and without any explanation or justification by those men who were parties to it.

The New York, New Haven and Hartford Railroad Company asked for authority to issue $45,000,000 preferred stock. One man spoke on the proposition; the previous question was ordered, and the proposition passed the House of Representatives. If caring for public interests is evidenced by devotion to vested interests, it may well be said that the House, in that instance, at least, was safeguarding those

popular interests which the gentleman from Somerville (Mr. Underhill) so aptly described yesterday in his speech.

Despite the need for soldiers, and the financial condition of Massachusetts, the Legislature passed the Eastern States Agricultural and Industrial Exposition appropriation for $50,000 to construct an Exposition Building. I heard a farmer, as he described himself, — in fact, more than one farmer, so they described themselves, — say that the lawyers of Massachusetts had something on them. But for cunning, and ability to accomplish results, they certainly need not bend to lawyers, — in this particular instance, at least. To show how cleverly they worked, it was not discovered until the bill reached the Governor that it contained two separate appropriation items, of $50,000 each.

Mr. Churchill: I shall hope to have an opportunity later to make further remarks about some of these bills to which the gentleman is referring, but I am glad that he allows me the privilege at this minute to nail an accusation which he has made with regard to the Eastern States Exposition Bill. The gentleman refers to the fact that an appropriation of $50,000 was made for this building, and that when the appropriation bill reached the Governor there were found to be two appropriations of $50,000. Now, there may be plenty of cases, Mr. Chairman, where something is "put over;" — I am not discussing that, — but the facts with regard to this matter are these: When the bill empowering the giving of the appropriation of $50,000 was before the Legislature, before the Senate, that bill contained the appropriating section. It is not the custom in such bills that the bill itself should contain the appropriating section; authority is given by certain bills, as every member of the Legislature knows, for an appropriation, and the appropriation itself is made in an omnibus bill submitted by the Ways and Means Committee, actually appropriating the money, the authority for which has been given in various preceding bills. Now, the peculiarity of this bill was that it contained in itself the appropriating clause. That section was in the original bill. There was a withdrawal of that section, and a replacement of that section in the bill in the Senate. It was simply an inadvertence, I suppose, on the part of the Ways and Means Committee, that they failed to notice that, contrary to the usual custom, that appropriation itself was not only authorized by the original bill, but made by the original bill. And that was the cause of an absolutely unintended circumstance, — an appropriation of $50,000 twice. There may be plenty of things that the gentleman may wisely attack, but there is absolutely no ground for any suggestion whatever that anybody tried to sneak over a double appropriation for the Eastern States Exposition Building. [Applause.]

Mr. Horgan: No doubt, Mr. Chairman, in the gentleman's one year of legislative experience he has acquired much more knowledge and greater understanding of legislative procedure than, during the six years in which I have served, I have been able to master. But I reiterate the statement, that no matter what his explanation may be, the fact is that the condition did exist, the fact is that it was inexcusable; the fact is, in my humble judgment, — because I pay tribute to the intelligence of the members of the Legislature of 1917, — it was deliberate.

Mr. Chairman, another action for which the Legislature of 1917 is

alleged to stand as the exponent of public justice and public opinion: The House passed a fifty-hour bill for women and children; the Senate killed it without one single word of debate. Those champions of the public interests, of the welfare of the working people, arising in their might, smote the bill in order that the people might not be compelled to work a less number of hours than their employers desired.

For three years the Public Service Commission asked for appropriations for a comprehensive inquiry into the rates and service of the telephone system; for three years consecutively that proposition has been killed. Yet we discover that, in New York city, as a result of the investigation of that system there, an annual saving, according to reports, has been secured of $3,000,000 a year, — not to the telephone company, not doing injustice to the telephone company, but for the benefit of the people, and still permitting the telephone company to earn a reasonable and just return upon its invested capital. I wonder if the Legislature of 1917, out of the goodness and largeness of its heart, and its consideration for the New England Telephone and Telegraph Company, continuously killed this proposition because it was fearful that bankruptcy might result; or was it because, in the discharge of its duty as representative of the popular will, it thought that it was more desirable and necessary to protect vested interests than to care for the well-being and a reasonable disbursement of money in the public interest?

Mr. Chairman, again let us pause and analyze the legislative action of 1917, in order that we may ascertain if the gentleman from Amherst (Mr. Churchill) was correct in his assertion of the purity, integrity, intelligence and ability of the legislative system.

The House passed a bill to require coal dealers to sell coal and coke to poor people in this Commonwealth in coal yards in small lots at ton prices. When it arrived in the Senate, one of the distinguished members of the Senate, with whom I have served, arose in his dignity and majesty as a mouthpiece and champion of the judicial system of Massachusetts, and, in solemn and awed tones, announced that the act was unconstitutional. It is true, Mr. Chairman, that he had no greater right than had the other thirty-nine members of the Senate of Massachusetts to declare that proposed act unconstitutional. It is true, Mr. Chairman, even if the Senate of Massachusetts did not desire to ask the opinion of the Supreme Judicial Court upon the constitutionality of that act before they passed upon it, nevertheless, that there is a law officer in this Commonwealth, an Attorney-General; and, despite the confidence that the other thirty-nine Senators of Massachusetts in the legislative session of 1917 must have reposed in the honorable Senator from Worcester, the fact of the matter is that, if they were acting in the interest of the public interests, not, as the gentleman from Somerville (Mr. Underhill) describes it, "popular clamor", — although I do not quite understand what he means by "of political demands", — they would have asked the opinion of the Attorney-General of Massachusetts upon the constitutionality of that act. Surely they were not actuated by ulterior motives! Their desire was not to protect the ramifications already existing and erected by the coal manipulators of Massachusetts! They did not know, for instance, that the Metropolitan Coal Company controls all the coal dealers of Boston, owns the stock and controls them; and that there

is little hope for the solitary, the poor purchaser of coal, in the face of a combination such as that. But if they did not, for the love of Heaven, why did they eagerly grasp the opportunity to accept the statement of the gentleman from Worcester (Mr. Hobbs), who has no greater legal acumen than is possessed by other men who were serving in the Senate of 1917 and who also are members of the legal fraternity?

Mr. Chairman, in 1917, Attorney-General Attwill asked for a law to punish combinations hoarding food and raising prices. The Senate exempted farmers, — and yet the farmers tell us that the lawyers constantly put something over on them. I wonder if that exemption was deliberate! I wonder if it simply was for the purpose of protecting the interests of the farmers, as it was viewed by them, or if it was for the purpose of forcing the declaration that the law was unconstitutional because it exempted a certain class from its operation! The Governor, feeling that it was unconstitutional, asked for a constitutional act; and, rising to the will of the people as expressed by the Governor, as the Constitution demanded and required, what did they, the champions of the people, do? They failed to pass it, — this legislative body, which is so expressive of the popular will, and such a great champion of popular welfare!

Again, in 1917, the Attorney-General, Mr. Attwill, asked for a bill to authorize him to investigate cases of investment of funds of poor people in savings banks in such proportions as the $800,000 investment in the Hampden Railroad, the only indorser of which was the Hampden Investment Company, with assets of $7,000 against an investment of $800,000. The committee on Banks and Banking voted against this bill; the report was accepted without a word of debate. Surely, Mr. Chairman, it must have been most audacious on the part of the Attorney-General of Massachusetts to ask authority for such an investigation, because it affected certain vested interests. Certain gentlemen in the city of Boston had been unwise in their speculations and were fearful of the discovery which must result from such an investigation; and they were backed up by the Legislature, in one branch at least, in their attempt to protect themselves.

A bill was presented in 1917, authorizing Attorney-General Attwill to investigate the Hampden Railroad steal and it was killed on recommendation of the Senate Ways and Means Committee, — without a roll-call, without a word of debate. Mr. Chairman, what a sad commentary on the disinterested devotion to public welfare on the part of the Senate of Massachusetts is evidenced by this action!

The State Board of Labor and Industries recommended one day off in seven for hotel employees. The Senate defeated that bill, and reported a new resolve for further investigation, — a new resolve for further investigation, despite the fact that there had been a thorough, intelligent and competent investigation, with results reported which justified action. And then, in order to be certain that they accomplished the act they set out to do, they killed even that resolve on the following day.

Under the law, the Edison Electric and Illuminating Company, having withdrawn its petition before the Board of Gas and Electric Light Commissioners for authority to issue $6,000,000 in capital stock, issued $10,000,000 short term notes; and the Legislature refused to even admit a bill from the Board of Gas and Electric Light Commis-

sioners to forbid such stock issuance. Mr. Chairman, of course the Edison Electric and Illuminating Company is the devoted servant of the public! Its service and its rates to the public are the best evidence of it! It charges higher rates than any other electric illuminating company in this country, as far as I have been able to discover. It has manipulated its stock repeatedly, so that it is watered if not one hundred per cent, very nearly to that extent; and it was afforded opportunity under existing law, which it was impossible to amend, because when the codification of the gas and electric light laws came before the Senate of Massachusetts in 1914 and I offered twenty-two amendments affecting their power to play with the finances, and the line-up defeated every one of them, this law was not strengthened. The Legislature, therefore, I say, refused to give the public that protection, and, availing itself of the opportunity afforded by the loopholes left in the codification of the gas and electric light law, the company immediately issued $10,000,000 worth of short time notes, and then the Legislature would not even allow the Commission to introduce a bill to remedy that defect, even for the future, — not for that issue of notes, because, under the law, it was legal, although the petition was reinforced by the recommendation of the Gas Commission.

Governor McCall and the Faneuil Hall commission and the special committee of the Legislature asked the Legislature to pass a law governing the construction of public and private school buildings, — and the proposition was killed. It certainly was not killed, Mr. Chairman, because it was the desire to protect the lives of little children in case of fire in a particular school building, or of a possible conflagration. It must have been killed for some other reason, and I am very anxious to ascertain what the reason was.

Now, Mr. Chairman, another champion of the cause of the legislative system, the gentleman from Somerville (Mr. Underhill), yesterday announced in impassioned tones that he was the champion of the public interest, not the popular clamor or a political demand; that his record evidenced the fact. And by inference, at least, it is fair to conclude that he set his record forth as evidence of the justness of the present system, and the protection that the present system affords the public. Without comment or criticism, I am going to submit a few of the votes of the gentleman, during his recent legislative action, to this committee for its judgment of his justification that his record is an excellent argument in favor of the retention of the present system without strengthening the same. But I am going to ask this query: If the gentleman is satisfied that his record, as it appears in the Journal of the House of Representatives, is the justification for the retention, without strengthening, of the legislative system, because it is the assurance that the public is amply safeguarded and protected, when will we ever get that protection which, in reason and justice, the people are entitled to from their servants whom they honor by asking them to represent, care for, and protect their interests?

In 1910 the gentleman's record is as follows, — and I will give this to the gentleman when I have completed it, so that he need not make notes now, in order that he may verify the truth of the statement; I do not wish to weary him on such a warm day: 1910, February 24, opposed the public opinion bill; April 8, opposed the eight-hour bill;

May 11, ducked the nine-hour-in-eleven bill; May 17, opposed the peaceful persuasion bill; favored reference to the next General Court of bill limiting time for construction of electric railroads; May 20 and 25, opposed bill to allow trade-unions to impose fines; May 20, opposed bill to protect faithful and competent public employees; May 23, was absent on the constitutional amendment authorizing the General Court to classify property; May 27, opposed the homestead bill; June 1, opposed referendum on the Berkshire trolley bill, and favored the bill on June 1 and June 6; on June 2 and June 6 he favored the bill to authorize the Worcester and Southbridge Street Railway Company to purchase the lines to Thompson, Connecticut, and a bill to authorize the Springfield Street Railway Company to purchase the line in Suffield, Connecticut; on June 3, he opposed the bill that provided penalties for making false returns to the Railroad Commission; on June 7, he opposed the bill to make more effectual means of collecting taxes on estates of deceased persons; on June 10, he favored the Boston Railroad Holding Company preferred stock bill. In 1911, on February 28, on admitting resolutions to support the pension bill before Congress, he voted "No"; March 3, he voted against the bill to prevent the Civil Service Commission from asking applicants relative to offences committed before reaching the age of sixteen years; March 14, he opposed the bill for fenders on street railway cars, and on March 24, he opposed the anti-padrone bill; on April 13, he opposed the bill authorizing additional work on State highways in times of industrial distress; March 17 and April 20, he opposed the resolution ratifying the Federal income tax; on April 28, he opposed the eight-hour bill; on May 1, he opposed the public opinion bill; on May 5, he favored striking out the penalty of imprisonment and fine upon railroad officials for violation of law; on May 5, he opposed the same bill to impose penalties; May 17, he opposed the nine-hour-in-eleven bill; on May 23, he opposed the bill for direct preferential nomination of United States Senators; on June 6, he opposed the peaceful persuasion bill; on July 11, he opposed the Lynn grade crossing bill. In 1912, on March 26, he opposed the Hisgen anti-discrimination bill; on March 27, he opposed the investigation of the telephone situation; on March 28, he opposed direct election of United States Senators; on April 3, he opposed the public opinion bill; on April 4 and May 20, he opposed the peaceful persuasion bill; on April 4, he opposed the bill to establish municipal lighting plants; on April 16, he opposed the national income tax, and he was absent on the referendum amendment to the Constitution on April 24 and May 8; on May 3, he opposed the bill restricting expenditures of candidates for public office; on May 3, he opposed the constitutional amendment relative to taxation of wild and forest lands; on May 9, he opposed the income tax.

Here I will divert myself for a moment from my statement that I should make no criticism or comment on this record, and it is this: that yesterday the gentleman in commenting on successful legislation praised the income tax. I again repeat that on May 9 he voted against the income tax. [Applause.]

On May 22, he opposed all amendments to the Western trolley bill; on May 24, he opposed the general amendments for tax on incomes; May 24, he favored the Western trolley bill; May 24 and May 29,

he opposed the Public Service Commission bill, which became a law and that commission was substituted for the Railroad Commission. I do not think I need to pass any comment on whether it was a beneficial change. On June 11, he favored the passage of the western trolleys bill over the Governor's veto. In 1913, on January 25, he opposed the bill directing the Attorney-General to take steps to prevent increases in price of certain commodities; on March 31, he opposed the bill permitting cities and towns to deal in necessaries of life; on April 18, he opposed the bill to determine value of stock in Consolidated Railway Company; on April 28, he opposed the bill to regulate the sale of unwholesome food; on May 13, he opposed the constitutional amendment for referendum; on May 21, he again opposed the nine-hour-in-eleven bill; on May 22, he opposed the constitutional amendment allowing the General Court to classify property; on May 27, he favored the western trolley bill, and on June 12, he favored the passage of the same measure over the veto of the Governor of Massachusetts; on June 13, he favored the passage of the railroad control bill over the Governor's veto.

Mr. UNDERHILL: Mr. Chairman, I plead guilty to the indictment, and present to the gentleman from Boston my record as being consistent, honest and upright. If I need any one to defend me, sir, I would call upon the author of this initiative and referendum petition (Mr. Walker of Brookline) and would ask if, with the exception of my opposition to the direct election of United States Senators, my position was not exactly the same as his on every one of those questions. [Applause.]

Mr. HORGAN: Mr. Chairman, I am not the champion of the gentleman from Brookline (Mr. Walker), nor does he need any advocate of his political record. I do know that wise men change their minds; fools never do. [Applause.] And I want to remind the gentleman from Somerville that when he pointed to the flag of Massachusetts and deplored the possible menace to that white field he must have forgotten that that white field stands for purity and devotion to the public interest and the welfare and the happiness of the people whom first he is supposed to represent in public office and life. [Applause.] And, Mr. Chairman, if, as he has contended, the Legislature is the panacea for all evil, I should like to ask him to explain why the Legislature apparently failed to properly represent the will of the people on the following subject-matters: The successive defeats of the initiative and referendum by a minority of the House, despite the fact that for ten years out of twelve the House of Representatives gave a majority in favor of the initiative and referendum many times overwhelmingly, and in 1916 a question in regard to the initiative and referendum was on the ballot in 39 representative districts, with a vote of four to one in its favor. And I should like also to ask the gentleman if, as the champion of public interest, he feels that the other members of the Legislature, while he was a member, who voted in favor of this proposition so overwhelmingly, were the champions of vested interest.

Mr. UNDERHILL: I doubt if the members of the Convention are interested in my political career or in my legislative record. But, sir, the gentleman cannot fairly quote my attitude on these bills, without an explanation as to what the bills meant. It is an endeavor on his part to discredit my record by indirection. Because, without explana-

tion, — for instance, sir, — one of the bills I voted against was for an "investigation of the hours of labor of women and children" in this Commonwealth, and I voted against it because it was an amendment offered as a substitute for a bill introduced by me providing for a child labor law, which afterwards went through the Legislature, and was pronounced, I may say without conceit, the best child labor law on any statute-book; and the substitute bill against which I voted was offered for the purpose of killing my bill. Of course I voted against an investigation when my bill provided for a reduction of the hours of labor of children in mills and factories.

Practically every one of the measures which he has quoted to the Convention had some qualifying excuse, if "excuse" is the right word, for my vote. I always have opposed the initiative and referendum, conscientiously and honestly, and believed that in opposing it I was representing my constituents. And I believe so at the present time. Furthermore I will match my record for honesty, uprightness, decency and respect to the Commonwealth, with the gentleman from Boston (Mr. Horgan) at any time. [Applause.]

Mr. Walker of Brookline: Mr. Chairman, my name has been brought into this debate — and I am rather sorry that it has. As a matter of fact, during all the years that have been referred to I was Speaker of the House. As a matter of fact I voted on very few, if any, of the matters, one way or the other. I know perfectly well that if I had been on the floor I should have voted with the gentleman from Somerville (Mr. Underhill) on some of the matters, and would have voted against him on some of the other matters. But I must in justice to that gentleman say that I do not believe he ever cast a vote in this hall that was not conscientious and in what he believed to be the public interest. [Applause.] Just a word more. We have been associated for many years very closely, both in the Legislature and outside of it in political affairs, and when I was first made Speaker there was one very important committee, dealing with public service corporations, on which I believed should be placed the most intelligent and honest man that I could find in the Legislature. I refer to the committee on Public Lighting. And it was my pleasure to put the gentleman from Somerville in charge of that committee. [Applause.]

Mr. Horgan: I endeavored to make clear before I started to submit the votes of the gentleman from Somerville that I should neither criticize nor comment on any of those votes. I also endeavored to make clear that I impugned the motive or the integrity of no man in this Convention or in the Legislature as an individual. I also desire to emphasize the fact that I endeavored to make clear, that because a man disagrees with me or I with him upon a public question is not evidence that he is not sincere and upright in his viewpoint, though, in my judgment, that may be a narrow viewpoint. But I do want to say this, Mr. Chairman, that, as far as devotion to the public service is concerned, as far as attention to the duties and obligations devolving upon a man as a representative of the people in public life may be considered, if I did not conscientiously feel that my public record expressed more clearly and more distinctly and more emphatically the will and the desires and the hopes and aspirations and the rights of the citizens of this Commonwealth, I certainly never should have aspired to be a candidate from my congressional district as a delegate to this Conven-

tion. And I want further to say that I believe the gentleman from Somerville may have been inspired, and probably was, and I agree he was, by as high and lofty motives in his public service as ever has been any other public official. But it does not change the fact, Mr. Chairman, that a man with his viewpoint of public affairs is a menace to the stability of this Commonwealth; and it is an outrage upon the rights of the people of this Commonwealth to permit such viewpoints to dominate and control the public will and the public obligations and duties of this Commonwealth of Massachusetts. [Applause.]

The working-men injured in the course of their employment waited sixty-four years for a partial measure of justice in the Workmen's Compensation Act, into which the profit-making insurance companies, through unwise influence on the Legislature, intruded themselves. Working hours for women and children: It has taken over seventy-five years to reduce the hours for women in mills and factories to a point where they work ten hours per day, with Saturday half-holiday. A minimum wage for women and children: Not yet has the Legislature seen fit to protect women and children from exploitation by greedy employers. One day's rest in seven: Notwithstanding religious sentiment, the demands of humanity and the necessities of health, enormous numbers of men still work seven days per week. The food situation, national and local: With all the agitation, the cost of living has steadily advanced, and it has as yet been impossible to secure any legislation to stop monopoly or speculation. The coal situation: Nine dollars a ton for coal which should sell for $5.50. Forty-nine legislative bodies failed to do anything effective to check the monopolies or the present condition as to consolidations, increase of fares, etc., of street railways. Taxation: A discredited and inequitable system, the Legislature apparently being powerless to remedy it. The New York, New Haven and Hartford Railroad scandals and spoliation; the result of the tour workers' bill; the deceitful reëstablishment of party enrollment, — and I want to dwell for a moment on this, because the gentleman from Somerville (Mr. Underhill) emphasized the fact yesterday that the people thoughtlessly, and, I assume, apparently lacking in intelligence, voted for this proposition and then turned over and in 1916 voted to reëstablish party enrollment. Mr. Chairman, one of the defects of constitutional amendments submitted through legislative enactment is the lack of opportunity afforded the public to know and understand the character and effect of the amendments proposed, not only because there is not sufficient publicity but also because the phraseology oftentimes is such that it is deceptive and is intended to be deceptive, and I submit that the reëstablishment of party enrollment was due to the cunning manner in which the amendment was phrased and not to the desire of the public of Massachusetts to reëstablish party enrollment. I want to read the question that it may go into the records of this debate:

> Shall an act passed by the General Court in the year 1916, entitled "An Act to prevent the voters of one political party from voting in the primaries of another political party," be approved and become law?

How many intelligent, educated and college-bred citizens of Massachusetts knew the meaning or the significance of that amendment, or whether it directly affected the question of the abolishment of party enrollment? The form of the question in my judgment, was enough

to deceive them, and it was not a fair test of the actual will of the people of the Commonwealth.

Mr. GEORGE of Haverhill: I should like to ask the gentleman from Boston if it is not a fact that up to this year it was possible for Democrats to go into Republican primaries and choose Republican city or town committees, and if it was not possible for Republicans to go into Democratic primaries and choose Democratic city and town committees. If that is true, what is there wrong in putting on the ballot that very question, whether or no members of one political party can go into the primary of another political party and choose the men to run and manage the campaign of their opponents? What is there dishonest about it?

Mr. HORGAN: Mr. Chairman, of course I have no right to say that either Democratic or Republican voters, whether machine voters or otherwise, with the abolishment of party enrollment, would go from one primary to another one year and then change over the next year. It may be that in the city of Haverhill that was done, because the little knowledge that I have of the city of Haverhill might indicate that it might be possible, although I think that it would not be probable. But, Mr. Chairman, it was not because such actions were committed that this proposition was submitted to the people. It was not because such a condition existed that this proposition was framed in the language in which it was submitted to the people. It was framed for the purpose and submitted to the people for the purpose of reestablishing the powers of party machines, and for no other purpose; and realizing that if it was framed so that the people would understand that if they voted for that proposition they would vote to reëstablish party enrollment, it was framed so as to give the impression to the public that something was radically wrong, that an evil had to be righted. It was recommended for that purpose by the Legislature, and, having faith in the Legislature, they favored it.

Mr. GEORGE: I should like to inform the gentleman that I happened to attend the hearing that was considering this proposition. If I mistake not, the honorable gentleman from Brookline was there. It was the unanimous opinion of all present, — and I think there were a dozen Democrats and Republicans, — that it was absolutely wrong for members of one political party to go in and choose or nominate candidates of another political party, and especially to choose the city and town committees, as well as the State committees. Now, that was considered as being a menace, and I think it was the unanimous opinion of those present that some legislation ought to be provided that will keep the members of one political party from interfering with other political parties. So there was nothing mysterious about it, it was practically a unanimous opinion, and I think it was very nearly the unanimous opinion of the committee which had it in charge.

Mr. HORGAN: It may have been the unanimous opinion, and it may have been justified by evidence adduced before the committee, that the abolishment of party enrollment was a serious mistake; but, Mr. Chairman, it did not justify the submission to the people of this Commonwealth of the proposition in the language in which it was framed. If the evidence was such, and the report of the committee justified the action, why was not that amendment so framed that the people would know that they were voting to reëstablish the party enrollment, either

because the abolishment originally was wrong or because they believed that it ought to have been reëstablished? It is the form of the proposition that I say is a bad indication, and it is not the cause for the action of the Legislature.

Mr. MONTAGUE of Boston: I desire to ask the gentleman if under the form of initiative and referendum proposed the ten signers for that petition chose to frame a measure which would be by its title misleading, whether there is any power in anybody to change that title.

Mr. HORGAN: As I understand the gentleman's question it is that if the ten original signers to the petition for a constitutional amendment have framed a proposition is it then possible, at any subsequent stage, to change the proposition? Mr. Chairman, as I understand the provisions of the so-called Walker resolution it is not possible. I may be in error.

Mr. WALKER: I should like to say that under the measure proposed the ten signers have nothing whatever to do with the title as it will appear on the ballot. That title is fixed by the Secretary of the Commonwealth, and he alone is responsible for it.

Mr. HORGAN: Even if the gentleman's question applied not only to the title but to the form of the proposed constitutional amendment, I want to tell the gentleman this: That if ten signers, and we have to assume that those ten men are at least honest in their convictions, just as sincere as is any delegate in this Convention, if ten men frame a proposed constitutional amendment, although the body of the amendment may not be subsequently changed, you have two years in which to point out its errors and its evils and to safeguard the public against an error of judgment, and you have no greater opportunity on a legislative constitutional amendment than is presented by the proposed initiative constitutional amendment.

In arguing on the necessity of this proposition my thoughts were naturally directed to a statement made by the gentleman from Southborough (Mr. Choate). He said very positively, and I believe very sincerely and honestly, that there is no social unrest. The fact must be that the gentleman, living in an environment so far above and beyond the ordinary man or woman who labors for a living, is not acquainted with social conditions in this Commonwealth, because if he were I cannot conceive that he would make such a positive yet erroneous statement. That there is social unrest, Mr. Chairman, seems to me obvious. Not only are wages unfair, the hours of labor (in many employments at least) unjust, and conditions deplorable, but more important than that is the fact that the rank and file of the working people are not afforded the opportunity in many instances to earn the amount of money to which in justice they are entitled, and which will enable them not only to live themselves but also to bring up their families and to provide for themselves in their old age. Until that condition exists there must be social unrest, and there must be injustice. That justifies the demand by that element in their judgment for this proposition, convinced as they are that thereby relief will be afforded them without injustice to capital.

Mr. Chairman, the gentleman from Norwood (Mr. Willett) yesterday had read into the record a statement that the average salaries for 1907 were $512, for 1911 $532, for 1915 $580, showing an increase in salary from 1907 to 1915 of not quite twelve per cent against an

actual increase in the cost of living of nearly one hundred per cent. Does that show that there is not social unrest, or that there is not justification for it? It seems to me, Mr. Chairman, that if, as commonly known to be a fact, the man who five years ago was earning $18 a week could live better and safer and fear less the menace of starvation than he does to-day when he earns $21 a week, it is the best evidence that there is a condition in this Commonwealth and this country which needs to be remedied.

We proceed on the assumption of equal rights for all and special privileges for none, but it is an obvious truth that there is special privilege, and that the people suffer, and we demand control for the public because we believe that thereby the situation may be remedied without any injustice to vested capital. And furthermore, Mr. Chairman, I do not believe that the citizens of this Commonwealth are lacking in intelligence, judgment or honesty. I believe that the moral sense of the people of this Commonwealth is the great anchor which alone will save this Commonwealth against the troubles and vexations which confront us to-day. I prefer to trust the will of the people, the sound, calm, sane judgment of the people of Massachusetts, rather than the judgment of those men who will stand before us and argue that labor is receiving its just deserts, that they have enough to live on, that they are well enough provided for, and that the more fortunate are entitled to take all the money that they may be able to obtain, no matter how unjust the act may be.

On that phase of the situation the thought that I desire to express I will express in the language of a gentleman whose name is not unfamiliar, and whose knowledge perhaps was as great as is that possessed by any of us. John C. Calhoun said:

> A power has risen up in the government greater than the people themselves, consisting of many and various and powerful interests combined into one mass, and held together by the cohesive power of the vast surplus in the banks. This mighty combination will be opposed to any change, and it is to be feared that such is its influence, no measure to which it is opposed can become a law, however expedient or necessary, and that the public money will remain in their possession to be disposed of, not as a public interest, but as their's may dictate. The time, indeed, seems fast approaching, when no law can pass, nor honor can be conferred from the Chief Magistrate to tidewater, without the assent of this powerful and interested combination, which is steadily becoming the government itself, to the utter subversion of the authority of the people.

It is history repeating itself. To emphasize the truth of the assertion that there is such an element in the body politic, I desire to quote the figures submitted by Senator La Follette to the Senate, August 14, which have not been controverted. They show why the people demand a more equitable distribution and application of the laws of this country. According to him, The American Agricultural and Chemical Company, with a capital of $2,959,000, had a net earning of 100 per cent; the American Beet Sugar Company, with a capital of $4,880,000, showed a net earning of 250 per cent; the American Hide and Leather Company, with a capital of $1,309,000, showed a net income of 250 per cent; the American Steel Foundries Company, with a capital of $2,900,000, showed a net income of 600 per cent; the American Zinc, Lead and Smelting Company, with a capital of $9,110,000, showed a net profit of 4,500 per cent; the Anaconda Copper Company, with a capital of $47,151,000, showed a net return of

400 per cent; Armour and Company, with a capital of $15,363,000, showed a net profit of 350 per cent; the Barrett Company, with a capital of $3,025,000, a net income of 200 per cent; the Bethlehem Steel Company, with a capital of $40,518,000, a net return of 1,300 per cent; the Central Leather Company, with a capital of $12,016,000, a net income of 350 per cent; the DuPont Powder Company, with a capital of $76,581,000, a net income of 1,400 per cent; the Standard Oil Company of New York, with a capitalization of $20,425,000, a net income of 100 per cent; and the United States Steel Corporation, with a capitalization of $207,945,000, a net income of 300 per cent. Mr. Chairman, is it any wonder that there is dissatisfaction and disturbance? Is it strange, in the face of this condition, that the Liberty Bonds which were issued by the United States Government bearing interest at 3½ per cent, intended for the poor people, an investment which is non-taxable, were seized by the wealthy people of this country and that millions were used by the wealthy to purchase them in order, not to assist the government in financing the present war, but to save their wealth from taxation?

Mr. Chairman, it seems to me that it is obvious that there is something wrong with the social system. Cicero said: "A general desire for gain will ruin any wealthy, flourishing nation." Does not that danger menace us? We must remember that the people of this Commonwealth are entitled to live. They are entitled to a just income just as much as capital is entitled to protection on its legitimate investment. I am opposed to socialism, I abhor communism; but, Mr. Chairman, I can understand the viewpoint of the advocates of both of those systems, and I can appreciate the fact that they believe that their remedy is the only answer to the social troubles which confront us. But, Mr. Chairman, I have faith in the sane, sober, thoughtful judgment of the people of this Commonwealth. Directed along proper channels and safeguarded by their moral sense the people will follow honest leaders, and the solution of these problems will not be socialism, and it will not be communism, but it will be a readjustment of the social fabric in such a way that equity will be done to all of the people. The minute the people, the rank and file, realize that what they call the upper classes are doing something to alleviate conditions, just so soon will they gladly join hands with them, and just so surely will this State prosper. It is wise, therefore, for us all to realize the truth, that it is a condition which really does exist. It must be remedied unless we are really to have socialism, or the greater menace, communism. Grover Cleveland pictured the situation which exists to-day even as it did, in lesser degree, at that time, in this language:

> Communism is a hateful thing and a menace to peace and organized government. But the communism of combined wealth and capital, the outgrowth of overweening cupidity and selfishness, which assiduously undermines the justice and integrity of free institutions, is not less dangerous than the communism of oppressed poverty and toil, which, exasperated by injustice and discontent, attacks with wild disorder the citadel of misrule.

It is because that condition must be remedied, Mr. Chairman, that I think that there ought to be a closer knitting together of the elements described by the gentleman from Somerville (Mr. Underhill) as capital and labor. I believe that the men who are the leaders of

thought in this Commonwealth are sufficiently big and broad-minded to give the situation the study which will result in a solution that will be beneficial to the people, the first step being the initiative and referendum. Now let us endeavor to ascertain if there is demand for this resolution.

Mr. Chairman, the gentleman from Southborough (Mr. Choate) said in his remarks that the votes taken in the representative districts, indicating the desire of the people of those districts for the initiative and referendum, were not fair tests because, according to his statement, many voters failed to register their votes. Is not this contention a fallacy? My answer to that is this: There has not been a constitutional amendment adopted in this Commonwealth since 1853 where the majority vote in favor of the constitutional amendment recommended by the Legislature of Massachusetts has anywhere near equalled proportionately the votes cast in favor of this proposition in districts where tests were made as against those who failed to register and vote; and the difference between the votes actually cast in favor of and against the amendments which were submitted by the Legislature since 1853 as against the votes on this proposition in those representative districts is so clearly in favor of the expression of the interest and will by the people in those representative districts on the question of the initiative and referendum that I think it is the best and strongest answer to the gentleman from Southborough (Mr. Choate) that there is a decided demand for it.

But I do want to call attention to this fact: That the average vote for and against amendments to the Constitution from 1857 down to and inclusive of the year 1913, as against the combined vote for the Governor of Massachusetts, has been sixteen per cent, and at one time there was a vote cast in Massachusetts of 10,035 for a constitutional amendment against 6,082, when the total vote cast for Governor was 99,767. Less than three per cent of the vote cast for the Governor of Massachusetts resulted in the enactment of a constitutional amendment on the recommendation of the Legislature of Massachusetts. If that is possible, where is the theory of the gentlemen who argue that the will of the people as expressed by a majority of voters is not the expression of the will of the people of Massachusetts? It certainly is evident that in that case, and in every other case of a constitutional amendment submitted until 1915, there never has been an expression by the majority of the people who voted in this Commonwealth on constitutional amendments submitted by the Legislature of Massachusetts. Hence the argument that instructions to delegates or direct votes for the "I. and R." are to be ignored because a majority of registered voters failed to vote is fallacious. Surely, Mr. Chairman, with the advantage of 50,000 signatures in favor of the initiative and referendum against the legislative recommendation, which in many cases, and the majority of them, arouses no public interest, it is much safer to assert that we will get a real expression of the will of the people of Massachusetts than we do now under the present existing conditions.

The people of Massachusetts did demand the initiative and referendum. The Legislature of Massachusetts realized that they demanded it, and that is why they did two things. The first was that they gave the people the public opinion bill, believing that it would pacify them

and stave off for a number of years the possibility of the initiative and referendum. In subsequent years, discovering that the expression of will in favor of this proposition was just as strong and just as menacing as ever, they gave the referendum by which the Legislature may at its pleasure and discretion submit to the people by referendum a proposition which they enact into law. But the public opinion bill and this limited referendum came, Mr. Chairman and gentlemen, because the mind of the community was set upon this initiative and referendum proposition and in the hope that the inevitable might be averted. You cannot divert your mind from the knowledge that the will of the people is favorable to this proposition. The demands before the Legislature of 1912, 1913 and 1914, fathered by the advocates of this proposition, and the messages in favor of a Constitutional Convention by the Governors of the Commonwealth in 1914, 1915 and 1916, all help to satisfy us that the people have for years demanded the initiative and referendum. If we are sincere in our desire to voice the will and sentiment of the people of this Commonwealth we will submit the initiative and referendum to the people.

It provides for deliberation. It gives time. It allows discussion, just as much as does a legislative proposition. A legislative proposition is submitted to the Legislature. It is referred to the committee on Constitutional Amendments. The committee on Constitutional Amendments gives a hearing. It is reported to the Legislature. If it is acted on favorably it goes as a matter of course to the next Legislature. It again goes through the same channel, and then it is referred to the people for action. Thus there have been two years of deliberation by the Legislature. But there is not the publicity, nor is there the prior knowledge on the part of the public of the possible efficiency and far-reaching scope of the proposed amendment that is afforded under the petition form that we suggest. The public do not give much thought and attention to proposed legislative amendments because the public generally have not the time nor the inclination nor the opportunity to study the proposition, and consequently it goes to the people on the recommendation of the Legislature when only a small body of people, having knowledge that the proposition was threshed out in the Legislature, understand or have information on that question prior to voting day. On the other hand, 50,000 citizens of Massachusetts sign a request to the people of Massachusetts to give thought and consideration to the proposition that they submit to them, — 50,000 signers; not ignorant, not stupid, not bereft of intelligence and understanding, not lacking in civic knowledge and responsibility, as has been argued on this floor, but 50,000 people who are just as sincere and earnest as we are. They possess just as much intelligence, they are just as much interested in their civic responsibilities and duties and appreciate them just as much as we do. Does any man have the temerity in this Convention to make the statement that, if 50,000 voters sign an application to submit to the people a proposed constitutional amendment, only ten of those 50,000 have sufficient intelligence, interest and appreciation of their responsibility to read and consider and know what it is? It is absurd on the face of it, Mr. Chairman. But even if, for the sake of argument, we admit that it were true, I want to call your attention to this fact: That after that proposition is submitted to the Legislature you have the

same time for thought and consideration to point out the defects, if any, although you may not remedy them, and consequently to defeat the proposition, if it is not framed properly or if it does not appeal to the people. Surely there is at least as much safeguard to the minority in that method as there is by the present legislative method. Finally, I have endeavored to convince you that there is necessity and demand for this resolution and that the call ought not to be unheeded. I desire to apologize to the committee for taking so much time, but I did not intend to do so at the start, and I am only asking a few minutes' additional indulgence while I attempt to analyze the sophistical document presented by the minority in favor of their opposition to this particular proposition.

On page 2 of their report they say that the unrestricted majority rule was not contemplated by the Constitution and is unjustifiable, but majority rule is the very essence of government from, of and for the people, and justice for the minority is guaranteed under our Constitution and is protected by our judicial system.

On page 3 they say: "Restraint upon popular action imposed by the people themselves." If so, Mr. Chairman, I only want to say this: They can remove it at will. Otherwise, even amendments to the Constitution of the United States, it may justly be contended, would be impossible.

"The solemn compact and covenant to maintain the rights of minorities and individuals. Changes in this compact to be made only after deliberate action of representatives of all the people," is their contention on page 4.

Mr. Chairman, I simply desire to say that former Attorney-General of the United States Dana, as a member of the Convention of 1853, in discussing the so-called social compact emphasized the fact that while it was beautifully framed, and that while the word picturing was commendable, it accomplished nothing for the protection of the people of this Commonwealth; and certainly the majority of the people are safer and better than are legislative majorities if our analysis of legislative conditions is at all reliable.

"The resolution would break this compact and strike at personal rights," — so they say on page 5 of their report.

Mr. Chairman, it seems to me that it is obvious that this is both erroneous and fallacious, because the Constitution of Massachusetts in its fundamental principles will always stand unless you dare to assert that the majority of the people will ever become suicidal and subvert personal, domestic and other rights to passion and to anarchy.

On page 6: "Attempted justification of this destruction of constitutional rights, and our answer. The compact to be broken at will and at any time by a temporary majority of voters." I have already endeavored to answer that, but I desire to add only this: A temporary majority will be a good majority, for large bodies move slowly, carefully and intelligently and certainly are less venal than are legislatures.

The answer to the next claim is already covered. On page 8 they say: "The duty of the framers of a Constitution to safeguard its stability and permanence." Yes, that is true, Mr. Chairman, but do you wish to assume and to argue that the people are ignorant and

lack knowledge of justice, and should surrender their power to their agents?

They say on page No. 9: "a question not of principle but of wisdom" (on the legislative initiative and referendum). "Will the majority plan insure a truer expression of the public will than the action of representatives?" In my own judgment, it certainly will. You cannot divert all the people to deny to themselves common justice and expediency when you submit the proposition to them themselves. On page 10: "Grounds offered for the change: The asserted faults and failures of the Legislature. The reply is the real character and efficiency of the Legislature." They do not strengthen their cause, for legislative weakness and pliability has been readily demonstrated. Mr. Chairman, I do not think I need to add anything more on that contention to what I have already said.

On page 11 they say: "Varying opinions of the advocates of this measure." This is certainly most disinterested. Mr. Chairman, the people are honest and intelligent, and will not do injustice to any element of the people, because it has been proven in every period in the history of this country where the will of the people has been asked and expressed that they always have been on the side of justice and reason.

"The initiative not reserved to the people, but to small groups," — so they claim on page 12 of their report. Even if so, Mr. Chairman, the people are willing to take the trouble to vote for or against a proposition on its merits, and the opportunities afforded them by this method to deliberate upon and to discuss, before it is submitted to them for action, have been considered.

"Majority votes," — on page 13, — "under the plan reported will not be a real expression of public opinion." Mr. Chairman, it seems to me that the propositions here advanced are absurd. It is absurd to claim that propositions will not be acted upon by the majority. How about the legislative majority? I have already indicated the small number of votes by which they have passed to the people, the small number of votes in favor of and against the legislative enactments at various times since 1853. But, again, let us go before the people for final decision, and the people, in my judgment, will act as they ought to, in justice, with reason and with an understanding; and above all they want this amendment now.

"Voters will not be fully informed," — so they claim on page 15. Are they fully informed now under the legislative constitutional amendments? If so, how? Except in very few cases, such as woman suffrage and agitation on the party enrollment question and some few other questions the legislative constitutional amendments submitted to the people of Massachusetts are submitted without any prior knowledge by the people, and in the majority of cases knowledge is acquired only by reading the form of the question as it appears on the ballot on election day. I think I have already emphasized the fact that the Legislature does have the opportunity to talk on amendments under our plan, to point out evils, to prepare the mind of the public for its success or defeat and to guard the people against any injurious possible consequences, if any exist, and thus afford the people at least as much, if not greater, opportunity than they are now given on legislative constitutional amendments.

On page 16 they say that the Legislature cannot debate any proposed direct legislation. That obviously is not true, for they may debate *in extenso* and thus prepare the people for action.

Mr. Chairman, they claim on this same page 16: "No amendment or compromise possible." The same argument applies against legislative constitutional amendments to-day. If the Legislature passes upon it, it goes to the people. The people must either favor or oppose it.

The next proposition is: "The people less interested in measures than in men, less competent to decide on measures than to elect worthy representatives." It seems to me, Mr. Chairman, that that shows lack of judgment, to put it mildly, — the cloven foot. If the people are not competent, why have they not an outright monarchy at the present time, or an oligarchy, the rule of the few by monopolies, because in the minds of some that will be a satisfactory solution of all the difficulties and troubles which confront us. In the language of the Roman citizen:

> This is not the first time, O Romans, that patrician arrogance has denied to us the right of a common humanity. Truly the patricians will, by and by, begrudge us a participation in the light of day; they will be indignant that we breathe the same air; that we share with them the faculty of speech; that we wear the forms of human beings.

But why continue the dissection? The same fallacious reasoning marks the whole of the minority report. Suffice to say that the document evidences the weaknesses of our opponents, without proving that the people are not entitled to or are incompetent to exercise directly their rights.

Therefore it seems to me, Mr. Chairman, that there is every reason to believe and to feel convinced that in placing in the hands of the public the right to which they are entitled and ought to enjoy, no interests will be sacrificed and no rights will be jeopardized. That the people are capable, trustworthy and patriotic has been vouched for and is much better expressed by a great and noble man in language which commends and warns. Abraham Lincoln said:

> 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 until all of liberty shall be lost.

To the people this power belongs. To them, in justice, it ought to be returned. The voice of the people is the voice of God. Mr. Chairman, I thank the delegates to this Convention for their indulgence. I desire to emphasize the fact that if any statement made by me may have been displeasing I had no intention of criticizing any individual as an individual, but I wished to bring out the weaknesses of a system where I felt that they really exist and to suggest a remedy. Mr. Chairman, I am convinced that the opponents of this proposition who have sought light and who have given sincere thought and study to the question in all its ramifications, are just as earnest and sincere in their attitude as are the advocates of the same. I feel that on this great question, the solution of which devolves upon us, we are anxious to act fairly. I know that if we approach it with rectitude, with the firm resolve that we will discharge our obligations conscientiously, and

with due regard for the welfare of the people, we will bow to the inevitable and submit this question to the people. I believe that whether this proposition is successful or defeated, the public of Massachusetts will have gained a clear insight into conditions as they are, and perhaps, — and I believe it, — a greater devotion to our State as well as respect for the citizens who represent them in this Convention and who endeavor to discharge their obligations as duty indicates, in the hope that prosperity, the solution of our social and economic troubles and happiness for ourselves and generations unborn may be assured. [Applause.]

The debate was continued Tuesday, August 28.

George F. Willett of Norwood.

Mr. Willett of Norwood: I beg the attention of the committee for just a moment to answer the inquiry of the gentleman from Boston regarding some statistics that were quoted the other day. The member from Boston (Mr. Hale) in his admirable speech quoted some figures which impressed me at the time as possibly containing an error. He said that there were 100,000 men in Massachusetts who were getting less than $10 a week wages. I questioned those figures, but I find in the statistics of 1915 that they are verified. I think it might have been said that there were 40,000 to 45,000 men who were getting between $9 and $10 a week, and that the remainder were getting less than $9 a week. I did not raise the question in order to support the proposition that that was a sufficient wage for 100,000 people in Massachusetts. I think that it is too low. The question which I was raising, and which I hoped to press further but was unable to, was as to what the Legislature in the past had failed to enact which would have been instrumental in raising those wages. The gentleman said that later on reference would be made to such legislation, and that I should have the opportunity of discussing it.

The following day I quoted further figures, which showed that of all the people working in Massachusetts in 1907 the wages per capita for all the earners, every one working in Massachusetts, were $512, that in 1911 they were $532, that in 1915 they were $580. After quoting these figures, without discussion, I was asked by the gentleman from Brookline (Mr. Anderson) to give figures with reference to the cost of living during that same period. If we should try to inject into these proceedings a discussion of the cost of living, or the increased cost of living, we should stay here not only this summer and fall, but through the winter. It is a broad subject, and one too complex for discussion here in a very few minutes. But in looking into the question the idea ran through my mind as to what really determined the basis of a man's prosperity, and what determined the basis of the prosperity of Massachusetts as a whole. What determines the basis of the prosperity of a business? I think it is what you have got left at the end of the year. It is what you have got after you have carried on your operations of purchase and sale, of manufacture and sale, and then it is what you have got in your pocket at the end of the year.

So I looked at the savings banks statistics, and I was quite surprised to find a very strange coincidence. I found that in 1907 the savings in Massachusetts were $706,000,000, in 1911 they had in-

creased to $802,000,000, in 1915 they had increased to $928,000,000. Figures which I had previously quoted showed an increase in the wage of every wage-earner of approximately between thirteen and fourteen per cent, and these figures which I have just quoted, showing an increase in savings, amount to exactly the same percentage, or from thirteen to fourteen per cent.

Now, I think that that is simply a coincidence, and yet it is not altogether so, because we know that, taking things by and large, we are just as prosperous to-day as at any time in our history. I believe that we are more prosperous than a year ago. I believe a year ago we were more prosperous as a whole than the year before that.

Mr. CLARK of Brockton: I should like to ask the speaker if he took into consideration the fact that in 1915 there were a very much larger number of depositors than in 1907?

Mr. WILLETT: I will say to the gentleman that I have made no careful analysis of these figures. I think that it is true that the number of depositors has increased; in fact, there has been a steady increase, but I do not think that that detracts in any way from my argument. The per capita increase, that is, the average amount of savings based on the entire population, is the point involved.

Mr. CLARK: I should like further to ask the speaker, if the number of depositors has materially increased, and the pro rata deposits have increased only in proportion to the increase in wages, if it does not show that there is a smaller deposit per capita than in 1907?

Mr. WILLETT: I do not know that I get the point of the gentleman, but if I do I think that I have already answered him. Anyway, I have answered it to the extent of the figures I have at hand. It is the per capita average of the savings of the entire State that really tells the story.

Mr. ANDERSON of Brookline: May I inquire of the gentleman from Norwood whether he does or does not claim that the purchasing power of wages has increased between the years 1907 and 1915? I noticed he did not give any figures bearing upon the increased cost of commodities, or cost of living, as it is sometimes erroneously called, which are available to all of us who are accustomed to deal with statistics. My question now is a very simple one, — it is the question that I asked the other day, — as to whether, testing the cost of living by the accepted standards, actual wages, — purchasing power, — did not in Massachusetts decrease between 1907 and 1915.

Mr. WILLETT: I believe that the purchasing power of wages has decreased. I do not believe that you can get for the same money to-day, and everyone here knows that you cannot get for the same money to-day, what you could get in 1907. I have some figures here which may be interesting, which show that the quotations on three hundred different commodities, from 1909 to 1914, show an increase in price of about one per cent, and that wages during the same period increased about 12 per cent. On the other hand, the price of food products, and it is the price of food which we discuss more commonly than anything else when we talk about the cost of living, — the price of food shows an increase during that same period of 16 per cent. That was from 1909 to 1914. None of the figures that I am quoting show the abnormal increases due to the conditions that have existed in the last year or two.

Mr. BROWN of Brockton: Where did you gather your figures, please?

Mr. WILLETT: I think these came from the Bureau of Labor Statistics, here in the State House. There is another interesting point which may be brought out to advantage at this time, and that is that where wages have advanced 12 per cent here in Massachusetts, nevertheless as compared with the United States as a whole Massachusetts and New England have steadily gone back. In 1904 the average wage in Massachusetts was $480, in the United States at large it was $477. In Massachusetts in 1909 it was $515 per wage earner, in the United States $518. That is, for the first time in history, in 1909 the wages in the United States at large had passed the wages in Massachusetts. In 1914 the wages in Massachusetts had gone to $562, and the wages in the United States at large had gone to $580. So, as you can see, these figures are all relative and as far as legislation is concerned are not indicative of any particular thing. The point which I was raising was not as to the figures themselves or as to the question that the wages were too high or too low, but as to whether we were going to gain anything through the initiative and referendum toward increasing the real prosperity of Massachusetts.

If I may be pardoned just one moment further I am reminded of a story which was repeated to me the other day with reference to this very matter. President Roosevelt had called a Congress of the Governors of the United States at Washington and at their first session they had a sort of experience meeting. The Governors from the various States stood up and told of what had been done in their respective States. Starting with Arizona and some of the more western States, each Governor boasted of new and progressive legislation. When they finally came to the Commonwealth of Massachusetts, our Governor Draper got up, and was able to state that every piece of legislation of a progressive nature which had been pointed to with such pride by these newer States had been on the statute-books in Massachusetts anywhere from ten to twenty-five years. And yet, in spite of that fact, we find relatively by looking at the figures that, from the standpoint of average wages, Massachusetts is going backward as compared with the rest of the United States. And that point shows, — the point which I wanted to make, — that we should discuss this question of the initiative and referendum from a different standpoint than that from which it was being taken up by the gentleman from Boston. There is one phase of that question which deals with specific and direct legislation, and I do not believe that individual questions of that nature can be effectively dealt with by the people collectively. Those matters must be left with the Legislature, and the initiative and referendum should deal with broad questions of policy, the fundamental questions of government. What we should try to do is to devise some way by which those questions can be brought before the people for their decision or approval.

William S. Youngman of Boston.

Mr. YOUNGMAN of Boston: If I were not a member of the committee on Initiative and Referendum of this Convention I should not trespass upon the time of the members to expose my thoughts or express my convictions on that subject, because of the presence of so many men here whom I consider far better qualified to present the

great arguments bearing upon that question. Having been appointed on that committee, and having the unique distinction of being the only member of the dissenters concerning whom the official organ outside of the Convention has made no accusation beyond saying that I came from Brighton, — and of course all of my constituents have got to share in that curse, — I feel that I ought to present the conclusions, and a sifting (and I will do it as briefly as possible) of the arguments and evidence that came before our committee, or came to my knowledge in the various discussions in connection with our work.

It is time, I think, to look at this resolution in favor of a plan of initiative and referendum (No. 335), and perhaps remind some of the members exactly how it comes before this Convention. It is true there is a committee report by the narrow majority of one; and the gentleman of the committee who makes that report, from Brookline (Mr. Walker), on my right, is obliged to say in making it that one of the eight has reservations in regard to it. So we have before the Convention a disagreement, not a verdict, virtually a proposition seven to seven; because if you consider the questions that our able chairman wished to have excluded from the application of the initiative and referendum under the Walker resolution, — and I have a summary of them before me in his own handwriting, — you will see that we have come practically to a dead heat, or a see-saw, with our dissenters having the weight of the chairman's judgment on main questions, and the other gentlemen having the weight on what this Convention, by its acts in reference to the judiciary, wish to be minor questions. That is the question that is left, because the chairman says:

> No law or amendment to the Constitution relating to the appointment, qualification, tenures, removal or compensation of judges or relating to the recall of judges or judicial decisions, or relating to the creation or abolition of courts, or relating to the fixing of rates or to the making of regulations for the administration of public service corporations, or respecting the establishment of religion or the free exercise thereof; and no law or amendment to the Constitution the operation of which is restricted to a town, city or other political subdivision of the Commonwealth, shall be the subject of such initiative petition.

Now, gentlemen, I have been disappointed in what has appeared, not only before the committee on the Initiative and Referendum in the hearings, but also in the discussions which were carried on in a very friendly way among the members of the committee, although it turned out they were so nearly equally divided. And, also, in the presentation of the proposition before this Convention, I have been disappointed in one very great thing. The gentleman from Brookline in the fourth division (Mr. Whipple) said that the proponents of the measure assumed the burden of proof, and I expected evidence, so long as this verdict was divided, to be presented to the members of the Convention, to show where the initiative and referendum had worked successfully; evidence that, assuming social injustice existed in this Commonwealth as in all the others of the United States, this particular remedy somewhere and somehow had cured social injustice.

I have been disappointed in that; and particularly that the debate should have progressed so far that the proponent of the scheme, the author of the measure on which this committee report is based, and the ablest counsel of that side, have finished their remarks and still we are lacking any evidence to show a demonstration of the successful working of the initiative and referendum in any State in this Union.

On the contrary, in many States where the initiative and referendum has been adopted in its strongest form, social injustice and troubles are rampant right at this moment. But the thing that encourages me is this: The members of this Convention are taking the right interest in this question. Now that the sectarian question is out of the way, I think there is more discussion going on between members among themselves and outside concerning this, concerning the real merits, concerning the facts that would justify the adoption of the whole or of any part of this Walker resolution, than on any other subject. And we well may consider it, we well may consider it carefully, because the deeper one considers the part of this proposition that relates to the Constitution, the more one realizes that all our work with reference to the sectarian amendment, with reference to giving a vote of confidence in the frame of our government in Massachusetts that remains after the amendments that we recommend are adopted, — all that work is futile if we adopt the constitutional initiative and referendum; because I believe that if it goes out with the recommendation of this Convention, this body of representatives of all the people of Massachusetts, if these representatives consider it carefully and then as representatives bind themselves to pass it on and to recommend it to the adoption of the people, I think the probability is that it will be adopted. That is one of the things that makes it imperative for us to consider it very carefully.

Now, I am impressed not only by the interest of the men here assembled, but by their earnestness and the sincerity of their desire, the desire of each and every individual, to do his duty, and to do his duty by what? To do his duty by all the people of Massachusetts, present and to come. Looking over the records of the personnel of this Convention, their qualifications by education, by experience or otherwise, I believe that it compares favorably with any Convention that ever sat in Massachusetts, and with any Convention that ever sat in any State. It is a fashion to think of the men of a hundred years ago as not wholly human, almost as demigods; but if you read the letters and intimate papers of those days you will see that they were just like us. Gentlemen, the thing that impresses me most about the members of this Convention is that they are determined to do a good job on this Constitution.

Now, in connection with that good job, I must again express my disappointment that this debate has advanced so far, and the principal proposition, the principal piece of evidence that we are offered to justify the adoption of Resolution No. 335, is substantially contained in this letter, which I received from the Union for a Progressive Constitution, dated May 31, 1917. I am not going to read it all, I am going to read very little. It says:

> Our investigation reveals the following situation: The Convention is composed of 320 members; 161 constitute a majority. We find that 185 members have declared themselves for the initiative and referendum.
>
> Committee on Initiative and Referendum,
> (Signed) Joseph Walker, *Chairman.*

Now, gentlemen, I began in my campaign, and I began in this Convention, with a very strong leaning to some form of the initiative and referendum. I was enamored with the vague idea. But the minute I began to consider the definite proposition, the minute I be-

gan to consider that this remedy was in a form that had a perfectly tremendous possibility of injury to the whole system of the body politic, I began to think of something that must have impressed you, in hearing the eloquent speech of the gentleman from Brookline in the fourth division (Mr. Whipple) about social injustice. I said to myself: Why should we not deal with social injustice specifically? Why must the doctor take a knife and sever the spinal cord behind the ears instead of amputating the wart on the man's hand? Did the gentleman from Brookline, or has any gentleman of the committee on the Initiative and Referendum, the majority, offered to this Convention one specific amendment to this Constitution that, specifically and directly, will relieve social injustice? What is there in the present Constitution of Massachusetts that causes social injustice? It has been known since November, 1916, that this Convention was going to meet. The people had then voted, a very small number of them, it is true, — but they voted, enough of them, to have a Constitutional Convention. During all that time these gentlemen had an active interest in public affairs. Yet they have come here, and instead of asking us to help with a check for ten dollars, they have asked us, in relation to the Constitution of Massachusetts, to give them a check book with an unlimited number of checks, signed in blank, without date, that they may fill out at any time and for anything that they may see fit to put in.

Mr. Hale of Boston sought recognition.

Mr. YOUNGMAN: I should rather not yield. I should be glad to take the gentleman's number, — No. 2. The proponents of this proposition, having in terms accepted the burden of proof, and having had plenty of time, can make no claim of surprise as an excuse for their failure to offer definite propositions and put them up to this Convention. They are absolutely impaled on one or the other horn of the dilemma. One of them is this —

Mr. Hart of Cambridge sought recognition.

Mr. YOUNGMAN: Mr. Chairman — Number 3.

Mr. HART: I ask the gentleman simply to put me on the waiting list.

Mr. YOUNGMAN: All right; Number 3. Here is the situation. Either they have got to admit the facts which the gentleman from Brookline in the fourth division was most adroit in covering up, that they believe that this Convention, or any body of representatives chosen by all the sections of Massachusetts, is incompetent to deal with any question of righting social injustice by amendment to the Constitution, — that is one horn of the dilemma that they are up against, — or else they have got to say there is no constitutional check that should be had.

Gentlemen, there is another thing that was very striking to me in the opening of this debate. The gentleman from Brookline in this division (Mr. Walker) spoke of the necessity of the constitutional part of this proposal, this Resolution 335, to which I am very glad to see already an amendment has been offered to strike out, — the clause which applies to the Constitution offered this morning. He said it is very necessary, because how can we consider such a situation as this:

A law may be initiated and it may be passed at an election, and somebody, some litigant, may be aggrieved about it, and he takes it up in his case before the Supreme Judicial Court, and the Supreme Judicial Court decides that that law is unconstitutional; and there, if you do not have the constitutional provision, you can go no further.

Now, the gentleman in the fourth division from Brookline (Mr. Whipple) made his great argument about protecting the courts, protecting the courts from criticism, protecting them from an embarrassing situation. He made a touching allusion to the venerable representative of the Supreme Judicial Court in this division (Mr. Morton), as much as to suggest that he was saving the successors of that gentleman on that bench from something that was very terrible. But there, again, was the adroit omission of the fact that he could not quote the gentleman in this division, — and I hope the venerable justice will be heard from on this question before the debate is closed, — he could not quote him, he could not quote any other judge or former judge of standing, as asking that that particular provision be passed, — the constitutional initiative and referendum, the wiping out of representative government in reference to amending the Constitution, or practically nullifying it, — that that should be adopted, to save the courts from criticism. Oh, no. And, furthermore, the gentleman from Brookline in the fourth division talked to you about the initiative and referendum in reference to saving the courts from this criticism, and he said much more about the initiative and referendum. Gentlemen, he is so clever, — I have been watching and I know, — that he left us all hypnotized with the idea that this was something more or less new. But is not that proposition to initiate with a few petitioners or many, — it makes no difference, — a question of whether the decision of the highest court shall stand in interpreting the written Constitution, absolutely nothing less and nothing more than the old proposition, the political proposition, the question of the recall of judicial decisions? Did we not hear a lot of that in the presidential election of 1912?

That proposition, and the only argument brought either by the gentleman from Brookline in this division (Mr. Walker) or in the fourth division (Mr. Whipple) to support the constitutional part of their resolution, is just the proposition to recall judicial decisions, and it is worse than that, because if you adopt their proposition you can not only recall judicial decisions but recall judges too.

Now, gentlemen, I will call your attention to one thing in regard to the recall of judicial decisions. The way this proposition of the initiative and referendum, omitting that old title, which is the proper title for that argument, has been promoted and advertised, you would think that they were dealing with a new thing, but it is old. And why is that?

In 1912 no less a political personage than Theodore Roosevelt advocated that proposition. It was discussed from one end of the country to the other. And what has happened to it since? Why, it has sunk. It has been neglected. It practically has been abandoned.

Mr. Chairman, I ask you and the gentlemen of this Convention, recognizing the tremendous powers and skill of the gentleman from Brookline in the fourth division (Mr. Whipple), whether it lies in his power to revive and resuscitate a political proposition that has been

abandoned as dead by Theodore Roosevelt. The recall of judicial decisions is the only argument to support the constitutional initiative and referendum that I have heard so far. It has received further attention. The American Bar Association, to which any lawyer in any State in the Union in good standing is eligible, and of which I have no doubt the gentleman from the fourth division is a member, dealt with the recall of judicial decisions some years back, and after threshing it out voted to oppose it, and elected a committee composed of lawyers of prominence from every State in the Union and from all the territories. I am not going to offend by reading names or anything long into this record, but if I am permitted I should like to give the report of that committee, which can be found in the report of the American Bar Association for 1916. Now, what did they say in the last report of that committee?

The work of the committee has been made known to you —

that is, in the association —

through its reports and literature. The report this year shows what I believe to be effective work relating to this fallacy.

I shall simply call your attention to the fact that during the past two years there has been no progress in the judicial recall, either in the form of the recall of judges or in the recall of judicial decisions, so far as legislative or State enactment is concerned. Indeed, the progress seems to have been stopped as far as such enactments have been concerned, either of legislative or constitutional reform, in many of the States. The spirit, however, is still somewhat persistent. The movement seems rather in those States, six in number, that have adopted judicial recall in constitutional form, to bring about provisions that will lessen the danger, and in any such work it will be proper for the Association, through its committee to coöperate.

Then as another point he says on page 59:

The work of your committee, so far as judicial recall is concerned, seems to be largely done.

The advocacy of judicial recall, as such, seems to be on the wane. The most pronounced and vociferous advocates of either the recall of judges or the recall of judicial decisions are now saying little or nothing. Such advocacy of this fallacy seems to be the adoption in different form of what seems to us a dangerous reform, and one as to which we should keep watch and see that it does not progress or gain ground.

For instance, Chief Justice Clark of North Carolina, a very pronounced advocate of judicial recall, says now very little about it, but he spends his time in advocating the socialistic fallacy that the power of the courts to declare that statutes are unconstitutional and unwarranted and usurp power is not warranted by constitutional provision.

Gentlemen, I have supplied the gentleman from Brookline with a judge, — I am not sure whether he is alive yet or not, — who did advocate the judicial recall, the recall of judicial decisions.

Now, what is the essential thing that is wrong with that proposition? It comes to this: You have a written Constitution. It is possible that questions may arise between an officer under that Constitution, even the executive, and some individual in the State or some other department of government, as to the powers of the respective parties under this Constitution. Somebody has to decide which one of those people is right, or somebody has got to interpret the rules of that political system. It has got to be decided by somebody that is recognized, and so the power of the courts was created. Gentlemen, if you will consider what has happened in many other countries that have tried democratic form of government and had to abandon it, if you will consider what is happening practically every day in South

America, you will find just this: That it is because of the failure to recognize that when a written set of rules for the conduct of government is adopted, and a tribunal or umpire is asked to interpret those rules the thing to do is to abide by the rules and by the decision of the umpire until the rules can be changed in a proper and orderly manner.

Did we not fight in this country a civil war because so long as the rules worked in favor of the south, although the popular majority was the other way, the south abided by the written Constitution, and then when the time came that the Constitution worked the other way, the people were getting to the position where they could change the Constitution in the proper way, they said: "We won't abide by the decision"; and we said: "Nationality is supreme, liberty and union shall be bound together." I had to feel with sadness the other day, as those old veterans marched along, the part that the men of my own blood played in trying to work that problem out. A father and five uncles went to the front, all as private soldiers. One never came back; two came back wounded. Now all are gone but two of the survivors. Can you blame me for feeling keenly the suggestion that the very bulwark of protection and progress of this Nation, the decision of somebody upon these written constitutions so that they shall not be as sounding brass and a tinkling cymbal, shall still be maintained?

Gentlemen of this Convention have shown their intention to uphold the courts. If they have done so, where does this Walker resolution stand when it comes to a vote on that question of the constitutional provision?

Mr. O'Connell of Boston sought recognition.

Mr. YOUNGMAN: Mr. O'Connell is No. 4.

Now, gentlemen, with regard to the pledges, — alleged pledges, — of 190 members in this Convention. I believe there is nothing of the kind exists. I believe perhaps that many men have said that they were favorable to the initiative and referendum; but what is the initiative and referendum? That is what the letter says, the initiative and referendum. What is it? It is not the resolution that was before us here, because that was not in its present condition at that time, and you know that the Walker resolution (No. 335) requires that you must initiate laws in their precise and final form. What is the initiative and referendum to which a man might be favorable? Is it the initiative and referendum method in effect in any one of the States, — twenty-one different kinds? Is it the initiative and referendum in the State of Maine, the only one that is adopted in any form in a New England State? The gentleman from Brookline in the fourth division (Mr. Whipple), if I heard him rightly, was in error in stating that that applied to the Constitution. The State of Maine Constitution is still in charge of representative government. They have not yet passed a vote of censure on constitutional conventions in the State of Maine. And I believe, gentlemen, although I may be anticipating, that this Convention is not going to pass a vote of censure on itself or similar bodies to come in the future to consider constitutional amendments.

Representative government as applied to acts of the Legislature

may sometimes develop weaknesses and show defects, but they are not incurable. We do not need, if we decide to shorten a dog's tail, to perform amputation behind the ears. I believe that when the vote is polled on this question it will be found that the members of this Convention are going to consider first the form of this proposition, whether it is something that, although it may accomplish some good, is not going to do an enormous amount of harm. At this time, at this very critical time, they are not going to take and strike at the roots of representative government.

What is the advantage of representative government? Just take an easy illustration. In the votes of this Commonwealth the metropolitan district and the coast section of the Commonwealth could make the rest of the Commonwealth look like thirty cents, but in the Legislature the smallest section of the State, the section that figures least and could have least influence in the counting rooms of the big newspapers of Boston and Springfield and other large cities, have a man here, they have somebody on the job who can be heard. He may be outvoted, but his voice is heard. And in this Convention when we make a recommendation and it goes back to the people the first thing that they will feel is: "Well, the man from my district was there. He considered it. We were all represented." And so we have the proposition.

Our fathers fought Great Britain on the proposition that taxation without representation was tyranny, but if you can destroy any guarantee that there is in the Constitution, take anything out of the frame of government without representation but simply by this initiative form, you are dealing with something, — and many things, — without representation, compared to which taxation is trivial. I never had enough, and none of my ancestors back to the Colonial days had enough, to make taxation a great burden on them, because we were always people of large families, — my mother one of thirteen, my father one of nine, my grandfather one of fourteen, and so on. The only thing we could look forward to was the inheritance that was common to every American, whether he was born in this country or whether he simply had come here, the inheritance of the American opportunity, guaranteed by the frame of government that was worked out by our fathers.

Now I come to another allegation of the gentleman from Brookline in the fourth division (Mr. Whipple) that our Constitution is 130 years old and it is worn out. Nothing of the kind. The parts of our Constitution upon which we rely for the protection of this wonderful opportunity for individuals in America are not only 130 years old, but they are more than 4,000 years old. They are founded on human nature. They are founded on the principles that those men of the Revolutionary days, who for seven years of war were tried under conditions that even what is prevailing in the war in Europe scarcely surpasses, fully appreciated. There was no organization, absolutely nothing. Just the old individual with his flint-lock started out, and very often he had to forage on the country. Read Washington's letters if you think we were a great country then. See what we had to go up against.

We come to the present time, and we have got a wonderful opportunity, and we have got it because those men worked out a system

of checks and balances, — on what? On wealth? On the majority? No. On human nature. They balanced one trait of human nature against other traits of human nature, and they found this, and that is the reason the Massachusetts judiciary stands supreme. I do not care that no other State in the Union has an appointed judiciary. I am proud of it. Although I was not even born in Massachusetts I am proud to live here and to have a little part in the credit of that thing, because that system has meant wisdom, it has meant that when a man assumed the ermine of the bench he was protected there in everything except wrongdoing; he could be independent. And of all things the man who is acting on the judiciary should be independent. He does not want to have his ear to the ground about his re-election for the next five years. That is a trait of human nature. He may be honest, he may be good, but you can scarcely blame him for wishing to be re-elected.

Here comes another question about this judiciary. They will not recognize, many of these gentlemen, — they have not considered it, they have not studied the Constitution and its operation as they should, — that the courts, the members of the court, are not executives; they are umpires, and how many gentlemen here would say in our great American national game of base ball that when the umpire interprets the rules any ten men in the bleachers can stop the game and submit his decision to a referendum? That is the principle of the courts. If you look upon a judge as merely casting a vote, the way I vote between Jones and Brown on a certain proposition, that is one thing; but if you look at him as carefully studying the rules and saying to me: "Youngman, I have got to find that you are violating the rules here," it is another. He may be more friendly to me than to the other man, but he interprets the rules, and that is what enables us to go forward. We have something settled.

Here is another thing, and one of the biggest things that is wrong with this initiative and referendum. It is unlimited legislation. Unlimited acts, unlimited questions can be brought up and forced upon the people. If there is any justification for any form of referendum, — and I have got to have more evidence offered me to be fully convinced of that, — if there is any justification for any form of initiative, it should be based on something that is genuine. Gentlemen, I make no hesitation in asserting that the proposition that there is a public demand that the public begin initiative legislation which is based simply on the accumulation of signatures, is not genuine. There is not a man who has been in politics, even in a small degree, who does not know how easily you can get signatures. Send a bright boy into a factory and let him tell the people, the men there, that he gets five cents a name, and they will sign almost anything for him, and especially would they sign a petition that merely gives a glowing description of what the proposition is. There is nothing in principle. If they came forward with a proposition like this: "We authorize certain petitioners, anybody as petitioners, to present at the election the proposition that the Legislature has failed to act on a thing that the public demands action on," and they take that and they get a majority of the people who vote in that election to agree to it, to say that they are right, then you have an act; then you have a fact. Voting is an act. Signing a paper is not an act. It is negligible. It is negligible, in

political parlance. That is not the only thing. What about these people who are proposing to change our Constitution, to rip up the very work that we are doing now? Ten people can do it, — ten men.

The gentleman from Brookline in the fourth division (Mr. Whipple) had a lot to say about the twenty-one wilful Senators. I shall not go over any of the ground covered by Professor Churchill or Mr. Lummus on that matter, but which would you rather have, gentlemen, twenty-one men elected from representative or senatorial districts, answerable on the question of re-election one year from date or sooner, twenty-one men of that kind whom you can reach, or ten men of straw? The men who start these petitions can be men of straw. I ask you to search your own experience. I ask you to think over some of these things. When a circular in politics is going to be put out, something that is a little nasty or has a little sneaking proposition in it, what do they do? Well, in the big cities they do this: They go to some boarding-house, where some fellow who is pretty nearly down and out has registered on the first of April. They get his name and his address. That complies with the law. He disappears. The landlady does not know where he has gone. The thing can be printed. It can be spread broadcast. You can take ten such men of straw and initiate anything in regard to this Constitution of Massachusetts, if this resolution No. 335 prevails, and the boys can start out on their five cents a name proposition, gather up the 50,000 signatures, have somebody behind the scenes, invisible government, willing to pay the bill, and you have got the thing up for discussion. It is forced upon the people. And it cannot be forced in one thing only, but they can send a dozen or fifty of them at the same time if they see fit.

You have seen out in the western States how they have forty-eight questions, — as many as forty-eight questions, — on those things. Now I want to say one thing about the western States. It so happened that owing to an affliction that came upon my eyes in 1911 I went to the west to visit among friends and relatives who are scattered out there in this course of American emigration, because, as you might expect, the sons of families of ten and twelve would not all settle down and divide up father's farm; they would have to go out and hustle for themselves. I visited a lot of my relatives all through the western States, and particularly in California. I was in California at the very time that the California Legislature was adopting the initiative and referendum, 1911. I was a guest, in fact, part of the time, at the home of one of the leaders of the Progressive party in California, a resident of Los Angeles. And what did I find out? Why, those men wanted the initiative and referendum out there to remedy the things that did not need remedying in Massachusetts. They were confronted with things like this: A steering committee of the Legislature could take any bill that came in and treat it like the committees of Congress sometimes treat bills, — bury it. They had no right of petition, like we have in Massachusetts. You do not need ten men, but one man can stand right on his own feet and come before the Legislature of Massachusetts either with a statute or with an amendment to the Constitution, and the Legislature is obliged to give him a public hearing; there is not any escape from it. With the steering committees and many other things that they had in California no wonder they wanted to do something different.

And as regards their judges. They do elect judges. The western people treat some of these political problems, the fundamental political problems, pretty lightly. They say: "I should worry," or they say: "We have not time to bother about that." Without fully realizing it they do sometimes indulge in the remedy that is best described by the assertion that the hair of the dog will cure the bite. They had an elective judiciary, and on the one side they found fault with it because it decided too much in favor of the Southern Pacific Railroad, and on the other side, while I was in California the highest court in the State reversed itself on the question of putting a labor leader in jail. No wonder they wanted some kind of a change. No wonder they wanted to hold something over their judges. If the judges had been chosen by the wise Massachusetts method in the first place the people would have had no difficulty.

Now, gentlemen, as to the duty of the framers of a Constitution to safeguard its stability and permanence. What is the big thing about our form of government as compared with any other democratic government that has existed in the world? The Greek republic, the Roman republic! France at the time of the revolution thought they had pure democracy, but they did not get as far as doing away with all forms of representative government as regards their Constitution; they still had the deliberative body, they still had the oral debate, they still had the opportunity to consider who it was that was making this proposition. Why, what we have got that the others have not had is stability. Now, the minute we fix it so that any ten men of straw can start a proposition that simply goes to the Legislature, and concerning which the Legislature is without power, then you have got the way open to any form of instability.

I am surprised that some of the gentlemen favoring this resolution have seriously advocated before this body that there is something that a representative body can do that means something in reference to a constitutional amendment offered under this resolution No. 335. There is absolutely nothing, — absolutely nothing. The Legislature is nothing but a rubber stamp. If you had a provision in this amendment, in this No. 335, that Mr. Kimball (the Secretary) up there should put on a rubber stamp that this thing was received at a certain date, it would have the full expression of power that that Legislature or the next year's Legislature has over the thing. Received in 1918 it can go on the ballot with only ten men of straw starting it, and 50,000 petitioners or signers that can be gotten chiefly through fake, if they are sought that way; it can go on the ballot under an attractive title that a man who never has dealt with those propositions at all, who is utterly unqualified ordinarily to deal with the title, gives to it. What does he do in the practical working out of the matter? What does he do? If you went to the Secretary of the Commonwealth with the proposition that you had initiated, and you said: "Give this a title," he would ask: "What title do you want?" It is just between you and him. The only way to combat a bad title, a fraudulent title, a deceptive title, is to start something else with another title, and then you have got the conflict of laws, such as they had out in Oregon when they had to issue a hurry up call to the Legislature to correct the mistake of the conflicting initiative of statutes. It is the same old story.

We want to secure stability, and we want to deal with questions of social injustice specifically, — each one separately.

Now, there is another question about the people voting on these things. Do the people want to legislate directly? Gentlemen, if you put it to them, as to whether they shall pass directly a statute dealing with a certain thing and specify the statute, and you get a majority vote on it, then you have got something that is genuine, you have got an act, a fact, a popular act. I trust the people. I have no worry about how the people will decide ultimately on a proposition which they are willing to decide by a majority of them, and which they determine upon information; but when you have got ten men of straw starting an initiative petition, with a lot of fake signers, — good Lord; if you had 50,000 signers spread all over the Commonwealth of Massachusetts who would verify them? Why, they even broke down on the verification of the nomination papers, just that simple little number of names required to nominate us here in Boston, for this Constitutional Convention. Now, what do these names mean? Why, out in my district there was a man who had 1,500 signers to his indorsement, all voters by the way, and he got 300 votes. That is about what it means. That is just about a fair proportion of what these signers mean.

When you deal with the Constitution of Massachusetts, an old State, that has been a beacon light to all the other States in the Union, you do not want to deal with it on the basis of a fake or something that you know is not genuine; and these signers, these petitioners, these ten petitioners and these signers may not be genuine, and if genuine they do not represent a true statement that the majority of the people of Massachusetts voting in any election really want to legislate directly. Well, it is a simple illustration. Out at Harvard College they had a proposition up and submitted it to a referendum of the students, as to whether they should conduct their own government, and the students replied to the faculty what I think in most instances if this proposition that I have been discussing were adopted the people of Massachusetts would reply to the Legislature: "You are hired to do this job. You are paid in honor and in money. Now go ahead and do it." That is what the thing would come down to. But when you can get that far you have got a proposition.

Now as to the Constitution. We have had about a dozen amendments to the Constitution of Massachusetts in the past ten years. There was no serious opposition to this Constitutional Convention. I have not heard it asserted on this floor that it has been impossible in Massachusetts at any time on reasonable effort to secure a Constitutional Convention. Why, then, do we need this other form?

What is the matter with this other form from another standpoint? It is against human nature. They say: "We give you this form. This is a third form. You have at present the way of amending the Constitution by two Legislatures and then submission to the people. You have the way of calling a Constitutional Convention and then submission to the people. Now we only want a nice little third way, — a perfectly harmless and a very popular vote-getting-idea for a third way." But what happens to the other two? Will a man walk up nine flights if he can take an elevator? If ten men of straw, — you do not know who they are really, — can start a petition that forces

the decision of a question of constitutional amendment, will anybody take the trouble to get a Constitutional Convention called and elected? Will they take the trouble to bother much before the Legislature? There is only one other thing that the Legislature could do with regard to an initiative and referendum proposition to amend the Constitution put up to it in this way, and that is, it could give it a little advertising. But, gentlemen, Mr. Filene and the gentlemen who are doing his advertising could do better advertising than half a dozen Legislatures. What show has the average man of the Legislature, what show has the average laboring man or the average man of the plain people, to which I gladly claim to belong, got in the newspaper office to get any great amount of space? But before representatives in the General Court he has got one thing that they cannot deny him, a public hearing and he has got a chance that out of the 280 members of the Legislature he can find one man who will stand on the floor of the House, and probably one on the floor of each House, and voice his convictions about that, state whether or not that proposition is fair to him. That is what representative government is. Representative government is a series of compromises to work out a measure that is on the average fair to the whole community. The fundamental weakness in the initiative and referendum is that there is no possibility of compromise. The bill is initiated. The Walker proposition has been amended in this resolution, so that there is no possibility of amendment by resolution 335, and you have got to take it or leave it.

Gentlemen, I have called your attention to how the judicial recall was dying out, or dead, and I should like to call your attention to some of the States where the initiative and referendum has been put up recently, in one State as late as 1914, and has not been accepted. On this resolution we come first to the question of what the initiative and referendum is. It is like grandmother's crazy quilt. Every different State has got a different patch. Gentlemen, there is no question for more serious consideration by this body than this: If we were to adopt, and assuming we were to vote to adopt, this resolution No. 335, we are trustees for the future generations of Massachusetts people, and the beneficiaries of our trust would look as we have looked at the deliberations of the Convention of 1853, as we have looked at the deliberations of the Conventions that have gone before it, and they would say: "Why did they adopt that method of government in Massachusetts? What was the reason? What was the public necessity? What evidence was put upon the record to show that that was needed? What was the popular demand?" Now, I am not going to elaborate all those things, but as a member of this Committee I want to testify to all my fellow-delegates of this Convention that the popular demand as evidenced before us in any form was practically nil. Twenty-five persons was our largest attendance, and of the people who came in advocacy, if it should become pertinent, — I do not wish to become personal and I am sure I shall not become abusive, — I can show how a great many of them have been syndicated together so long on so many things, and not all of them by any means for the public welfare, that it narrows itself down to a mere handful. Now, gentlemen, with that thing before us, with that thing in the record, with my questions put here, these gentlemen will not be able to make a convincing answer any more than they are able to make a convinc-

ing answer for any State in the Union where the initiative and referendum in any form has demonstrated its success, — with those things before you are you, because at any time you said that you were inclined to favor the initiative and referendum, going to adopt this resolution?

I will discuss now the resolution in detail.

The first thing that I would call your attention to is the fact that unfortunately it contains a joker. I have the very highest authority for the fact that it contains a joker, because I hold in my hand the pamphlet issued by the Union for a Progressive Constitution, signed by Mr. Walker, Chairman of the Committee on Initiative and Referendum. On page 16, describing the official joker No. 3, it says:

> The requirement of an unreasonably large number of signers or other burdensome restrictions upon petitions.

That is the description of the joker. This is what it says about it:

> Clearly if the labor of filing a petition is too great, the initiative and referendum is useless. In Massachusetts where, for generations, ten voters have had the power to work the initiative in town affairs by putting in the town warrant a measure which can be settled only by vote of the whole town, the requirement of fifteen to thirty thousand signers for State petitions of similar purport seems quite high enough.

And 66⅔ per cent increase is put in resolution No. 335, which is now before you, and I hope that that degree is sufficient in view of the words thirty thousand being quite sufficient to constitute a fair suggestion of a joker. But the real difficulty, gentlemen, is this: You are deceiving yourselves if you consider that any number of petitioners signed to papers circulated like that means anything. I should not alter my opposition to applying the initiative method to amending the Constitution if they said they would do it by 100,000 petitioners, — 100,000 signers. It is not a genuine test.

My first criticism of this measure specifically is that all the provisions of it applying to the Constitution should be stricken out. I make that on the ground that with those provisions left in, the representative form of amending the Constitution is practically nullified, to be used only when initiated amendments have gotten the Constitution of Massachusetts in the interesting condition of some of the western constitutions, — for example, Oklahoma, — where they had about everything from dog taxes to the guarantee of bank deposits, under a system that means the absolute repeal of human nature. And that, gentlemen, is exactly the weakness of this proposition as applied to our Constitution. It does not recognize certain laws of human nature which are immutable just the same to-day as they were a hundred and thirty years ago. A man will not take a slow, burdensome, expensive way of doing a thing if he can do it in a quicker way. But as regards constitutions depending on the consent of all the governed you do not get the good results. What did they say in the Declaration of Independence: "Governments deriving their just powers from the consent of the governed." And how have we worked out the wonderful destiny of this country up to the present time? By a representative system of getting the consent. If we passed a law, for example, by the initiative in this State, — here is where the sectional question comes in, — that the metropolitan expenses now divided among the cities and towns of the metropolitan district should be borne by the

whole State, would the gentlemen from Berkshire and Hampden, the citizens out there, feel that they had been represented in the thing because they had a chance to vote in the election? If, on the other hand, having the votes in this metropolitan district, we said: "Here, you people have State highways through your towns, miles and miles through some of the shoestring towns. They are your streets. We pay for them fifty or sixty per cent of the cost, although here in Boston you do not pay for our streets. Why should we pay for yours? Now, we will get a State highway bill passed, and we will put the burden entirely on the people where the highways are." Those are not only possibilities, but probabilities, and there is nothing in this resolution No. 335 to prevent their doing that. It is not the money part of that thing, Mr. Chairman, that counts; it is the ill feeling. It is the feeling that here was a law passed and thrust upon those people virtually without their consent, virtually without their getting a fair hearing, because, gentlemen, if you get a hearing before a tribunal or a judge that does not decide, what good is it to you? Or if you fail to get a hearing before the tribunal that does decide are you satisfied? Will not sectional dissensions arise? Certainly they will.

Now as to a constitutional amendment under the Walker proposition. Why, it is not even as fair as the Harriman resolution, No. 186. Mr. Harriman realized that when you came to put up a constitutional proposition, and there may be a dozen or more of them put up at the same election under the initiative and referendum, the people may think: "Well, that thing is going to be killed. I don't need to worry about that. I don't need to talk to my neighbors or anything. That is going to be killed, that is such a foolish thing." And lo and behold it will be just like this public opinion test. There will be only a handful of the people who vote for Governor in that election who will also vote on these propositions, and the thing will be carried by a small percentage of the total vote; an amendment to the Constitution ripping up all kinds of things will be carried in the election, and the people will be taken by surprise. Well, Mr. Harriman says that before a thing like that becomes a part of the Constitution it shall be submitted twice to the people, and the second time they will get a chance to look it over and then they will know the second time, if it passes the first, that they are up against something. Of course the method of trying to amend the Constitution without a representative body to discuss it, to deliberate upon it, I think is unwise and obsolete. It is not new. It is not progressive. It is old. It had been abandoned centuries ago. But at least, if you are going to have that method, remove the element of surprise. That is the assertion I make about this proposition, that it contains two big elements that should not exist in anything that is applied to the Constitution of this or any other State. It contains very great possibility of surprise to a large number of the people, and it contains very great probability of fraud in the unfairness of the description, in the unfairness of the presentation.

Now see what the framers of the Massachusetts Constitution said in the preamble about those things:

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence,

or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new Constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain, and establish, the following Declaration of Rights, and Frame of Government, as the Constitution of the Commonwealth of Massachusetts.

Gentlemen, we want to get consent, we want to get confidence, we want to get stability in the government, and then you have that great opportunity the ability to go ahead.

I have alluded to the fact that the initiative and referendum gives a license in blank in reference to the Constitution to go as far as you like. That is what we give them if we pass it here. I have alluded to the fact that it forces decisions, and to the fact that it puts a premium upon sectionalism. Of course the compromise that has enabled this section of Massachusetts to go forward with its metropolitan improvements is a compromise worked out in the Legislature with the representatives of the western part of the State, who freely say: "If you are going to pay the bill, why should we object?" But where is the opportunity to compromise under the initiative and referendum?

There is another provision of this measure that is seriously open to criticism. On page 6 of No. 335 you will find that it is provided that they may take up any part of any act of the Legislature and submit that to a popular vote and have it repealed. I do not believe that any man who wishes to be fair about this to all the people of Massachusetts, who ever has been a member of the Legislature, will believe in that provision, because no compromise can be worked out in the Legislature that satisfies at the time all interests without being subject to the treachery afterwards of some other interest by simply starting with these men of straw a referendum petition, and the part that would get the least popular votes can go out. For example, gentlemen, here is another fundamental thing that is wrong with this. It never is settled. We never are sure that a proposition is settled. In the past we have had great questions that have come up to a crisis and been settled. Can anybody get anywhere now with a proposition for human slavery? It is not because it is that proposition. Can people get anywhere with any big proposition that has been settled definitely and for all time before this Legislature or before the Congress of the United States? They cannot, because those who are to consider whether it shall be put to the people are representatives who can be pointed to with the finger of scorn and to whom it can be said: "Here, you are promoting sectarian dissension, you are promoting sectional dissension, or you are trying to revive a dead issue that has made a lot of trouble, and we don't want any more of that trouble." But you cannot get at those ten men of straw who start a petition of that kind; nothing of the sort. They can start this trouble through parts of acts. I think at the very least, if they were going to strike out the power to amend an initiated statute they should strike out the power to referend, so to speak, a part of the statute.

I am getting near the end of what I have to say, and I wish to call attention to the parallel in history between this proposition here and its supporters, notably the Hearst newspapers, and the agitation for bimetallism in 1896. Almost the same States in the west took up that craze. Gentlemen, as we had twenty-five people who came before our committee on this proposition you could have gathered twenty-five thousand on Boston Common in favor of free silver in 1896 and,

referring to the constitutional initiative and referendum, the one proposition is founded on just as much good political sense and knowledge of human nature as the other. Although I was only a boy, I discussed that proposition at that time with a member of Congress who was a free silver man. I said: "Why, that can't prevail. It won't work, because it is in opposition to Gresham's law." He replied: "Billy Bryan will get control of Congress, and we will repeal the Gresham law." Gentlemen, the Gresham law is the law of human nature. If there are two coins and each one of them will pay a man's debt and one if it is taken as bullion will pay the debt and half as much more, which one will the man pay the debt with? Why, he will pay it with the cheaper one.

Mr. Brown of Brockton sought recognition.

Mr. YOUNGMAN: You are No. 5.

Mr. BROWN: I am looking for my number on that proposition, Mr. Chairman.

Mr. YOUNGMAN: He is No. 5.

In 1896 bimetallism was heralded from one end of this country to the other. As I say, not only did the Hearst newspapers support it, but it was supported by the gentleman who was mentioned to us before the committee by some of the advocates of the initiative and referendum, particularly the constitutional part of it, extolled as the great exponent of this initiative and referendum proposition, George Fred Williams, a man who undoubtedly is an able man and all that, but whose political judgment in espousing that cause and going before the people of Massachusetts was submitted to the acid test, and this is what it was: In 1895 George Fred Williams was a candidate for Governor of Massachusetts. I hold in my hand the official report of the Executive Council on the election returns. Frederic T. Greenhalge had a majority over him of 65,000. Only one year later, after George Fred Williams had advocated this great popular proposition of bimetallism to relieve the poor, to cure social injustice and all the things that this very proposition that is before us, applied to our Constitution, is to relieve, and about all the isms that are involved in it were discussed right then and there in connection with Populism, George Fred Williams came before the people of Massachusetts, and this is the seal that they put on his political judgment. I again consult the official report of the Executive Council. Roger Wolcott got 258,000 votes. George Fred Williams, running on four tickets, got a grand total of 103,000 votes. Roger Wolcott had a majority of 155,000 votes. I do not mean to make this personal or apply it to one man, but not only George Fred Williams but some of the very men whose names I find on these circulars of the Union for a Progressive Constitution were supporting that proposition. It has been tried before the people, to whom when it was first proposed it looked good, just like this thing did in some of the western States; but when they began to get down to education on it, when they began to apply the test of how human nature would come out with this thing put up to them, why, they repudiated it, and that is just exactly what they are going to do with this. Woe be to the party, — whether it is the Progressive party, dwindling now to a few generals without an army, and I had great sympathy with them in their beginning, or whether it

is the Democratic party, that went into innocuous desuetude for sixteen years because of the advocacy of this great popular measure of bimetallism, — that adopts it. The one that adopts it will suffer, because in the end the common-sense of the people of Massachusetts and of all the States in the Union is going to triumph. They are going to come out and say: "We like our institutions that are secure, we like those that guarantee individual liberty."

What is the other side of this thing? I have not touched on it. The question of the advocacy of this thing by some of the leaders of organized labor. I say to my friends of organized labor that I am very glad to find that their leaders are divided, because some of them are wise and some of them are unwise on this proposition. There is no question in political affairs, no question in the framing of government to which you need to give so much consideration as this. When you make a change that may give you something that you think you temporarily want, are you going to destroy by that change something that you do not want to destroy, that you wish to keep, that is infinitely more important to you than what you wish to destroy? Here in this Constitutional Convention in 1853 they would have shaken the stability of our courts and our judicial system to try to get through a fugitive slave administration of Massachusetts laws to suit the majority of the people of Massachusetts at that time. Would they be proud now if they had got it then? No indeed. It was far better that time should settle that problem. It worked along and was settled in the wise forms and methods that it was settled, even if it required finally the shedding of human blood; but it was settled right.

Now, my labor friends, I certainly can say that I am a friend of labor. The records of one great industry, which employs more men than any other in this Nation, — the railroads of this country, — will show that when I was a boy of eighteen I worked as a switchman. The records of another will show that when I was a boy of twenty I worked as a fireman and stoked the boilers of a river steamboat. I also have worked on a farm. I have great sympathy with labor, because I have seen the time when the chance to earn a dollar a day looked mighty big to me. But the men of the labor organizations who counsel taking this course with our system of government are making the very mistake that was put up to a similar element in the community of Rome many centuries ago, — more than 2,000 years ago. You know they had castes there then which we have not got here, they had the plebeians and the patricians, and the plebeians said: "We are doing the work with our hands. We will strike. We won't work to do something that feeds these patricians who are practically running this government." Well, they had a great gathering on the Capitoline hill, or some hill, I do not know, and one wise old fellow got up and said: "This situation reminds me of a fable. The hands once decided to make a strike against the stomach. They said: 'Here, we are scratching, scratching all the time, digging in the soil, and what we produce simply feeds the stomach. The stomach does not scratch. The stomach does not do anything. The wear and tear is on us.'" When that thing soaked home to the minds of those people, the element that corresponded to organized labor of to-day, the organized plebeians, they said: "The old man is right." But, gentlemen, in America we have got something far bigger than

that, because the hands of to-day may be the stomach of to-morrow. I have seen it generation after generation in my own family. The boy starting with nothing and getting so that he has a comfortable little home can raise a large family of children, and he can end his days proud of his country and proud of his flag. But the minute you start in this country or in this State to say that the organized portion of the community, whether it be organized capital or organized labor, shall have a set of rules for government that is more favorable to it than to the unorganized portion, — and that is what this constitutional initiative and referendum is, nothing more, nothing less, — then what have you got? You have got a feeling of bitterness creeping up. Numerically organized labor is not in the ascendency if the unorganized portion of the community, the great plain people that are not organized and constitute nearly sixty per cent of the population of Massachusetts, get busy. You do not want that. You do not want that division. Organized labor has its best chance, — and I found it so whether as an individual or working with my local union off there, — in getting sympathy. Get a good proposition and get the sympathy of the public. Get the sympathy of that sixty per cent. Line them up with you, and do not line them up against you. Do not try to be the Prussians of America. You cannot get away with it, and I will tell you why. Because you will be like some of my friends of the Progressives who have adopted this proposition and called it progressive, you will be a lot of generals without any army. The average laboring man is either a good Republican or a good Democrat, and most of the time he does not take his orders from somebody else on a proposition that he regards as a governmental proposition, and the average laboring man, even though affiliated with a labor-union, is first and foremost a patriot.

I never shall forget as I was going to the front in the Spanish war passing along in our troop train through a great plant that is now working hard to protect this country. On the side of every smoke-stack, fixed up by the hands of toilers underneath who could not go to the front, was a flagpole. Right up there in the smoke from the plant of the Pennsylvania Steel Company were hundreds of American flags waving to us and showing that those men, unionized just the same, were united in heart with all the rest of their fellow-citizens.

This proposition for the initiative and referendum is a promoter of dissension, a promoter of discord, a promoter of things that shake this Republic to its foundation; and above all things, in this time of great national crisis, of international crisis, it should not be considered by our people; it should be dealt with by this jury of experts, this representative body against whom no one yet has issued on this floor an assault or a question of their honor; it should be decided that we will not recommend that an experiment so drastic, so far reaching as this, be applied to the Constitution of Massachusetts. Abraham Lincoln said at Gettysburg: "We have met on this great battlefield, the greatest battlefield in the greatest war, testing whether this Nation or any other Nation so conceived and so dedicated shall live —" that is, conceived in the proposition that all men are created equal, and dedicated to that proposition.

Now, gentlemen, we are in the midst of a great world war, and we are testing whether representative government, whether democracy

with its checks and balances, can go forward, or whether we have got to have autocracy with its wonderful organizing power. We have the issue between the Russia of to-day, a blind giant, and the Germany of the past forty years, able to blind millions. Are we going to choose the Russian proposition or make ourselves victims possibly of the German proposition, or are we going to stick to the good old American proposition? What did Gladstone, the great liberal, say? That the American Constitution was the greatest document ever sprung from human pen. What have many men, the wisest and the most impartial judges of our system, said? And the Massachusetts Constitution is the pattern of the Federal Constitution. What have they said about that? That our forefathers builded better than they knew. Well, they had to know. They had seven years of war of the Revolution, seven years of the Articles of Confederation, where you could have had the initiative and referendum applied to any Constitution for the asking, practically, — seven years of that and seven years of the other, — and when they got down to what was fundamental they gave us something that fitted human nature for practically all time. I believe that the men of this Convention, when they come to think over the workings of this particular resolution that is before us, go into the details of its possibilities, will reject it; and the fact that they said, or any of them said, that they were favorable to some form of the initiative and referendum, will amount to nothing, because they will say: "You gentlemen as the proponents of this measure, instead of offering your evidence and giving us something with which we could creditably go before the people and before posterity as justifying our decision to adopt your measure, have done nothing of the kind. You simply have relied on a lot of haphazard opinions gathered together principally by one newspaper before the men who assembled here and stood up, and each of them took his oath, naming his own name, had heard one word of the evidence or anything of the arguments."

I thank you. [Applause.]

The debate was continued after the noon recess.

Mr. YOUNGMAN: I am taking the floor only to make good my promise to the gentlemen who wish to ask me questions.

The CHAIRMAN (Mr. Boynton of Everett): Mr. Youngman of Boston now proposes to open a question box. Those gentlemen who wish to interrogate him are at liberty, I understand now, to do so.

Mr. BROWN of Brockton: Mr. Chairman, I am Number 5. At the time I got the number I was about to ask the gentleman what was the definition of the Gresham law, and he, telling me that I was Number 5, proceeded to give it; then I discovered that he, a lawyer, was avoiding the record statement of what that definition is and giving his own definition. I think he is so far sunk in the fog of his error in regard to the Gresham law that I should either have to take my own time to enlighten him, — at least I cannot enlighten him by a question, — and so I thank him for the courtesy in putting me No. 5; but I am out.

Mr. YOUNGMAN: Mr. Chairman, I am sorry I did not go out a little earlier myself. I appreciate very much the patience of the members of the Convention in hearing me through to a finish. The Gresham law, like some other things that have been put upon the record here,

would better be found by looking in the books than having it repeated orally. I gave only enough of it to suffice for my illustration. The next question.

Mr. BROWN: I should like to ask the gentleman if he ever did read the Gresham law?

Mr. YOUNGMAN: My understanding of the Gresham law is that it is something like the law of gravitation. It is not a thing that is described in any statute, but is a thing that exists in human nature, as the law of gravitation exists in the nature of physics, — the physical structure of the earth.

Mr. BROWN: Did he understand the Gresham law to be, for instance, that shillings that were clipped would be kept in circulation, while shillings that were not clipped would go out of circulation?

Mr. YOUNGMAN: If it be material, I will say that I understood the Gresham law to be that the maintenance of the parity of two metals, in the shape of two coins having the same legal tender value, was impossible unless the bullion value of those respective coins was the same. It never is the same, and therefore the cheaper money of the two would force the dearer money out of circulation.

Mr. BROWN: If the gentleman will allow me, Sir Walter Gresham observed that the clipped shillings were in circulation while full shillings were going out of circulation. At that time, as now, balances in trade between countries were settled by commodities and not by money. It manifestly follows that a full shilling weighs more than a clipped shilling. Whereupon he discovered that the full shilling was going out of circulation because the commodity value of the full shilling was worth more than the commodity value of the clipped shilling. And I might call the attention of the gentleman, if he will permit me, having yielded the floor, to the fact that it was very unfortunate for him to point to the 16 to 1 silver question because all the silver advocates then contended was that a government monopoly demand for silver at the stated price of the stamp would send it to a price equal to the stamp. And yet now, at the very moment that he is referring to it, the demand for silver may send it as a commodity above the price that is stamped upon it. The amount of silver in a dollar to-day, — to-day's quotation, — is 94 cents to a dollar, and that is caused by the law of demand and supply. Gold will be released and sent to this country because the amount of gold in one dollar, — or, better stated, sixteen ounces of silver may buy more than one ounce of gold, — which is the relative coinage value. They will send in gold and take out silver money. I was a little confounded to sit here and see that he, a lawyer, would confuse these fundamental truths about money which are more important to the liberty of this country than your sectarian amendment or the initiative and referendum. I am glad to see that the time has come when the contention of those people who were ridiculed in 1895 and 1896 is verified as correct; and the United States may see that even its subsidiary coinage, which weighs relatively a little less than the silver in a dollar, the small pieces, the halves and quarters, may leave us, in exactly the same way as the money of Germany has already gone out of circulation. She has no copper in circulation, because her copper is worth more than its stamp to melt into torpedoes to fire at us. Germany to-day, if

I may be permitted, has funded her debt by issuing paper money. She issues paper money, and takes in metal money, so to speak, for bonds, and issues more paper money and takes in more metal money for bonds. Five times she has made an issue of paper money. She is floating her war on paper money. Yet we in the United States, with the intelligence that should be in Congress, worry ourselves as to how we may draft the credit of all the people! We prefer to use the credit of a part of the people, to build up a bonded debt, when we could have immediately drafted the credit of all the people; for the credit of all the people with the money stamp of the United States on it is equal to any money it may be coined for. It is as good as the flag under which it is issued and the flag makes it good. I did not intend, sir, to take the time of the Convention, but I feel perhaps it is not lost. [Applause.]

Mr. YOUNGMAN: Might I reply briefly to the first question before I yield for the next one (Mr. Hart of Cambridge having risen), and simply to say that I will not lead the Convention into a discussion of the issue of the free coinage of silver in the ratio of 16 to 1, or of fiat money; but to say that those questions, like the question of slavery and freedom for the black man, have been settled by the highest jury in this Nation. And just for the reason that questions involving the great constitutional propositions like that cannot remain settled under the initiative and referendum applied to our Constitution, because irresponsible people may force a rediscussion of them, I am strongly opposed to it, and my conviction is growing stronger all the time, that the constitutional part of this Resolution No. 335 should be stricken out.

Mr. BROWN: May he not fear that the people of the United States may use the initiative and referendum to compel their representatives in Congress to observe and act on the dictum of the Supreme Court, as laid down in the 12th Wallace, 519, in regard to the very question to which he now refers? He speaks of fiat money; has he not discovered that all money is fiat money? Does he not know that there is no such thing as money except by law? Does he know what a gold dollar is except by the law which tells him how much gold there is in it? The Supreme Court has said it. A dollar never is in the commodity, — gold, silver or paper, — but always on it. All he has shown is that those persons who held the privilege of living on the interest of what they owe were able to fool the people when it came to any such thing as the referendum or vote on the question.

Mr. YOUNGMAN: I think if I were to answer the gentleman's last remarks I should only be prolonging a discussion that is immaterial. I only spoke of the free silver agitation as an illustration. Therefore I will yield to the gentleman in the fourth division.

Mr. HART of Cambridge: May I ask three little innocent questions. In the first place, the gentleman who spoke this forenoon mentioned a base ball game as a parallel for our courts, asking us what would happen if we did not recognize the umpire. I should like to ask him what would happen to a base ball game if the umpire read into the rules, which were made by other people and not by the players, something that was not there, as, for instance, that a man need not touch the bases as he went around, — whether or not the principle of recall would not be applied to him?

Mr. YOUNGMAN: May I answer, I am glad the gentleman consented to offer his questions one at a time. I used the base ball illustration to show that these gentlemen who are agitating for the I. and R., particularly those I have met in the populistic States of the west, never have formed an adequate conception of the relation of the Supreme Court of the United States, or the Supreme Court of a State, to a written Constitution. They think of the members of the highest bench as simply a few more legislators, who are there to vote, and who really, following the principle on which the initiative and referendum cause was organized for this Convention, ought to be pledged before they can get on the bench. That is the principle they go on. They do not realize that they are there when a question properly arises, and only then, to interpret the Constitution, or, in other words, to apply the rules.

Mr. HART: May I ask whether, if the gentleman lived in a State like California, in which there was a popular demand for legislation which the Legislature would not afford, — whether in such a State as that he would vote for the I. and R.?

Mr. YOUNGMAN: I was in California, as I have said, when the Legislature was considering the adoption of the I. and R.; and a leader of the Progressive party, one of the three most prominent leaders of that party in the State, and a very close personal friend of the greatest leader of the Progressives in California, the present United States Senator Johnson, said to me: "I wish we could adopt in this State the Massachusetts system of the judiciary; when I want good law on any subject I go and get a Massachusetts decision." I said: "Why don't you propose it? Your friends are in control up there at Sacramento." He replied: "Oh, that would be taking my political life in my hands, because that would seem to be moving the judiciary farther away from the people."

I think that if they had had in California a simple system of initiative, such as we have had in Massachusetts from the beginning, whereby one petitioner can present a law or a constitutional amendment and is bound to have it heard, publicly, by a committee of the Legislature, and is practically certain to find at least one man in each House of the Legislature who will present it, they need not have gone to the patent medicine, such as is suggested in the initiative and referendum. The only trouble with those western States, particularly populistic States, is this: That when they formed their constitutions in the first place they did not consider enough the reasons which these courts so wisely consider, the reasons for these provisions in the Constitution, the reasons that are founded on human nature. Instead of that they made their constitutions a hodgepodge of statutory law, and they could do it easily with the initiative. Why? Because they can come back to the Constitution of Massachusetts as to mother's love; though they have erred and strayed they always would find that substantial and reliable.

Mr. HART: It is a relief, Mr. Chairman, to discover that the gentleman would not take a patent medicine unless he thought his system required it. I will ask one other question of him, with your permission, Mr. Chairman. I observed that the gentleman intimated that the friends of the initiative and referendum were not interested in propositions of social reform in the Convention. May I through you call his attention to Document 349, which appears to-day, in which will

be found twelve different propositions for social betterment, now before this Convention, with the affirmative reports of committees, coming before us for discussion, in which I am perfectly certain the friends of the I. and R. are as well represented as those who are opposed?

Mr. YOUNGMAN: My remarks on that question were directed to the argument of the gentleman from Brookline in the fourth division (Mr. Whipple) who, while suggesting that social injustice existed, had offered us nothing specific. He did not say that he espoused the cause of these various amendments, — nothing specific that we could do to change the Constitution. He simply urged us to give a license in blank to have any changes made in it without the methods of the representative system, and I claim that we cannot truly get the consent of the governed of this Commonwealth without the representative system; and that these gentlemen, having the burden of proof to show that their system is better than the representative system embodied in the Constitution as amended as a method of amending the Constitution, have failed to come forward with any convincing evidence.

Mr. WHIPPLE: I understood the speaker to quote me as having said earlier in this discussion what he has just stated, — that I recommended the initiative and referendum to take the place of representative government. I wish to say once for all that I made no such proposition. The initiative and referendum, according to the Walker plan, does not take the place of representative government. To my mind it does not interfere with the functions of representative government. In one or two respects in which representative government has failed it serves merely as a corrective, a corrective of influences which have grown up under representative government, — a corrective which, if adopted, will insure us representative government, and which, if it is not adopted, I fear will bring us where we shall have no longer representative government. [Applause.]

Mr. YOUNGMAN: I am delighted to have the gentleman from Brookline in the fourth division reaffirm that assertion, because that is the big element in this constitutional proposition, contained in resolution No. 335: that while protesting that they do no harm to representative government, they offer a third method of amending the Massachusetts Constitution that makes it so that in human nature the representative method of dealing with a frame of government that is to be forced upon all the people of this Commonwealth, is abandoned until such time as the unrepresentative method, the mere submission to popular vote, — which may be mostly a vote of the city of Boston and vicinity, leaving out the rest of the State, which has all these other representatives, — that that method will take the place of all the other methods until they get the Constitution in such a tangle that they will have to call a new Constitutional Convention, the way the people in Oregon have had to call the Legislature to untangle their affairs. And I say that in Massachusetts we are not like kittens that are four days old, hobbling round with their eyes shut. We do things with regard to our fundamental law, our frame of government, with our eyes open; and we take a new thing when it is demonstrated to be a good thing, and we do not fool ourselves about how human nature will act. We do not believe that because we leave a provision in the Constitution for its amendment by the Legislature or

by Convention, that such methods are going to be used in preference to the I. and R., when the cost of this Convention is at least $500,000, and it only costs a little necessary work to have a Constitution ripped up with the I. and R.

George W. Coleman of Boston.

Mr. Coleman of Boston: I hesitate very much to take part in this discussion. I far rather would remain in my seat and listen to it. But an experience has come to me within the last ten years that I think perhaps has not been shared by many, if any, men in this Convention, and I should like to take a little of your time and have your careful attention while I present to you as best I may the impressions that have come to me from close, intimate contact with the conditions out of which rise this whole question of the initiative and referendum and other political reforms. I wish, indeed, I had the tongue of an angel, in order that I might adequately and fitly present to you what is in my heart and mind. Perhaps I should be as well or better off if I could combine in one personality the talents of several of the gentlemen who are so successful as debaters on the floor of this assembly. If I had the smooth-flowing rhetoric of the cultured gentleman from Amherst College in the third division (Mr. Churchill), combined with the ready and extensive vocabulary of the ex-Attorney-General from Lancaster in the second division (Mr. Parker), with the grave demeanor and moving eloquence of the honored President of this Convention, and could add to that the "punch" of the delegate who sits directly behind me, the gentleman from Brookline (Mr. Whipple), who insists that the rodents certainly will return to the cheese, and then if I could add to all those qualifications the rapid-fire quickness of the tall and snow-crowned delegate from Brockton in the second division (Mr. Brown), I should feel fairly well qualified, fellow-delegates, to present to you what I have in my mind and heart. Lacking these qualifications, I shall have to proceed as best I may, and trust that you will make up by your indulgence and your keenness, your interest and your patience, what I lack.

I am not going to argue over this. I am not going to thresh over the ground which already has been so well covered and doubtless will be thoroughly covered again. It would seem from the argumentative point of view that there is enough information in these two pamphlets, which every delegate has had the opportunity to read and re-read, — the report of the minority and the answer to it. As far as argument goes, it would seem to me there is enough there to satisfy all who will depend wholly upon argument for the solution of this problem. But I am one of those who believe that there must be something in addition to argument, in addition to clear reasoning, in order to arrive at results that shall be satisfactory. I want in the time I am going to occupy to ask you to take with me a general view of this proposition, to look at it telescopically rather than microscopically, to take a bird's-eye view of it in a sense, and see what we can gather from the facts and conditions as we find them in Massachusetts, and throughout our whole country, and search out the causes that led up to the call for this Convention and to the proposal of the initiative and the referendum.

The gentleman from Amherst in the third division (Mr. Churchill), you will recall, in the opening of his address, which interested us all so much, called attention to the fact that there had been created already in this Convention a sort of emotional atmosphere in favor of the initiative and referendum, and he greatly deprecated it. He thought it interfered with straight thinking. But I call you to witness if he did not proceed, in the gravest accents and most mellifluous language, to create a beautiful atmosphere against the initiative and referendum, which he exploded in the most spectacular fashion with an electric spark in the form of a peroration which brought down tremendous applause from his supporters and from those of us who enjoy a beautiful spectacle. I call to your attention the fact that he declared throughout his address that he was making no argument, yet he deprecated the creating of any emotion. For my part, I think emotion is necessary as a driving power back of argument. We have had so many arguments in this Convention, we shall have so many more, that I want to present to you some facts that will engender an emotion that will be a driving power in your hearts and minds. You will recall that the gentleman from Amherst (Mr. Churchill) acknowledged frankly the conditions which exist all around us, — the distress, the dissatisfaction and the social and industrial unrest. He admitted it all. He said he had been drawn into political life very largely by his desire to help remedy these conditions. He admitted that they could be remedied, that they ought to be remedied, but he objected absolutely to the remedy that is proposed in the initiative and referendum; and he closed that moving speech of his without making a single constructive suggestion.

It reminded me somewhat of one of the most beautiful of American flowers, the American Beauty Rose. You know how magnificent it is, with its profusion of petals with all their glorious coloring, and the fine fragrance, but when you examine the heart of that rose you will find missing the pistil and the stamens. In other words, all the strength and virtue of that rose plant, through a process of cultivation, have gone into its fragrance and beauty and left it absolutely sterile, — just like the beautiful address of the gentleman from Amherst, with all its profusion of rhetoric, and the lack of one single constructive suggestion.

In his attitude as a citizen of Massachusetts who recognizes the distress and dissatisfaction that surround us on all sides, he also reminded me of the dear old lady who was going along one of the streets of Boston the other day, so I was told, in the rain, a downpour of rain that wet her through and through, and the water was dropping from all her garments, a pitiful sight as she plodded along laboriously. There was passing in the street a limousine with a lady of leisure riding therein. She caught sight of the old lady toiling on in the rain. She ordered her chauffeur to drive up by the side of the curb, stop the automobile and open the door, when she said: "My dear madam, you come right in here, and my chauffeur will take you to any destination that you name." The old lady looked at her appreciatively but was somewhat startled, and put up her hands, and said: "Oh, no, my dear lady; thank you very much, but I couldn't trust my life in any contraption like that. I hear you have awful accidents in these automobiles and that some people lose their lives riding in them. No,

thank you; you are very kind, but leave me alone and I will reach my destination surely, if not in comfort."

Now, it seems to me, Mr. Chairman, that the gentleman from Amherst, failing to make any constructive recommendation, and in his fear of a new piece of political machinery, was like the dear old lady, perfectly content to go along indefinitely in the political wet, rather than to use a new piece of political machinery which has been amply tested in other States and countries.

It has been said on the floor of this Convention that this industrial, social, political and economic unrest that we hear talked about so much, and to which you will not be able to close your ears and eyes even when this Convention is over, because it is in all the public prints and it is on all the public platforms and it is in almost every pulpit, — that this discontent arises almost wholly from those who fail because of shiftlessness, selfishness and inability to exercise self-control. For this or that reason these people are hopelessly incompetent, they never can rise, and nothing can be done for them. It is said also that they are so overwhelmed by their circumstances that it would be dangerous indeed to trust the welfare of the government, through direct legislation, in their hands. It was pointed out to us by the gentleman from Southborough (Mr. Choate) that the street car conductors, the laborers, the mechanics and operatives, after they have had a hard day's toil, cannot be expected to give time to the understanding of these abstruse, academic, economic, industrial and social questions.

Gentlemen, I want to say to you from my experience during the last ten years with these classes in the most intimate contact, in discussing these very same questions, that the average working-man, the average man who feels this social discontent and unrest, is better qualified by far to discuss all these questions than the average business man or the average lawyer. I will guarantee that not ten per cent of the men who sit in this Convention as delegates would be willing to come with me on a Sunday evening and present themselves to an audience that I will give them, made up of these common people, these every-day people, and discuss one of these topics with them, and stand the rapid-fire question period which follows. But I could turn the tables about and pick more than ten per cent of those who are in that audience who gladly would come to this Convention, if they had the opportunity, and take up any one of these topics, especially this one we are discussing now, and show by their intelligent handling of the situation, show by the reading they have done, show by the meditation they have given the subject, that they are able to consider it fairly and squarely with any one of you here to-day. [Applause.]

It is not so much a question of the intelligence of the masses, it seems to me, as it is the intelligence of the classes. I have seen bodies of these working-men, socialists, anarchists, agnostics, all the unorthodox people you can think of, handling some of these difficult questions, and I have said to myself that I would trust them further, given half a chance, with the welfare of this government and the perpetuation of our American institutions, than I would many a "blue-stocking" up on the Back Bay of Boston who cannot find time to vote once a year. [Applause.]

May I stop long enough to give you just one little illustration of how an unknown member of the proletariat will handle an abstruse question, not in this case on an economic or industrial or social line, which is their own fighting ground, but on a line which they would not be supposed to know anything about. One of the great editors, preachers and lecturers of the country was addressing one of these gatherings to which I refer, on the subject of the immortality of the soul. When it came to the question period, — oh. how wonderfully he did present the topic, I wish I could tell you about it, but it is immaterial, — a tall young man rose in the left-hand gallery and asked: "Mr. Speaker, isn't it true that the more modern school of biologists all agree that consciousness is nothing more nor less than the interaction of nervous forces?" Imagine that kind of question coming from an unknown member of the proletariat! The good doctor said: "No, my young friend, I do not agree with you; I think there is another school of biologists, quite as eminent as the one you name, who take a different position from that entirely." The voice up in the gallery said: "Name one." The good doctor said: "No, I don't think I will under the circumstances." Then he hesitated and said: "Yes, I guess I will, on second thought." Then he changed his mind again and said: "No, I don't think I will." Then he changed his mind once more, and said: "Well, there is Professor Hugo Munsterberg out at Harvard." And he went on with some qualifying phrase which I could not hear, because the voice from the gallery interrupted, saying: "Psychologist, not biologist." And the good doctor figuratively speaking threw up his hands, and literally said: "Well, then all I have to say is if the biologists don't think that way they ought to." [Applause and laughter.]

That will give you some idea of the keenness of these men whom we think we cannot safely trust with the affairs of this government in direct legislation, when they handle a topic that they are supposed to know nothing about.

I have an ineradicable sympathy with and appreciation of the man who works at a monotonous, mechanical task, long hours. I did not get it through argument, I got it through experience, working in my father's bookbindery during my last year in the grammar school and my three years in the high school, on Saturdays and during the summer vacations, standing at the bench ten hours a day, and sometimes pasting great piles of paper or leather, back and forth, all day long, with a mountain of work at my side to replenish my stock when it ran out. Ex-President Eliot of Harvard once said to the labor men: "The trouble with you workmen is that you do not put love and joy into your work." I said to myself: "What a pity it is that some of those tasks are such that you cannot put love and joy into your work." I should like to see President Eliot himself putting love and joy into pasting great piles of paper or leather back and forth all day long, ten hours a day. Oh, I realize the drudgery of the world must be done; if we are all real men we are doing our share of that drudgery in one way or another; but when it so happens that a man's lot is given to hard, mechanical, monotonous toil for eight, nine, ten or eleven hours a day, then I say you have got to find some other way of putting love and joy into his life if you expect him to be a man upon whom you safely can rest the welfare of this Commonwealth and of the country.

Oh, the conditions are so different to-day from what they were in the days of our fathers! Then they had the little shop, and the owner of that little shop worked side by side with his journeymen; they met every day, they knew each other, and they had friendly intercourse with reference to all the affairs of daily life; they knew the joys and sorrows of each other's families, they understood each other, cherished each other, valued each other.

How is it to-day, with our enormous organizations of industry? All that has passed, inevitably so, helplessly so. The glass door of the office separates on the one side those who own and manage, from those on the other side who work with their hands. That mere physical separation engenders in time a lack of knowledge, a lack of sympathy, then misunderstanding, mistrust, jealousy, envy, hatred, strife and violence; and when you have it on a large scale in a great city, it almost approaches insurrection; and when you have it affecting a whole State, as we have seen it in this country, it almost approaches civil war. May I set forth to you in four simple little verses, intended to be humorous, but, as is often the case, having a sermon deeply embedded in their contents, a picture of the situation as it is, as I have seen it during the last ten years in this country. These verses set it forth more compactly and more vividly than could be done in a half-hour's address. These are the words of Arthur Guiterman. They are entitled "Cause and Effect." This is the way they run:

The powder lay in heaps — a threat
  Of death — where powder should not lie;
Some fool threw down a cigarette —
  And flaming ruin rent the sky.

Whereat, a solemn jury met
  And laid the blame in wisdom rare,
On him that threw the cigarette,
  Not them that left the powder there.

Upon the heaps of Want and Shame,
  Whereon men build, one evil day
Some fool will fling a word of flame —
  And what will follow, who shall say?

But should all earth be overset,
  We'll lay the blame, in dull despair,
On him that threw the cigarette,
  Not them that put the powder there.

Mr. Chairman, as I conceive it, it is our duty and our privilege as delegates to this great Convention to do what we can in the initiative and referendum and other measures of reform, to clean up this powder that is left lying around loose everywhere. [Applause.] The lurid scenes that are suggested in that little poem can all be translated into contemporary American life by the mention of a few names. You have only to recall San Diego, California, Everett, Washington, San Francisco, with the Mooney trial now on, stirring that city to its very depths; Ludlow, Colorado, and the States of West Virginia and Michigan. Oh, I wonder how much these names mean in detail to you men who perhaps gathered the drift of these events only as you read it in your daily papers! I wonder if you take the pains, as I have for the last ten years, to read the most conservative papers on the one

side and the most radical papers on the other side. In Boston, for example, do you read both the Boston Transcript and the Boston American? I wonder how many of you read both sides steadily, in order that you may get the right balance and a true judgment and perspective on the facts that are transpiring all around us. You say: "What has this to do with Massachusetts? Massachusetts is so different." Let me assure you that Massachusetts is not isolated and insulated from the rest of the country. Just as we have found in our cities that we cannot have scarlet fever or smallpox, and other worse plagues in one district, without the danger of having them reach all over the whole city, so we cannot have these social, industrial and economic conditions affecting various sections of the country and expect any one State will escape from them. But if you have any doubts about it I have only to mention one other name to bring it right home to us here in Massachusetts. That name is the city of Lawrence. How many of you know where this word of flame will next be spoken, and upon what powder heap it will fall, and where the next conflagration will take place?

I recall speaking in one of the towns on the Cape about two years ago to a representative audience, and we were discussing these same questions, when a gentleman, in the question period, arose and said: "Well, if you establish an open forum in this town will it prevent a strike?" I replied: "No, not if that is your purpose in establishing the forum and not if you wait until all the conditions have developed that cause a strike." I doubt if there was any one in that audience of five hundred, — and it contained the general manager of the greatest industry in the town, — who knew that on the following morning a strike was to take place in an industry of that town which never before had had a strike, and from which 2,000 workmen marched out on that occasion. No; we never know how soon the trouble is to strike us, nor where.

May I call your attention to the feelings of some of these discontented people whom some of us regard as beyond the pale. Take note how they feel right in this present crisis; witness the bitterness that is corroding their hearts and unfitting them, as most of us would think, for American citizenship in this trying hour of the world's history. Let me read to you a bit of propaganda circulated by one of the great radical papers of the middle west, with a circulation reaching into the hundreds of thousands. It is printed also on envelopes, so that their socialist constituents may circulate them continuously. I quote this without comment, simply to illustrate to you the bitterness that has been driven into the hearts of thousands and thousands of our fellow-citizens. This is the way this little bit of literature reads:

> If the masters want blood, let them cut their own throats.
>
> We don't want other people's blood, and we refuse to waste our own.
>
> Let those who want great victories go to the firing line and get them.
>
> If war is good enough to vote for or pray for, it is good enough to go to; up close, where the bayonets gleam, swords flash, cannon roar, rifles crash, flesh rips, blood spurts, bones snap, brains are dashed; up close, where men toil, sweat, freeze, starve, kill, groan, scream, pray, laugh, howl, curse, go mad and die; up close, where the flesh and blood of betrayed men and boys are ground and rounded into a red mush of mud, by shrieking cannon balls, by the iron-shod hoofs of galloping horses and the steel-bound wheels of rushing gun trucks.
>
> They say, "War is hell."
>
> Then let those who want hell go to hell.

Remember, that is circulated by a publication that, as I have said, has subscribers in the hundreds of thousands, and is being kept in continuous circulation as well. Probably there is not a man in this Convention who would not consider it his greatest privilege to do anything in this hour of need that his country might call for and that he was capable of doing; and yet thousands of stalwart American citizens have been driven into such a state of mind and heart that they can use these bitter words. Just compare that for a moment with the statement that came to us some weeks ago, was it not, of 152 lumbermen out in the middle west against whom an indictment was laid by the Federal Trade Commission for conspiracy against the government. I ask you whether that kind of action on the part of responsible business men is not quite as bad as the piece of literature that I have just read to you, — and the one engenders the other. You say that these radical citizens have gone mad. I verily believe that some of them have; it certainly would seem so. You say the only treatment for a mad dog is to shoot it. Oh, no. That is what you may have to do in the last extremity. That is not the method we have of handling mad dogs, — not at all. Our method is to do away with the conditions that turn a sane, sensible, honest, healthy dog into a mad dog. And what we should give our attention to is a change of the conditions that have driven, — oh, I do not know how many, — thousands of American citizens into this extreme position.

You say that some of these men are foreigners, recently come to this country, that they do not understand the genius of American institutions, and that they do not fairly represent American life. I want to say to you that the most violent and terrible language that I ever listened to I heard right here in the city of Boston before a company of socialists. The speaker was not a socialist in the strict sense, not a member of that party, but he was an I. W. W. To him the socialists were hopeless conservatives. For half or three-quarters of an hour he spurted forth the most vitriolic language, the most class-conscious hatred, the most terrible denunciations, it ever has been my fate to listen to. And I found on inquiry, — and I did not need to ask because you could tell it by his bearing and his face, — that he was an American and he was of the third generation, too, a Michigander, stalwart and strong, of fine presence, splendid mental ability, and with a wonderful fluency of language. Let me read you what I found the other day in a magazine concerning this very gentleman, and with reference to the troubles that are brewing now in some of the States just this side the Rockies, — just this little paragraph:

> We have meetings every evening in the City Park. The last two evenings Fellow-Worker James P. Thompson spoke to four thousand people at each meeting. He was greeted with rousing cheers which re-echoed through the canyons of Bisbee. Thompson pointed out that for every drop of blood spilled on Everett's bloody Sunday hundreds of red cards have been issued.

My friend the delegate from Fall River (Mr. Cummings) the other day in handling the religious question said: "The blood of the martyrs is the seed of the church." Oh, you cannot confine that truth to religious organizations. It is true of every institution and every organization and every movement which men take deeply to their hearts. Let me give you just one other quotation to illustrate how these men are feeling with reference to events that are now transpir-

ing, and which you are reading of every morning and every evening in the daily papers. This is from an article entitled: "From Butte to Bisbee," written by John Macdonald.

> If you have any red blood in your veins you will take off your hat and salute the fifty thousand copper miners who are fighting from Butte to Bisbee for the right to organize into one big union. They want a union big enough to take in the 500,000 unorganized men in the metal mining industry in this country.
>
> For years their separate unions have been spied upon and broken up by Pinkerton and Burns detectives who were in the employ of the copper companies. They have been betrayed and double-crossed by many of their own officials who posed as union men, but were on the companies' pay-rolls. They have been buried and blown up by the hundreds in producing profits for the copper kings and they now demand and are going to get together in one big union, which will be under their control.
>
> They are having to face government troops, company gunmen, deportation from their homes and misrepresentation by a lying prostitute press — they are being accused of being "German sympathizers" and of having received huge wads of German money, by lying labor leaders. Hundreds have been torn from their homes, herded into cattle cars without food or drink and are now threatened by company-owned sheriffs with bull pens. Still they fight on! Every socialist who is a socialist and every union man who is a union man will support this strike of the copper men to the limit.

That is the statement of one of their own number as to how they feel and what they are trying to do. I am not supporting it or criticizing it at the present moment. I simply present it to you as evidence of how men are feeling as to the same class of questions that we are trying to handle in this Convention. The delegate from Fall River (Mr. Cummings), in an argument which was made in the Initiative and Referendum Committee, said: "Ah, the difficulty and the trouble and the danger are not to be found so much even in these thousands of men, who seemingly have gone mad in their radicalism as it is in their winning over tens of thousands of honest, industrious, solid, substantial American working-men, who, if the conditions were what they ought to be, would be content and would be men on whom the country could rely in its time of need; that is what constitutes the grave danger."

Now, gentlemen, I wish I had some of the gifts to which I referred in my opening remarks, for the next section of my address. If I could only pack into the briefest possible compass a review of the situation that our civilization the world over is facing now, and make it adequate and vivid to your minds, I would give a good deal.

We all realize that we are passing through a period of transition, although that is an old and trite statement. I suppose five or six centuries ago, when they were passing from the age of feudalism into the age of capitalism, there were a great many trying situations that arose; but our dilemma is worse, because the change now on is taking place more rapidly. What it took three or four hundred years to accomplish in an older age may come to pass in our day in a hundred years, or in a generation, or possibly even in a decade. The discovery of steam and the finding of coal in the bowels of the earth about a hundred and fifty years ago, about the time that our Constitution was written, led to a series of wonderful inventions that have completely revolutionized the physical world in which we live and almost turned it upside down. About the same time in the intellectual world there came the discovery of the scientific method of thinking, that method by which, instead of having a preconceived theory and then going out to hunt up facts to bolster up that theory, you start out

with your mind dispossessed of any theory and you go out and study the facts in which you are interested, you make sure that they are facts, you gather them together, you collate them, compare them and contrast them, and then you find out in which direction those facts are pointing, and then if you are a wise man you follow in that direction and you adopt a theory in harmony with the facts. That is the scientific method of thinking. At first it was applied only to the natural sciences; now it is applied to every walk of life and every avenue of thought, educational and commercial. Even the discussion of religion itself is subject to this scientific method of thinking. Then again about a hundred and fifty years ago, roughly speaking, we began to witness the application of the Golden Rule to governments, the adoption of democracy on a large scale. We saw empires trembling and thrones tottering through the application of that idea, and it is still at work to-day as we see in Russia and China. And countries that have had the democratic form of government for generations are just waking up to the fact that if they are going to keep what they have of democracy in government they have got to go on and apply this same democratic principle in the social, industrial and economic relations of life.

All three of these wonderful powers, — steam, the scientific method of thinking, the application of the Golden Rule to great masses of men, — have been at work in our civilization for a hundred and fifty years, and the effects are converging on our day and generation. Is it any wonder that things are changing? Is it any wonder that foundations that you were sure of yesterday are crumbling to-day, and that your point of view of yesterday is quite changed to-day? A short time ago I thought conscription was an autocratic abomination; to-day I know it is a democratic necessity. Oh, I cannot begin to tell you, I do not know anybody who could tell you, what these changes will mean. All we know is that we are passing from an old era over into a new era. But I have studied the matter so closely and so intimately for the last ten years that I think I can hazard a guess or two with reference to some of the characteristics that will mark this change. Let me call your attention to three. Is there any business man who is wide-awake who has not discovered that we are passing from an age of competition over into an age of coöperation; that we are passing out of a time when the unwritten law in industry and commerce and finance, was: "Every man for himself and the devil take the hindmost"? That is anarchy, — unrestrained and unlimited competition, but that is what we have had. We are learning better. We are passing over into a new era, when the emphasis is going to be more and more on coöperation. We are waking up to the fact that two men working together on the same job and dividing the results can get more out of it for themselves than if they were working in competition with each other. And what is true of two men is true of two thousand men and two hundred thousand men and two million men. And we also are just waking up to the fact in the midst of this great world conflagration that the same thing is true also of nations, and if they will work together they will get more out of it for each other than if they line themselves up in opposition to each other.

In the intellectual world we see another change going on. We are

passing from the era when the emphasis was almost entirely on the things that divide men over into an era when we are going to emphasize more and more the things that unite men. I wish I had time to develop that.

Take another suggestion. We are passing from an age when the emphasis in all our legislation has been upon property over into an age when the emphasis is going to be more and more upon life. Not that we shall fail to recognize the sacred rights of property. I am one of the first to acknowledge the sacred rights of property. Why? Not because of its material intrinsic value, — no, not that, — but because property represents crystalized human life. That is the reason it is sacred. But when it comes into competition, in warfare with human life itself the decision of the future is going to be more often in the interest of life and less often in the interest of property. Do you realize that ninety-five per cent of all our statutes on our books here in this State, and throughout the country, deal with the protection of property, and only about five per cent of them deal with the protection of life? That was inevitable, for it is a part of our evolutionary, or growing-up process. But the time is coming when, if there is a conflict between stocks, bonds and dividends on the one hand and men, women and children on the other, the emphasis is more often going to be given in favor of the men, women and children.

Let me suggest to you the enormous changes that have taken place in family life during the period since this Constitution was written. In the days of our great-grandfathers, our colonial ancestors, what was the situation? Why, then indeed a man's home was his castle. All the needs of his family were supplied by the old colonial estate; food, clothing, light, heat, drainage, care of garbage, fire protection, police protection, transportation, almost everything that was necessary to the welfare and happiness of the family, was within the direct control of the head of the house. All those things to-day for the majority of our citizens have passed beyond the control of the head of the house, and they are in the hands of the community, city, State or Nation. All the more reason then, my friends, that the relationship between the government, local, State and national, and the people, should be just as close as possible.

It has been intimated already in one of the addresses on the floor of this Convention that American manufacturers have made themselves rich and famous by their willingness to have a generous scrap-heap, by their ability to throw out on the scrap-heap machinery, no matter how new it was, if it had been bettered by other machinery that would do the job quicker, cheaper or more satisfactorily. But, oh, why do we not apply the same good sense to political machinery? The worst example of our failure to do so is found in the way we have been trying to run our cities on a frame of government that was shaped a century ago, and was made analogous to our national form of government. It has broken down famously, — infamously, I might say. But we are waking up at last. Now we find four hundred of our American cities which have adopted new charters, with political machinery much better adapted to the modern times in which we live. Is it not fair to assume that the document that was written one hundred and thirty-seven years ago, that has had only forty-four amendments added to it in all that time, all in more or less of a patchwork fashion,

should be made more responsive to the will of the people in a day that is so filled with enormous changes, such as I have tried to bring before your attention?

Fortunately for us, with all these new conditions, a kind Providence has been generating in our midst a new spirit, and the men who have been impressed with that spirit have been developing new methods to meet the new conditions. I will not detain you by an account of them, but if I had time it would be interesting to show how wonderfully this new spirit is manifesting itself in relation to these various social, industrial and economic problems that are troubling us. In the church, the most conservative institution that we have, remarkable changes are taking place. I could point out to you the prophets, the leaders in progressive social ideas in all these churches, beginning with the Catholic church, going along through the various major divisions of the Protestant church and into the Jewish synagogue, each one of which has developed some noble leader, who has seen the vision, who has had the courage, and who has now the backing of his church or his denomination and they have gone up and down the length and breadth of this land telling their story. I have not time to go into that. I should like also to suggest that the same thing is coming into business life. If I had time I could recall to your minds men in business, the heads of great industries, successful and powerful, who also have seen this new vision and are re-adapting their methods and their ideas to meet these inevitable changes. Why need we be so behind in government? Why need we here in Massachusetts, with the wonderful record she has to her credit, fall so far behind in government? As I sat in this hall this afternoon my attention was attracted for the first time to that wonderful galaxy of names running around the dome of this chamber, every one of them, if I am not mistaken, a son of Massachusetts. I wonder if any other State can present such a wonderful array of names, known the country over, and many of them the world over, — all sons of one State. Oh, what a record we have of the past! But while in church life and in business life Massachusetts is keeping abreast of the times why do we let twenty-odd western States, and Switzerland and New Zealand, precede us in this great matter of the initiative and referendum as applied to legislative and referendum matters?

We have learned in the discussions of this Convention and by examining our Constitution, that the government counts on the religious forces of this country as one of her greatest bulwarks. I wonder if you realize that this matter has a grave relationship to the question we are discussing. I wonder how many of you who flatter yourselves that you live in a Christian country ever stopped to examine the fact that the majority of all the men, women and children in this country, — some say almost approaching two-thirds, but to put it conservatively a majority of all the men, women and children in this country, — prefer to remain outside of, and unidentified with, any kind of organized religion, notwithstanding here in blessed America they have the widest and freest choice in religion that they have anywhere in the world. There is one explanation, at least, of that puzzling fact. There seems to have gotten into the minds of these people who are discontented and unhappy over these industrial and economic questions a suspicion that somehow or other the church is in partnership

with those who are holding back the wheels of progress. You have heard already from the delegate from Boston (Mr. Hale) with reference to the unequal distribution of wealth. In this country two per cent of the people own sixty per cent of the wealth and sixty-five per cent of the people own five per cent of the wealth. Oh, how easily those figures drop off the tongue, and how little they mean to most of us! But when you stop to think what a little accumulated wealth means in the hands of a small family, for its protection and safety and for the education of the children, you appreciate something of the significance of this terrible congestion of wealth in the hands of a few in this the richest country on the face of the globe.

We have witnessed the rising power of the labor-union. We saw only a little while ago how a great national railroad strike threatened this country, which if it had come to pass and had lasted three days would have paralyzed this great and mighty Nation as completely as would a stroke of paralysis paralyze a human body. But this did not happen all at once. It has long-standing conditions back of it. We have failed to deal with them. We have failed to correct them.

Now let us consider the socialists, more radical still as most of us would think, and what do we find there? Six hundred thousand of them at the last election went to the polls and voted for a socialist candidate for President of the United States at a time when you would suppose that every man should want to make his vote count for the utmost. Yet six hundred thousand of them, which, counting five to a family, means three million people, were so deeply impressed with our situation that they went to the polls and, as we would think, threw away their votes in one of the great crises of this country in order to register their conviction that the present order of things is all wrong. And then if we pass on to consider the I. W. W.'s, still more radical, who are on the stage in the lime-light just now, and find out how many thousands there are of them, we will find that they are so extreme that they say: "Away with politics. Away with government. Away with voting. We don't care a fig about any of it. It is all nonsense. We in industry will settle everything by direct action." Do you realize how far that is going?

Let me quote to you the opinions of some of the great men of our country in a very abbreviated fashion, so that you will not think that the truth of these conditions that I have been reciting to you rests at all upon my authority.

President Wilson some seven or eight years ago said:

> Unless America learns to steady herself and choose leaders who better understand her genius, she will wade through seas of blood greater than were ever seen in the days of the French Revolution.

Harry Pratt Judson, the president of the University of Chicago, some years ago, reading from an official manuscript, said:

> The days in which we are now living are more like the days that preceded the fall of the Roman Empire and more like the days that preceded the French Revolution than any other period of history with which I am acquainted.

William Howard Taft, whom surely nobody will accuse of being a radical, at the beginning of his administration, speaking to a body of lawyers in Augusta, Ga., said:

Gentlemen, your work for the next ten years will be to write into law the new limitations on private property which public opinion has come to recognize.

A very significant and far reaching statement.

If you will examine the writings of John D. Rockefeller and Andrew Carnegie, the first in his autobiography and the latter in his book, "The Empire of Business," you will find these great masters of finance and industry saying in one form or another that the only future for industry in a democracy is for the men who use the tools to own them. They did not mean by that the rake and the hoe and the hammer, the personal tools; no, they meant the composite tools of industry, the mills, the factories and the shops. Statements like these from two of the most conservative financial and industrial leaders in the country, are significant.

It was De Tocqueville, the great Frenchman who already has been quoted on the floor of this assembly, who said more than eighty years ago in the keenest analysis of American institutions that has ever been written except that of Ex-Ambassador Bryce in recent years, that our form of government, our Constitution and our laws, were all right for the days of our fathers, but when the time came that our frontier had been pushed to its extreme limit and free land no more could be had, and men who were feeling the pinch of the industrial and economic situation could not move out and take their piece of land and work out their own salvation, — when that time came we would feel the pinch and the strain and come into dangers just such as we are experiencing at this blessed moment.

And may I call your attention to the statement of the greatest of Americans, written some fifty-three years ago, and you cannot deny his far-seeing judgment. He said, and mind you this was written before the civil war was quite over:

As a result of the war, corporations have been enthroned, and an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign by working on the prejudices of the people until all wealth is aggregated in a few hands, and the republic is destroyed. I feel, at this moment, more anxiety for the safety of my country than ever before, even in the midst of war. God grant that my suspicions may prove groundless.

That was written fifty-three years ago by Abraham Lincoln. I ask you whether the conditions in fact, as I have tried faithfully and impartially to present them to you, indicate any relief in the situation as Abraham Lincoln saw it fifty-three years ago, or whether it is tremendously aggravated.

And what was Abraham Lincoln's method of meeting this difficulty and this trouble? Let me read you another brief word from him. He said:

Every generation finds the work of the last generation unfinished. Every generation leaves to the next an unfinished work. Everywhere the work of government is in the line of bringing the government nearer to the people. I believe in everything that tends to bring the government nearer to the people and to give the people larger control of their government.

[Applause.]

In closing, Mr. Chairman, may I indulge in a personal experience that I had this year, which I shall recite very briefly? No doubt many of you were at Squantum some years ago and saw as I did for the first time an aëroplane go up into the air and carry a man with

it. I wonder if you were as thrilled as I was. I wonder if you did not register in your mind at that time a conviction that if you ever had the chance you too would go up some time. That chance came to me last spring down in Florida, at Palm Beach. I was out on Lake Worth in a gasoline launch, and I saw an aëroplane flying in the air. I asked my boatman if he would not take me close to where it landed. I saw it going up from and coming down on the water. I saw there were two men in it. I asked my boatman if they took passengers. He said they did. I said: "Take me over to it." Five minutes from the time that the aviator and I looked into each other's eyes we were away out on the lake, and up in the air, 1,500 feet high. Each of us was absolutely dependent on the good sense of the other. If I had consulted my fears, if I had consulted all that I had been taught in the past, I would have denied myself one of the most exhilarating and inspiring and wonderful experiences I ever had in my life. I came down in perfect safety. I hope the chance will come to me to go up again some time. I employed argument in deciding whether or not I should go up. I said: "Thousands of men have done this before. It has been tested and proved. I have seen this very man himself go up and come down safely. I have seen him take a passenger up and bring the passenger back safely." I used all these arguments. But somebody else standing beside me, and there were those of my friends who tried to dissuade me, used just as good arguments on the other side, taking counsel of their fears. What was it that brought me to the decision to go up and have that experience? A tremendous desire, that overcame my fears.

Likewise, in the discussion and consideration of this initiative and referendum proposition we could go on here until snow flies, discussing the machinery of this thing and hearing the arguments back and forth, and as many arguments can be brought out on one side as on the other. Unless, however, you have faced the facts of daily life, as I have been trying to face them in the last ten years, giving a great deal of my time and strength and money to a close hand study of the situation, in personal contact with the great unrest, and have gathered from that experience a strong desire, — yes, a great desire, — to see something accomplished, not only for the relief of the oppressed, which really is secondary, but still more for the safety of our State and country —

Mr. Underhill of Somerville: Before the gentleman closes his remarks I should like to have him tell the Convention, in the States where the initiative and referendum have been in force for many years, Oregon, California, Arizona, and others, how much better the industrial and economic situation is, how much unrest has been allayed, how much lawlessness abated, how many strikes prevented, how much treason has been turned to patriotism by the workings of the initiative and referendum. If, sir, I read the papers right, it seems to me just at the present time I would much rather live in Massachusetts under the control, or partial control, of the American Federation of Labor, than live in those States under the I. W. W.

Mr. Coleman: Mr. Chairman, I should like to answer the gentleman's question in Yankee fashion, by asking him another. Will he please give me a list of the States and countries whose civilization has been ruined by the initiative and referendum? [Applause.]

Mr. UNDERHILL: The gentleman has not answered my question. If conditions continue to improve in those States in the next three or four years as they have since they have established the initiative and referendum, I should say they were fast on the way to ruin.

Mr. COLEMAN: The gentleman insists, as so many of our opponents do, in taking a limited and narrow view of this question. Who is there who thinks that the application of the initiative and referendum for a few years is going to overcome all the difficulties of a situation that has been growing twenty, thirty, fifty or a hundred years? Who thinks it is going to remedy all the untoward conditions in the new and raw States of our southwest? It is absurd. [Applause.]

Now, Mr. Chairman, I have just one point more that I should like to make, and that is this: Not only do we not think that the initiative and referendum is a panacea, we believe it must be followed by more new machinery to meet other situations as circumstances may require. But my honest fear is, as I have faced the situation and note the rising tide of discontent growing into violence, that we may not, even after we get the light, move fast enough to meet the situation. That reminds me of a little story which is rather humorous, but it illustrates perfectly the point I have in mind.

A Mississippi steamboat was coming down the river at a time of low water. In going through a very tortuous channel the captain had great difficulty in steering her off the shoals on this side and away from the bank on that side. The engineer seemed to be answering the signals somewhat slowly until all of a sudden there seemed to be a great deal of confusion and the steamer punched her nose right into a sandbank. The captain sent the mate running down into the engineer's room to see what in the world the trouble was that the engineer did not answer to the signal. The mate rushed down there and found the engineer working for dear life, with his coat and vest off, and perspiring freely. He was pulling levers and working as fast as he could. The mate said: "Why don't you answer the signals of the captain?" The engineer replied: "Don't bother me. Don't bother me. I am four signals behind already." That is about the situation that I am afraid we will be in with reference to our political machinery if we do not wake up and get something done very soon.

I want to read you as my last word just a paragraph from a recent book, published this month, entitled "Faith, War and Policy," being a collection of essays and addresses by Gilbert Murray. I take this extract from the last two paragraphs of the preface, and it summarizes beautifully what I have been trying to say:

> I do not profess to define what the main lesson of the war will prove to be. The message is burned into our hearts, but we cannot yet read the characters clearly. But certainly we have seen, as no previous generation has seen, the extreme clash between the two great systems which have hitherto held human society together. We have seen, I trust, convincingly, the evil of the military form of State. A greater and more degrading evil than we ever surmised. It has turned the most educated Nation of Europe into a Nation of lost souls. But only a very shallow thinker will feel satisfied with the forms of society which the various democratic nations have hitherto opposed to it. Neither present England nor present France nor present America is a Commonwealth which really deserves that its sons should die for it as men have died during this war. Russia is different. The change there was very likely worth dying for; but only because of its promise, not its accomplishment.
>
> We have none of us done our duty as free societies. We have oppressed the poor; we have accepted advertisement in the place of truth; we have given too much

power to money; and we have been indifferent to the quality of human character. The democracy of the future must be a great deal better and cleaner than any which now exists, with more reverence, more discipline, more love of beauty, more joy in life, as well as more social justice and better distribution of wealth, more freedom for the soul and more friendliness between man and man. Towards this end, however dimly seen and distantly followed, all the nations that have suffered together in the War of the World's Liberation must contribute, bringing their various gifts.

And let me repeat these lines from James Russell Lowell:

> New times demand new measures and new men.
> The world advances, and in turn outgrows
> The laws that in our fathers' time were best.
> And doubtless after us some purer scheme
> Will be shaped out by wiser men than we,
> Made wiser by the endless growth of Truth.
> The time is ripe, and rotten ripe, for change.
> Then let it come.

[Applause.]

Mr. COOK of Fitchburg: I have been loath to interrupt the admirable argument of the gentleman who now has the floor for a question, but he has made allusion in the course of his remarks, and others who have preceded him, who have spoken in favor of the initiative and referendum, also have made allusion in their remarks, to a form of equitable distribution of wealth in the Commonwealth of Massachusetts. I had hoped, and I have listened attentively in the hope that some one would amplify their arguments along this line. I should like to know specifically how the adoption of the initiative and referendum would bring about a more equitable distribution of wealth in this State.

Mr. COLEMAN: I do not know any one who supposes that the adoption of the initiative and referendum is going to result in a redistribution of wealth, but the initiative and referendum, after being in operation long enough, will make men satisfied that, whatever their conditions, they are not due to injustice on the part of the government, because they have the power in their own hands, if they are in the right, to change them. That satisfaction and contentment with reference to the government, whether it changes actual conditions or not, is worth all it costs.

William S. Kinney of Boston.

Mr. WILLIAM S. KINNEY of Boston: Before the last speaker arose it had been my intention to make a few observations on the subject under consideration, but it so chances that I have been in the chamber during the time which he has taken and I have listened with great care to the arguments he has presented in favor of the adoption of the initiative and referendum. Before passing to those observations which I had originally intended to make, it seems to me that some answer should be given to the opinions which he has advanced.

So far as I have been able to catch the tenor of the gentleman's remarks, they can be characterized as merely a statement of conditions. He portrayed fully the social unrest that exists in many parts of the country to-day, and some of the political unrest that exists, and then concluded by saying that the remedy is the initiative and referendum, without pointing out where the application of the remedy has alleviated or changed these conditions. And I want to say in the same

general terms that the gentleman himself has used that he has made no discovery. He referred to old conditions, and said: "My! how conditions have changed since the forefathers framed the Constitution." Well, now, Mr. Chairman, it chanced that when he was making that remark I had before me the volume of the speeches of 1820. What did Mr. Webster say the conditions were at that time? He said:

> In the nature of things those who have not property and see their neighbors possess much more than they think they need cannot be favorable to laws for the protection of property. When this class becomes numerous it grows clamorous. It looks on property as its prey and plunder, and is naturally ready at all times for violence and revolution.

That condition of social unrest prevailed then; it prevails now.

If you think that Mr. Webster's characterization of the people does not portray the general condition of affairs, and that a different atmosphere prevailed in that Convention, listen to Judge Story's characterization of the Convention of 1820 and see if it is not applicable to this Convention. See if any gentleman could arise here and more accurately portray this Convention than these words of Judge Story in characterizing the Convention of 1820. He said:

> There was a pretty strong body of radicals, who seemed well disposed to get rid of all the great and fundamental barriers of the Constitution. Another class, still more efficient and by no means small in number, was that of the lovers of the people, alias the lovers of popularity. But after all these deductions there was a strong body of sound, reflective, intelligent men, who listened and were convinced and marched onward with a steady eye, to the public good.

Conditions, Mr. Chairman, have not changed. The answer to the gentleman's argument is that human nature is the controlling factor in devising any system of government, and human nature in its general characteristics was the same in 1780, was the same in 1820, was the same in 1853, as it is in 1917. The problems which faced the fathers when they framed the Constitution, and the problems that faced the other constitutional conventions which have sat in Massachusetts to revise or alter their work, are much the same problems as those which face us to-day. The Constitution and laws of Massachusetts must be devised with the thought that human nature is the mainspring, and that such a system of government as will be best suited to the controlling passions and impulses and thoughts and visions of human nature is the system of government which will best endure. It is no new discovery to arise here in this Convention and portray the dark side of our conditions. Unrest has existed always but the fact is that there is less unrest to-day than ever before, and the fact that after 130 years of operation under the Constitution we have been able to produce a civilization in which the people are the most happy and the most prosperous and the most contented on earth, has proved in itself that the system under which they labor is the best and the most successful system of government which the world ever has seen.

Now, Mr. Chairman, to return to some of the suggestions which it had been my intention to make. Before taking up the initiative and referendum itself, before going into the details of any mere scheme of political machinery, I think it is advisable that every member take a comprehensive view of this situation, in order to determine exactly

the program, or plan, which the proponents of the initiative and referendum have in mind. That this is necessary was brought to my mind very forcibly on the opening day of the Convention, when I chanced to sit beside another delegate who confided to me that he was committed to some sort of a mild form of initiative and referendum, the exact nature of which he himself was unable to define. From the discussions which I have had in the corridors with other members I believe that there are in this body quite a few members who are committed, or feel that they are committed, to some sort of a mild form of initiative and referendum. If I have any purpose in making such few remarks as I shall make on this question it will be for the purpose of demonstrating, if possible, that there is no such thing as a mild form of initiative and referendum. Either a man is in favor of the principle of direct democracy or he is opposed to it. Either he believes in representative government or he does not. There is no half-way goal. There is no bridge that spans the two. If on principle a man does not believe in direct democracy then he cannot consistently vote for the initiative and referendum, however it may be worded or phrased.

And so the point I want to make is that if any gentleman or delegate in this Convention is committed to a mild form, and thinks he can give his support to a measure which perhaps has been toned down in some features, and that that is as far as he intends to go in aiding the movement, I believe he should stop now and completely cover the whole subject in his mind, and see whither the gentlemen who advocate this reform are tending; what their program is. We were favored with quite a glimpse of the intended program by the opening address of the delegate from Brookline in the third division (Mr. Walker). I shall not attempt to quote his exact words, but the program as outlined by him and as again outlined in the fourth page of the MacFarland pamphlet, is substantially this: The executive power in this Commonwealth must be strengthened. The executive must be given the authority to appoint minor officers and make unto himself a cabinet as the Federal government does. They must be given seats in the Legislature. The legislation proposed by them shall have the right of way, and if it fails of passage the Governor shall then have an initiative, in order to place the proposed measures on the ballot on election day. In other words, that is a form of government which properly might be characterized as representative autocracy. That is the contemplated change in the executive portion of the government.

The judicial system is under attack. Those who find that the Supreme Judicial Court renders a decision on the constitutionality of legislation adverse to their interests are not satisfied. They want, as was suggested this morning, a system which in effect is the old system that was advocated in 1912, in the Presidential election, the system of the recall of judicial decisions. They want to have the authority to change the Constitution and thereby reverse the decisions of the Supreme Judicial Court.

Mr. Walker of Brookline: I rise to a point of personal privilege.

The Chairman: The gentleman will state his question of personal privilege.

Mr. Walker: I believe that when a member is referred to, and his

remarks, unintentionally I have no doubt, are being misinterpreted, he has a right to state what his remarks really were if the gentleman is incorrect in his interpretation of them. If I am correct in that, I should like simply to state at this time that I am not in favor of the recall of judicial decisions, and never have been, and my remarks at the beginning of the session contained no such suggestion.

Mr. KINNEY: I accept the gentleman's modification, but I feel that I have made my position in the matter clear by stating that I was not attempting to quote him, that I was attempting to outline briefly the entire program of those who are joining in this movement to secure the initiative and referendum. If the gentleman from Brookline who has just taken his seat does not share with those others who desire the initiative and referendum all the aims which they ultimately hope to accomplish, I am gratified to that extent; but it is true, and if the gentleman himself will turn to the fourth page of the MacFarland pamphlet he will find, that the three departments of government, the executive, the legislative and the judicial, are all under fire, and that radical changes in the construction of each of these departments are intended to be gained by the adoption of the initiative and referendum. In other words, as the father of the proposition in Massachusetts, Professor Johnson, says, the initiative and referendum will be the gateway by which these advocates hope to accomplish all of these changes, and therefore there can be no mild form of initiative and referendum. He who votes for it here assists to that extent in furthering the whole scheme.

To revert to the course of my remarks, the attack on the judicial system is directed by those who feel a spirit of unrest when the Supreme Judicial Court declares a statute unconstitutional, and therefore they hope to change the Constitution immediately, to override that adverse decision of the Supreme Judicial Court. That is the contemplated attack on the judicial system. It may not be and is not now called the recall of judicial decisions, but the effect is the same, because they propose to submit to the people the question of sustaining the ruling and the reasoning by which the Supreme Judicial Court arrived at its decision, or to reject it in favor of the statute which the Legislature had passed originally and which the Supreme Judicial Court, in its recent decision, has declared to be unconstitutional. The representative form of government also is under attack. In other words, gentlemen, the whole structure and fabric of government as we have known and lived under it in Massachusetts is to be changed. In order to determine whether we agree with such a proposition as that we necessarily must analyze our whole fabric of government.

What was it that the framers of this Constitution had to provide against? I am not going into a long academic discussion, but the gentleman from Cambridge who is not now in his seat arose the other day and quoted passages of the Constitution of Massachusetts, and the effect of all those quotations was simply to demonstrate a proposition with which nobody finds fault, and with which we all agree, that all power in a democracy rests primarily with the people. The people are the source of all power, and when our forefathers framed this Constitution whatever checks and balances they proposed were necessarily checks and balances upon the action of the people, and of such agencies as they thereby created. It is true that they brought

with them from England a system of governmental theories and great principles which the English-speaking people had evolved through centuries of struggle. They brought with them the principles set forth in the four great charters of English democracy: Magna Carta, The Petition of Rights, the Habeas Corpus Act and the Bill of Rights; and they embodied all of those great fundamental principles in the Bill of Rights in our Constitution. Furthermore, Mr. Chairman, they declared that those rights were inalienable. And when they had completed their efforts at Constitution-making they provided no method by which the Constitution could be amended, because I suppose that in their wisdom they did not see how it ever could become possible that human nature should so change that any large body of citizens in this Commonwealth should ever want to abrogate any of the great principles set forth in the Bill of Rights. They then proceeded to prepare the frame of government. They delegated the legislative power to the Legislature.

And right here I want to differ with the gentleman from Southborough (Mr. Choate), because I think that he, perhaps unintentionally, made a concession which no opponent of the initiative and referendum could make upon reflection, when he said that the question of passing legislation by the representative system as compared with direct legislation was a question of expediency. The representative system, Mr. Chairman, was not adopted in Massachusetts as a question of expediency. Representative government was adopted, sir, because no direct democracy in the history of the world ever had proved a success, and the framers of our Constitution knew that to be so. They knew that where democracy had been allowed to go uncontrolled, democracy had degenerated in the first place into anarchy, and from anarchy into a despotism. How long did it take the people of France, when they first burst asunder the barriers which had held them in check for centuries, to progress through the stages of constitutional government as laid down by their constitutional assembly and as embodied in the Constitution which they adopted, to anarchy? How long was it after they had established the Commune and other tribunals not properly elected, mere voluntary associations to direct the public effort, before under such domination they confiscated estates, they murdered their King, they killed their nobles, and thus prepared through such a process, the path for a Napoleon? If that example is not sufficient for us and for those who advocate direct democracy, how long has it taken Russia to go from an autocracy all the way through the stages of a popular frenzy in attempting to vote prosperity and happiness into their midst? How long has it taken them, Mr. Chairman, to go through those stages and arrive under the dictatorship which according to last night's paper is to treat those who do not agree with and who do not support this provisional government with the sword and with the bullet? In other words, Mr. Chairman, the advocates of direct democracy cannot point to a time in history or to an illustration in history when direct democracy in a large and heterogeneous community has done anything else than to degenerate into anarchy and to point the way for the despot and the autocrat who has ground those who were seeking liberty under his iron heel. So I say advisedly that the framers of our Constitution adopted representative government not as a question of expediency; they adopted

it advisedly in the light of history, because, sir, they had an idea that a body of representative men chosen by the people, meeting annually in election, chosen from among the number of the people who appeal most to the voters as being capable of representing them, — that body so chosen should then meet in a proper form, far removed from the clamor of the market-place, in a higher atmosphere than the disturbing elements which every-day life and contact and attrition have upon the momentary judgment of a large crowd of irresponsible people, that such a body so chosen, sitting in such an atmosphere would be more apt to pass legislation in the interest of all the people of the community, regardless of class, regardless of color, regardless of all of the other handicaps which have retarded the development of particular groups in the community, whether social or industrial, that such a body of representative men, in other words, would be more apt to express in the form of legislation the real, sound, fundamental will of all the people than any other method that could be devised for framing legislation.

The debate was continued Wednesday, August 29.

Mr. KINNEY: The course of my remarks yesterday had led me directly to a defence of the present system of government in Massachusetts, as I pointed out that the attacks contemplated by the advocates of the initiative and referendum contemplated a change both in our executive, our judicial and our legislative systems. I will first take up the question of the executive. I pointed out that it was the purpose of those who are advocating the proposed change to increase the powers of the executive to such an extent that the system, if the change suggested should be adopted, would amount to a representative autocracy.

As I understand our present system, in the contemplation of the framers of our Constitution the executive was to be merely an executive to carry out the expressed will of the people. He was not to formulate policies. It is only within the last dozen years that Governors have attempted to formulate policies. In the view of the makers of our Constitution, this should be a government of laws, not a government of men, and the policies by which we are to be governed should emanate from the people, be passed by their representatives into law, and then carried into effect by the executive.

I submit to you, sir, that to start in on a departure from that system would be to start along the pathway upon which many other democracies have started, and which finally has culminated in the establishment of an autocracy, — a system of government as far removed from a democracy as the minds of men can devise; and I submit, sir, that the present system of retaining and confining the powers of the Governor to those of an executive rather than to those of an autocrat is the only system which can long endure in a democracy.

We next pass to the judicial system. The Constitution says that, in order that this may be a government of laws and not of men, the judiciary shall be composed of men as free and as independent and as impartial as the lot of humanity will permit. Secondly, the contemplation was that a judge should have no constituents. While he sits on the bench he represents no constituency. There is no party, no political party, no special group, no capitalistic interests, behind

him. His sole function is to interpret the laws which have been enacted, and to deal justly with the litigants. During the course of our discussion of the judiciary on other questions which have come before this Convention it was asserted repeatedly that the judiciary had usurped the power to declare statutes unconstitutional. There, I desire to point out, a confusion of thought exists. Why, Mr. Chairman, if the gentlemen will take the pains to examine, for instance, the Federal Constitution, they will find therein these two propositions: First, that the Constitution is the supreme law of the land; second, that the judicial power shall extend to all questions arising under the Constitution and laws of the United States.

Those two propositions taken together, Mr. Chairman, constitute the basis of the authority of the judiciary to declare laws unconstitutional. It is under that authority that our judicial tribunals, both in the State and in the Nation, have assumed the power to declare statutes passed by the respective legislatures unconstitutional.

Now, contrast this system formulated by our Constitution-makers, where judges are independent, where they have no constituents, — contrast such a system with an elective judiciary, for instance. Under such a system the judge immediately is the representative of some constituency. When it becomes necessary for him to pass upon the constitutionality of a statute, or to decide any law action, always there is behind him the constituency which elected him and whose interests he must preserve if he is long to retain his office. What respect does such a judicial system create in the minds of the people? Even the very persons who elected him, and who receive from the lips of such a judge a decision in their favor, must in their heart of hearts feel a contempt for the man who, having been appointed or elected to such a high office as that of a judge, prostitutes the high position to give a decision not based upon equity, not based upon law, not based upon justice, but based upon the selfish interests of the constituency that elected him.

Mr. Chairman, if we are to continue to be a free people it is absolutely essential to the preservation of our liberties that we retain in Massachusetts this system of an independent, of a fearless, of an impartial judiciary, which has made the decisions of the courts of Massachusetts respected throughout the entire world. I do not believe that I need to spend very much time on this question, because many gentlemen came to me last night, even the gentleman from Brookline in the third division (Mr. Walker), and said that while he was in favor of the I. and R., he was not in favor of any proposition to change the judicial system of Massachusetts. When the question was submitted that if he was not in favor of changing the judicial system, why, then, was he in favor of a system by which such a change easily could be accomplished, the answer was hard for him to formulate. This Convention already has expressed itself on the judicial system, and I believe that if any form of the I. and R. were to be adopted, as I hope it will not, an amendment to it will be adopted before its final enactment here which shall preserve to Massachusetts and to posterity the benefits of our great judicial system.

We pass now to the legislative system and here, perhaps, the principal attack has been directed. I attempted to point out yesterday, Mr. Chairman, that the representative system of government was not

adopted by the framers of our Constitution as a question of mere expediency. The representative system of government, sir, is the only system of government by which a democracy has ever been able to long survive. Whenever representative government has been destroyed Liberty has not long lingered with the people. Representative government and liberty have ever gone hand in hand in democratic governments, and no direct democracy has ever been successfully maintained anywhere in human experience in the world.

But such general characterization evidently does not satisfy the proponents of the I. and R.; therefore it becomes necessary to analyze the representative system of government, in order, if it may be possible, to satisfy these gentlemen, that, upon the whole, the system is the best system which can be devised.

In the first place, I desire to call the attention of the Convention to the fact that the representative system is a system which the people themselves have created. Some of the speakers here, in referring to the Legislature, have adopted an attitude or have assumed that the Legislature was a sort of hereditary body which arrogated to itself the authority to pass laws which it believed to be good or otherwise, and that the people had no control over the Legislature. I desire to point out in that respect that the legislative and representative system of our government was a system which the people themselves adopted, and adopted advisedly; second, that the people have retained control over their Legislature. Here in Massachusetts we have retained the annual system of elections; and, in conformity with the spirit of our Constitution, which said that public officers should make frequent report to the people and be accountable to them, we have required our legislators to come before the people annually and to stand for re-election on the basis of their public record and public service, and thus the people have retained control over their legislators.

Now, that Legislature, sir, has been in operation in Massachusetts for 130 years. I believe that on the whole it has passed the fairest laws that any State in the Union has passed. I can think of no more fitting tribute to the legislative system of Massachusetts than the words of the representative of organized labor who appeared before the committee on the General Court of this Convention, of which I am a member, and who said, in this connection:

> Gentlemen of the committee, organized labor has asked many things of the Legislature of Massachusetts. We have not yet secured all of the things which we desire. But, gentlemen, take it all in all, big and little, the system of government in Massachusetts, and the Massachusetts Legislature, have given to the laboring people of this State the fairest and squarest government on the face of the earth.

That, Mr. Chairman, was the view of the official representative of organized labor, whose business it is to keep in touch with the Legislature of Massachusetts and to secure, if he can, legislation in the interests of the laboring class in Massachusetts.

It will be impossible for me, sir, in the limited time which I propose to occupy, to review to any great length the many salutary and wise laws which the Legislature of Massachusetts has placed upon our statute-books. Other speakers who have preceded me have attempted to enumerate, many of them at great length. I believe it is fair to say, in a general way, that on questions of social justice, on the regulation of the hours of the working classes, on all of the great measures

which vitally affect the civic and social conditions of the people, the laws of Massachusetts are equal to, and the superior of, many of the other States in this Union, and that they compare favorably with any laws under which any people are living on the face of this earth. I shall not attempt to go into a detailed discussion of each and every one of these great and wise measures. The system itself, however, I will briefly touch upon.

In the first place, take up the question of the initiative. Under our system of government, the right to initiate legislation is given to every individual citizen in this Commonwealth. Mr. Chairman, what is the effect, — and I think this question has not received in the past the importance which it should receive. What is the real effect upon the community of the right of individual petition? As I conceive it, Mr. Chairman, the benefit of that system as contrasted with the system under the I. and R. is this: Now each citizen having a grievance may come here and secure a redress of that grievance in his individual capacity. Under the system proposed in the I. and R. the individual melts away, and his importance is felt only when he associates himself with a group. It may be a group of laboring men, it may be a group of religious enthusiasts, who might raise all of the hideous questions which make men, previously friends, instantly enemies; it may be some other group. But, in any event, the system will tend to foster group action. Now what is the effect of dividing your people into hostile groups? Immediately, sir, you create what we have attempted all through, from the very first, to avoid, — you create class agitation; you create classes hostile in interest, hostile in spirit, hostile in purpose; and these classes will carry on a sort of legalized warfare which will embitter men, which will cause them to have in their hearts a feeling of hatred for those who oppose the class interests with which they happen to be associated.

Mr. Chairman, if for no other reason, I should oppose the initiative and referendum because of the fact that its whole tendency applied in actual practice would be to divide our Commonwealth into hostile camps, ever ready to seek an advantage for their own selfish interests, as contrasted with the interests of the whole people. That, I believe, sir, to be the primary advantage of individual petition.

Again, under the rules of our Legislature, as contrasted with those in other States, no legislative petition can be lost sight of; no legislative committee can pigeon-hole any matter which is introduced in this Legislature; every matter must be reported on, either favorably or unfavorably, before the prorogation of the Legislature, immediately creating an opportunity for debate and discussion; so that no public question, of the twenty-five hundred questions that annually are brought before this Legislature, can be avoided by the Legislature of Massachusetts. On each and every one of these questions the people of Massachusetts are given an opportunity to know how their representatives have voted, to know what their attitude is, and to determine at the next election whether such representatives are entitled to their continued support and endorsement.

And so, Mr. Chairman, I believe that these two salient features, the right of individual petition and the fact that no public question can be avoided, constitute the basic merit of the legislative system in Massachusetts; bearing in mind always what I said yesterday, that

the basic reason why the fathers adopted the representative system in the first place is because they believed it to be sound theory, that the people, assembling at a time of little popular clamor and in an orderly manner under the law, at annual elections, then select from among their number those whom they believe to be qualified to represent them, and that that body, so elected, then assembled here in a higher atmosphere, far removed from the clamors of the market-place, far removed from the noisy agitation which results in particular places in the Commonwealth, and here, in that higher atmosphere, is able to pass into law the real views of the people of Massachusetts, at the same time always being near enough to the people to catch their inspiration, and to enact into law the real and settled views of the majority of the people of the Commonwealth. Because I am not contending, Mr. Chairman, that there should be any other or any more final test for either a constitutional provision or legislative act than the settled, well-founded conviction of a majority of the voters of the Commonwealth of Massachusetts.

Taken together, Mr. Chairman, these features constitute the basis of our great representative system. It is this great system which has been commended so often and so highly by eminent men in the past. It was this system, Mr. Chairman, to which Webster referred when he arose with all his dignity in the United States Senate in 1830, and said:

> I shall enter upon no encomium of Massachusetts; she needs none. There she is; behold her and judge for yourselves. There is her history; the world knows it by heart. The past at least is secure.

And I hope that when this Convention shall have finally adjourned we may be able to look back upon our efforts here and say that we have done our part, by defeating this measure, in making not only the past but the future of Massachusetts secure.

It was this system, sir, to which as late as 1889 the great Henry Grady, first coming here from his southern home, than whose no more eloquent lips ever have been heard in our old Commonwealth, in referring to our institutions, said:

> Strange apparition! This stern and unique figure, carved from the ocean and the wilderness, its majesty kindly, and growing amid the storms of winters and of wars, until, at last, the gloom was broken, its beauty disclosed in the tranquil sunshine, and the heroic workers rested at its base, while startled kings and emperors gazed and marvelled that from the rude touch of this handful, cast on a bleak and unknown shore, should have come the embodied genius of human liberty.

Mark you well, Mr. Chairman, those words when you hear gentlemen arise here and say that the government of Massachusetts does not preserve the liberties of the people, — that as late as 1889 a distinguished statesman in visiting Massachusetts characterized our institutions as "the embodied genius of human liberty." [Applause.]

Mr. Chairman, I already have taken more time than I had intended when I first arose to make some observations upon this question. I desired to point out, and I do not know whether I have completely covered the ground, that the fundamental difference which exists between the advocates of the I. and R. and its opponents is this:

We believe to a certain point together, that is, that the final test upon constitutional and upon legislative matters is the convictions of a majority of the people of Massachusetts. We differ as to the method

of ascertaining that will. We believe, and the framers of the Constitution of Massachusetts believed, that the system of government which we have adopted, with all its checks and balances, is the system which in the long run and in the majority of cases will secure the expression, in constitutional provision and in legislation, of the settled, well-founded, well-considered views of the people of Massachusetts. We believe that the adoption of the initiative and referendum in any form is the taking away of those safeguards, and substituting for the old system a system by which there may be enacted into law, or into constitutional provision, the hasty, the intemperate, the ill-considered, the temporary and not the permanent, convictions of the people of Massachusetts. We believe that this change will result in the destruction of our institutions. We believe that it is opposed to, and cannot exist in connection with, the system which I have outlined. And so, Mr. Chairman, I urge this Convention to consider this question in all its phases, to realize that its adoption is the opening of the door. I do not say that if we should pass this and submit it to the people, and the people should adopt it in November, that all of our institutions would fade over night. Of course they would not. The principles of liberty, the great principles set forth in the Bill of Rights, are deeply embedded in the hearts and minds of the citizens of Massachusetts, and they would not forego them in a night or in a week, or a day or a year. But what I say to you is this, — you have taken away the safeguards. I recall to your mind the ancient English axiom "that it is not only he who suffers but he who is exposed to tyranny that is without liberty." We should be exposing the people of Massachusetts to a system of government which contains possibilities, without proper safeguards, of foisting upon them the abrogation of those great principles upon which their liberties have been founded and reared and fostered. We should be taking away all of these safeguards and substituting in their stead a system of government which would open the door to the very evils which not one of you gentlemen would advocate as the settled policy of the Constitution or of the legislative laws of Massachusetts. I hope, sir, that this committee will report adversely, not only upon the proposition, but upon any form of the initiative and the referendum, for the reasons which I have indicated. [Applause.]

Arthur N. Harriman of New Bedford.

Mr. HARRIMAN of New Bedford: This question has been discussed before this Convention from several points of view, and I would bring to your attention yet another phase of this vital question which means so much to the working people of this Commonwealth, and consequently, sir, to the prosperity of our entire State. And before I go far I want to seek your indulgence for a personal reference, and then ask you to forget him who addresses you and consider this question from the viewpoint of labor.

I come to this Convention, as do each of you, a citizen of the Commonwealth, zealous of her fair name and determined that no thought or act of mine in any way should hinder the onward march of progress. It has been my fortune, sir, my good fortune and honor, to have been chosen to one of the most responsible positions within the

gift of the labor movement of this Commonwealth; how natural, then, and how necessary that I should endeavor truthfully, and briefly as I may, to give expression to the needs and the thoughts and the aspirations of the working-class of this Commonwealth, fully realizing the responsibility and conscious, sir, of my limitations.

Consider, if you will, the hardship, the handicap and the disadvantage of labor when it comes before the Legislature, or even before this Convention. The men who represent labor are from the work bench and from the factory, and they have not had the experience that is necessary to present their side of the case; and many of them, far too many of them, sir, have been deprived of even a common school education because of adverse industrial conditions. I cannot but stand here this morning and think that, perchance, some of them who come in the name of labor are the very men who were referred to by the gentleman in the third division (Mr. Choate), who opened for the minority, as those men who, because of their industrial servitude, were unfit and unsafe to have a voice in this government or even pass upon the conditions that were to govern them.

Opposed to such men what do we find? We find the alert, the adroit and trained legal mind, men who have every advantage of wealth, of education and influence, and many of them, sir, in the employ of great and powerful corporations, which have gained their power and influence because of special grants and privileges that have been given by that self-same Legislature, or others of like kind.

Picture the contrast. On the one hand, wealth and entrenched privilege, defending itself and retarding progress; on the other, the untrained and unskilled voice of labor, demanding justice and striving for better working and living conditions for the people of our Commonwealth. But, sir, labor seeks no sympathy. Labor asks not a single privilege. Labor demands her rights, the right to live, the right of equal opportunity, the right to labor and to enjoy the fruits of their toil; and that, sir, is the mission of labor.

I do not want this Convention, Mr. Chairman, to think for a moment that I come here in the interests of the special few; far from it; but I want to try in the limited time that I shall address you, to say this: That if there is any phase of the question that demands attention from this Convention, even presented perhaps in a disconnected manner, it is the voices that come out of the working people of this Commonwealth, who have demanded for years the consideration, sir, of this question, and primarily are the forces that are responsible for the calling of this Convention.

And now, sir, there is a reason for men to organize. There is a reason that men and women in industry should organize to protect themselves. And why is it? It is because of the results of the present day industrial conditions that confront them. I say to you, sir, that no other movement has been met with such blind and unreasoning opposition, no other movement is so little understood or has been as grossly misrepresented, and there is no other movement in the world to-day that is so important to the welfare of the people, as is the labor movement; and when I say labor movement I do not apply it simply to those who have become organized, but I apply it, sir, to the entire class of men and women who, either by hand or brain, are doing something, not only to support themselves, but also to aid other peo-

ple and the welfare of the world in general, — and this is the labor movement; and I ask you men in these few opening remarks to bear with me because I am bringing to you another voice in this Commonwealth. There are men here who realize, and have realized for years, that underneath it all, underneath all the disturbance, there was this human element; and I say to you, sir, that this human element cannot be entirely cured by legislation. A question was asked by the gentleman from Norwood (Mr. Willett), if you could make a community prosperous by legislation, and I want to answer that question from the viewpoint of labor. Let me say to you, I do not know to what particular political faith that gentleman may belong, but if he belongs to that political faith which for years has dinned into our minds that the protective tariff was the only means of bringing prosperity to our government, he should be the last to raise his voice even in the supposition that such a measure as this may not mean material benefit to the workers of this Commonwealth. The question in this connection that has been asked, is whether or not the adoption of the initiative and referendum would lead to the more equal distribution of wealth. I want to make this point now because I want to answer it later. I want to disabuse, if I can, in the minds of many men, this thing that seems to be so terrible to them, because, sir, in the solution of that problem is the solution of our entire peace, happiness and prosperity as a people. I have told you, sir, of the reason why men organize; and the reason is because, — and this is in direct connection with what I just said, — of the unjust distribution of the results of labor. The worker is slowly becoming conscious that he is getting less than his fair share of the output. He sees wealth piled up on every hand. He sees the corporation for which he works becoming strong and powerful, and he feels the cramp of poverty; and he finds, be he as efficient as he may, it grows harder and harder for him and his family to maintain a decent standard of living. He feels this, he sees it, and to rescue himself he asks not only for higher wages but for shorter hours of labor and better working conditions.

Sir, is it a crime for the worker to demand a wage that shall keep his wife in the home and the children in school instead of in shop or factory? Is it a crime for labor to demand reasonable hours of employment, hours that are in conformity with the adaptation of modern time-saving machinery and the welfare of humanity? Is it a crime for labor to demand healthful conditions in their industrial and also in their political life, when those things will provide an equal opportunity for the children of man? And, sir, if this be no crime, — and it is no crime, — what can we say of the men and the forces that have persistently and are to-day opposing the decreasing of hours of labor, who are opposed to, and have defeated legislation that would safeguard the life and limb of the people of this Commonwealth? What shall we say of this?

I propose, sir, to talk from that angle, and you will see that it must necessarily fall upon lines which have been touched, but have not been opened up, as yet, in this Convention. The conviction grows upon me that the opponents of the initiative and referendum are such from the fear of the passage of more so-called social legislation. In other words, it is easier to defeat this kind of legislation in the Legislature than it is if it once reaches the people of this Commonwealth upon

the ballot. Sir, I believe this to be the reason. Show me another organization that has for its cardinal principle the decrease of hours of labor, that which will give a man a decent standard of living, and protect him, his life and limb, in industry; and I ask you, is it not a privilege and an honor as well as a duty to have some small part in such a movement as this? The welfare of a Nation is read through the eyes of its industry. If that industry keeps the great majority of its people profitless and in poverty, and a few in unmeasured wealth and a monopoly in land and the tools of production and distribution, I say to you, I submit to you, that there is something in such a system as that. Such conditions do exist; and the problems of to-day are centered in and around the conditions that have arisen out of modern industry, which was at first individualistic but later was forced to adopt collectivism. Thus the weaker succumbed to the stronger, and we have great corporations, gigantic combinations of wealth, and the end is not yet. It was inevitable, gentlemen, that as these forces became powerful they should seek to defend themselves, not only from industrial competitors but by political activity as well. This growing power found that its salvation and advantage lay in receiving favorable legislation, in the form of grants, special acts and privileges, and, what was just as important, the defeat of any measure that would tend to curb those advantages which it had gained. They looked upon it, and looked upon it rightly, as the very vital thing that they must do, for in those actions was the source of their wealth, their power and their influence.

Both parties in this struggle, which had been suddenly thrust into our political life and gave the Legislature a new and added interest, found that the laws were founded upon the Constitution, and they made the not astonishing discovery that the Constitution was not drawn to fit conditions which modern industry had evolved. Is it reasonable to assume or suppose that those who drafted that Constitution, could have foreseen such conditions? It is no disparagement to them to say that they did not. Under such conditions special interests knew that their salvation, as I have told you, and their prosperity, lay in enacting laws that were favorable to them and defeating such measures as would curb or prevent their enjoying those advantages. They found that it was safer to do this in a gerrymandered Legislature, aided in its election by campaign contributions and the promises of further financial, political and social preferment, than it was to submit their case to the people; and I am inclined to believe, sir, that that is another of the reasons for the opposition by these forces to the adoption of the initiative and referendum.

By this change in our industrial life the workers were thrown together and soon they began to organize for their protection. They found conditions which were not wholesome, and which were the result of special grants and special legislation, which had been made possible by the Legislature, their servants, not in their interest, but in the interest of those who employed them. The gentleman this morning raised a question about classes in society, and it is because of the conditions which I have enumerated and drawn facts from that there are two classes in society to-day, — the result of our economic struggle; the many in poverty and hardship, with the fear of unemployment and poverty always present with them, and the few with the unmeasured.

things of life. And you may close your ears, and you may shut your eyes, and you may deplore its mention, but, gentlemen, it does exist. I want to warn you, — it does not need any warning on the part of myself or anyone else, — that conditions must be remedied, or of the future no man dare speak.

Mr. Bennett of Saugus sought recognition.

Mr. HARRIMAN: I will yield. I want to make one statement and then I will yield to the gentleman; I had considered in preparing these remarks the fact that questions might be asked, and I thought perhaps, untrained as I was, that it would be better not to answer; and then a realization came to me of the people whom I represent. We have nothing to conceal, and we want every reason known why labor demands this and like measures. And so, sir, while the gentleman or any gentleman may demolish me, may demolish the argument that I make, they cannot harm the principle for which I stand; I yield to the gentleman in the fourth division.

Mr. BENNETT: I have no desire to embarrass the gentleman at all by breaking up the thread of his argument, but he is making the most positive and most lucid statement of his views that I ever have heard. This gentleman has just used the term "private corporation." When I was in the Legislature once, when Mr. James Carey was there, Mr. Carey said there was no such thing as a public service corporation as distinguished from a private corporation; all corporations are public service corporations. I never heard anybody from that day to this draw the line and prove what are public service corporations as distinguished from private corporations. If it was a corporation engaged in distributing steam power and steam for heating, it seemed to be a public service corporation when it reached a certain magnitude, and it was not a public service corporation if it was serving two or three subscribers. Now, I should like to ask my friend, who evidently has thought deeply on this subject, if he had any specific purpose in using the term "private corporation", and if there is in his mind any distinction in regard to corporations, — that some are private corporations and some public service corporations. I ask that for information.

Mr. HARRIMAN: There is a distinction, sir. I want to say that so far as my economic education has led me, I always have held to the belief that the welfare of the community was far above any special privilege or the welfare of any individual; and when business was so developed that it became necessary for that community, it then was proper and necessary for the community to control that which had become a necessity. But remember, sir, that we are in an age of transition, and that things that are privately owned, many of them, gradually have become in the eyes of the people, and have been accepted, as necessary for the public good. And, sir, the trend of the times is that even this system will change, and sooner or later the people will say the public business, the furnishing of food and fuel and the necessities of life, is a public function, and must be regulated, not for the interest of the few, who might happen to own those things, but for the interest and the prosperity and the peace of all the people. [Applause.]

Sir, a bad law is more killing than a frost, it is more blighting than a drouth; and thus labor was driven by dire necessity, — was driven

into the political arena, — and there the battle of industrial and political freedom will be fought, and there will be dealt the death blow to special privileges and interests. To-day the working class is fighting in the open, it is obedient to the law; it does not plot; it casts not the bomb, but the ballot.

Mr. MANSFIELD of Boston: I should like to ask the gentleman to state whether or not in his opinion, — he appears to be speaking strictly from the viewpoint of labor, — as to whether or not the labor leaders have consistently supported the referendum?

Mr. HARRIMAN: I should like to ask the gentleman to qualify his statement. Does he mean the organized movement as a whole, or does he mean individual organizations in their own form of government?

Mr. MANSFIELD: Perhaps I might better bring to his attention what I mean by referring to my own experience. It is a matter which I think so far has gone without observation here; because if we want a referendum, if the people through the Commonwealth need it, then surely there must be instances in the past which show the need and necessity for it. I happened to serve in the Legislature and sat in this chamber in the years 1900, 1901 and 1902. None of the learned and eloquent gentlemen whom I have so far heard speak appears to have referred for illustration to anything which transpired during those years. During one of those years, sir, an important public question arose which concerned the people of Boston in a very special degree. My colleague at that time, from the district which I now represent here as a delegate to this Convention, was the president of the Boston Central Labor Union. I was then, as I am now, a lawyer, and we sat side by side and represented jointly the same district. Before that body came the question of referring to the people of Boston for their vote the Boston Subway Bill, and the lease of the subway to the Boston Elevated Railway Company. There were fifty members from the city of Boston who sat here in the House of Representatives. Forty-five of those members voted against referring that measure to the people for their vote; five members only of the fifty voted in favor of referring that measure to the people of Boston for their vote.

I, sir, a lawyer and a representative of a constituency of working people, voted in favor of referring that matter to the people for their vote. My colleague, a prominent member of the element in the community for whom my eloquent friend has been speaking, the president of the Boston Central Labor Union, voted against referring to the people of Boston the lease of the Boston subway to the Boston Elevated Railway Company. I call that special incident to his attention. I call it also to the attention of some other supposedly qualified and authorized representatives of the labor element in the community, who from day to day and from time to time go unnecessarily out of their way to cast slurs upon the lawyers who have membership in this body, and to bestow compliments in the highest possible terms upon members of the labor-unions; and I ask them to explain why at that time the president of the Boston Central Labor Union voted against referring that matter to the people, while I voted in favor of so doing.

Now, while I am upon this subject, let me refer also to another matter which I think deserves some attention from some of the gentlemen who have taken such a prominent position and who, at such great

length and so eloquently, have presented an exposition of their views in regard to the referendum. During that same period, when I was a member here, other important questions came before the House of Representatives; the question of the lease of the Fitchburg Railroad to the Boston and Maine Railroad, the question of the lease of the Boston and Albany Railroad to the New York Central and Hudson River Railroad, came before that body during those years for consideration, and then the same question was presented, — shall those matters be referred to the people for their vote or not? And while I found myself, Mr. Chairman, in a hopeless minority when I voted in favor of referring those matters to the people for their vote, many another gentleman, men of great ability, men of great eloquence, some of them members of this body here to-day, voted against referring those matters to the people for their vote. Now, I am not arguing against the referendum. My own record of acts performed by me and of votes cast by me in the past tells its own story. But I do protest, Mr. Chairman, against men who avow themselves as being the friends of the referendum, friends of the people, friends of organized labor, and yet who can show nothing but empty words and eloquent sentences upon which to base their claims; and I should like to ask the gentleman to answer that question and to make use, if he pleases, of those suggestions.

Mr. HARRIMAN: I assume that he must have been a part of the conditions of which he speaks. I assume, sir, and I know, that there are men here who are members of the Boston Central Labor Union, who could answer him much better than I. I am not talking of individuals or individual records. Sir, you cannot draw a parallel between honest labor men and some of the interests that have desecrated the affairs of this Commonwealth.

I have dwelt, sir, upon this subject of labor because it is the most important and powerful and potent thing in the world to-day; and thus, as I have told you, they were driven into political activity, and what did they find? They found the condition of which the gentleman has just spoken. They found privilege entrenched. They found that long before they came into court, orders and regulations had been enacted that militated against them. They found that custom and precedent were almost insurmountable, and also that almost every agency was in the hands of those who were growing rich and powerful because of special privilege. I want this Convention to consider these things. I want you, sir, to be perfectly free to ask any question that you want. I should like to answer the gentleman more fully than I did, but it was the only way to do it because it was not a concise or concrete question that appertained to this subject at all.

Mr. BENNETT: On the gentleman's invitation, I should like to ask a question. Do you draw any line anywhere between individual employers of labor and corporation employers of labor? The term corporation is used so indiscriminately and so vaguely that I ask that question. Is there any dividing line in the relations between labor and capital, — is there any dividing line in capital between the individual capitalist and the corporation as respects their relation to labor?

Mr. HARRIMAN: There is a difference; but the question here is not between labor and capital as individuals; it is between human rights and special interests and privileges.

Mr. WHITTIER of Winthrop: I should like to ask the gentleman, if I

may, a question. He has made a statement that I should like to have him make again in order that I may understand it perhaps a little better. He said there are two classes. Will he please state the two classes to which he refers?

Mr. HARRIMAN: Most certainly, sir; and if the gentleman had listened attentively, I named them. I said there were two classes in society, — the result of the economic struggle; the many upon the one side facing hardship and poverty and the fear of unemployment staring them in the face, and the few with the unmeasured wealth of the things of this life; and you, gentlemen, know it just as well as I do. You can call it anything; it makes no difference.

Mr. WHITTIER: If I may be allowed to do so, — and I am obliged from lack of experience perhaps to treat it very humbly, — but in order that perhaps I may get some further enlightenment I should like to make just this simple statement. I listened with a good deal of attention and interest to some statements that were made, and I find myself in a very peculiar position. Now it happens that I was born of poor parents, and that all I have in this world I have had to get as a result of my own efforts. I owe nothing to any wealthy plutocratic class, neither have I been identified in any way, shape or manner with organized labor, and I should like to know just about where I fit. I think I represent, — I may be wrong in this respect, — but I think I represent a considerable number of the plain people of the Commonwealth of Massachusetts; and I must say here and now that it arouses my indignation that any one, no matter how sincere he may be, should arise on this floor, or on any floor in fact, and make such wild statements as have been made by the gentleman in the first division. [Applause.]

Mr. HARRIMAN: I see that to my wildness there is some opposition. I want to say to him and to those who think like him, that they miss the point entirely. They think that we make it an individual. I want to say to the gentleman that I do not know what his business is. A man told me in this Convention that if he did not know what a man's business was he assumed he was a lawyer. I assume, sir, that the gentleman belongs to the class that is not known in the generally accepted term as the working-class. But I want to say that we are all members of the working-class; that phenomena are taking place in our industrial life. Now, some of you do not realize it. Some of you think it may be true. I believe it. The combinations of wealth which I have tried roughly to trace are showing two things. They are showing, as they must necessarily show, that as wealth concentrates, and it has concentrated, there must be a corresponding decrease somewhere else. It is shown in the cost of living. It is shown in everything. The gentleman says he represents a constituency. Let me tell you that, no matter what constituency he represents, that constituency is not as independent as it was ten years ago, and in ten years from now the men who to-day are the fair-sized business men will have been swallowed up in the larger and still larger corporations. If that be a wild statement, gentlemen, I am willing if my children can read to have them say that their father was wild.

Mr. WILLETT: I should like to ask a question, and incidentally I would like to ask where I fit.

Mr. HARRIMAN: Where you fit?

Mr. WILLETT: Where I fit.

Mr. HARRIMAN: The gentleman will have to explain that.

Mr. WILLETT: There is an attempt on the part of the speaker to place me in a false position because of a question asked in good faith. Nearly three hundred years ago my ancestor, Thomas Willett, came to this country. After he had been identified with civic work here in the Massachusetts Colony, and because of conspicuous ability in dealing with questions of that time, he was asked by the Dutch to go over to New York and help them to establish their government. Out of respect for the services he rendered he was elected the first mayor of New York city. He afterwards came back to Massachusetts and died in Swansea, near Plymouth. That was nearly three hundred years ago, and yet from that day to this, or from his generation until my own, so far as I am able to learn no one in that branch of my family has had what you could call an income; they have worked for their living. They have been mostly farmers, men who have tilled the soil, and if you should see the soil from which they got their living you would wonder to-day how it was possible for them to have done it. That is the record on one side. On the other side, I think one of the most successful lives that I know of is that of a great-grandfather who started as a weaver in Huddersfield, England. The wage which he had was exceedingly small, but in spite of that he was able to save enough money so as to bring his family over to this country. He took a position in a mill up in Cherry Valley, near Worcester, and stayed in one job in this mill until he had accumulated $2,500, and then bought a farm, the place where I was born, and lived out his days with all the independence of a King.

I started out with only that ancestry as an asset, and I have been trying to make good with such opportunities as have been afforded me. There is hardly a man in this Convention but stands substantially on that same basis, for as I look about me here I find very few representatives, you might say, of hereditary wealth. The majority here are those who, like the gentleman who last spoke, have made good largely because of their own efforts in meeting the opportunities which Massachusetts affords. By the study and application of scientific methods of production the industries with which I have been connected have been able to expand and grow, and I have come to the place where I employ large numbers of men and to a certain extent have their destinies in my control. It has been my privilege to establish the first nine-hour day in the leather industry in Massachusetts, and so far as I know to put the first nine-hour day in the textile industry in Massachusetts, and yet when I stand here to ask a question on some of these economic subjects with which I am more or less familiar, and which it seems to me are being presented upon an entirely wrong basis, I am immediately held up as one who is opposed to the rights of the common people and opposed to the rights of those who are seeking equal opportunity here in this Commonwealth.

Mr. HARRIMAN: Is the gentleman through?

Mr. WILLETT: Now I think there are many others who feel about this in the same way that I do, and I think we ought to have a showdown, you might say, and decide right now whether we are going to discuss these matters from the narrow standpoint of class or special interest. I am not identified with any class or special interest. I am

going to stand here as an individual and give the best that my experience teaches, and I feel sure that we shall welcome the words and advice of the gentleman from New Bedford (Mr. Harriman) if he will give them on that same basis. On the other hand, I, for one, hate to be put in the position, because I do not stand as a direct representative of labor as a class, that I cannot deal with labor questions from the broadest possible basis. Furthermore, I do not believe there is any other man in this Convention who cannot deal with the industrial conditions of this Commonwealth as applied even to the conditions of labor and employment just as fairly as the gentleman from New Bedford. [Applause.]

Mr. Harriman: Yesterday the gentleman said that some of the leaders of the movement were wise and some were unwise. I wondered if when I started in to answer the question I should be regarded as in the wise or unwise class. I want to say to the gentleman and to those who ask questions that I will yield at any time to any question, and I want to call to your attention that some of the men in this Convention who have spoken in opposition to our position have refused the same privilege and have never yielded to labor. [Applause.]

The gentleman quotes his ancestry, and I hope that his posterity will be as proud of him as he is of his ancestors. He tells of their long struggle, and it has been the same thing about which I have been trying to tell you gentlemen, — it is not against individuals. As he has gone on he says that he has arrived now where the destinies of men are in his control. And that is the trouble with our industrial system; the destinies of men are in the control of other men. [Applause.] You men may not like it. I do not say that the man who occupies that position is to blame for it. You have heard what he had to say. You know some of them have lived on the sweat of their fellow-beings, but I do not say that of him. But I do say to you, and I say to you in all seriousness, not as a labor agitator but as a citizen of this Commonwealth, that when you control the opportunity for a man to work and have it within your power to say that he shall or shall not work, you have slavery.

It has been a long and fearful struggle for those who have endeavored to obtain remedies in their industrial life. I am not going to take up the whole array, but I am going to pick out a few instances where things have not moved as we think they should have moved, and tell you what we think of them; and I ask you to go along the road with me and see if we cannot discover if certain changes were needful in our government and means apparently were not at hand, who and what it was that has retarded and made impossible the changes that were needed to bring about what we claim to be ultimate justice, and, sir, we can defend our position so far as justice is concerned. We will see whether or not the workers of this Commonwealth forget. Let me tell you that they may forgive, but they never, never will forget.

In 1844 there was read into our industrial life the fellow-servant rule, so called. That rule was read into the legal department of our Commonwealth, and from time to time the assumption of risk and contributory negligence found lodgment in our system. You know it is almost impossible under those conditions for the injured worker to receive damages in case of industrial accident. Think, think, of the thousands of orphans deprived of an education, of the widows

and their families in poverty and distress, facing all the hardships that could come because, while there was a power, that power would not move to make industry, instead of innocent human beings, bear the burdens of industrial accidents. This condition existed, and I trust, sir, that no voice in this Convention will be raised in defence of the old order. But, sir, in these self-same walls has been heard the cry of the hapless widow and orphan, and that cry has fallen on unheeding and unfeeling ears. It is true. Is there a man here who will deny it? Not one. Mr. Chairman, for over sixty years the people of this Commonwealth needed and wanted legislation on this subject; for over sixty years they strove for it in one way or another, and at last they got partial relief.

I do not stand here, neither does the labor movement, and say that the Legislature is a band of crooks. Neither do we say that they have brought lasting shame and disgrace upon this Commonwealth. But we do say, sir, that they were agents of the people of this Commonwealth; that the people of this Commonwealth at a certain time ordained a certain form of government, and history shows what it was, and we claim, and I agree, sir, that we claim rightfully, it is a truth and an axiom, that the foundation of authority is laid firstly in the people; and we believe that this method of allowing the people to pass judgment upon themselves and upon their acts is not to do away with the Legislature, to abolish the Legislature, but, sir, that it shall be an improvement upon the machinery which has been tested out, which when it was started was just as uncertain as some of you men prophesy the future will be with the initiative and referendum. We have come to a time when we honestly believe, sir, that there have been faults, the faults of human frailty in the past, and we ask you, sir, we ask you, gentlemen, to still improve our form of government by injecting a little more democracy into the affairs of our government and our industrial and our political life.

I want to ask you now, from the time that this fellow-servant doctrine came into our books, if in all that time there was need for a Workmen's Compensation Act. And I want to ask you, sir, with all the wisdom and judgment which is said to exist in the Legislature, which always has responded to the needs and desires and wishes of the people, as a representative body should, if it should have taken sixty-four years to bring about even a partial measure of reform and protection to the workers of this Commonwealth. After bitter opposition a measure was passed, but, sir, there occurred one of the most terrible things that we have to confront to-day. When they passed that law there was allowed to creep in, — I will not say by sinister methods, — but there was by unfair methods allowed to creep into that law the opportunity for private interests to insure and make money out of the misery, and the sufferings and the crushed bones of the people of this Commonwealth. It is absolutely true. I ask you, sir, if you believe it is the duty of the Legislature to pass laws which will allow a few men or a combination of men to make money by insuring people against accident.

Now, you will ask: "Do you provide a remedy?" Yes, sir. We tell you that there should have been a State fund established, that every employee of the State should have been brought into it, and also the employer. The word "profit" should have been taken out of that

act, and it should have been administered for justice, and for right, and for the health and happiness, instead of being an opportunity for men to make dividends out of accidents that happen in the mills and factories and other places where workers of this Commonwealth are employed.

Mr. WILLETT: I should like to ask the gentleman from New Bedford, if the Legislature should establish a mutual company for mutual insurance of workmen under the Workmen's Compensation Act, whether it would not accomplish the same result as he would have sought? And is not the insurance business of that class being conducted to-day in Massachusetts on the basis of actual cost, as shown by the figures of the company and by the figures of the Insurance Commissioner's office?

Mr. HARRIMAN: In reply to the gentleman in the third division (Mr. Willett) I want to say that the act which was passed has brought a certain amount of relief to the worker; but when he says that justice is done, and that must be his plea, when he says that business has been conducted, I refer him, sir, to the matter of hearings that have been held before the various committees of this Legislature, where it has been shown that the companies continually have tried to break down the law, continually have tried to take every advantage of these things.

I do not want to tire this Convention, and I thought I would not refer to a particular instance, but I have one in mind. I come from an industrial city. I come from where a lot more "wild" people live, where men and women are injured in industry. I know a Portuguese woman who was injured. She came under the compensation act. She was ignorant, but she was useful in earning dividends. Because she was ignorant, I presume the opponents of woman suffrage would not allow her a ballot, but she worked hard every day and produced something of necessity to the people. She was injured. She was entitled to compensation. A lawyer came down from Boston, and he said: "We will give you $400," and she was going to settle. A gentleman well known to me said: "You are entitled to more. You had better wait." They offered her $500, $600, $700, $800, $900. She had somebody coaching her. Then they offered her $1,000, and she took it. You can multiply this case and like cases throughout this Commonwealth, where for the sake of profit for these companies, sir, they have urged the injured worker to take what they said instead of what he was justly entitled to under the law.

Mr. WILLETT: When this compensation insurance legislation was passed there was a difference of opinion, Mr. Chairman, as to how to secure a certain result. The gentleman from New Bedford says that he would have handled it in one way. The majority of the Legislature decided that it should be done in another way. What, after several years of operation, has been the actual result? I happen to be familiar with this matter because I am a member of the board of directors of the insurance company which was created to deal with it. Now what has been the result? The result has been that, because of the activities of that company, compensation insurance for workmen in Massachusetts to-day is handled on the basis of actual cost.

I think this shows something which is of value to us here, and that is that we may have honest differences of opinion as to the methods

of accomplishing a common purpose; that we may not agree on the method, but we may still obtain the desired result.

I should like to ask the member from New Bedford to consider that point, namely: Whether the result secured was not more important than the particular method used.

Mr. HARRIMAN: The gentleman states that we have secured that result, and I say we have not secured it. I say to you that you may claim you have secured it. He says there was difference of opinion in the Legislature. Gentlemen, we know there is difference of opinion in the Legislature. We are not objecting to that difference, but we are asking that, where there is a difference in the Legislature upon such a vital thing, it shall be passed upon by the people themselves; that they shall say whether or not it is right for a man to make one cent out of the people who are injured in industry in producing the wealth which makes this State prosperous, and strong, and, what it ought to be, the ideal home of American citizens.

Mr. DRESSER of Worcester: I should like to ask the gentleman if he has stated accurately what has taken place in this matter of workmen's compensation. It is quite true that Massachusetts in the days of its small industries adopted the fellow-servant rule, but in 1887 she was the first State to limit that rule by the Employers' Liability Act. It is true also that our Massachusetts court about 1898, when conditions had so changed that risks of injury were not really in fact assumed, was one of the first courts, I think the only court in this country, to submit to the jury the question whether the injured man had voluntarily assumed the risk. Massachusetts was the first State in this country to appoint a commission to look into the question of workmen's compensation. I think that was done in 1903, but I may be a year or two out of the way. That commission, of which Mr. Carroll D. Wright was chairman, reported, and its report received no support, as far as I know, from labor people or from any one else. There are some industries in this State that voluntarily adopted the principle of workmen's compensation a dozen or fifteen years ago and cared for all their injuries on that principle long before any statute was enacted. When the statute was passed, or was being prepared, I think it is fair to say that every considerable manufacturer who had looked into it spoke and worked in favor of it, and the National Association of Manufacturers sent a committee abroad to study foreign systems and framed what they thought was a model law, which was practically the same as has been generally adopted. Now, if I may, I will go one step further. Massachusetts to-day is the only State in the Union which gives compensation to a workman injured or suffering loss through disease, — that was the decision of our court a few years ago, — and is the only State where the court has so interpreted the compensation act. Our Legislature, moreover, had not, as in many other States, specifically excluded disease. So it seems to me that the gentleman in speaking along this line really ought to give, perhaps, to our Legislature, to our manufacturers and to our courts the credit of going further than any other jurisdiction in trying to obtain the desirable end of throwing the cost of injury upon industry. [Applause.]

Mr. HARRIMAN: The gentleman's question has been propounded, and he talks a good deal like a man who might be an attorney for a

large corporation. There is nothing personal about it. I do not pretend to discuss, and you do not want me to discuss, sir, the ins and outs of this matter. I am contending against what the courts have done. I have no fault to find if they lived within their Constitution; I am trying to establish a case here that the people have a right to have an opportunity to say whether or not their injury in industry must be turned over to a private corporation, or whether it shall be administered by the State, and all of this outside talk about what the people have done and what legislatures have done is immaterial to the principle involved.

Now, Mr. President, why opposition to these and like measures? Is it because of less profits to the employing interests or of fear of the further extension of the police power over the people by the people themselves? Privilege must defend itself along the entire line and it is easier for them to defend it in the Legislature than it is before the entire people of our Commonwealth. There are forces and interests that are opposed. Of course I do not know how the gentleman who has just spoken is going to vote on the matter. To his own conscience he must answer. I do not know of his environment, and have no interest in it. I assume, sir, that he is an honorable man. But let me tell you that the time has come when the people of this Commonwealth demand that they have an opportunity to say in their government what shall be the rules that are to govern them, and this is why we are asking for the people to have a chance to decide upon the initiative and referendum.

Now, I want another thing, and this comes close to my heart. I do not want to tire this Convention. You are doing better by me, Mr. Chairman, than you have by some other gentlemen who have argued in opposition to our movement, and I appreciate it. The movement to reduce the hours of labor in the mills and the factories and to abolish child labor in our State commenced seventy-five years ago. Need I tell you of the campaigns that were necessary and of the work that was done to abolish child labor in this Commonwealth? You all know it. Need I tell you, either, of the passage and the fate of the so-called 50-hour bill in the preceding Legislature? That is fresh in your memory. Need I tell you how in that particular case a thoughtful Legislature some time in the past had said that the employees of the State could have an 8-hour work day, but it had refused to conserve the lives of those who were to be the mothers of the future generation? Sir, I know not what the future has in store for me. I might be ambitious, but I want to assure you that ambition never will tempt me to raise my voice or my hand against the most noble but the most defenceless creature in our industrial and political system, — a woman. [Applause.]

In obtaining even partial results it has been necessary to go out into the highways and byways and pledge men, under fear of defeat, to a single measure of reform, and defeat men who would not vote to abolish child labor or to shorten the hours of labor, many of whom were good, useful and honest men in other lines of activity. I ask you, sir, would it have been better to have gotten the will of the people of this Commonwealth upon that subject than to have been obliged to adopt such tactics as that? Decidedly. You know the result, and need I tell you? When the special interests, the manufacturing in-

terests, the textile interests, opposed child labor laws and the shortening of hours, do you mean to tell me that their interests were not safer in the Legislature than on the ballot in the hands of the people in November? You can gamble your life they were. And they saw well to it that it remained there, and was not placed upon the ballot, not allowed on the open field of discussion, where the people themselves could pass upon it. That is one of the reasons, — one of the reasons, my friends, one of the very cardinal reasons. Because men will not do a certain thing, — they may be right on nine things out of ten, and the tenth thing the people may want, — is it necessary to push them with their intelligence out of public life? Would it not have been better to allow the people to have passed that law and to have retained those men, who perhaps if they could not see that particular point would have been useful in many other lines of legislative activity?

Opinion by the courts, in one instance with a dissenting opinion, has been the bulwark behind which every coal and food pirate has operated in this Commonwealth, and I challenge that statement, and his dictum has been: "Pay my price, or freeze or starve.' I want to say to you that all this time the Legislature never has done anything effective for it, and that is on the best authority, that of a professor in Amherst College. He has stated that the people of this Commonwealth are paying $20,000,000 a month more than is necessary for their food. Surely the wisdom that we are assured rests in such a body as this could not have done any more statesmanlike thing than to have allowed doubt for all time to have been removed from this matter by initiating, as only they themselves had power to initiate, a question for the people to decide and put into their Constitution whether or not they wanted to deal in the necessities of life. It was the people's business, and it was the Legislature's business, to see that the people had an opportunity to pass one way or another on that question. I do not criticize the court. Undoubtedly the court, a majority of the court, found just as it ought to find. But in reading those decisions, sir, the court did not say it was right. The court admitted in one decision that if the people were allowed to own and control municipal plants, coal and fuel would be sold at a more reasonable rate than they were sold by private industry. Now, it was the Legislature's business to make that legal, or at least to allow the people to say whether or not they wanted it, and for that reason, sir, the Legislature in one instance at least, has failed.

And thus I could go on citing instance after instance: Of the tour workers' bill, where the dominant party of this State betrayed their sacred pledges to the people in not passing that act; of the street railway scandals and the resultant burdens upon the people of this Commonwealth; of the old age pensions, submitted to a Legislature in the message of the Governor; and of the taxation scandal. Now, I am not an expert in taxation, but, sir, I can read. I know that when the Tax Commissioner of this Commonwealth says that $4,500,000,000 of intangible property escapes taxation he must be telling the truth. I know something, sir, of the history of how a bill to cure that was framed and passed, and I want to ask you now: Is the tax on that $4,500,000,000 going to be collected? Not yet. Go to your Tax Commissioner, and he will tell you now that very little more money will be collected under the new law than there was under the old. Do

you think the working people in this Commonwealth, who in the last analysis pay it all, are not alive to this condition? They are, and some day they will rise and demand that wealth pay its just share of the expense of government.

Now, as to the financial buccaneers who stole millions from the New York, New Haven and Hartford Railroad, robbed the Boston and Albany Railroad, exploited the Boston and Maine Railroad, — how those captains of industry got away with the goods, and the Legislature did absolutely nothing. Do you not think the working people read about those things? Do you not think they are interested? I happen to know that in at least a portion of this Commonwealth they are, and when the gentleman from Boston spoke yesterday about the intelligence of the working-class he spoke the absolute truth.

Sir, it is my honored privilege to have presided over what is known as the Central Labor Union of New Bedford for a considerable number of years, and I look back to that service, — and I am not through with it yet, — with a great deal of pleasure. I want to say that that organization is not any better than the average one; but it was my privilege to attend a meeting of a city council in a city not far from Boston, and I want to say to you, sir, that the decorum and the way of doing business and the intelligence displayed in the Central Labor Union over which I have the honor to preside was far superior to that of the city council to which I have referred. These conditions do exist. You gentlemen, many of you, do not mingle with the working-class; you do not know what is going on. I tell you, my friends, you have done well, but I want you to listen to this. I want you to ask questions, and to remember that if I make mistakes they are from the head and not from the heart. To these failures and adverse action can be directly traced the unrest, the distrust and the disappointment of the people in their legislation, and the desire for a change in their organic law which allows the Legislature, and it alone, the power to initiate changes which industrial conditions may from time to time warrant.

And now I come to the last question that I shall take up at this time with this Convention. We now come to this question in our government, and to that great improvement which we believe is needed in the machinery of our government, whereby the will of the people can be ascertained and made effective, a method by which the people can exercise their sovereign right without revising their whole system of government. There is need and demand for the initiative and referendum, and I want to point out to this Convention that it is evident. Cannot you men see that there are conditions which may arise twenty years from now, fifty years from now, over which we have no control and of which we perhaps cannot conceive? I ask you, should not there be some means whereby the will of the people can be made to conform to those conditions, and those conditions conform to the welfare of the people, without revising our entire Constitution or coming before numerous legislatures and meeting with successive defeats? That is one of the reasons, sir, for the necessity of this movement.

An absolute control by the people over the government, over every governmental function, is the essence of democracy. I have heard democracy sneered at in this Convention. Are there men here who

will say that democracy is a good thing so long as you keep away from the working-class? I confess, sir, that some of their actions and deeds would seem to imply some such thought. Democracy is not perfect, but it is the least imperfect thing that the human mind has yet devised. [Applause.]

Now let us see what has been the fate of the movement to get this question before the people, and I ask your careful consideration of the facts, for our ears are filled with the assurance that the Legislature always has been alive and responsive to the will of the people. What are the facts? For over twenty years this question has been before the people, and agitated. Within that time many of the political parties have advocated it. The labor people in conventions have indorsed it. Five of the last seven Governors of this Commonwealth have proclaimed it publicly before they were elected. Now, then, this is the condition that I want to bring to your attention. In the House of Representatives, — now follow quite closely, because I know it harms, perhaps, the effect of the message to read it, but I want to be perfectly accurate, and I want you men to realize that I am trying to be accurate and that these are the facts, — in the House of Representatives from 1901 until to-day, with one exception, that of the first year, a majority always has been cast for the measure, the initiative and referendum. In 1903 the vote was 155 to 22, or over seven to one. The amendment was lost in 1904, and in the following years, because of the conservatism and corporate influences, — and to amend the Constitution it took two-thirds of the vote for two successive years, — since the year 1904 an objective minority has prevented this measure from going to the people and, sir, has gloried in its achievement. Can it be true, as is claimed by the opponents of the initiative and referendum, that the Legislature represents the will of the people? Is it possible that during all these years a majority of the Legislature has misrepresented its constituents, a majority of the people of this Commonwealth?

Mr. President, we have come from individualism into collectivism. Once the bounties of nature were supposed to be had without thought or measure; to-day we have conservation. Once private industry was the business of an individual; to-day we have the exercise of the police power by the State. None dares to predict what will come out of the awful conflict in which the world now is engaged. But we do know, fellow-delegates, that the condition which exists to-day ought not to exist in the future, and that the changes will be radical is reasonable to assume, and that industry will come more and more under public control, and this change will be evidenced in our political life. And is it not wise to provide some method whereby the people may revise their Constitution from time to time, as I have pointed out, as conditions seem to require it?

Mr. Chairman, the gentleman from Waltham (Mr. Luce) drew attention the other day to the coördination and the efficiency of the German government. There are many things, sir, in their system that we admire and perhaps adopt; but, sir, the German government, the rulers of Germany, made one vital mistake, and for that mistake the world is suffering. They took democracy out of their government. That is the result, sir, of not allowing the people to have a voice in the government of their affairs.

Now, do not forget that the strength of a Nation lies not in its armies, not in its navies, but in its happy and contented homes. In the great change that is to come to us it is necessary that nothing be done to hinder the expression of the will of the people to become known and effective. Safety lies in the fact that those people shall make that change themselves. Sir, that is the test of democracy.

Delegates, do you believe that the citizens of this Commonwealth have intelligence enough to govern themselves? Do you put faith in the people? Then put that faith to the test. Delegates, do you believe in democracy? Prove it. Prove it by submitting to the people the question of whether or not they desire to have a direct voice in their government. It is not for us to decide, but for them. Are you afraid of the result? Sir, if fear prevents you then you are not of the faith of Jefferson, of Lincoln, and of Wendell Phillips.

Would it were possible for me to tear asunder the sophistry of those gentlemen who, under the guise of so-called progressiveism, and wise and progressive leadership, oppose this great measure of democracy. I say to you that any man who for the sake of financial, political or social gain would prostitute his intelligence and his ability upon an altar of greed and avarice, whereby man, woman or child is deprived of a chance to enjoy the fruits of their honest toil or the full protection of their government, is a menace to this Commonwealth. Sir, there are such men, men who to-day are opposing and in the past have opposed every measure that looked to the decrease of hours of labor, or the protection of life or limb, or to bettering the living conditions of the people of this Commonwealth. I say to you, and say to you again, that the influences of such men are fatal to our institutions and a danger to the future stability of American institutions of government. They may have a legal right, but, sir, they have no moral right, to ply their nefarious profession.

The Legislature always has been exposed to danger from such men and interests, and it is that we may remove that danger, that the people, with the same right and interest as a parent seeks to protect the good name and welfare of the family, seek to protect their Legislature, to whom they have delegated certain functions of government. They would make impossible the manipulations of selfish interests to become the law of the Commonwealth. They would further improve their legislative machinery by providing in a clear and orderly manner a means by which the will of the people can be ascertained and ordained despite the influences of a few selfish but powerful interests.

Society has its evils, society has sinned, but we must have faith, — faith in man and faith in the future. We each have a duty, and, sir, that duty calls forward, not backward. We are a great and growing family, whose duty it is to multiply and fill the earth with healthy and happy human beings, to serve in the spirit of humanity. Our eyes, sir, are fixed upon the goal; the road thereto is industrial and political freedom, and the gates that we must open to enter upon that highway are the gates of equal opportunity and equal justice. Is there anywhere a more noble conception of duty, a duty that calls us more fully to that attainment, the dream of ages, the brotherhood of man?

Mr. BENNETT: I want to ask a bold and dangerous question which probably very few have heard. We have heard something about corruption in the Legislature. I should like to ask: What percentage of

corruption is there in labor organizations? I have heard a great deal on that subject, and the answer is made frequently in Lynn, Lowell and elsewhere that when somebody is trying to engineer some sort of labor proposition he is "on the make." Now, I should like to ask: In the gentleman's judgment about what percentage of corruption is there in the labor organizations?

Mr. HARRIMAN: I am most happy to answer the gentleman. I do not know, but I assume from experience that it averages up with the Legislature; no worse, no better. Human flesh is liable to err. And I want to say this, and I hold no brief for things that are wrong in the labor movement, that the labor movement is the most human thing in the world, and it is liable to err; but because of error it is no reason why the labor movement should not seek to perfect its machinery, any more than we should not seek to perfect the machinery of our government where we have found that things that were not right possibly might have retarded our progress.

Mr. BENNETT: I understand my friend to say that in his judgment there is no more corruption in the labor organizations than there is in the Legislature? Is that right?

Mr. HARRIMAN: Well, Mr. Chairman, being human nature I think that they run parallel, — the same. There are men in the labor movement who like to ride on the backs of people. There are men among the labor people who would take advantage of things. I admit that.

Mr. BENNETT: A gentleman stood here the other day and talked, I think, pretty nearly all day, about the votes of a certain member of the Legislature. Well, now, he was defended by the gentleman from Brookline (Mr. Walker) in a manner which I think added to our respect for the gentleman from Brookline. [Applause.] But I did not understand that in that long presentation of the votes of the particular gentleman he was alleging corruption. He was alleging what we all understand, the powerful influence of certain interests and certain people in the Legislature. Is not that right? I understand that he was trying to make a parallel, he was trying to use the case of the gentleman from Somerville (Mr. Underhill) to show that certain members of the Legislature would come in here inevitably opposed to the initiative and referendum, because a long series of votes showed that they were on the conservative side by temperament and by experience. That is what I understood.

Now, I have come in contact with a great many labor leaders from all points, and I venture the assertion that it is just as in the case of the Legislature: the off-hand remark is passed that the Legislature is not trustworthy, which is not true. I probably served with more than a thousand members of the Legislature in various years, and you could not get together a better thousand men in this Commonwealth. I say it with no prejudice, no feeling one way or the other; you could not get together a better thousand men. Now, when we come to the labor organizations, in the district which I have represented, and I have sometimes been with them and sometimes against them, that off-hand remark has been made, that this man and that man and the other man were "on the make." Now, I once ran as an independent for Representative, and I ran several times as a Republican, and I never had a labor man ask me for a dollar for himself, never. My heart goes out in sympathy. I know the gentleman from Norwood

(Mr. Willett) very well, and have known him for so many years that memory runneth not to the contrary, and I appreciate the thoroughly sincere manner in which he takes hold of this question, as an employer of labor, and he is doing a great deal of good by entering into it instead of remaining quiet and not talking outside, the way so many do. He deserves great credit in this Convention. But when he gets up here and when other gentlemen get up here and show what has been done in so many cases in these labor matters he gives the whole question away by admitting that the abuses did exist and that they have not all been cured. And so I ask the gentleman a question, because my heart goes out strongly to the labor leaders and the men who are working conscientiously for a better distribution of the products of industry in this Commonwealth, for a better distribution of equality of opportunity in this Commonwealth, for a chance to get more of the products of industry, and I want to see them received and encouraged and helped in the progress of the whole matter. It is therefore that I have asked my friend these questions, that he may emphasize positively that the great mass of the labor workers in this Commonwealth are actuated by high and altruistic motives.

Mr. HARRIMAN: I am glad to answer the gentleman. I want to say, as I said before, that the labor movement is human. It has had men in it who were not an ornament. But I have wondered, Mr. Chairman and delegates, I have wondered often that more labor men did not fall when they were tempted by the same influences that have endeavored to debauch our government for selfish ends.

Delegates, you and I may strive honestly to settle these problems, but while we may advance, and it is our plain duty not to hinder, the solving of these problems, which are the problems of government, let us realize that they will be solved and settled in the minds and the hearts and the consciences of the common people of this Commonwealth, by those countless thousands of men and women who, unheralded and seemingly unrewarded, are performing daily the duties of citizenship as duties which they alone can do. Can we afford, sir, in the light of duty, to stay the onward march to better conditions and a clearer understanding of man's relationship to man? And can we allow posterity to say that we faltered and at the dawn of a new era of political and industrial freedom paused and heeded not the beckoning cry of progress? Shall we not rather follow the example of those illustrious founders of this Republic and put not our trust in the past but our faith in the people who are to come?

I thank you. [Applause.]

Samuel L. Powers of Newton.

Mr. POWERS of Newton: If the resolution which we now have under consideration be really a reform measure, then, to be consistent, I ought to support it. During the last forty years in which I have lived in Massachusetts I hardly recall a single movement that bore the label "reform" that I have not been back of; and so if this measure be really a reform measure then to be consistent I ought to support it.

The fact is, I have been a reformer all my life. Like the Kentucky Colonel, I was born a reformer. My earliest recollection goes back to the little school-house up in New Hampshire nestling among the

hills, where were assembled earnest men and women in the interest of the freedom of the slave, and when I came to Massachusetts and saw reform movements going on I naturally was inclined to join them. I always have looked upon this tendency to take up a reform as a tendency that is inherited. I came from a line of ancestry all of whom were either reformers or revolutionists. They hated arbitrary power because they could not exercise it; they hated wealth because they did not possess it; and therefore they always were willing to take part in a revolution because any change was likely to better their condition. And so I find them fighting for constitutional liberty and individual freedom in England, and in the struggle for our independence both my grandfather and great-grandfather were at the Battle of Bunker Hill. And while those men were framing an immortal document, our Constitution, my ancestors were not in the council chamber, but they were in the field with muskets in their hands. So I naturally believe in what may be called reform. I should like very much to see my way clear to support this proposition. I know the gentlemen who are the leading advocates of this measure. They are my comrades in several reforms that we have been fighting for for years in Massachusetts. But, Mr. Chairman, I want to speak to-day, and I trust I shall not speak at too much length, concerning one phase of this resolution. You know we have two phases here. One provides for initiating amendments to the Constitution, and the other for initiating laws. One is a matter of principle, as I look at it; the other is purely a question of expediency.

I want to discuss, in the first place, the provision that is contained in this resolution for changing the Constitution. What is the purpose of that provision? As I read it, I assume that the purpose of it is to allow the will of the majority to prevail without interference or hindrance on the part of the minority; in other words, that the people shall rule; and, if that means anything, that the majority shall rule without interference, without opposition on the part of the minority and the individual.

Now, if that be the proposition, — and I understand it to be, — I shall undertake to satisfy you that it is not a progressive measure, but a reactionary measure; that it is an un-American measure. Let us look at it. The real purpose of this resolution, so far as it refers to amending the Constitution, is to provide a convenient and easy way for the majority to remove restraints which they have imposed upon themselves. Is not that all there is to it? When the Constitution was adopted in 1780 the majority imposed upon themselves certain restraints. They did that voluntarily. They said they did that in the interest of minorities. Now, is not the purpose of this resolution to provide a convenient and easy method of removing those restraints? Has not the argument, since we have had this matter under consideration, been that it was too difficult to get rid of these restraints?

Now, how happened the majority to impose upon themselves the restraints that are contained in the Constitution? That leads me to a very important consideration, and that leads us to inquire: What is there about the American Commonwealth that is different from any other Commonwealth in any other part of the world? I will tell you what it is. It is these restraints which the majority have imposed upon themselves for the protection of the minority, and nothing else;

and in order that these restraints should be imposed in such manner that there should not be any discussion as to what they were, the framers of our Constitution put it in writing. In other words, in 1780 these great men and immortal men who wrote our Constitution, gathered here in the darkest days of the Revolutionary War, when their comrades were fighting to achieve independence, and they said: "We will create a Commonwealth which shall be a representative democracy, and, more than that, we will create one which shall stand for all time, because we will put into this Constitution certain restraints upon the majority, and we will provide a method which is difficult, complex and laborious, to remove those restraints." So they set forth in the Bill of Rights the rights of the individual and the rights of the minority.

I need not undertake to go over those. You are familiar with them all, — the right to own and acquire property, the right to defend it, the right to defend one's character and one's property, the right to worship the Supreme Being according to the dictates of conscience, etc., etc. They said: "All those rights in the minority and in the individual shall be protected by the majority; the majority requires no protection." In other words, they imposed those self-restraints.

Now, the gentlemen who favor this resolution say that it is too difficult to get rid of these restraints. They say: "We want an easy way by which we can get rid of them by an initiative petition, by which we can amend the Constitution if the majority of the people who happen to vote favor it, and by which we can destroy the Constitution altogether." But the cardinal virtue of these American commonwealths, you will bear in mind, is the restraint which the majority imposes upon itself. I have here a copy of a letter written in 1857 by Lord Macaulay, and written to an American, a friend of his in New York, and he made this prediction. You will remember that Macaulay always was making predictions as to what was going to become of the United States. He did not believe in a democracy. But in this letter, which he wrote in 1857, directed to Hon. H. S. Randall of New York, he says:

> I have long been convinced that institutions purely democratic must sooner or later destroy liberty or civilization or both.

Now, the trouble with Macaulay was, he predicted all these dire disasters to our democracy because he never took into consideration the restraints which the majority had imposed upon themselves. The proposition is here to provide a way by which the majority can pass any act that they choose without interference or hindrance on the part of the minority. Go back, Mr. Chairman, for a moment to our frame of government. When the framers set up this government they said that there should be three coördinate branches; there should be a legislative branch to make the laws, an executive branch to enforce the laws, and then there should be a judiciary, or a judicial branch, to interpret those laws. It further provided that if the law was in conflict with the Constitution any citizen had a right to go to the Supreme Judicial Court and have that question determined, and if it violated any of these restraints that I have spoken of, by the terms of the Constitution, then the law could not be enforced.

In other words, our fathers set up in this country a form of government by which a single individual, though he be the humblest individ-

ual in the Commonwealth, could defy a law if that law was in conflict with the Constitution. Even an alien coming to our country, and becoming subject to our laws, if the Legislature passed a law that interfered with his rights, could defy that law by appealing to our Supreme Judicial Court.

And then, in order that the Supreme Judicial Court should not be influenced by public opinion, they said: "We will give to its members such a tenure that they can hold it for life, or at least during the time of good behavior." In other words, the attempt was made to make the Supreme Judicial Court stand in such a position that it could determine whether the law passed by the Legislature and enforced by the executive department violated the rights of the minority or of the individual.

Well, these restraints are wholesome restraints. You cannot have a democracy without having restraints. I suppose, Mr. Chairman, that this Convention here is a democracy; it is a pure democracy; and yet we are under restraints. There are certain things here we cannot do without a two-thirds vote. There are certain things that we cannot do without a four-fifths vote; and I remember my friend in the third division, the author of this measure (Mr. Walker) was the one who brought forward a rule by which we could not adjourn more than a week after July 16 except by unanimous consent. These are all restraints.

Mr. WALKER: I do not know as it is worth while, but of course the rule can be suspended without requiring unanimous consent.

Mr. POWERS: Well, let us see what that rule says. The rule is an absolute prohibition, as I remember it. I was not intending in any way to criticize the gentleman from Brookline, but rather to commend him for his good judgment.

Mr. WALKER: It is such a small matter I beg the gentleman's pardon for interrupting; I am sorry I did.

Mr. POWERS: The rule which I refer to is Rule 45. It says:

> After July 16, 1917, until all amendments to the Constitution have been finally adopted for submission by the Convention to the people, no motion to adjourn for more than seven days at a time shall be entertained.

Well, if the motion cannot be entertained I do not see how we can suspend it.

Mr. WALKER: As the gentleman insists upon arguing the question with me, which I am sorry that I raised, I will say that on a two-thirds vote any rule can be suspended, except those specifically excepted.

Mr. POWERS: I am entirely willing to discuss the initiative and referendum with my friend from Brookline, but not parliamentary practice. His experience is such that his word is entitled to have great weight in this Convention. The most I mean to say is this, — that there certainly could be no adjournment without a suspension of the rules, which was a restraint upon this Convention. What I maintain is that if you pass this resolution, that is, that part of the resolution that provides for initiating amendments to the Constitution, then you may pass any kind of amendment that the majority of the people voting see fit to pass. But, you say, — and that will be the argument, — it is a difficult thing to put this machinery in motion which we have in this resolution. What is there difficult about putting this

machinery in motion? Why, you say, there must be fifty thousand signers before it can be submitted to the people, — fifty thousand qualified voters must sign. Well, how many qualified voters have we in Massachusetts now? — 660,000-odd. In other words, eight per cent of the voters must set this petition in motion. Well, suppose that the right of suffrage is extended, as my friend from Brookline and myself confidently believe it is going to be, to the women of the Commonwealth. Then it will require only four per cent to set this in motion, and four per cent is not a very difficult thing to secure.

But suppose you want to remove these restraints to-day, — the restraints under the provisions of the Constitution. You have got to have in the first place a two-thirds vote on the part of the House of Representatives, — and the House of Representatives, by our theory of government, is supposed to represent the people, and the Senate, under the old theory of government, was supposed to represent property. You must have for two years in succession a two-thirds vote of both Houses, and a majority vote of the Senate, and you must have that for two years before the question can be submitted to the people.

Now, all that is required here is a petition with eight per cent of the voters, and the Legislature may unanimously say that they will not recommend it for two years, and then you may go to the people, and if a majority of those voting favor the amendment, it is adopted.

I wonder how many of you gentlemen have ever made a study of how that works out in the western States where they have the initiative and referendum. Let me give you one illustration. I could give you many, but I will give you only one. I will take the State of Colorado. In 1912 there was a presidential election, and the people of Colorado cast for presidential electors 265,000 votes. There was submitted to the people that very year on the initiative an amendment to the Constitution providing for the recall of judicial decisions. I think you will agree with me that that was a very important question, — the recall of judicial decisions. Upon that proposition 55,000 voted in favor of it and 42,000 against it. In other words, only 20 per cent of those who voted, voted in favor of that amendment, and that amendment was carried; and those 20 per cent represented only 16 per cent of the qualified voters of Colorado.

Do I make myself understood? One of the important amendments to the Colorado Constitution was carried through by 16 per cent of the qualified voters of that State; and it was an important amendment to the Constitution. Only 36 per cent of those who voted for presidential electors voted on that question.

What is the effect of this new method of amending the Constitution? What has been the effect of this new method in other States? I want to call your attention to the view of Professor Barnett of Oregon. Professor Barnett has written a book upon the initiative and referendum. He is professor of political science in the University of Oregon. Any one who has ever read that book will say that it is an impartial discussion of the subject of the initiative and referendum. I reached the conclusion that he did not believe in amending the Constitution by initiative, but did believe in enacting the laws by the initiative. But this is what he says in his book relative to the effect of the initiative upon the Constitution of Oregon, and I trust I shall be pardoned if I read these few lines to the Convention:

It is clear that so far as initiative legislation is concerned there is practically no Constitution in Oregon. The Constitution of Oregon is only a check or restriction on the Legislature. The people's will rises above it. There is no Constitution, for it is so subject to flux and change as to no longer be the main stay of our government. The only constitutional protection enjoyed by the people of this State to-day lies in the Federal Constitution; but as that instrument bears only indirectly upon important questions, it is quite evident that in all ordinary matters of government the people of Oregon are practically without constitutional protection. It is an evil of our initiative and referendum that a slender majority can, on the exciting impulse of a single election, now ride roughshod over all the rights of the minority, even to sweeping away any and all of the elementary constitutional safeguards which the experience and wisdom of the ages have established as supposed permanent guarantees of the right of individuals and minorities against the sudden encroachments of majorities.

Now, Mr. Chairman, there is the opinion of one of the leading citizens of Oregon, who really believes in initiating laws, but does not believe in initiating amendments to the Constitution, and he tells us that the Constitution is practically of no account except as a restraining instrument upon the Legislature. Now, if that can take place in Oregon it can take place in Massachusetts. If the effect of the initiative in amending the Constitution is of that character in Oregon, the effect must be the same in Massachusetts, because it is the application of a principle. We have spent much time here in attempting to get through what is called a sectarian amendment to the Constitution. It has been handled in a most admirable way by the committee and by everybody connected with it; but you leave that exposed, as it is on this question of the initiative, and the people may sweep that all out of the way, and they may sweep out of the way everything that is connected with the Constitution to-day. They may change the Constitution entirely.

Well, you say to me, do you not believe in the people? Do you not think the people ought to rule? Why, if you are going to advance that proposition you need no Constitution, you need no restraints. No man lives who does not put himself under restraints; majorities put themselves under restraints. But here is a proposition by which the majority can remove all those restraints. I read the other day in one of our leading metropolitan papers, when we had under discussion the question of the tenure of judges, a very enlightening and illuminating editorial. It served notice on this Convention not to waste our time on the question of the tenure of judges. It said: "What you want to do is to put through the initiative, and then if the Legislature or the people pass a law that is unconstitutional, change the Constitution to fit the law." That was the language, — "change the Constitution to fit the law." In other words, do what was suggested, and I think what appears in one of the constitutions of a western State:

No act, law, bill, measure or resolution, or part thereof, adopted by vote of the people, shall be held unconstitutional or come within the veto power of the Governor, or be amended or repealed, except by vote of the people.

That is the rule of the people; and yet we live in a Commonwealth which we have declared to be founded on laws, and to be a government of laws and not a government of men. We have a written Constitution. As Chief Justice Marshall said a good many years ago, in *Marbury* v. *Madison:*

The powers of the Legislature are defined and limited; and that those limits may not be mistaken or forgotten the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing if these limits may at any time be passed by those intended to be restrained?

You remember that Mr. Lincoln, when he gave to Congress that first inaugural, in which he appealed to the south that they were not justified in a revolution, used this language:

> If by mere force of numbers a majority should deprive a minority of any clearly written constitutional right, it might in moral view justify revolution.

Now, what is the difference? You propose a measure here, — at least, the advocates of this resolution do, — by which the minority may have these constitutional rights taken away from them provided a majority of the people see fit to do so. My friend in the second division, the chairman of this committee (Mr. Cummings) entertains certain views with reference to the courts. He feels that the courts ought to be protected. He feels, as I do, that religion ought to be protected. But if you pass this measure that is brought forward by the gentleman from Brookline (Mr. Walker) you give to the people a right to sweep away the courts if they choose to do so, or to recall judges, to recall judicial opinions, or change the form of worship, and I do not know what they might do. I did not take a great interest in this sectarian discussion, because I am a Unitarian, and I regarded myself as a neutral in that contest. But I can understand perfectly well that the little church to which I belong, or the little church which my wife attends [laughter], — I can understand perfectly well that there might be a combination of these other creeds, and they might say, later on, that I and my fellow-Unitarians should not maintain a place of worship, but that we should become either Baptists or Methodists or Catholics or something of that kind. In other words, we leave this question of religion to the people; we submit it to a vote, — it is a town-meeting, — and they can say what shall be the religion in this State. And on this question of judicial decisions, and tenure of office, you leave that to the people. You remove all these restraints if the people desire to have them removed. Why, when this question of the tenure of judges was under discussion I was surprised to hear some men, members of the bar and good lawyers, say that the courts did not interpret fairly the Constitution, that they seemed to lose sight of the human side of legislation. I always had supposed it was just the other way. I am reminded that it was John Marshall, the great Chief Justice, who in those early decisions upon the Constitution broadened out our Federal Constitution and made us a Nation. If he had not been a great constructive judge he never could have done it. But one decision after another came along, and he held that the States had vested in the Federal government this authority and that authority, and he broadened out the Constitution and made us a great Nation.

You may recall the story that was told some years ago in connection with those decisions that came to us in the time of the Spanish War. It was at that time that we were having more or less difficulty in determining whether the Constitution followed the flag or not, and that grew out of our possessions which we had acquired during the war. The Supreme Court of the United States in one case, by a vote of five to four, declared that the Constitution did follow the flag; in another case, which looked very similar, they decided, by a vote of five to four, that the Constitution did not follow the flag; and the opinion in each case was rendered by Mr. Justice Brown, he voting with the majority in each case.

It was at this time that that great modern philosopher and humorist, Mr. Martin Dooley, sat reading his Sunday paper, and reading about these two great decisions of the Supreme Court of the United States, and his friend Hennessey said to him: "Martin, what are you reading?" "Well," he says, "I was reading about the decisions of our Supreme Court at Washington." "Well," he says, "Dooley, what are they deciding now?" "Well," he says, "they are deciding whether the Constitution follows the flag or whether she does not follow the flag." "Well," he says, "how have they decided it?" "They say that sometimes she follows the flag and sometimes she don't follow the flag, and Brown, J., says that he is the lad that will say when she follows the flag and when she don't follow the flag. But, Hennessey, I will tell you one thing. The Supreme Court of the United States will never go far wrong so long as she reads the newspapers and watches the election returns." [Laughter and applause.]

What I want to say, Mr. Chairman, is that that story is no reflection upon the Supreme Court of the United States. It is a commendation of our courts, because every court should be in touch with the human side of life, it should know the affairs of life; and that was exactly what it did in those two decisions. It worked out the very best policy that it could for the Nation, and that is true with reference to the decisions of Marshall. By broadening the Constitution it made it the foundation of a great Nation.

Only the other day I made my first pilgrimage to Marshfield, and stood by the grave of Webster; and as I stood by that mound and read that simple tablet above it, "Daniel Webster," the thought came to me: What would the great defender of the Constitution have said if he could have been told the last year of his life that in a little more than a generation there would come a public tide in favor of giving to the people the right by vote, and a majority vote, to change the Constitution as they saw fit?

Why, it seems to me that if we put through this resolution in the form it is to-day we put into the hands of the people an authority that they never ought to exercise. I mean by that that the majority always should be under restraints in order to protect the rights of the minority. For 140 years we have lived under this written Constitution. We have extended invitations to people of all nations and all climes and all beliefs to come to our shores. We have said to them, if you come here your rights as individuals shall be protected, and you shall be protected from the majority. If you are going to give to the people the right to change the Constitution as they see fit, and thereby vest in the executive side of the government great power, you are going back to the system of government that they had in England when this Constitution was adopted. You are going back to the same form of government that they have had in Germany and those continental countries where they have no written Constitution and no Supreme Court that can protect the rights of the minority or the individual. In other words, this measure is a reactionary measure, and the more you think of it the more you will see that it is absolutely reactionary. When you make it possible that these different provisions, these different restraints, which were voluntarily imposed by the majority upon themselves, may be removed by this simple and easy process, then you open up the road for the triumphant march of

a majority, and the triumphant march by the majority, in the long run, without any restraints, means the greatest possible harm to the Commonwealth. [Applause.]

Mr. ANDERSON of Brookline: I had waited several moments hoping that the orator would say something which would make clear his point, on which I am in doubt; I ask now a direct question so that he will to my mind, if he may, make clear his attitude. In the minority report signed by him I find these two sentences:

> A democratic government is one in which all power rests finally in the whole people, and which executes the will of the people. And we are not disposed to question the proposition that in a democratic government we must accept a majority vote as the final and decisive expression of the will of the people.

Elsewhere in that report is the doctrine, with which I coincide, to the effect that that majority will should not be declared without required discussion, deliberation and delay.

Now, I am left in doubt by the argument of the gentleman from Newton, as to whether he stands on the doctrine enunciated in this document, to the effect that the majority, after discussion and deliberation and delay, have a right to amend the Constitution, or whether he stands on the proposition which some of his sentences, at any rate, seem to imply, that there had been finally bargained away in 1780, on the adoption of that Constitution, beyond recall, the right of the majority of the people to amend that Constitution. I may add, perhaps somewhat facetiously, that I also am a little worried, as one of that small and, we think, select body of Unitarians, lest, if it should be left to the majority of the people, they might not pass some law to make us, for instance, my brother from Newton (Mr. Powers) and myself, go to the Baptist church, — which we should regard as a very great infringement upon our liberty.

Mr. POWERS: It would not do us any harm. [Laughter.] Mr. Chairman, if I understand the gentleman's question correctly, it is: Do I believe in the statement contained in the minority report, that all power rests in the people? Why, of course I believe in that; that is elementary. Everybody believes in that. What I do not believe in is that this power, which is vested in the people, should be exercised by the majority of the people except under certain reasonable restraints; and the framers of the Constitution intended that these restraints, or restraints in some form, should continue to exist for the protection of the minority and the individual. I do not know whether I have answered that intelligently or not, but, as I understand the question, that is my answer.

Mr. ANDERSON: I understand now that the gentleman says that the majority, even after deliberation and delay, should not be permitted to have a government of their choosing. It would seem therefore to follow, if the majority does not rule, then the minority must rule. I should like therefore to add to that a single question. Is the gentleman from Newton satisfied with the present method of restricting majority rule, which method is that 34 per cent of the members of any one of two successive Houses of Representatives may veto the right of the majority of the voters, and, for aught we know, three-fourths of the voters, as to any desired change in their fundamental law? If he is not satisfied with the present method of vetoing and restraining majority rule, what alternative has he to suggest?

Mr. Powers: The present method, to which I already have referred, of adopting constitutional amendments comes of course by a two-thirds vote of the House of Representatives for two years in succession, and a majority vote for two years in succession from the Senate. Now, so far as I know, that method has worked well in the past, and I do not know of any amendment to the Constitution for which there has been any true public demand that the Legislature has not been ready and willing to submit to the people. Take, for instance, the amendment in favor of woman suffrage. I have supported the cause of woman suffrage for the last thirty years. I have done everything in my power to have it submitted to the people, and the Legislature two years ago submitted that question to the people when they themselves did not believe in it; the majority of the members of the House were opposed to it. Nevertheless they submitted it to the people, and it went down to defeat by nearly a hundred thousand majority.

Now, I know nothing about this question, that has been discussed here so much, of the Legislature. I never served in the Massachusetts Legislature. I have heard all kinds of discussion here, — every now and then it drifts back to it. One man says it is the best legislative body in the world, the next man says it is made up of a lot of crooks, and so on, and so forth. Now, I live out in a city in which we have three representatives. I have been there for thirty-five years, Mr. Chairman, and I want to say to you that the city of Newton always has been well represented in the Massachusetts Legislature. I never, during those thirty-five years, have heard a word of criticism of the men who have represented us there. They have represented the sentiment of the Newton people. The men who we have sent here have been just as honest and just as incorruptible as the members of the Supreme Judicial Court of Massachusetts. [Applause.] If there have been bad men in the Legislature they have not come from any community in which I have lived; if there have been dishonest men in the Legislature they have not come from these communities in which I have lived. Now, it is said there ought to be some other system —

Mr. Brown of Brockton: I want to ask my fellow-reformer, who I understand by his admission is a sufficiently good Unitarian to permit his wife to go to church to represent him, how far he wishes to discard the ancient theory of *vox populi vox Dei;* and, furthermore, just when shall we discover that it is not God speaking through the people if the people manifest their will, and what restrictions would he place upon the people in such a way that God could not speak through the people?

Mr. Powers: I certainly believe that the voice of the people is the voice of God. Sometimes it seems more as though it was the voice of the devil than the voice of God, but nevertheless I believe in that theory. I am not attempting to dispute that theory at all, that the people should rule. The only question is: Ought there to be any restraints whatever upon the majority? That is the whole question. So far we have had restraints upon the majority. And I want to ask my friend from Brockton, whom I have known so many years, and for whose opinions I have great respect, whether he be-

lieves in giving to the majority the right to rule in Massachusetts without any restraint whatever?

Mr. BROWN: If he will permit me, one great defect in American civilization has been the teaching that God gave to every man a natural right, and omitting to teach that He also imposed upon each man a duty coördinate with that right, which was that He had given to every other man the same rights; and therefore that it was the duty of each man to protect the rights of other men. Therefore, sir, I would answer him in this way: That I do believe that God in this way has placed such a restraint upon men that the natural order of things teaches them that there is no justice for themselves unless they observe the duty which they are obliged to observe toward their fellow-men. It is only, sir, in this faith, that I could go one step toward supporting this measure.

Mr. POWERS: Mr. Chairman, in other words, he admits that there ought to be some restraint, that every man ought to be under restraint.

Mr. BROWN: Yes, sir; I have gone further and said there is such a restraint.

Mr. HALE of Boston: I hate to interrupt the gentleman from Newton by asking a question, but I think this particular point on which he is now talking is one that is most fundamental in this whole debate. I should like to ask the gentleman, following up the question of the gentleman from Brookline (Mr. Anderson), as to just what restraint exists in the present method of amending the Constitution as to time or opportunity for deliberation, which does not exist in the proposed amendment, eliminating from the answer the general oratorical effects which have been used somewhat in the past in the debate, in regard to direct legislation in general, the government of Greece in particular, and other matters which have nothing to do with the amendment under discussion.

Mr. POWERS: It is hardly necessary for me to answer that question to this Convention, because I think everybody knows the difference between our present method and the method proposed. If there is not any difference between the method proposed of amending the Constitution and the one that exists now we ought not to be wasting our time in discussing it, [applause], but there must be.

Mr. HALE: I really hoped, Mr. Chairman, for an answer to that question. The question I asked was not the general difference between the proposed amendment and the present method of amending the Constitution, but the difference between the two amendments in so far as they affect restraints upon the action of the majority, which, according to the minority report, and according to the majority of the committee on initiative and referendum, ultimately must be supreme.

Mr. POWERS: Of course you all understand what is necessary to be done at the present time to amend the Constitution. It is what has been termed, and was termed in the Convention of 1853, as a laborious, complex and difficult task; but they said all that was necessary in order that the restraint should not be too easily removed. The proposed method is to get eight per cent of the voters to sign a petition sooner or later, and then to say to the Legislature: "We want such and such an amendment within two years." The Legislature might vote unanimously in those two years that they would not grant that

amendment, that they would not submit it to the people. Then at the end of the two years it is submitted to the people, and if a majority of those voting on the subject is in favor of it, the amendment is adopted. Now that majority might not be, as it was in Colorado, over 18 per cent of the voters. Nevertheless it amends the Constitution.

Mr. HALE: I hate to be persistent in this, but I shall continue until I really get the answer which must come. I want to know specifically and in detail, the exact differences, as far as length of time for deliberation, as far as the manner in which the people determine whether they shall have a constitutional amendment or not, and in regard to the opportunity for discussion. The answer that the gentleman has just given does not to my mind answer the point at all, because of course he would admit, as we all would admit, that the final method of determination, in other words, the last step in a constitutional amendment, the votes of the people, is identical under the proposed amendment and under the present method; and therefore this question of the majority voting, or the number of people voting, to put on the final step of a constitutional amendment, does not answer the question. I want to know the specific differences during the process of amending the Constitution between our proposed amendment and the existing method.

Mr. POWERS: Mr. Chairman, I wanted to confine myself to an hour in discussing this question, to set a good example as to the amount of time that ought to be used. If I am going to answer questions of the character that has been put to me it will require a good deal of time. Of course any of you gentlemen who have examined this thing know the difference between the two methods. The method that exists to-day has been denounced as a difficult method, and one you could not make use of. Now, the method that is proposed here does not require any discussion whatever. It may be put up to the Legislature, the Legislature may decline to consider it for two years, then it goes to the people. There may be a pamphlet sent out; the people may not read the pamphlet. Then it goes to the people and they vote on it. There may be no deliberation whatever on the question. The Legislature is not required to deliberate on it, they are not required to discuss it. If it goes before them and they see fit not to act on it for two years, then I understand it goes to the people. The people may receive a pamphlet, a pamphlet such as I will call to the attention of the Convention a little later, and they may not read the pamphlet. They may vote, and they may not vote intelligently. In that way you amend the Constitution. But perhaps I have taken, Mr. Chairman, all the time that I ought to take on this point. I want to say just one word on the other phase of this resolution.

Mr. ANDERSON: I thank the gentleman very much, but I wish he would say a word on the point that he brought out a moment ago. I think he said, a little inadvertently, that an amendment might be proposed to the Legislature and the Legislature might refuse to discuss it. Does he seriously put to this Convention the proposition that, after 40,000 or 50,000 voters, — I have forgotten which, — have put up to the Legislature a proposed amendment to the Constitution, a Legislature which is fit to bear the name would flippantly fail to discuss it, and undertake to educate the people as to its merits or de-

merits, — and that not *one* Legislature, but *two* legislatures? If he meant that seriously, is it not a confession that legislatures are not fit either to deal with constitutional amendments or to make laws?

Mr. Powers: I am very glad the gentleman from Brookline put that question to me. Now let me summarize some of the amendments that are likely to be the first ones that will come to the Legislature. About the first amendment that will come to the Legislature is the right to recall the judges of our Supreme Judicial Court, and recall judicial opinions. Those are about the first ones that will come, and there are groups of men in Massachusetts to-day who are waiting for that time to come.

Mr. Webster of Haverhill: I should like to inquire of the honorable member by what authority he makes that statement? Sir, if I may add a word in explanation, and as a basis for my question, and if my explanation is any authority for the statement, — I suppose there are few members of this honorable body to-day who have longer advocated the proposition under consideration than myself. I am deeply opposed to the recall of judges. I am opposed to the elective system of judges. If such a proposition were brought forward I should take the stump with every particle of power in my possession to argue against it. I resent and repudiate the assumption of motive, of particular beliefs, to those who join in the advocacy of this great reform.

Mr. Powers: I confess that I do not understand what the gentleman means when he says that there is no sentiment in Massachusetts in favor of the recall of judges or the recall of judicial decisions. Those were about the earliest matters that came up under the initiative and referendum in the western States. What is there about Massachusetts that is going to protect us against the consideration of those measures in a different way than they were in the western States? I would like to know why voters of Massachusetts will act differently on this subject than they have acted in the States where they have had the initiative and referendum.

Mr. Webster: I congratulate the honorable member on his good judgment. Mr. Chairman, if I spoke with some heat I beg to assure my honorable friend from Newton that I had no animosity behind my statements; but what I do think is unfair in complicating this debate is the continual bringing in of the assumption of attitude upon the part of individuals or of classes upon totally extraneous and trivial questions. Further, by the proprieties of parliamentary procedure I suppose I should place this in the form of a question.

The honorable member from Newton a few moments ago said that he knew of no matter in which an amendment to the Constitution was deeply or generally desired by the people of the Commonwealth which did not receive attention and response from the Legislature. Sir, I should like to ask the honorable member if he believes there is any general public sentiment among the people of the Commonwealth for such an amendment to the Constitution as will in time of emergency or need permit dealing in the necessities of life by the municipalities and townships, perhaps with the aid of the State. Why, sir, in the year 1913, when I had the honor and pleasure to sit in the House with his esteemed townsman, my honored friend and valued friend, George H. Ellis, a very conservative gentleman, too, let me assure this body, I remember that that proposition passed the House by a vote of 207

to 13, and Mr. Ellis spoke and voted for that measure. And what became of it in the other corner of this building? That is what was the trouble. I beg the gentleman's pardon, I do not intend to make a speech. I do expect to speak upon this later, and I may recall that. But let me say that I have become thoroughly conversant with the Jeffersonian idea of a unicameral system of Legislature. You may recall, those of you who are familiar with the constitutional history of the country, that Thomas Jefferson was absent in France at the time the Federal Constitution was adopted. After his return home he was sitting at afternoon tea with Washington, who of course was a conservative of conservatives, and he asked: "Why did you give your consent, and why did you adopt the bi-cameral system? Why did you have a Senate?" Washington said, — or so runs the story, — "Why do you turn your tea out into your saucer?" which, probably with a different idea of etiquette from that which obtains to-day, they were doing at the time. Jefferson of course naturally made the reply, the only reason a man could give for the practice: "To cool it." "That is just what we are going to do with our Legislature," said Washington. "We are going to furnish, in the senatorial saucer, the cooling." The senatorial saucer, sir, has reached such a degree of refrigeration that it freezes every beneficial piece of legislation that is brought up in the Commonwealth.

I apologize to the honorable gentleman for having taken more of his time than I meant to, but I wanted to allude to one matter in which I can assure you I believe there is a most far spreading general sentiment which has been absolutely powerless to get any response from a Legislature.

Mr. Powers: I did not quite understand the gentleman's question, so I will not attempt to answer it.

At the time we were discussing the question of judicial terms for the judges, the claim was made that there was a great social unrest, and it is claimed that this social unrest may lead to great harm; and I had assumed that if this measure went through the question of recall of judges, and the recall of public officers, and the recall of judicial decisions, would be among the first that would be suggested. I should be very much surprised if those were not the first that would come along. And now what I want to ask my friends who are advocating this resolution is: Are they entirely willing to leave all those questions without any restraints except what are provided in their proposition for the people of Massachusetts to vote upon?

Mr. Walker: This is the Committee of the Whole, and I think that questions really are profitable here, asking them informally, especially when we have such a bright minded, intellectual man as we have before us to question. Now, I want to ask him whether he does not see any difference between providing an orderly method for amending the Constitution, a method that requires a reasonable time for consideration, and the abolition of the Constitution itself. I understand him practically to say that the passage of the initiative and referendum, or that part of it which relates to the Constitution, is practically abolishing the Constitution. Cannot he see the difference between providing a method by which the Constitution may be amended and abolishing it?

His first line of argument is this: If we provide the method for

amending it by the people they may do so and so and so, and of course any one can think of all the horrible things that can be done when you grant the power. If you grant the power it may be abused, and this, that or the other thing may be done. And so his argument that the courts may be upset, that we may have the recall of judges, we may have the recall of judicial decisions, is quite true, because we may do anything and therefore we may do any one of those things. The point is that we provide an orderly method for amending the Constitution by the will of the majority, and I take it that the people cannot express its will in any other way than through the majority. I again ask the question whether the gentleman sees no difference between providing a method for amending the Constitution and abolishing the Constitution itself.

Mr. Powers: The trouble is the method is too orderly. [Laughter.] An amendment to the Constitution is put up to the Legislature, it may be for the recall of judges, the recall of public officers, the recall of judicial decisions. When it reaches the Legislature the method is so orderly that even the Legislature cannot change one word in the amendment that is put up to them. That is what I object to. They put up a method that is absolutely cast iron. There is no use of the Legislature deliberating on anything except the one question that is involved, and not as to the manner in which it should be carried out.

Mr. Walker: May I point out just now he is going off on a little different question? I asked him if there was not any difference between providing a method, whatever that method, and abolishing the Constitution itself. Then we will discuss which is the best method.

Mr. Powers: I have given a quotation from Professor Barnett, that the effect of it in the State of Oregon has been the abolition of the Constitution, that the only use made of the Constitution in Oregon to-day is as a restraint upon the Legislature, that it no longer has any restraint upon the people. Now, I see no reason why, if this method is adopted, the effect in Massachusetts will not be exactly the same as it has been in Oregon.

Mr. Walker: Now let us find out just what that restraint is, as we tried to find out once before. What is this restraint on the people? Of course if it is a restraint it means one of two things: Either the people are restrained or they are blocked. We may require them to go slowly, — that is restraint, — but ultimately they shall have their will. Now, what is the restraint we have to-day? We have the restraint of the Legislature, the representative of the people; that is the restraint we have do-day. Under the initiative and referendum that restraint will be withdrawn. I admit it. We shall have all the deliberation, all the time we now have, but the restraint that comes from legislative opposition to submitting a proposition to the people will be withdrawn. Now that is exactly it. To-day we have a method of restraint which amounts to a defeat again and again, in my judgment, of the deliberate will of the people, and that is a dangerous restraint. I believe that as years go on and we have questions come up that will stir the people of this Commonwealth to the bottom, and they find they have that legislative restraint and believe that the Legislature is not representative, when they find that the Legislature is forbidding the people to have their deliberate will in matters, we shall find difficulty. I wish, therefore, to bring out this point at this

time, and that is why I asked the question, that the restraint we have to-day is the opposition of a legislative body to the deliberate will of the people.

Mr. POWERS: I regret that my friend from Brookline and I do not agree upon everything. This is the only thing, however, that we do not agree upon. I think we agree upon about everything in the way of reform except this one. We are working in the same vineyard for great reform movements, but we do not agree upon this.

I have taken all the time I ought to take in the discussion of this phase of the case. I want to say just one word upon the other phase, and that is the question of initiating laws. I do not care very much about that.

Mr. BROWN of Brockton: I think the interest is greater where we have these questions and answers. Would you contend, because of the initiative and referendum in Oregon, that Oregon is worse off than she would have been if she had not had it? Would you hold that position?

Mr. POWERS: No, I would not hold that. I will say to the gentleman, Mr. Chairman, I would not hold that Oregon is any worse off. I do not know whether she is any better off.

Mr. BROWN: Thank you.

Mr. POWERS: But she is not any better off. I spent my summer out in Oregon and Washington a year ago, and I had occasion to study some of these great reform movements that I was interested in. One was prohibition, another was woman suffrage, and another was the initiative and referendum, and I am going to tell you just what I found to be the public sentiment in Oregon and Washington on those three questions. Ninety-nine men out of a hundred said that woman suffrage had been a great success. Ninety-nine men out of a hundred said that prohibition was a good thing, and that they never would think of going back to the old system. When I got to the initiative and referendum they broke just about even on it. I am a pretty good mixer, and I asked the question of every man whom I met, pretty nearly, and we talked it over, and some said that the initiative and referendum had been a good thing, others said it had been a bad thing, and most of them agreed that it gradually was falling into disuse.

So much for that. Now I want to say just a word with reference to initiating laws. That is a pure question of expediency. There is no principle involved in that. It is a question of direct legislation.

Democracy is not new; it is old. You had the democracies of Greece and of Italy, and we have had the old town-meeting during all these years. I suppose that this is true, that the framers of the Constitution believed in the town-meeting, and the town-meeting has continued. It has been said that a democracy can exist where the area is sufficiently small to allow the people to come together, and where the number is not so large but that they can gather in one room for the purpose of deliberation and discussion. We have provided by law that when a town has 12,000 inhabitants it may have a city charter and become a representative democracy. If it chooses to become a representative democracy the Legislature gives it a charter. But I want to refer to the town of Brookline. There is a town, so far as I know, which is the very place where this movement

for the initiative and referendum originated, the town of Brookline. Three distinguished advocates of this movement come from Brookline. I remember that in the old times the people of Brookline said it always would continue as a pure democracy, even though it had 100,000 population it still would remain with the old town government. Well, they did pretty well. They went on till they got 20,000, and 25,000, and 30,000, and finally did get up so that they had 6,000 voters and the old town hall would not hold 6,000 voters and those who got there first in the morning ran the town-meeting. Well, they said: "We cannot undertake to be a city, because we have said to the world we never would become a city," and so a few years ago they came to the Legislature and adopted a system of selective voting. They have about 280 gentlemen out there who do the voting now for the 7,000 voters. [Laughter and applause.] That is what you call an aristocracy. [Renewed laughter and applause.] I assume, Mr. Chairman, that you do not have anything of that kind over in Arlington. Out in my city, where I live, we followed the old course of becoming a city.

Mr. WALKER: Before you leave the good old town of Brookline, and as I am one of those aristocrats who sit in the town-meeting, for we have now an elective town-meeting there, let me remind you that in the conservative town of Brookline they did not think of trusting their affairs entirely, — and the Ex-Governor (Mr. Bates) is a member of the same body, — to their representative body, but they provided that the town of Brookline cannot pass a special appropriation for anything more than $25,000 without a referendum upon petition of any twenty citizens of the town. [Applause.]

Mr. POWERS: Well, now, in those western States, — [great laughter], — I was saying, Mr. Chairman, that in those western States where they have the initiative and referendum they have a pretty good sized ticket to look over. A friend of mine who was out in California, I think in 1912, brought me home one of the tickets. [Exhibiting a ballot.] This is not a large ticket. In some States they have had them where they were six feet long. There are only forty-eight questions to be answered on this ticket. Some of them are amendments to the Constitution. Some of them are amendments to laws. Others are new laws. But they had the officers to vote for, and these forty-eight questions to answer. Of course if people go in to vote when they are on the way to business they are in a hurry, and so they pass on those questions. But they undertook to educate the public, and they sent along a pamphlet, and every voter was supposed to have this pamphlet. Now, that pamphlet [exhibiting the pamphlet] looks like a small pamphlet. How many words do you think it contains? A trifle over 250,000, and the print is so poor that no one ever would think of reading it unless he was paid for it. Some of them contain propositions in which there is an argument in favor of the amendment and an argument against it, and other propositions in which there is no argument whatever.

I do not undertake to say, Mr. Chairman, that this method of direct voting is not going to work out all right. I am not going to find any particular fault with this part of the measure. If this Convention wants to recommend to the people the matter of initiating legislation, believing that it will have a check on the Legislature, why, I have

not any particular fault to find with that. I look upon the question of the two phases of this measure as absolutely unlike. I look upon this question of amending the Constitution as fraught with great danger; I look upon this other question as a pure question of expediency. I do not know whether we will get better laws under a method of direct voting than we will through the Legislature. I am entirely willing to let that thing go without further argument. But what I do say is this: That if we adopt that resolution as it has been presented here, the resolution which provides for amending the Constitution and throwing off easily the restraints which the majority have imposed upon themselves, we do something that is un-American, we do something that is contrary to the theory of the American Commonwealth. We become reactionary rather than progressive, and more than that, we cease to be that kind of a Commonwealth in which every individual is protected under the law against the will of the majority by the terms of the Constitution as interpreted by the Supreme Judicial Court. [Applause.]

George W. Anderson of Brookline.

Mr. ANDERSON of Brookline: There never has been a time, in the quarter of a century or more that I have had the pleasure and the honor of a somewhat intimate acquaintanceship with the gentleman from Newton (Mr. Powers) who has just addressed you, that I ever spent an hour in his company without enjoyment, and it is very infrequently that I have spent an hour without profit. He has just given us, as we knew he would, not only an interesting but an instructive address. It is impossible for him to speak for an hour on any subject without at least touching the subject. I venture to think that in that particular he is to be distinguished from some speakers who have addressed us on this floor.

I observe, I think with entire respect, that this discussion has taken an exceedingly wide range. Most topics of present human interest, except the last peace proposal of the Pope and the terms that ought to be given to the belligerents, have been discussed on this floor since we began the consideration of this resolution. Some topics have been discussed here which I think have not even human interest. It is well, therefore, to come back and consider what we really are discussing, — a proposed amendment to our Constitution, providing a new method of amending that Constitution and also of enacting laws.

To state my conclusions first, I may say that, after some study of the problem, and after a very considerable experience with the government of Massachusetts as it actually is, and I think a considerable knowledge of what forces, operated by what persons and classes of persons, really have governed in Massachusetts (I am not talking about those who *reign*, I am talking now about those who *govern*) I have reached the conclusion that the initiative and referendum in the form presented, or substantially that, — my mind is not closed on any matter of small amendments, — is a wise, desirable, wholesale addition to our governmental machinery, safe to experiment with, and fraught with *no* practical danger. That is not a very enthusing statement to some who believe that the initiative and referendum will bring about a radical change in our industrial and economic relations to

each other, will make those who are dull much brighter, enable the downtrodden to escape from under the heel of the oppressor. But I regard it as the very essence of the whole proposition.

That proposition divides conveniently into two questions or two subdivisions: First, are there shown to be such evils, defects, weaknesses, in our present representative system of government in Massachusetts as you *know* it (not as somebody theorizes about it), as fairly to call for some (not a revolutionary but a substantial) change in our method of changing our fundamental law and also our statute law? If no, if we have all we need at the present time, if our government is as good as we ought to expect it to be and ought to undertake to make it, except by the slow process of improving our standard of general citizenship, — that disposes of the whole proposition. If yes, the next question is, does the initiative and referendum offer us, not a panacea, but a reasonably tried method, — reasonably sound in principle, not fraught with serious danger to any essential right, — which we may put into our Constitution for the purpose of seeing how it will work? Both those questions must be answered in the affirmative if you are to vote for this resolution. I answer them both in the affirmative.

I regret the absence of the learned gentleman from Southborough (Mr. Choate), who was put forward as the chief opponent of this proposed amendment to the Constitution. I always miss him when he is not present. Sometimes I enjoy his absence; to-day I greatly regret that he is not here. There were certain points in his argument to which I should have been glad to advert, but which I shall only touch upon in his absence. It seemed to me, however, not accidental that one of his training and type of mind and professional and personal affiliation and clientele was instinctively put forward by the opponents of this method of new and increased democratic control.

I note by way of preliminary: We have listened amidst the oratory delivered here to much interesting historical discussion of the fact that this is "a representative government," that "a pure democracy is impossible;" this has been pointed out to us at great length. We have been told with much care that democratic representative government is an improvement upon straight or pure democratic government. I venture to say to the gentlemen who have given at so great length so much of their historical learning that those of us who favor the initiative and referendum, knew that. We knew that the old town-meeting system would not work when the town got too big. We knew that representative government was a step forward beyond pure democracy, — a development and expansion of real democratic government. But, gentlemen, the real issue here to be determined, and which I hope will not be tempted to be dodged, and which some of us intend shall not be dodged, is not between pure democracy, — government directly by the people, — and representative government. The question is between representative government and *un*representative government. The real issue being fought out here now on the floor of this Convention is the issue between visible government and invisible government. [Applause.]

There is no one of us here in favor of the initiative and referendum who does not stand just as strongly for all the fundamentals of democratic government, just as conservatively for the protection of every right

of liberty and property, as the most virulent, if I may use that word, of the opponents of that proposition. [Applause.] What we say is that representative government actually has shown, particularly during the past thirty years or so, in Massachusetts, such defects, such *un*representative qualities, such failure to be responsive, — not to the "will of the people," (I have very little use for that phrase "the will of the people," as distinguished from the deliberate decision of the people), — that there ought to be a change of law-making methods.

Now I propose to address you at some length, on that first proposition.

What are the forces that have governed, not reigned, in Massachusetts for the last thirty years? I digress to say that I shall not, in accord with what has come to be, I almost had said, the practice, of those who speak on the initiative and referendum, give you my genealogy. I do not regard it as particularly interesting. It is sufficient to say that I was respectably born, born at least as respectably as I have lived since. What I am now interested in bringing to your attention is that for the last twenty-seven years I have had a fair opportunity of knowing what has been going on in Massachusetts. I came to the bar twenty-seven years ago; in 1893 I was junior counsel for the city of Boston in the gas investigation of 1893 before the legislative committee that opened up and showed the inner workings of the gas situation. In the course of that investigation we had to go back for a period of nine years, to 1884, when Mr. Addicks of Delaware came over here and took possession of a large part of our gas field. Perhaps I am as familiar as any except three or four people with the history of gas operations in and around Boston, from 1884 down to date. I do not know how many investigations of the gas situation I took part in before the Legislature in years subsequent to 1893. It was investigated, and investigated, and *re*-investigated.

The present point is that those investigations were stenographically reported and the record kept; a printed record was made in some cases. I bring this fact particularly to the attention of the gentleman from Amherst (Mr. Churchill) who at one stage of this debate found fault because we did not refer to book and page, name and event. I want to say to the members of this Convention that in those records, stenographic and printed, you will find disclosures as to the means by which, and the persons through whom, Massachusetts was really governed, and the extent to which the Legislature of Massachusetts was or was not representative of the demonstrated needs and desires of the people of the Commonwealth.

Some ten years later, it became manifest that the governing forces in this Commonwealth had come to be centered in a little coterie of men in possession of the machinery of our public service corporations, or some of them, and who were financing their political ambitions and their political plans through money drawn from the treasuries of those public service corporations, and therefore based on the taxing power, for the tolls paid to a public service corporation are as much taxes as the money paid direct into the treasuries of the cities and towns. It became so clear that the Legislature had ceased to govern in a large and important field that some of us formed ourselves into an extra-official alliance known as the Public Franchise League.

The first year that I had anything to do with it, being then so poor

and so busy that I could not afford to be what my friend from Newton says he has been from the cradle up, "a reformer," I was employed by the Public Franchise League and paid by the money contributed by public-spirited citizens, — more public-spirited than I could then afford to be, — to conduct an investigation of some aspect of the gas business, an incident of which disclosed the way legislation had been obtained and immunity from legislation had been obtained.

Mind you, what I am saying is not that all these investigations were directed straight at the question of legislative control. All I am saying is that these various investigations of the public utility enterprises, and the activity of the Public Franchise League, led inevitably to the question of legislative control, and that we were getting at the forces which showed who was governing Massachusetts and how she was being governed. After I had one year been the paid counsel of the Public Franchise League in that investigation, they demanded that I become a co-reformer with them; then I joined that holy band to which my brother from Newton (Mr. Powers) always has belonged; from that time on I spent no inconsiderable time in what I once defined in a moment (which some one afterwards said was an inspired moment) in "carrying on the government of Massachusetts by process of public row," for that was the way it was carried on.

In the course of the investigations that we made, public and private, the study that we made of the situation in Massachusetts, we came to know, — we could not always prove it in a court of law, — the forces which really were in control of this Commonwealth. I state to this Convention that I *know* that in a large field of legislation and immunity from legislation there has been control exercised by mercenary forces which has prevented the Legislature of Massachusetts from being a truly representative body, not of the mere momentary desires but of the public interests of this Commonwealth. Somebody will ask at once how I reconcile that with the statements that I made here the other day. Until the last day or two I think I have been the only delegate on the floor who has dared lift his voice in defence of the Massachusetts Legislature. I did say the other day that after a considerable acquaintance with the Legislature for a period of twenty-five years, in my opinion there was a very small percentage of them who were bad men, that there were half of them who were good men and probably three-fourths of them who were fair, average men.

The answer is very simple. Some of you already know it. The source of the trouble is not the bad man who sells his vote. There may have been votes bought in the last twenty-five or thirty years; I think there have been. There have been a very small minority of the men, who have failed to be faithfully representative of the public interests, who have been bought. But the important and controlling facts are (and a lot of you here know it just as well as I do) that out of money taken in the guise of fees out of many of our public utility companies men have been financed into office, frequently without knowing who financed them until they got there. Some "good fellow," friendly to them, saying in effect that he regarded them as an ornament to the community, would say: "Why, you ought to go to the Legislature." Or, "It is your turn to go to the Senate; it would be a great credit to your town or district for you to go to the Senate. You ought to go. You will have a pleasant experience. I will get

you some help for the nomination; and will get some of my friends to contribute to your campaign expenses." They put him there. He is a good fellow. What does he do, being an ordinary man, — a reasonably strong and a reasonably weak human being? When he gets there, he finds that there are certain lines that they want to draw, that they want him to vote with them; he is told: "Why, our friends, you know, who helped us get in here, don't want that bill. They want this bill." After a while he becomes dimly conscious that in this House there are certain lines drawn, certain forces operative, which are just as clear to the gentleman from Ward 5, — formerly Ward 8 in Boston (Mr. Lomasney), — (who has been here ever since the time when the memory of man runneth not to the contrary) as are these aisles that run up this hall; but lines and forces which the man who has come here because he was made to feel, flatteringly, that he would be "an ornament to the community that sends" him was entirely unconscious of when he was nominated and financed into office. He is soon taught to "remember his Creator." Frequently, if a little dull, he is owned without knowing it.

Mr. Brown of Brockton: I should ask the gentleman, are the men who engineer those schemes recognized as indispensable adjuncts of either of the great political parties?

Mr. Anderson: They are. It happens that in this Commonwealth, where during the most of the past generation, I think during the entire past generation, the Legislature has been made up of Republicans, there is more opportunity for that mercenary kind of politics in the Republican party than there is in the Democratic party; for that reason mainly, perhaps entirely, the chief field of operation has been through the machinery of the Republican party. But that kind of operators do not know partizanship. As Jay Gould said: "I am a Democrat in a Democratic State and a Republican in a Republican State." In this non-partizan Constitutional Convention, Democrat as I am, I would give no partizan tinge to this great question of State reform. It does not in its nature and substance grow out of the faults of any party as such. If we Democrats had been in control here, the chances are nine out of ten that we should not have been one whit better, and we might have been worse, than the Republican party has been. But of course that kind of thing operates in connection with and through, in part at least, the machinery of one or more of the parties; at times it probably has operated in this Commonwealth (as we think we know that it was operated in New York State) through *both* parties. There is not, I take it, the remotest doubt in the mind of any student of modern political history that Mr. Croker and Mr. Platt were partners in obtaining immunity from legislation and in procuring legislation, — partners in dealing in governmental favoritism in New York State. That, I think, is the accurate answer to the question of the gentleman from Brockton.

Great fault was found the other day by the gentleman from Amherst (Mr. Churchill) in particular, because they had not been furnished the particulars of names, dates and events. I am *not* going to give to this Convention names of parties who have been involved and smirched in the invisible government during the twenty-five years that I have been conversant of it. I beg you to pay attention a minute while I tell you why I shall not do it. It would be grossly unjust

to some people alive and still more to people dead. It is an exceedingly difficult undertaking, when you are attacking a system in which various people are actors with varying degrees of blame, to state publicly their respective parts without doing very grave injustice. I had one particular experience with that difficulty which I beg you to give a moment's attention to; then I think you will conclude that I am right in saying that I shall give you no names.

I was on the Public Service Commission and active in the conduct of the investigation of what were called the "Other Expenses" of the New York, New Haven and Hartford Railroad Company during the period when it was wrecking its property. The problem was sent to us by the then Governor of the Commonwealth. We had before us a large number of witnesses and people who were involved, running all the way from a Harvard professor down to the lowest kind of a lobbyist and press agent haunting these corridors, and a vast mass of evidence. I went into the Public Service Commission and looked at it the other day. It is a pile *that* high of evidence [indicating the size], besides exhibits nearly as high again. It fell to my lot to undertake to write the report of that investigation. I undertook to classify these wrongdoers and to say: "So many of them were in this class and so many of them in that class and so many in this other class;" then I undertook to work out a method by which their various offences should be exposed to the public view and the public execration. But as I went through the evidence and exhibits, I said: "This is not quite fair. This man was not as bad as the other one, and I have got them classed together. This one was drawn in, and when he got in he could not get out." Then I would elaborate, and elaborate, and elaborate.

The result was I found that in order not to do very grave injustice to many of those people who were mainly weaklings, — or the victims of a vicious system, — I must write a report that was a volume. I finally disposed of the matter by saying in effect that the chief public benefits to be expected from this sort of an investigation arose from the publicity incident thereto; then I dwelt briefly upon two or three of the most important things; I did not name, if I named anybody, more than one or two persons. Now, I submit to you, gentlemen, as fair-minded men, who know something of the way in which public affairs go on, who know how easy it is to kill a man's reputation, particularly when you have the privilege of a legislative assembly back of you, — that I was right then and that I am right now, in refusing to give you the names of people who I know have been involved in these wrongdoings.

Mr. Brown: Merely to ask as to the number — the total number — good, bad and indifferent.

Mr. Anderson: In that particular investigation?

Mr. Brown: That you were talking about. Good, bad and indifferent, about how many were involved?

Mr. Anderson: I cannot remember whether it was forty or a hundred. But I will close what I have to say to-night by referring the gentleman from Amherst (Mr. Churchill), who thinks that there was exaggeration on the part of some one on the floor, with relation to the extent of the forces of invisible government in this Commonwealth, to the record. He should go to the Public Service Commission and

ask for the record of the investigation of the "Other Expenses of the New Haven Railroad." Let him also take those two volumes, which are in print, and which he can get as a public document [showing two large volumes]. Do not be frightened, I am not going to read from them. They are the investigation of the New York, New Haven and Hartford Railroad, the report of the Interstate Commerce Commission, with the evidence therein, in two volumes, July 13, 1914. Let him also go to the Public Service Commission of New Hampshire and ask for the evidence and the report and the exhibits of the investigation of the expenses of the Boston and Maine Railroad, covering about the same period as our investigation in Massachusetts. Let him go into the District Court, or to the United States Attorney, in New York, and ask for the evidence and the exhibits in the trial of the case of *United States* v. *The New York, New Haven and Hartford Railroad Directors;* and ask to be directed particularly to that part which indicated expenditures with reference to legislation. Let him go into one of half a dozen of the law offices of this Commonwealth that have been active in these matters for the last twenty-five years and ask us to take down the contents of our cupboards and get out the old dead files and show him the stenographic reports, and frequently the printed reports, showing for a generation the same set of phenomena. Let him look at the printed report of the gas investigation of 1893 and, — I think it was the same year, — the printed report of the investigation of the New York, New Haven and Hartford Railroad, in which Mr. Moorfield Storey and Mr. Brandeis, now of the Supreme Court, participated. If after an examination of that mass of literature, printed and typewritten, he still believes that there is any exaggeration in my statement that the forces that have governed in Massachusetts during the past thirty years, — not in the entire field of legislation, but in a large field of legislation important to the public interest, — have been the forces of invisible government, financed out of money taken wrongfully and frequently criminally out of the treasuries of the public service corporations, then, if he is not satisfied by that mass of literature, I will undertake to convince him by adducing the oral evidence of a lot of witnesses, if we can get them together, who have had a part as large as or even larger than I have had.

Continuing his argument Thursday, August 30, Mr. Anderson said:

Mr. ANDERSON: Into the tepid, murky atmosphere of yesterday afternoon I projected some remarks on the need of strengthening our representative form of government, adducing some facts indicating that our present form of government fails in important particulars to represent the public interest and the obvious needs and desires of the people. I stated yesterday that I should not give the names of persons involved in the workings of invisible government, but I did refer inquiring minds, if there be such, to various documents and sources of information from which detailed and substantiated information may be derived. I by no manner of means covered the field of knowledge when I referred to the investigations and the various means of information concerning them.

There are one or two other things that I desire to bring to the attention of this committee on the question as to how far our government, — particularly our Legislature, — does or does not represent a

faithful, intelligent, uncontrolled regard for the public interest. Closely connected with the question arising from the contributions from the treasuries of the public utility companies to sustain law firms and individuals who have financed into office, or assisted in financing into office, various members of the Legislature, is the question of publicity control. In the investigation of the "Other Expenses" of the New York, New Haven and Hartford Railroad Company conducted by the Public Service Commission when I was a member of it, we had occasion to examine into the expenditures from our tax funds, — I refer to the funds of our public utility companies, for they are tax funds, — for the purpose of *mis*informing the people as to the issues before them, and we found (the list of the agents can be found in the records of that investigation) a pitiful procession of publicity propagandists in and around this gallery and these corridors, representing, some of them, respectable papers, but secretly in the pay of the invisible government, unknown in several instances to their employers. Very likely some of them are here yet. I have seen some of the same individuals in and around the corridor, probably engaged in the same business of misinforming the Massachusetts public, in which they were engaged while in the pay of the New York, New Haven and Hartford Railroad Company during its long career of waste and destruction of values, financial, political and moral. I know that the Boston Herald, — which has a very violent antipathy to the I. and R., — the Boston Herald has adequate reasons in the history of its not remote past for believing in invisible government. For hundreds of thousands of dollars, — I think it was $700,000, but it is immaterial whether it was $400,000 or $700,000 for the present purposes, — money taken from the treasury of the New Haven railroad, was used in financing that newspaper.

Mr. Herbert A. Kenny of Boston: Out of consideration for the Boston Herald I wish to ask, does the gentleman refer to the present Herald management or the old management?

Mr. Anderson: Not being fully informed as to when and to what degree the old management went out and the new management came in, I am not able to answer that question. What I say is that it appeared in sworn testimony on two or three occasions that money of the New Haven Railroad, — I think it was $700,000, but again I file a caveat that it may have been another sum, — went to finance that newspaper while it was engaged in the business of furnishing supposed news to the people of this Commonwealth. That money, to the best of my knowledge and belief, and I think I should know it if it had gone back, *never* has gone back into the treasury of the New Haven Railroad.

Mr. Kenny: I wish to say that I am in sympathy with my brother regarding the I. and R., but I wish to have him understand, or ask if he does understand, that while he charges the Boston Herald with not supporting the I. and R. at present does he wish to say that that is a legacy of the old management of the Herald or, does he charge that the present management of the Herald is allied to the old management of the Boston Herald? My brother will recall, of course, that the Boston Herald changed its managers immediately following the scandal of the New Haven Railroad. Does he intend therefore, under those circumstances, to charge the new management of the Boston Herald with the sins of that old management?

Mr. ANDERSON: I can only repeat what I said a moment ago: That as I do not know that there has been any change in the management and control of the Boston Herald, or, if there has been any change, when it took place, I am unable to say to what degree, if at all, the present Boston Herald corporation, if that be the name of the concern, is or is not responsible for the deal as a part of which the money went from the New Haven treasury into the securities or *in*-securities of the Boston Herald. I therefore shall neither undertake to say that the present management is free from culpability for that use, nor shall I undertake to identify more closely than I now have, persons, — and whether they may be there now I do not know, — with that transaction. But I do say that that same paper, and, so far as the general reading public is concerned, under a management which is not noticeably changed, — is tarred with that transaction. It might be somewhat modest therefore in its discussion of measures which strike at the kind of government through which it (or its predecessor, if you prefer) got that sum of money that it never had any right to get.

Mr. BAUER of Lynn: I should like to make a statement that might clear up some matters, because this is a statement of fact so far as the ownership of the Boston Herald is concerned. The bonds of the Boston Herald property at that time were owned largely by the Plant estate. They are owned largely by the Plant estate at the present time, and the representative of the Plant estate was one of the directors of the New Haven road at the time these affairs took place.

Mr. ANDERSON: There is one other fact that I think may be interesting to certain gentlemen who impress me as sincerely doubting as to whether my friend from Brookline (Mr. Whipple), who spoke earlier in the discussion, had not exaggerated the gnawing qualities of certain rodents in the community. But the fact I now bring to your attention is a mere incident in the workings of a system which much more widely ramifies than that particular incident would indicate. It became a few years ago a matter of common knowledge (I never saw the original list myself, but the contents of it have been reported to me by persons as credible as any in this Convention and of course one can set no higher standard) that there was in the office of the Boston and Maine Railroad a list of between three and four hundred individuals, largely, I regret to say, lawyers in the State of New Hampshire, in the *secret* pay of that railroad, for the purpose of controlling the politics of New Hampshire; and that that list was used by the then management of the Boston and Maine Railroad to dominate the legislative and political situation in that State. I do not know that there was *not* a similar list as to Massachusetts. But the organization down here, to the best of my knowledge and belief, took on a somewhat different form. It existed for the same general purposes. The money of those railroads, — that railroad and the New Haven Railroad, — went into the control of the legislative situation. Whether that list is now in existence and access to it can be obtained, I do not know. It would be worth inquiry, if there be any honest doubters as to its existence.

But I am exceedingly anxious to state this situation as it ought to be stated to this Convention, without doing any injustice to persons who are far more the victims of the system than they are the pro-

moters of the system, and to weak persons who are drawn into the system. It ought to be said, therefore, that a considerable number of very responsible men, in high places in the management of our public utility companies, have felt themselves *required* to pay the money of their corporations to this system, lest they, or the interests which they had to protect, should be penalized by "strike legislation." "Strike legislation," gentlemen, is not limited to the cheap politician who turns up from ward politics. "Strike legislation," as it has been practiced in Massachusetts, has originated high up in the councils of invisible government.

I should not be willing to close this disagreeable task of stating what I know about invisible government in Massachusetts without saying that I believe a considerable number of men for whose personal character I have great respect, — for whose fidelity to their duty, *as they saw it*, I have respect, — have paid the money of public utility corporations in tribute to this invisible government. I think they were wrong. I do not think they had any right to do it. But I do not want to be put here in the position of having made an attack on the *motives* and the *would-be standards* of that class of men in the responsible management of our public utility companies. It is a pretty hard problem for a man in the management of a utility company which needs legislation or immunity from legislation of certain kinds, when he finds in existence and power a great underground, insidious, invisible government, controlling forces such that if he does not become affiliated with it or pay tribute to it he knows not what will happen to his interests. It is a hard place to put a man. While I say that I think the men who have paid that tribute have been wrong, I also think many men whom I should not be willing to excoriate as willing participants in this system of invisible and improper control of public affairs, have been compelled, as they thought, to go into it. I may give you one single other —

Mr. Donovan of Springfield: I should like to ask the gentleman from Brookline as to the identity of the invisible government under the public service corporations. A word of explanation might make it more clear. He holds that a system has grown up that very often forces legislators against their will to favor certain forms of legislation. He does not particularly blame them. Therefore, I am trying to find out who the guilty person is, or what set of persons are guilty. If the public service corporations, those who are employed in public service corporations, are also in the grip of a system, where does that system start from? What is the basis of that system? Can we find that out? Can we dig far enough down to locate the foundation of that system?

Mr. Anderson: I thought I had made clear, as far as I am capable of making, — without giving names and specifying events, — my notion of the system. But I will try to state it in a little different form, but briefly, for I have had more time already than I think any man has the right to take before this committee. My notion of it is that a man gets a start by having a political pull. He is of the dominant party, of course. Then he gets some retainers, some money from public utility companies. Then his power and influence grow. He finances, in the way of good fellowship, in the way I indicated yesterday, a lot of fellows, so that they become his elected friends,

and find themselves under obligations to him. Then he advertises in an indirect and insidious way that he can promote or can stop legislation. Then more companies, utility companies, insurance companies, other concerns which have interests, legitimate interests, — sometimes they want something they ought not to want, but they think they want it, — all come in and pay money to him; and the more money there is paid to him the more money he has to finance the next set of legislators; the larger grip he then has and appears to have. And so the thing grows by that which it feeds on. Now, it is true that the center and source of most of that system was found in the public utility companies, and that without them, in my opinion, there never would have been any long-continued and generally dominant control of that kind. But it is true also that to the same center have flocked all other kinds of interests, — having desires for immunity from legislation, or for legislation, legitimate and illegitimate, wise and unwise, — until the system has become so dominant, so widespread, that there have been many times when the Legislature has been controlled to act against the public interests and in behalf of private interests. I hope I have made my idea plain.

Mr. Donovan: The gentleman, in starting out to lay the basis of this system of invisible government, made the statement that a politician gets a pull, and after he has got the pull and got political prestige he begins to surround himself with these influences. Now, what I should like to ask is, where does he get his pull? How does it happen that a politician achieves that pull? Does not that also come from some economic source? That is what I am trying to find out.

Mr. Anderson: I suppose the gentleman means, construing his question in the light of a question he asked me in the corridor yesterday, that the Legislature is all the time dealing with propositions which enable people to make profit. Of course it does; and in my opinion, and as long as our industrial system is in any such form as it now is, it always will. If you can accept the general theory that you can limit the whole profit making business, and still have a progressive industrial system, — why, you may have destroyed the entire basis for invisible government. But as long as laws, franchises, offer or restrict the opportunities for people to make money, so long will there be the motive to control, for private interests and as against public interests, a good deal of legislation. That motive will survive. My view is that we should provide such wholesome checks and balances as will *tend* to subordinate private interests to public, — to make legislation as far as possible act in the general public interest. Beyond such checks and balances you never can go.

Mr. Brown of Brockton: Is not a lawyer immune from an investigation by the grand inquest known as the Legislature, when a private citizen is not immune? In other words, can a lawyer take a retainer and use it improperly, where a private citizen cannot take that retainer without getting behind the bars?

Mr. Anderson: I regret to say that I think the fair result of what has happened in this country in the past thirty years is that lawyers have been in a certain way immune from prosecution for taking, under the guise of fees, what were in substance and effect bribes, and that it has been a stinging disgrace to the bar. How far this has gone in this Commonwealth I express no opinion. I know it went to a very wide extent

in New Hampshire, which was my native State. I judge from various articles that I have read that it has gone to a very wide extent in some other States. It has gone to a considerable extent in this State. You will find some specific instances of it disclosed in the investigation of the "Other Expenses" of the New Haven Railroad, with the amounts of money paid, and the names of the persons who got it and what *they said* they were doing or were trying to do for their fees.

Mr. Lowe of Fitchburg: I should like to ask the gentleman if this political microbe may not work as efficiently under the I. and R. as at the present time? As an illustration, let us suppose that some individual had this ambition. He gets the signatures of ten of his friends. Then he presents his matter to the Legislature. It accumulates some power at that point. He may be defeated. He goes out and gets twenty-five thousand signatures. He gets then an organization of twenty-five thousand people to work with him for this particular matter. Then it is submitted to the people. Now all through the State there are twenty-five thousand friends of this measure working for it; and it seems to me that that might not prevent all of the vicious trouble that the gentleman has referred to.

Mr. Anderson: The question of the gentleman is very pertinent. It somewhat anticipates some things I was coming to, but it is a perfectly fair question. Assuming the existence of the conditions that I have undertaken to demonstrate to the satisfaction of open-minded members of this Convention, it is a perfectly fair question as to whether the I. and R. is the proper and effective remedy, and will or will not involve serious dangers and abuses of its own. My own judgment is, — I am fallible, and may prove to be all wrong, — that it is an experiment worth trying and fraught with no serious danger. I have no delusion about panaceas. I do not take any stock, — to speak with entire frankness, — in the notions of some of my friends as to what the I. and R. is going to do. It will not bring in any millennium. I believe that it will strike a fatal blow at the kind of invisible government that has been an injury and a disgrace to this Commonwealth for a generation. [Applause.]

Mr. Youngman of Boston: On the question of whether other remedies applied directly to the evils of which the gentleman complains have been applied by any of the advocates of the I. and R., I should like to ask the gentleman whether he, or any man connected with the I. and R. proposal in this Convention, applied either to the district attorney or to the grievance committee of the Bar Association for action against the men whose names appear as receiving large sums of money from the New Haven Railroad for things that they could not explain, justifying the inference that they received it for influencing legislation here, and upon which legislation they were not registered according to law as counsel or as agents? Did the gentleman, or any of the proponents of this widespread remedy, affecting the whole system of the body politic, apply for a specific action, authorized under existing laws, to get at the men who were the offenders?

Mr. Anderson: The question is not one calling for any considerable discussion. It is one of those questions which is intended to divert a worth while discussion into a side channel concerning the personal performance of the man who may be addressing the Convention. [Applause.]

I will answer that *one* question of that kind; but I will not be interrupted to answer any more of that kind. I did *not* present anybody to the district attorney or to the Bar Association. I considered seriously, when a member of the Public Service Commission, as to whether I had any duty to perform beyond the duty that I was then performing as a member of that tribunal. The facts were public. The record was typewritten. It was known to certain men who I think were at that time members of the grievance committee of the Bar Association. It was known or knowable to the men who were responsible for the conduct of the members of the Legislature, some of whom were there. I did not under those circumstances regard myself as obligated to proceed against certain individuals whose conduct probably would have exposed them to serious danger of criminal prosecution or to disbarment, — particularly when I was of the opinion then, and am of the opinion now, that they were not morally any worse than scores of others. [Applause.] I have refused in all my activity against this system during the past twenty years ever knowingly to be a party to merely personal persecution. I fight the system. So much for that. Now I pass on.

Now, we come to the question, — if I have made out a case that representative government in Massachusetts is not fairly and adequately representative, — as to whether the I. and R. is a remedy which ought to be favorably considered by fair and open-minded people. The opponents of the I. and R. fall, in my opinion, roughly but conveniently into three classes. First, those who do not believe in democracy; the innate disbelievers in democracy, — and there are still such; men who no more believe in democracy than the Bourbons of France of the old régime or the Junkers of Germany to-day. I do not quite know why. I know some of those men. I respect many of their personal traits. They simply cannot believe that the ordinary run of people are fit to exercise the powers of government. They look upon every great public movement with suspicion and fear. Alexander Hamilton was the greatest of all the old leaders of this type. I think it was Theodore Sedgwick who said: "Your people — it is a beast."

There is no use of arguing with this type. You might as well undertake to convince the Hohenzollern family that democracy is good. And yet I cannot see how anybody of any intelligence in these times can fail to believe in democracy. That democracy is crude, fallible, makes all kinds of mistakes, — that it is unsafe, — I admit. But pray tell me what is there in the world to-day that is so *little unsafe* as democracy? Are we not now engaged in a great struggle, spending billions of money and offering as a sacrifice perhaps millions of lives, in order to rescue ourselves and the world from the grip of the best educated and the most intelligent people in the world, who are misdirecting their tremendous energies in favor of autocracy, the re-establishment of the will of the one or of a few, and who have refused to accept the code of modern political morality, — democracy?

But I quite agree with what was said by my predecessor, the learned gentleman from Newton (Mr. Powers). Democracy does not consist of the mere majority rule. The *essence* of democracy is not found in the arbitrary rule "by the *people*." The essence of democracy is, — the recognition by everybody of everybody's rights. [Applause.]

Mr. GEORGE of Haverhill: I am very much interested in the latter

statement of the gentleman from Brookline; and if democracy is what he says it is why does he not insist that the millions of people south of the Potomac River have their right to vote and have their votes counted the same as they do in Massachusetts? I understand, Mr. Chairman, these people believe in democracy, they believe in the kind of democracy that exists south of the Potomac River. I think we would stand better in this country, when we are trying to democratize the world, if we should apply some practical tests right here at home; when we demonstrate that the people here can vote because they have a right to vote, and not because their color does not happen to be our color, I think we should stand better in the eyes of the world.

Mr. ANDERSON: That is one of those questions intended to divert the discussion, which is becoming interesting and I think somewhat pertinent, into the partizan field. I will refer the gentleman from Haverhill to Mr. Moorfield Storey for help, and to various other people for opposition. I shall not depart into the question of southern democracy at the present time.

Mr. GEORGE: I should like to ask the gentleman if he agrees with the distinguished gentleman who made a speech at Westborough yesterday, in which he said:

> Low wages, high rents and brutal treatment by the land owners of the south are the real reasons for the general exodus of the negroes to the north —

and declared that unless the negroes were given proper treatment in the south the question would assume serious proportions.

That was announced by Mr. Frederick W. Mansfield. I should like to ask the gentleman if he agrees with that statement.

Mr. ANDERSON: That, again, is one of those partizan questions by which the gentleman is undertaking to divert us from a discussion which is to him apparently unpleasantly pertinent. I decline to go into it. I do digress to say that if we Democrats have troubles in our party, you Republicans have your own. I never expected to live to enjoy such quarrels in the ranks of the Republican party as I have enjoyed in the past five or six years. [Applause.] We Democrats need neither candidates nor principles as long as you have your present management and your present capacity for discord.

Now, Mr. Chairman and gentlemen, let us go on seriously, for this is an important and serious matter. Note this: These facts that I have adverted to relative to the domination of invisible government are perfectly well known to many of you; this matter has been under discussion for many days. But no single constructive idea, — either by way of amendment or by way of substitute for this resolution, — has been brought forth by its opponents. I never have listened to a set of speeches more absolutely destructive, unconstructive, without a single affirmative idea. I regret to say this.

I created a civil war a few weeks ago among the ranks of the proponents of the I. and R. by saying I should hold myself open during the discussion to accept ideas which I thought might come from some of the learned gentlemen who were opposing us; saying that if they brought forward points which I had not before thought of I must be considered at liberty to vote as I thought best. There was then a civil war. I beg now to say to my friends and associates, that, after listening to the arguments of the opponents of the I. and R., I am

firmly convinced that the measure proposed is, in all its essentials, a sound and just measure. [Applause.] If the opponents by their discussion have not convinced anybody else, they have convinced me.

Now, this issue will not down. The people of this Commonwealth are not to be played with. The democratic forces of the world are not to be played with in any such way as, in Europe and in America, for the past thirty years, they have been played with. You must stand for democracy, and help to make it a wholesome democracy, a deliberative democracy, an intelligent and justice-loving and regarding democracy, or you are going to have trouble. No amount of unction and elocution, and "Massachusetts, there she stands," or James Otising or Daniel Webstering, will dispose of this issue. You may oratorically create a temporary atmosphere of reactionary self-glorification in a body like this, but the issue is here; it will not down.

Mr. Mansfield of Boston sought recognition.

Mr. ANDERSON: I trust the gentleman; yesterday, I will say, Mr. Chairman, when others were speaking, it seemed to me that the interruption was undue; I do not desire to be kept *apparently* on the floor, so as to be charged with a criminal offence for the length of time I have occupied it, by interpolated long speeches.

Mr. MANSFIELD: The gentleman may or may not consider my question pertinent; I hope that he will; and, with just an explanatory word before I ask it, I will proceed to put it as briefly and as much to the point as possible. Let me say first that I do not stand here as an opponent of the referendum; I do not stand here as a proponent of the election of the judiciary. I am not arguing for or against either one. I simply am asking a question. If I remember correctly, the gentleman some few days ago, standing in that place, stated that he was opposed to the election of judges, and he now says that he wants to hear no high-sounding phrases, such as "There stands Massachusetts." I should ask him whether or not he thinks the other members of the committee want to hear such phrases as "The people may be trusted with their own" when applied to the I. and R. and matters involved in it. And I should ask him this question: Why may not the people be trusted with their own in such matters as the election of the judges? How, sir, do you, and other eloquent and learned gentlemen, who already have spoken here on this very matter, and who have announced their opposition to the election of judges, — which again I do not say I advocate, — but in the interest merely of consistency, and nothing else, I would ask the gentleman: How can you favor the initiative and referendum and say that democracy must prevail, and deny the people the right to elect their judges? [Applause.]

Mr. ANDERSON: To the question of the effect of majority rule on the possible election of judges I will come a little later, if I may proceed regularly for a few moments.

I stated that the opponents of the I. and R. fell into three classes: First, innate disbelievers in democracy. There is very little use, as I already have said, to argue with them.

Second, those who are sharers in the profit and power of invisible government. There is a very considerable number of them. I hardly need say that they are not open to argument. We pass them.

Third, those who believe in democracy, who do not believe in this invisible, disgraceful, private-interest serving government that we have had, but who are doubtful as to the form and nature of the proper remedy. To such people we appeal. We regard them as the people with whom we ought to be in accord. We may be wrong in our view of the proper remedy; we think we are right. We pray you to listen with open mind to the considerations which we urge.

Now, it was stated, with entire accuracy, that this proposed amendment divides into two parts: First, as to the method of providing for constitutional amendment; second, as to legislation. I want to present very briefly my views on those two points and then I will give way.

The gentleman who preceded me yesterday argued in substance a different proposition from that which is contained in this Document No. 343, although this Document No. 343 is neither consistent with itself nor with any modern and generally accepted theory of democratic or constitutional government. I might digress to say that the "social compact" theory of the origin of constitutions and political societies was discarded by all students of politics a hundred years ago; and that in 1853, as is noted in the diary of Richard Henry Dana, it appeared, so far as he observed, that there was no one in that Convention, over sixty years ago, who had any belief in the "social compact" theory. But it appears that the learned gentlemen who signed this report, apparently lacking any other basis upon which they could ground their theory, took the "Invocation to the Muse," so to speak, found in the Preamble to the Constitution, and upon that grounded the theory that in 1780 the people of Massachusetts had traded away irrevocably their rights to amend their Constitution without the consent of the Legislature, with two-thirds of two Houses of Representatives; apparently overlooking the fact that that Constitution of 1780 contained no provision for amendments except a possible contingent one in 1795, which was not availed of; that in the method of amending the Constitution finally resorted to to get rid of the established religion practically provided in this "social compact" of 1780, — the religion I referred to the other day, the orthodox evangelical religion, to which my ancestors adhered, — they had rested upon the theory that all power emanates from the people and that therefore there was an inherent implied power to have another Constitutional Convention. It was not till 1821 that the present method of amending the Constitution, by putting this check of two-thirds of two successive Houses of Representatives, as well as a majority of two Senates, was made a part of this sacred "compact" argued for in this report, and by the eloquent gentleman who first took the floor in defence of it.

Now, let us see for a moment just where we are. I am in entire accord with all that is stated in this report, and all that has been argued on this floor, to the effect that it is necessary to restrain a democracy, so that that democracy may not act hastily, in passion, without discussion and deliberation. I have no use for legislation or constitutional amendments which are not the outcome of deliberation and discussion. I agree that no people are safe under any form of government unless they have provided that the passion of the moment shall not become the law of the Commonwealth. This, — and my attention is called to the fact, — is the *minority* report that I am

referring to. They have argued, and argued with great pertinency, that a people are not safe under a democracy unless they provide for deliberation and delay. They say that there is no such thing as "an unchartered freedom;" that that democracy which would be wise, just and effective must provide that in times of passion and excitement the people (who then do not see the rights of others as clearly and sanely as in times of calm), may not destroy, may not do things which are unwise or unjust or as to which they are uninformed. I am not reading exactly, but paraphrasing.

With all that I agree, but where do they come out? The proposition of my friend from Brookline (Mr. Walker) for the initiative and referendum provides exactly the same delay that is provided under the present method of amending the Constitution. It provides for more discussion; for under the initiative and referendum method of amending the Constitution you have to put it to the people with an explanatory pamphlet; whereas there is no provision under our existing Constitution, — no official provision, — for giving the people any information about a proposed amendment. It goes to two legislatures, precisely as it goes under the existing Constitution. But the difference between my friend from Newton (Mr. Powers) and myself is this: He says the majority must be "*restrained;*" and, interpreting that word by the outcome of his argument, he means that thirty-four per cent of either one of two Houses of Representatives shall have an absolute veto upon the submission of any amendment to the people. The "restraint", therefore, that the opponents of the I. and R. seek is not a "restraint" for deliberation, discussion, delay. It is a veto. It simply is saying that one more than a third of a particular set of agents, picked out for one of two years, may control the majority of the voters of the Commonwealth. That result might easily accrue.

Mr. Bartlett of Newburyport: I should like to ask the gentleman if he claims that the Constitution of 1780 contained no provision for its amendment?

Mr. Anderson: Mr. Chairman, subject to correction if I have misread it, the Constitution of 1780 provided in a contingent form for a submission in 1795, if I recall, and no other provisions for its amendment that were mandatory.

Mr. Bartlett: It provided that two-thirds of the voters voting for a Constitutional Convention, the General Court could call it.

Mr. Anderson: Yes. I intended to state it to that effect. What I also stated was that the present method of amending the Constitution never was made a part thereof until 1821, and was then the outcome of the Constitutional Convention called, not in 1795, under the power reserved in the original Constitution of 1780, but called under the general, *implied* power that the court has held always rests in the majority of the people to change their form of government. With that I take it the gentleman from Newburyport is not in discord.

There is nothing in this "social compact" theory. It is the sheerest nonsense, as we all know when we are talking serious things.

The notion that a few farmers, merchants and fishermen, — there could not have been more than a few hundred thousand people, I do not think there was half a million, though I have not the figures before me, then in Massachusetts, — could lay out a political system in 1780 binding upon the people of this great and growing Common-

wealth, *for all time,* is not half as sound, as a matter of logic or a matter of political sense, as the "divine right" theory of the present Kaiser of Germany. [Applause.]

Now, then, come right back to this point. My friend from Newton (Mr. Powers) who argued yesterday wants majority amendment of the Constitution restrained, — vetoed. He is not content with deliberative discussion and delay; he says that there must be a veto of majority rule. That amounts to saying that in his view the minority are entitled to rule in this Commonwealth, that the majority are not entitled to rule in this Commonwealth; and it is absolutely inconsistent with this statement on page 2 of the minority report: "We are not disposed to question the proposition that in a democratic government we must accept a majority vote as the final and decisive expression of the will of the people." I stand on that sentence in that minority report. I go there, and I go no further. Given a required delay for deliberation and discussion by a representative body for two years, I accept the proposition that in a democratic government we must accept a majority vote as the final and decisive expression of the will of the people, and that they are entitled to have it accepted; and that any other system is an assertion of the system of an oligarchical, minority rule, and in substance and effect is absolutely opposed to the fundamental idea of democratic government.

Mr. Cusick of Boston: I want to ask the gentleman from Brookline (Mr. Anderson) in regard to his position on the petition of 40,000 voters to the Legislature as provided in the resolution under section 2. The Legislature is aware that any action taken by it is *not* conclusive; that its judgment or reasons for its conclusions cannot go to the people for their consideration. Therefore as a practical matter the Legislature cannot be expected to spend much time in deliberation or consideration of the matter. My question concretely is this: Is not the provision for legislative consideration a mere artifice to enable the proponents of this measure to argue that two years *is* given for deliberation of matters submitted?

Mr. Walker: I should like to explain what the measure provides and why it is that the Legislature might have been influenced in the matter. If it were true that 40,000 might petition the Legislature, and whatever action the Legislature took the matter would thereupon go on the ballot, the Legislature naturally would take little interest in the matter. To be sure they would be informed. It would be a means of publicity, for I believe the measure would be discussed, but the Legislature might very well take no great interest. But remember this other provision, namely, that the matter shall not go on the ballot unless 10,000 more signatures are filed. And why is that provision made? In order that the Legislature may discuss the matter, and if they are in favor of the main proposition but merely wish to perfect it by amendments and so put it in better shape or better form they could do so. If that is the only thing the Legislature did, the 10,000 additional names of course would not be filed by the petitioners. Of course the final decision rests with the petitioners. If it were not so we should lose the whole point and purpose of the initiative. But if the Legislature acted merely with the purpose of perfecting the bill the petitioners would permit this to be done and the 10,000 names would not be filed. That is the sole purpose of providing the additional

number of names. It does give an opportunity for the Legislature, if it is favorable to the main idea, to perfect the measure with the assent of the petitioners.

Mr. CUSICK: I am entirely open-minded about this question. I have been following these debates and have even gone to the record in order that I might not mistake the attitude of the delegate from Brookline. His explanation is the particular thing in the whole matter that I think is going to trouble many open-minded, intelligent delegates in this Convention. I now ask the proponent of this measure, for whom I have got the greatest respect and whom I should like to follow if I can, because I believe him to be sincere: Is that the only explanation he can give of these provisions in the resolution under discussion?

Mr. BROWN of Brockton: It is immaterial, sir, whether Mr. Anderson or Mr. Walker answers it, but I want to ask this question. Suppose that 10,000 men or 40,000 men put in a revolutionary proposition here to amend the Constitution. Is it not true that, under the present constitutional method of amending the Constitution, the Legislature may originate a counter proposition and thus both will get down to the people on the ballot at the same time? The people then can accept either one proposition or the other proposition. Thus you are able to counteract by these double alternate propositions any incendiary propositions of stealing wealth which you claim you fear. You have got them both under such a plan, — one is a check on the other. Furthermore you keep your government of checks and balances; you enlarge it by adding a new check, to be exercised by the people.

Mr. CUSICK: Is that necessarily true? That it is a statement of fact does not necessarily make it true. I cannot see where you have any double proposition here, except one that appears so. As a matter of fact, however, it simply means that 40,000 or 50,000 voters, in two years, can get that on the ballot to be passed. I think that some way should be found to check that.

Mr. ANDERSON: There is no sensible person who does not know that the realm of prophecy is a dangerous realm; who does not recognize that every kind of democratic institution frequently fails to work as we wish it would. I realize that the claim of slipshod methods in getting signatures, — that the power of newspapers or of certain coteries of people having special interests to get them, — is true; I admit that, in many instances, people who sign will have little knowledge of the proposition and comparatively little interest therein. But consider for a moment an analogous problem; and then let us come direct to the question. We have been experimenting in the field of trying to get proper candidates nominated ever since we have had party government. We have had the Convention system; it did not work well. We have had the direct primary system, under which we could go into our opponents' caucuses and nominate candidates for them; and then turn to and beat them at the polls. I believe we have now party enrolment in the direct primary system. I do not believe that either party, or the leaders of either party, believe very much in the present system of nominations. It is all fallible, human, democratic machinery. None of it works perfectly. Anybody who believes that this system of getting signatures to propositions to amend the Constitution, origi-

nally 30,000 or 25,000, and then a subsequent 10,000, or whatever it is, will work out perfection, has more optimism than I have.

But now coming to the practical answer to the perfectly fair question of the gentleman from Boston (Mr. Cusick), I think it will work like this: You get originally your 30,000 voters or 40,000 voters who petition for a particular kind of an amendment, and it goes before the Legislature; in my opinion, if the Legislature is a decently representative body (and I think most of them are) they will pay some serious attention to that amendment. If it is wrong, or any substantial number of them think it is wrong, in form, they will thresh it into shape, just as we are trying now here to thresh this thing into shape if it is wrong in form. If it is wrong in principle, like some of the amendments that some of you think are going to be presented are wrong in principle, — and I shall come to some of them in a moment, — they will undertake to educate the people of the Commonwealth as fully as possible to their belief in the demerit of those propositions, — popular election of judges if you please. But no Legislature worthy the name of a representative body will allow a serious proposition, like amending the fundamental law of the Commonwealth, to come before it one year or two without undertaking to see that it goes to the people in proper form, so that the people really will vote upon what they think they are voting on. No Legislature will fail, in my opinion, if an amendment exciting controversy is presented, to seek to educate the people to the view held by the majority of that Legislature.

Your Legislature originated, just where your constitutional amendment is going to originate, in the votes of the people, except as some gerrymandering sometimes gives you a representative body that represents a mere minority. I do not know how bad that is in the Commonwealth, never having served in this much praised and much abused body, — the Legislature. But the point is that you have got two kinds of representative government in this proposition: You get the chance to argue the matter on the stump, in the newspaper, and in your provided and required pamphlet; you have also your chance for a discussion in your Legislature.

Mr. Dutch of Winchester: I should like to ask the gentleman if he would favor an amendment to the Walker resolution making it immune from amendment by the initiative, so that its safeguarding provision alleged to provide, as you say, for deliberation, discussion and delay, shall be maintained, subject, of course, to existing methods of amendment.

Mr. Anderson: I do not think I should answer that question offhand. I certainly should *not* say Yes, — that I would favor that, — offhand. The most I would say is that I should listen with an open mind to discussion as to whether there ought to be any exception whatever to the rule in favor of the power of the majority to shape their own form of government.

If I have said enough to satisfy the gentleman from Boston (Mr. Cusick) as to my view in favor of the requirement of deliberation and discussion and delay in the Legislature, — I come to face the exact question which is bothering some of you. Suppose this amendment is a part of your Constitution. Suppose there comes a proposition to give us an elective judiciary, "recall of judicial decision," or some other radical and undesirable change; what are you going to say about

facing it? Are you going to make exceptions to the rule in favor of majority control, or are you going to abide by the proposition, laid down in the third sentence of the minority report, that you are "not disposed to question the proposition that in a democratic government we must accept the majority vote as the final and decisive expression of the will of the people?" I am going to stand on that proposition. Now, I agree that the majority may do wrong things. I have been in the minority about all my life. I have not given you my genealogy yet, as most of the speakers have, but I will go so far as to say that I was born and brought up as a bigoted Republican as well as in the evangelical church; that I left this party when I became twenty-one, perhaps because I was, as some critics said, of "such a contrary disposition" as to want always to be in the minority, — "on the off side." I have been in the minority most of my life; have submitted to majority government that I thought was wrong; I am going to continue to submit the rest of my life to the will of a majority of my fellow-citizens, honestly exercised, through the channels created by the Constitution, obeying the laws made pursuant thereto, — even if I do not like that government, — even if I think this majority rule is unjust and unwise.

Mr. CUSICK: I am taking, perhaps, some advantage of my friend from Brookline (Mr. Anderson) in asking these questions, but I do not know anybody who would be more capable of answering them, and that is the reason I am doing it and not in any way to heckle him, and I think he knows that. I want to ask now: What does he mean by a majority of the people?

Mr. ANDERSON: I have no fault to find with any interruptions, except that they are disgracing me by keeping me on the floor so long. What I meant by the majority of the people was a majority of the voters who are interested in the proposition enough so that they go to the polls and cast their votes. There is no other practical way of dealing with democratic institutions. [Applause.] As Mr. Roosevelt said to Mr. Harriman when the latter was raising $50,000 for a campaign fund: "We are practical men." I said here the other day, when discussing the question of giving to the courts the power to declare statutes unconstitutional, that I was in favor of leaving it with the courts because, as a *practical* matter, I regarded the courts in a better position to deal with the merits of that question than any other branch of our government, and not because they are more conscientiously devoted to the Constitution than the rest of us. Now I say that as long as you are going to have a democratic government you are going to stand upon that proposition which the minority, inadvertently, as I think, laid down, — one of their few sound propositions.

Mr. CUSICK: I hope that the gentleman will continue to be practical until he casts his vote on the I. and R. proposition. This is a constitutional matter that we are discussing. Will you admit that "the people," as described in the Constitution, means every man, woman and child in Massachusetts?

Mr. ANDERSON: Why, Mr. Chairman, for certain purposes, "the people", of course, means every individual in Massachusetts, barring the question of alienage, to which we never have given much attention. But, as is pointed out in one of the other sound passages in

this report, as a practical matter you cannot have everybody vote, and as a practical matter we have adopted universal manhood suffrage. I want to let the women in; I think they could not botch up the political world much worse than we have botched it up considering the present conditions [applause]; that it is a species of unjustifiable egotism to say that they could make it any worse. So, without being enthusiastic, I am in favor of greatly enlarging the electorate.

Mr. Cusick: I asked that question simply to predicate the next one: If the Constitution guarantees the inalienable rights of the individual, and the "individual" means every individual of this Commonwealth, then is it not true, sir, that such individual in turn is represented by the registered voters of this Commonwealth?

Mr. Anderson: Precisely so; and that again is pointed out with clearness and soundness in this minority report. There is no other practical way. Every voter is, as is stated in here, in the casting of his vote a trustee for the entire people. It is upon that that we ground the theory that to take pay for your vote is bribery, — a crime. The courts have held in this Commonwealth that a man may make a contract for a consideration to cast his vote as a stockholder in a mere money-making corporation, although there were some doubts as to the exact limits of that doctrine and some tendency on the part of some of the courts at one time to assert that the stockholder who was voting for a private advantage apart from that which accrued to him as a stockholder was acting fraudulently. But the distinction, I take it, is now clearly established and laid down in the minority report, — that there is no way of working democracy except by picking out those individuals of the society of such age, of such intelligence and of such sex as may be thought most fit to be the trustees of the entire people, and saying: "A majority of you voting at any election shall be deemed to be the people."

Mr. Cusick: If, — I will give the number offhand, — I do not know whether or not I am right, but we will assume that in Massachusetts there are 650,000 registered voters who are trustees for three million and one-half individuals. I will estimate such as the population of Massachusetts. If those trustees show so little interest in their trust that even men to-day who are here for the purpose of considering changes in this Constitution are sent here by less than 25 per cent of those 650,000 registered voters, and that same body elects legislators to the Legislature, I ask you, sir, is democracy safe under those conditions unless you make the voters assume their trust to the whole people. And if you want the following of many open-minded men in this Convention on the initiative and referendum, why not eliminate that part of it which refers to the Constitution and stand on the I. and R. as applying to the Legislature, then put it up to the people in such a manner that propositions submitted shall be accepted by at least one-half of the electorate, the trustees for the whole people. [Applause.]

Mr. Anderson: I think the gentleman's question assumes that there is a certain sanctity to the existing provisions which would not accrue to the Constitution if less than a majority of the registered voters were permitted to amend it. It seems to me that, answering his question from the field of practical politics, it amounts to saying that unless you are going to permit a majority of the deliberating,

delayed, discussing voters to settle the question as to what amendment, if any, should be adopted, you say that the existing Constitution shall continue. Now I say that that is an assertion in favor of the validity and sanctity of the existing Constitution to which it is not entitled in a growing, progressive Commonwealth. And I therefore come back to my assertion of a few moments ago, — that, assuming, as I do assume, that the voters are trustees for the entire body, social and politic, there is no practical way of enforcing that trust more effectively for a *stable* Constitution and at the same time a *progressive* Constitution than to require discussion, deliberation and delay, and then take the result that you get from a majority of those who vote on it. [Applause.]

Mr. WALKER: I should like to read a very brief statement from Abraham Lincoln, and then I want to make a comment on the gentleman's remarks. I want to say to the members here that I do speak rather forcefully and welcome this kind of discussion, but I do want to contribute light and not heat to this subject.

Abraham Lincoln said in the case of West Virginia which he was discussing:

> It is the universal practice in popular elections in all these States to give no consideration whatever to those who do not choose to vote as against the effect of the votes of those who choose to vote. Hence it is not the qualified voters, but the qualified voters who choose to vote, that constitute the political power of the State.

That is Abraham Lincoln's opinion.

Now, Mr. Chairman, I wish to add this comment: Not one single amendment to the Constitution of Massachusetts would have been adopted if the requirement had been that a majority of the registered vote was necessary; not one measure submitted by the Legislature to the people would have been passed if it had required a majority of the registered vote; and therefore it seems to me fair to say under those circumstances that such a proposition is bad in theory and is impracticable in operation. [Applause.]

Mr. MONTAGUE of Boston: I should like to ask a question more properly of this gentleman from Brookline (Mr. Walker) than the other: Whether in his opinion the reason why so small a vote has been cast on these constitutional questions in this State is not because, the matter having been fully discussed in two legislatures, the people had confidence in their legislatures and were willing to have them substantially decide?

Mr. WALKER: I do not think that is the reason; no. Probably pure neglect accounts for some of it. But one of the reasons is this: That in our present method of submitting constitutional amendments we give the people absolutely no notice as to what is coming on the ballot. We do not send them the amendment that they may read it over, even; we do not even send them the heading that they may know what is coming. In nine cases out of ten, yes, in ninety-nine cases out of a hundred, the voter knows for the first time when he walks into the booth that there is to be an amendment submitted. He then sees nothing but the headline. Under those circumstances why should you expect that the people will vote, or if they do vote, that they will vote intelligently?

Mr. Webster of Haverhill sought recognition.

Mr. ANDERSON: I have no doubt, Mr. Chairman, the gentleman will make a very much better speech than I ever could make and reply with entire adequacy to any adverse suggestions that have been made; but I do want to complete all I have to say. There is no warrant for a man's keeping the floor as I am keeping it except that I have provoked discussion.

Now we were discussing the question, as I remember it, raised by the gentleman from Boston (Mr. Cusick) as to whether amendments to the Constitution ought to require a majority of all the voters. I think the answer given by the gentleman from Brookline (Mr. Walker), the proponent of the measure, was adequate. I do not believe that the suggestion by the gentleman from Boston (Mr. Montague), that the reason why a majority of the people have not voted on the previous amendments is because they trust the Legislature, is the reason at all. I do agree that there has not been much, — not an adequate, — interest in constitutional amendments in this Commonwealth, because there has been no means of educating the people to their importance. It has been recognized, just as every practical man recognizes the limitations which surround him, that there was no method of amending the Constitution except by getting it through two legislatures, — two-thirds in the House and a majority in the Senate, — consequently the real discussion upon amendments has been in the Legislature. When they have gone to the people there was very little interest in them or intelligence about them. I think that one result of very great practical value in the proposed new method of amending the Constitution will be to increase the popular intelligence about the Constitution and the popular interest in questions of fundamental importance. I may be wrong, but I think one result of this proposed amendment is going to be to increase the intelligence and the interest of our electorate. I thought, — I will yield in a moment (to Mr. Cusick who sought recognition), — that the gentleman was going to ask me if I did not think if we were going to give this power to the people we ought to have compulsory voting.

Mr. CUSICK: Exactly.

Mr. ANDERSON: And my answer is that I have not given sufficient study to that particular question so that I am ready to answer it Yes or No. I should listen with an entirely open mind to the discussion of an amendment which required a voter to exercise the suffrage. I am not at all sure that I should not come out in favor of it.

Mr. BRYANT of Milton: I should like to ask the question whether the experience in the western States has not been that a very small percentage of the voters pass on the constitutional questions, and whether if it does appear that under a certain form, — in the proposed form of government, — only a small part of the people take part, a much smaller part than take part in a representative form of government; whether, as a practical matter, that would affect his judgment as to the advisability of adopting that new form of government?

Mr. ANDERSON: I do not think it has very much bearing. I think, — and you could discuss it here *ab ovo ad nauseam*, — that the weight of judgment as to the experience in western States is in favor of the initiative and referendum as a wholesome and proper check upon the unrepresentative qualities of representative government and tends on the whole to make the government more representative.

Now some of you say that is all wrong, but before I yield to the gentleman from Brookline (Mr. Walker, who arose) I want to point out on page 14 of the report, one of the signers of which would seem to be, at any rate in print, *Samuel L. Powers*, the learned gentleman who addressed you yesterday, a statement to the effect that in Oregon they were deluged with submissions, and he showed a great sheet of a ballot, — I do not know whether it was from California or Oregon. But he said yesterday that when he went out there and got close to the people, — last summer I think it was, — they told him that the initiative and referendum was falling into disuse. Now I think that is just what will happen. I believe that the weight of opinion, grounded upon the study of those who have studied the experiences of States that have tried this out best, is that after they have gotten in these States certain necessary and desired reforms, and after all that class of people that we used to call disrespectfully behind their backs in the Public Service Commission when I was there, the "hot air artists" have let off their hot air and been turned down, the people settle down and become satisfied with the results which they *generally* will get from their Legislature. I should not vote for the initiative and referendum if I did not profoundly believe that it would result in an improvement of representative government. [Applause.] For I have no belief, as I have already said, in a government which is not the result of discussion and deliberation. I have had enough to do with the drafting of legislation so that I know something about how things come out after they have had the light of adverse intelligence thrown on them as compared with the way you at first think they will come out.

Mr. WALKER: This is a very interesting discussion. I suppose it really is a proper way to act in the Committee of the Whole. And now I wish to bring out, in answer to the question just put, the fact as to what per cent of the people do vote as a matter of experience. Let me tell you that in all the votes taken from 1904 to 1916 in all the States of the Union these are the figures on the average: On the most important questions 84½ per cent of those who voted for Governor or for President voted; on the less important questions 68.3 per cent voted; and on all questions over 75 per cent of those who voted for President or for Governor voted on measures. Put it in another way: In 1916, out of every man and woman who cast his or her ballot for President or Governor in fourteen States, over nine out of ten voted on the most vital measures, over seven out of ten voted on the most trivial matters, and eight voters out of ten voted on every question submitted. [Applause.]

Mr. MONTAGUE of Boston: I should like to ask either gentleman from Brookline, in view of the light which is shown by this average, whether it would not be entirely safe to put a provision in this measure that a majority of the voters who vote for Governor should be required on any matter in order to pass an amendment of this kind.

Mr. WALKER: I suppose I ought to say that those percentages are of the total vote. Take 75 per cent on the average; one-half of 75 per cent is less than 50 per cent, of course, of the total vote. Therefore a measure on which the yes and no vote was nearly evenly divided would have been killed in many cases even though 75 per cent of the voters voted, if you required that in order to pass a measure it took

50 per cent of all those who voted at the election. So such a provision would be wholly unfair and unwise.

Mr. Balch of Boston: I have just gathered together some figures which bear on the same point as the gentleman from Brookline (Mr. Walker) has just raised. These figures are very much in point at the present time. I had not intended to use them until later but in order to secure accuracy, and to supplement the figures that have just been quoted, I should like to give these figures, not made up by an average of miscellaneous States but from our own Commonwealth of Massachusetts, and treated from a little different angle. I have before me the actual figures. I shall not try to read into the record the whole set of them; I will say only this: That on all the referendums taken in this Commonwealth, from 1911 to date, the question has been settled by a percentage of the total males of voting age of never in any instance more than 26 per cent and going as low as 17 per cent; illustrating, it appears to me, how very differently the same set of figures can be made to look when analyzed in different phases; illustrating, also, that it is impossible to say, on a basis of popular interest, that these referendum questions are settled by any considerable proportion of the potential voting population.

Mr. Walker: I should like just to remark what a splendid commentary that is on the initiative and referendum system. In Massachusetts, where you give them no information, create no public interest, where they see nothing until they get into the booth and even do not know the questions are on the ballot, of course people do not know anything about the questions submitted, they do not vote on them; but in States where you give them information, where you create this interest, you find a very large per cent of the vote interested in questions and voting on them.

Mr. Hart of Cambridge: I should like to ask of the gentleman from Boston (Mr. Balch) and the gentleman from the rear of the room (Mr. Cusick), the gentleman in this neighborhood and the gentleman at the other end of the hall, whether these figures throw any light upon the desirability of requiring a majority of the registered vote in ordinary elections for members of the Legislature and State officials, and if not, why that difference should be made. I will go a little farther. I do not believe there is a member of the Convention now sitting who got 25 per cent of the registered vote in his district. Therefore I will ask any one of these gentlemen, any representative of the people, ought not there to be a constitutional amendment requiring that in future conventions no person shall be elected a delegate except by a majority of all the registered voters in his district?

Mr. Cusick: In answer to the delegate from Cambridge I have noted in his remarks both before the committee on Judiciary and at other times in the Convention that he does not seem to make any distinction between legislative enactments and amendments to the Constitution. The proponents of the initiative and referendum have one sound reason as a basis for their advocacy of their proposition and that is "that the people may find a surer and better way of expressing their will." The Constitution is the fundamental law of the State, in which the people have expressly limited the power of the majority in order that the individual may be protected in certain natural rights; and, in order to get a better and truer expression of

the will of the people, should occasion require it, certain checks were placed around contemplated changes in the Constitution. The member from Cambridge should realize that in order to get a true expression of the will of the people the electorate should vote. When only 25 per cent of the electorate vote on a matter and anything over 50 per cent of this vote is taken as "an expression of the will of the people" you are then getting what you call "an expression of the will of the people" from a very small portion of the people, and it does not fairly represent the will of the people. Is it not plain in the first instance that the electorate has a primary duty to perform to the people of this Commonwealth, — that is, to vote? Why blame the Legislature for indifference when the electorate that creates the Legislature is primarily indifferent? Do you meet this basic failure by anything contained in the initiative and referendum? Is it not a fact that this proposition may and practically will make this condition worse? The Constitution protects certain inalienable rights of the individual. Is it not true that these rights are jeopardized when the electorate neglects its duty to vote in the choice of men who seek to amend the Constitution? Is it not true that probably there are few men elected to this body who have received more than 10 or 15 per cent of the vote of the electorate from their districts? Is it not true also that as a general proposition more votes are cast for persons than for measures? Therefore I ask the gentleman from Cambridge is it safe to propose the initiative and referendum until some method is provided whereby you can get a better expression of the will of the people by compelling the electorate to perform its duty? These dangers are not so great when the initiative and referendum is applied to legislative matters. However, I will not ask that question of the delegate from Cambridge but will ask the delegate from Brookline (Mr. Anderson).

Mr. Bartlett: Referring to the statement that this remedy is getting to be less used where it is in vogue, do I understand him that that is the expectation of what is to take place here?

Mr. Anderson: I stated that in my view that would be the result, that in my view, — and I may be quite wrong in it, — it practically would be in the nature of an appeal from an unrepresentative Legislature, and that after that appeal had been made effective once or twice you would get a representative Legislature, would not need to pester the voters with one of these great blanket sheets with which my brother from Newton (Mr. Powers) terrorized this committee yesterday.

Mr. Bartlett: Then I understand that this proposition amounts to this in the expectation of its proponents: That it means the hanging up of a big stick over the legislative assembly to keep members in fear of what may happen, — something like that.

Mr. Anderson: That may not be an absolutely accurate expression. I think, you know, better of the Legislature than most of you who have been in it do, and I do not want to beat it too much. But I did notice the other day, when I was discussing the undesirability of having four to three decisions in our Supreme Judicial Court setting aside the acts of the Legislature, that you had a very contemptuous opinion of the Legislature. My friend from Quincy (Mr. McAnarney), who I see has wisely escaped, you know was in mortal terror, —

oh, here he is, — lest the professors of Harvard College should get into jail and stay there *ad infinitum* almost, if you trusted such a set of ignorant legislators as we have had in the past. When we were dealing with the courts all the confidence of the reactionary part of this body was in the four to three decision of the court under the Bill of Rights; they had little or no confidence in the Legislature; it would pass *ex post facto* laws or any other sort of unconstitutional statutes. But now when we come to the question as to whether you can trust the people, who were declared by John Adams to be the ultimate source of all power and authority in a democracy, some of you have not any confidence in the people, but you have *infinite confidence* in the people's representatives chosen under party government, with this system of gerrymandered districts which we generally have, whichever party is in power.

Mr. Lowe of Fitchburg: I should like to ask the speaker if he thinks that the initiative and referendum would bring out a larger total vote at the elections.

Mr. Anderson: I think that is a pure matter of guesswork. My guess is that probably it would. I said a few minutes ago that my guess, — and it is nothing but a guess, — was that the effect of the initiative and referendum would be somewhat to increase popular interest and popular intelligence in public affairs.

Mr. Lowe: I asked the question because the gentleman has said that he thinks the initiative and referendum would result in a smaller vote on these matters that are brought to the people by the initiative and referendum, or, in other words, that the initiative and referendum would be less and less used.

Mr. Anderson: I do not think, Mr. Chairman, that the gentleman quite accurately understood me. If he did, he did not quite accurately state it. What I attempted to say, and think I did say, was that I thought if you adopted the initiative and referendum there would be two classes of phenomena resulting. You probably will have in the first place some substantial changes. Perhaps you will not; for after we get through with our perfect work as a Constitutional Convention my expectation is that the Constitution will be so perfect that it will be years before anybody will seriously propose to amend the Constitution that we shall turn out. You know this Convention has become quite famous in outer circles, — some of them *outer* circles that wanted to be inner circles, — by conceding that it is the ablest deliberative assembly that ever sat in this Commonwealth. Hence I say, considering this concession so generally here made, that there is no probability that there will be any call by any intelligent part of the people for any amendment of the Constitution for a considerable period of time.

Coming back to the gentleman's question, — what I did say was that I thought there would be some phenomena from those whom we disrespectfully call "the hot air artists;" that there might be some appeals from the Legislature for legislation; that the result would be that the Legislature would shortly be found more responsive to public sentiment, would be less within the control of the invisible government which has largely created and dominated it hitherto in certain controversial fields, and that the general results stated by my friend from Newton (Mr. Powers) yesterday as accruing in Oregon would accrue here. Year in and year out we shall rely upon our Legislature and

not upon the initiative and referendum, for most of our needed legislation. I regard that result as a desirable result.

Mr. Brown of Brockton: On the question of percentages, of which so much has been made here on the question of voting, I should like to ask him if he would subscribe to the philosophy of Josh Billings, who said that he had discovered on any question that the people were divided into three classes: Those who thought it was so, those who thought it was not so, and those who did not care a tinker whether it was so or not; and the last class was larger than both other classes put together.

Mr. Anderson: Mr. Chairman, I have no doubt that the gentleman has enunciated the truth in that quotation. The gentleman in the rear, from Boston (Mr. Cusick), in the numerous speeches and questions with which he has favored us (and I say it with entire good nature, the only thing I resent is that I have been on this floor or apparently on this floor such a length of time), pointed out the desirability of requiring more delay, — more weight I will put it; he did not use that word, — in amending the Constitution than in the enactment of an ordinary statute law. That is a perfectly sound and proper distinction. I agree with him. The proposed amendment requires that. You can put a statute up to the Legislature. The Legislature declines it. It goes upon the ballot under the terms provided in your initiative and referendum and may be enacted at the next general election, within a year, that is, from the time you started. Not so with your constitutional amendment. That must go through two Legislatures; and we there discuss or at any rate have an opportunity to discuss it. It is only on the third year that it can go to the people for their acceptance or rejection. If, perchance, we should come to biennial elections, of which I am in favor until I am convinced to the contrary, the process of amending the Constitution would be a very slow and deliberative process, perhaps too slow. Now, that makes a very marked difference. One Legislature rejects a statute; you appeal directly to the people. Not so with your constitutional amendments. You have not only two Legislatures, but then you go to the people with the weight of an additional number, — 10,000, is it not? — of signers. That means a pretty concerted and definite movement; it must result necessarily in a good deal of public discussion, of public interest, and necessarily, as I think, of public intelligence, on that question. I can see no escape from that result, — assuming that you ever can produce something fairly called "public intelligence," and I, for one, do assume it.

Mr. Churchill of Amherst: I did not care to interrupt the gentleman, there were so many interruptions, but I want to ask him a question based on the statement in the book of Professor Holcombe entitled "State Government in the United States." I have understood the gentleman to be arguing that there should be deliberative discussion and delay. I assume, — if I do not assume correctly I hope he will correct me, — that he thinks this deliberative discussion and delay will have a decisive effect upon the voting of the people. Am I correct in that? I should like to ask him whether he has studied the evidence in the States that now have the initiative and referendum as regards this decisive effect. This book of Professor Holcombe's is a book, let me

say fairly, of a man who to a certain degree is in favor of the initiative and referendum.

His testimony therefore has value for us all, as not being testimony that comes from bias, and I think everybody who has read that book will agree that it is the book of a man who is endeavoring to be thoroughly scientific and to observe the facts. However, to be fair, this is his theory. Here is his statement, and I want to ask the gentleman if he agrees with it or disagrees with it:

> In no State does the available evidence indicate that the publication of arguments has any decisive influence upon the result of the vote. If it were certain that they were read by all the voters it would be possible to bestow high praise upon the educational value of direct action by the electorate. The election returns demonstrate, however, that the direct action of the electorate for the measures is an educational discipline of which a considerable minority of the voters do not as yet take advantage.

The question I wish to base upon that is whether the gentleman agrees that that is a correct statement of the evidence of the experience of the western States in the matter to which he referred.

Mr. Anderson: I do not think I am competent to give to that question an answer that is of any weight. I have not read Professor Holcombe's book. I know him very well and regard him as one of the best minds, — he is a very young man yet, he is hardly more than thirty, — in the entire Commonwealth, and one of the best minds that I ever have known, an entirely open-minded student of public affairs, rendering and certain to render an extraordinarily valuable service to his day and generation. But exactly what he means by the word "decisive" in the sentence read I do not know. I should say this: That on any question of political phenomena carefully studied and written up by Professor Holcombe I think that his statement of conclusions would be *prima facie* a weighty and very likely correct statement. Beyond that I am not prepared to go.

Mr. Cusick: I feel that the gentleman from Brookline has stated his views in regard to the initiative and referendum under considerable difficulty. He has been very patient in interruptions. That bad temper that he speaks about himself was not displayed on the floor of this Convention to-day; he certainly showed good temper. If it is parliamentary, Mr. Chairman, I move that the members of the Convention indicate to the gentleman from Brookline that they appreciate his willingness to answer questions and his patience in interruptions, by giving him a rising vote of thanks. Then I shall make the motion that we rise.

Mr. Anderson: I hope that motion will not be passed, because I have done no better than any other man would do who has had the good luck to interest his fellow-members present. I do not think there ought to be any such distinction accorded me. The simple fact is that I came here to discuss with you a real and vital question, not to make a set speech. I thank the gentleman very much, but I hope the motion will not be passed.

The debate was continued after the noon recess.

Mr. Whipple of Brookline: Just before the adjournment a passage was read from a volume written by Professor Holcombe, stating some general propositions based upon the experience of the initiative and

referendum in other States. I desire to inquire of the gentleman from Amherst (Mr. Churchill) whether it is not fair to say that that principle is formulated upon an experience of the initiative and referendum largely in the western States, where there is no provision such as there is in the Walker measure for discussion by the Legislature? In other words, if it is not based largely on what is called the direct constitutional initiative, where the measures are submitted directly to the people, without being in the first place submitted to the Legislature, as is proposed in the Walker measure, for two successive terms of the Legislature, where the measures of course are discussed and acted upon by the Legislature before they are submitted to the people? And if the exact figures can be given I am sure the Convention would be very glad to hear them.

Mr. Churchill: I regret that I was not in the chamber when the delegate from Brookline started his question. I think I gather the drift of it, however, from what I did hear. If I understand the gentleman's point on which he wants information, it is this: Whether the conclusions arrived at by Professor Holcombe, which I read this morning, are not based upon a condition different from that proposed by the present measure, based upon a system where there is comparatively little of the so-called indirect referendum and initiative, but mostly the direct, so that the discussion in the Legislature in most of the western States is not provided for, as it is provided for in the present resolution. Did I get the gentleman's question correctly?

Mr. Whipple: Yes.

Mr. Churchill: I think, Mr. Chairman, that as a statement of fact that is true. That is to say, as I look over the list of the States that have the initiative and referendum in some form or other, a majority of these States it is evident have a direct form. I do not want to take too much time in answering the question, but South Dakota has the indirect form, Oregon direct, Nevada indirect, — that is through the Legislature, as I understand it, — Montana direct, Oklahoma direct, Missouri direct, Michigan indirect, Arkansas direct, Colorado direct, Arizona direct, California partly direct and partly indirect, Ohio partly indirect and partly direct, Nebraska direct, Washington direct and indirect, North Dakota direct and indirect, and indirect with regard to constitutional amendments. Now, I think, just glancing over the list, that the gentleman is correct in suggesting that in the majority of these cases, perhaps a fairly considerable majority, the provision which is within the Walker measure is not contained, — it is the direct initiative and referendum.

Mr. Whipple: May I ask, while the delegate is on his feet, if he finds with reference to any State whatever a provision as to the constitutional initiative where it is submitted to two legislatures and is discussed by two legislatures?

Mr. Churchill: I cannot answer that question offhand. I have not looked over the details of the measure. I presume that is correct. But, Mr. Chairman, here is a statement of Mr. Holcombe, to which I call attention simply for its value as summing up what this man, who is not a reluctant witness but who is, as I have said, in favor of the initiative to a certain extent, thinks. He wishes it guarded, thinks it must be guarded, but he is in favor of it. Here is his testimony as regards the evidence of all these States. He says:

In no State does the available evidence indicate that the publication of arguments has any decisive influence upon the result of the vote.

And then, Mr. Chairman, in order that I might not be unfair to his statement in any way, I want to read a further sentence:

If it were certain that they were read by all the voters, it would be possible to bestow high praise upon the educational value of direct action by the electorate. The election returns demonstrate, however, that the direct action of the electorate upon measures is an educational discipline of which a considerable minority of the voters do not as yet take advantage.

He is dealing simply with the question of the publicity pamphlets, and he does not here raise the question as to whether the lack of decisive influence of the publicity pamphlet upon the voters may be supplied by debate in the Legislature. The members of the Convention will have to ask themselves as to whether legislative debate will be a sufficient supply for that lack.

Mr. WHIPPLE: If the gentleman will pardon me a moment, I should like to point out, what Professor Churchill has so very frankly stated, that that statement of Professor Holcombe refers entirely to the printed arguments, which under the systems in the western States are sent out to voters to influence them, and does not refer at all to the provisions in the Walker measure, whereby legislative discussion occurs with regard to every measure which is initiated by petition, in the Legislature, and with regard to every constitutional amendment, — two discussions in two successive years.

It has been asked whether the small vote upon the constitutional amendments that have been passed was not as a result of confidence in the Legislature. If it is, and if the people have confidence in the Legislature, and the Legislature under the new system should negative the amendments, would they still maintain the same confidence in the Legislature if for two successive legislatures there was a decisive vote against them?

Mr. WALKER: I think at this point it is only fair to state, inasmuch as Professor Holcombe has been referred to, that it was Professor Holcombe, and one or two other gentlemen and myself, who framed this measure which is now before you; that he has sat in with the committee in the discussion of this measure from beginning to end, and that he approves heartily every phrase in the matter, so that he is not only "to an extent" in favor of the initiative and referendum, is not only in favor of "a safeguarded" initiative and referendum, but he is in favor of this particular measure, with its particular safeguards.

Mr. LUMMUS of Lynn: I was interested in the remarks of the gentleman from Brookline (Mr. Walker), because Professor Holcombe in his book on "State Government" urges very strongly that the constitutional initiative must have this limitation upon it, — that the initiative shall not be used to secure constitutional changes that will broaden and loosen the operation of the initiative itself. Since Professor Holcombe's book was published, if I remember rightly, only last fall, I should like to have the gentleman from Brookline explain how it is that Professor Holcombe can yield full assent to the provision of the present resolution, which omits entirely that limitation so strongly insisted upon by him.

Mr. WALKER: Mr. Holcombe's book was written a short time ago, — not long ago, but a short time ago. Mr. Holcombe gave his assent

to this measure within a month. He is away on his vacation just now, but he sat in with the committee every day. I suppose I have spent twenty hours with him at one time and another discussing this measure. This method of amending the Constitution is Professor Holcombe's as much as it is mine, absolutely, sir, and every detail of it he approves. The last time I saw him we were discussing this matter and its provisions; and no man in this chamber can say or quote Professor Holcombe as being opposed to a single provision in this measure.

Mr. BRYANT: I should like to ask the last speaker whether the provision for amendment of a bill by a majority vote of ten was taken out at the suggestion of Professor Holcombe, or whether it was originally introduced there at his suggestion?

Mr. WALKER: The original provision was introduced by me, revised by me, and put in there with Professor Holcombe's approval. It was taken out by me, and with Mr. Holcombe's approval. He approves of having it in there, and so do I, but it is not important or fundamental that it be in there. It is a perfecting amendment of some merit, but not of great merit or great necessity.

Mr. BRYANT: I understood the gentleman to say that Professor Holcombe approved of this measure *in toto;* and I do not quite see how he can approve of it with the amending power in it and at the same time approve of it without the amending power in it. I should assume on such an important question as that, if he is the expert he is supposed to be, that he would at least have some opinion.

Mr. CLAPP of Lexington: I am just as anxious as are the rest of you to hear the gentleman from Brookline (Mr. Anderson) who stands in front of the speaker's desk go on with his remarks, but first I want to have one point brought out for the possible enlightenment of the Convention. I find, in talking as I did in the corridor during the intermission with the author of this measure, the gentleman from Brookline in the third division (Mr. Walker), that I was misinformed as to one feature of it; and, having been led to believe that this misinformation is shared by a considerable number of others, I want to ask the gentleman from Brookline (Mr. Walker) to repeat to the Convention the statement which he lately made to me outside. It has been my understanding that the "additional signatures" required in order to complete an initiative petition would have to be obtained after the Legislature had failed to act. In other words, I thought what was meant by an additional signature was a signature made after the Legislature had refused to act *and in the light of that knowledge.* The gentleman from Brookline tells me that I am mistaken in that. Am I right, sir?

Mr. WALKER: The gentleman is laboring under a misapprehension. The measure is perfectly clear on that subject. It says that the subsequent ten thousand names must be filed not less than a month after the Legislature has acted. It does not say when they may be collected, except as it says you cannot collect them before the first of the previous September. The thought is that these signatures may be collected beginning with the first of September, and forty thousand of them must be collected before the first of December. The others may be collected after that or may be collected before that. It is quite immaterial, Mr. Chairman, when they are collected. That is not

the point. The gentleman misses the point of dividing the filing of the signatures. They may be collected at any time. We provide that no constitutional amendments shall go before the people unless they have fifty thousand signatures back of them. That is the essential thing. Now, the division of them, and the requirement that they be filed at different times, is for an entirely different purpose. I may say that no such provision exists in any State in the Union, except a somewhat similar provision which exists in Ohio, but it is quite different and I do not believe I need to take the time of this Convention to explain it. They have both direct and indirect initiative there, and it is not the purpose for which our division was made.

Now, why do we have the division? It takes fifty thousand signatures, to be sure, on a petition to get the matter submitted. Why not leave it there? Why separate them? Well, we separate them for this purpose, and for this purpose only, — to give the Legislature an opportunity to put in really perfecting amendments with the indorsement of the petitioners. If you allow the Legislature to make amendments without the approval of the petitioners the power to amend would be the power to utterly change; and of course if we are to have the initiative at all we cannot permit the Legislature to put in hostile amendments, or to put in amendments that will change the bill contrary to the will of the petitioners, because then it would not be the initiative at all, it would be something quite different.

Now, if you separate those signatures you give an opportunity to a Legislature which is in favor of the main purpose of the bill to perfect it. That is the criticism in many of these western States. There is no opportunity to amend or correct, — I mean to perfect. This gives a Legislature friendly to the measure an opportunity to consider, discuss, perfect, and put the measure in what it thinks is better form; and if it is acting in coöperation with, or with the approval of, the petitioners, they perfect and pass the measure. But supposing the Legislature attempts to do something inconsistent with the purpose to be accomplished by the petitioners, tries to amend the measure by a hostile amendment, or in a way that does not satisfy the petitioners, — then the petitioners may file those names. Now, we compel them to hold them for a month, because we do not want them to step right in and file them immediately. We want to compel them to stop and think and see whether the Legislature has accomplished what they really want.

So this measure carefully provides that those signatures shall not be filed until a month has elapsed after the Legislature has acted. Then if the petitioners decide that the Legislature has not accomplished what they want to accomplish by their measure, they may go in and file them. Now, if that is our sole purpose, it is quite immaterial when the signatures are secured, provided that they are secured at some time.

Mr. Clapp: I thank the gentleman for his clear explanation. I want to ask just this further question, in order to make the thing clear as to all its features. He speaks about the Legislature being given an opportunity to frame an amendment that may be indorsed by the *petitioners* or may be satisfactory to the petitioners. By that I understand him to mean satisfactory to the ten *initiators*. Is that right?

Mr. WALKER: That is what I mean, practically, yes. Now I am on my feet I wish to explain just a bit more about these signatures. I might as well make it clear now as at any other time. In no State do they require ten proposers. That is a Massachusetts idea. It does not amount to very much. Any one man in the other States may file his petition and then go out and get the rest of the names, — any one man. There is no State that requires more than one man. This was put in requiring ten men because we thought it was a good provision, that is all, so we require ten men to frame the matter.

Now, the way the thing works is this: The Chamber of Commerce wants to put something on the ballot, a labor organization wants to put something on, or a set of reformers, — woman suffrage, prohibition, anything else, — want to put a measure on. They get together and frame it; the first ten men are the ones who write the measure, and they come in to the Secretary of the Commonwealth, sign it and file it with him. Then the Secretary, if the necessary names are secured, must submit it to the Legislature; and if the necessary additional names are secured the Secretary must submit it to the people.

What is the purpose of the other names? Why should not ten citizens be permitted to petition all the citizens, just exactly as one citizen has the right to petition the Legislature? The right of petition I need not argue; it is upheld by one of Massachusetts' greatest citizens, John Quincy Adams, who fought for it, explained it, urged it, upon Congress. Now, any one man has the right to petition the Legislature and ask it to pass an act if in its judgment, the judgment of the Legislature, it thinks it is best to pass it. Why should not ten men be allowed to ask their fellow-citizens to pass a measure? There is no reason in principle, not the slightest. The only reason is a practical reason, namely, that if you left to any ten men the right to appeal to the great body of the citizens as often as they wished to, we should have of course an impracticable situation. The people cannot deal with a great many measures at one time, — not a great many measures, — and they cannot be troubled by any ten men who want to put their "ism" forth, so we have to load down that petition. The main purpose is to load down the petition of the first ten signers to the end that they must gather together with them a great many petitioners, and for this purpose, — that they may not get a matter of small importance, or too many matters, on the ballot.

Now, that is the real reason for it. That is why we require fifty thousand rather than forty thousand or twenty thousand; and the reason why we do not require one hundred thousand is because it would be impracticable or too difficult. After you have got enough signatures to accomplish the purpose of not having too many matters on the ballot, — after you have got enough, then all the rest you get is simply a burden upon the officers who have to consider the names and read them over and see that they are accurate and right. So that it is very foolish to require more names than are necessary to accomplish the object. Of course we get this, too: We get a larger body of citizens to indorse it before it goes on the ballot. It shows a larger interest in the matter. Those are important considerations.

As I said, in trying to answer the question of the gentleman from Boston, do not put too much emphasis on this petition question. The

petition is not really the fundamentally important thing. It is important, but it is not fundamentally important. Every one who signs it would not understand the full purport of the bill. Most of them, practically each of them, will know the general purpose when he signs; he will ask what it is about, and he will approve it of course before he signs it.

Now, I will try to make perfectly plain why it is we require a large number of signatures, and why it is incidental that we have a fixed number rather than a percentage. Why do we have a fixed number rather than a percentage? For this very reason, — that we want to consider, as a matter of judgment, as to how many signatures are necessary to add to the first ten signers in order to load it down sufficiently so that there shall not be too many matters to go on the ballot. That really is the main reason of it.

Now, a percentage does not accomplish the object so well. The percentage to-day may result in fifty thousand names, but the percentage to-morrow may result in a larger number of names. If we have woman suffrage it will result in twice as many names. Now I say in getting a petition signed it would be just as hard to get fifty thousand names when the women cannot vote as it is when they can vote. It is the work and bother and trouble and expense of going round and getting fifty thousand names. It makes very little difference whether there are six hundred thousand voters in Massachusetts or one million two hundred thousand voters, it is just about as hard for any one who is getting a petition signed to get the names. Now if you clearly understand what the purpose of a large number of names is I am sure you will see the reason for having a fixed number and a reason for having a reasonable number.

Mr. Lummus of Lynn: I should like to ask the gentleman from Brookline (Mr. Walker) who persistently compares the action of initiative petitioners to a petition to the General Court for legislation, which of course the General Court can amend and reamend according to its judgment, and who is persistent in speaking of the action of initiative petitioners as a motion with seconders, — I should like to ask the gentleman what distinction he can see between the action of the Legislature upon a matter after we adopt the compulsory referendum, and the action of his initiative petitioners, who submit their propositions at their own will to the people? I should like to ask him whether under his plan the action of the ten petitioners is not precisely the same as that of the Legislature, and whether they do not have all the power that the Legislature can have under the compulsory referendum?

Mr. Walker: Why, Mr. Chairman, I suppose the men in this Convention understand the proposition perfectly well. It is impracticable to amend a petition signed by fifty thousand with their unanimous consent. It must be drawn originally the way it is to be put on the ballot. In that sense the ten men who have the power to draw it originally have the same power that the Legislature has to frame a bill that is to be submitted upon referendum afterwards. Of course they do. But that is the nature of the initiative and referendum. There is no chance to amend; and that is one of the weaknesses, may I say, of the initiative and referendum. But we have met that objection so far as it is an objection. If it is an objection, we have met

the objection so far as it can be met and be consistent with the proposition itself. If you are opposed to the initiative and referendum, well and good; vote against it. If that objection is such in your mind as to offset all the advantages, vote against it, because that objection, that it cannot be amended, is an objection that we cannot meet. But, Mr. Chairman, we can go as far as it is possible to go to meet that objection, and we have gone as far as it is possible to go. In other words, we submit the matter to the Legislature, as I have explained, and I do not think I need to explain again. We submit that matter to the Legislature. If the Legislature is favorable to the main proposition they can coöperate with the petitioners or the first ten signers; they can, in coöperation with those who hold the balance of the signatures, as the first ten signers would, make perfecting amendments, agreeable to every one, after discussion. But when the Legislature attempts to make hostile amendments they get nowhere, and of course cannot. Therefore you see that it is essential, if we are to have the initiative and referendum at all, that the first ten men who frame the measure originally shall be in control of it until it gets on the ballot.

Now, I want to say this: That that is one thing that is experienced in the western States, in Oregon and other States, namely, that those measures that are so drawn, and that must be submitted to the people after they once are drawn, and the petitioners understand that they must be submitted to the people without amendment, are more carefully drawn than ordinary legislation. I think that is common testimony. I do not believe that that statement will be contradicted. Therefore, Mr. Chairman, I should say that we have safeguarded this measure in that respect as far as it is possible to safeguard it and retain the initiative and referendum.

Mr. Anderson of Brookline: There is one aspect of this method of dealing with this constitutional amendment on which I want to be sure I am definitely understood. The lawyers of this Convention are more afraid, — as you hear it not merely in the questions asked here, but in private conversation, — of the proposition of having the judicial system substantially changed, than of all else put together. I think that is a fair statement. This question is constantly asked: "What is there to prevent, as soon as you get the initiative and referendum, putting through an amendment to give us an elective judiciary?"

To that I answer that I am ready to submit to the people of the Commonwealth of Massachusetts the question as to whether they have or have not confidence in the judicial system and the judicial personnel that we have had for the past generation. [Applause.] I answer that I am unwilling to say or to have it said that the judicial system that we have, and the judicial personnel that we have, cannot and will not be handsomely indorsed by the people of the Commonwealth, as the final tribunal to settle that question. I am unwilling to have the suggestion made, or at any rate, to accept the suggestion, that it is necessary to guard our courts from an expression of a popular lack of confidence, by saying that so long as they can get 34 per cent of the House of Representatives to stand back of them they can stay in office and maintain their power. I think that our courts and our system of administration of justice have sunk to a point where it is not entitled to the degree of public confidence that I believe it had and is entitled to have, if there is a real fear of trying out that issue

before the people, — on the hustings, if you please, — under the form of testing a constitutional amendment. I, for one, have not any doubt what the result would be, provided it ever gets as far as going to the people to see whether a majority would vote to change our judicial system.

Now, that is my view on that point. I do not for one moment blink the fact that we are going to stand as to changing the Constitution precisely on the ground set forth by the minority; I admit and assert that "in a democratic government we must accept a majority vote as the final and decisive expression of the will of the people;" but I am not willing to admit that one of the great coördinate branches of our government is in need of petting and guarding, of having closed its works from the light of day, — of exemption from a discussion of the merit or demerit of its performance. The courts in any properly governed community are the most democratic of all democratic institutions; for in our courts is the obligation, — to a great and high degree achieved, in this Commonwealth, at any rate, — of rendering justice without fear or favor, knowing neither rich nor poor, race, creed, or any other distinction, — nothing except the rights of man. If that kind of tribunal, tested in a fair discussion before an electorate as competent as the electorate of Massachusetts, buttressed as I believe it would be by two years' discussion and vindication through votes of confidence in the Legislature, is not able to hold its own before the people, — then I say our democratic experiment is a failure, — at least, not a success. That, Mr. Chairman and gentlemen, brings me nearly to the close of what I have to say.

Analyze this case as carefully as you may, go through all the ramifications of the different things which may happen, and you come down to this: You must have confidence in your legal machinery, which provides for delay and debate and discussion and deliberation, that it ultimately will produce a just and sound result; or you must announce that democracy is a failure. There is no third alternative. All you can do is to provide for education, for discussion, for deliberation, for delay, so that there shall be neither ignorance nor misinformation nor passion, and then you have got to trust to the people.

My brother yesterday said that in Oregon they have practically no Constitution. I believe in a written Constitution. But who in this audience would say that life, liberty, property, — all things which we regard as inalienable, — are less safe in England with no written Constitution than in America with our written Constitution? In my belief the English would have saved themselves much empty babbling if they had had a written Constitution. But all those things which come down to us, — the great guarantees of the Constitution as Mr. Justice Holmes called them, — even from Magna Carta, now rest on the acceptance of them by the people, and upon the adherence thereto of the Legislature. Under the I. and R. they cannot be changed without a referendum, or without the deliberation and the delay now provided. The experience of the great people from whose political institutions our political institutions are mainly derived assures us of our continued safety. I can see, in the light of their experience, no warrant on the part of the people who really believe in democracy for this fear that in Massachusetts the people, after compelled delay, discussion and deliberation, will throw into the discard any of the precious liberties,

— more precious to-day than ever before in the history of the world, — that have come down to us through strife and bloodshed, from Magna Carta times. It is an absurd proposition. It is grounded in distrust, grounded in a prejudiced and an undemocratic fear; we ought not to cherish it. And yet, Mr. Chairman and gentlemen, precisely that was the statement of the member of the minority of the committee who spoke the other day, from Boston, I think, — Mr. Youngman, whose name is next to the last in the minority report, — that the Legislature exists for the purpose of preventing the people from making laws and controlling their own political institutions. Are you, the majority of this Convention, ready to accept that proposition? My notion of a Legislature is that it exists in order that there may be brought to bear upon any problem a fair degree of intelligent discussion, the delay necessary to determine whether any proposed act is wise or unwise, that then, in the light of the education thus afforded by these chosen representatives, the common judgment is to prevail. And if perchance there happens to be a Legislature which holds quite different views, — as some of our legislatures, produced and procured in the manner I have undertaken to describe, have thought, — from those held by a majority of the voters, then I apprehend that the majority are entitled to rule; I think that ours is a government by majorities and not a government by minorities. Again I repeat myself to say that you cannot avoid that dilemma; you either stand for majority government or you stand for minority government. For which do you stand?

Some one said, — perhaps on the floor, perhaps in private conversation, — that if he had lived in California, when California was run, as it was run notoriously for many years, by the Southern Pacific Railroad, he would have been for the initiative and referendum; that undoubtedly it has been a good thing there; that it has done away with the invisible government which there controlled. Now, I venture to say to my fellow-delegate here that, except in degree, we have precisely the same conditions that they had in California. The same kind of forces, operating in the same general way, have been largely dominant in this Commonwealth of Massachusetts, — are dominant in this Commonwealth of Massachusetts. It is true, as is pointed out in the minority report, that things are not quite as bad as they were a few years ago; it is suggested in this minority report that invisible government is not doing much business here at the present time. That reminds me of what John Wanamaker is said to have said, I think when he was Postmaster-General, that there were four reasons why the American people could not have the parcel post, which they wanted and obviously needed; that those four reasons were the American Express Company, Adams Express Company, The United States Express Company and the Wells-Fargo Express Company.

Now, there are four reasons why invisible government is not doing business flourishingly in Massachusetts at the present time. Those four reasons are these: The Boston and Maine Railroad is in the hands of a receiver; the New York, New Haven and Hartford Railroad is on the verge of a receivership; the Bay State Street Railway is begging the Commonwealth to do something to save them; the Boston Elevated Railway stock is down to about half of the money paid, on the average, by the people who put up the money to make it; invisible government is

having pretty small pickings in Massachusetts at the present time. But when there is more cheese, as my slandered friend from Brookline (Mr. Whipple) said, there will be plenty more rodents. The system still is here. The gist of the system is not found in the prosperity or adversity at any particular time of these public utility corporations. The gist of the system is that it has been found entirely practicable to get such control, without substantial risk of criminal prosecution, of a sufficient number of members of the Legislature, in the manner I have described, so that the manipulators of invisible government have got something to sell; and when they have got something to sell, — which is influence and control over a substantial part of the supposed representatives of the public interests, — the private interest will pay them for what they have got to sell. That will exist just as long as you have large business interests affected by legislation or immunity from legislation, unless and until you provide some appellate tribunal to which cases may be taken, on the frequent occasions where private interests are dominating as against public interests. That is the reason why I am for the initiative and referendum in the form that it is here. I close by saying to my fellow-delegates that, after candid and careful consideration, with an instinctive dislike for radical changes and for new machinery, I have come to the conclusion that we either have to stand by invisible government as we have had it in this Commonwealth, or we have to stand for the initiative and referendum substantially in the form proposed by this measure; I know of no third alternative. I close by saying that we are going to the voters of this Commonwealth on that issue of being for or against invisible government. You are either for the old system or you are for a new, better and improved system. I repeat what I said this morning: There has not been presented one constructive suggestion, either by way of amendment or by way of substitution, for getting rid of the conditions which you practically admit are disgraceful and harmful; and, there being none, I venture to say that you will now produce none. Hence you are brought right to this: Are you going to the people of the Commonwealth this fall, palliating, excusing, defending, justifying the unrepresentative government that we have had in the past; or are you going to submit to the people this carefully conceived, wisely, patriotically studied proposition, consistent with principle, consistent with the weight of successful experience elsewhere, as a means of improving our democratic institutions, upon whose security and advancing efficiency we all depend?

I thank you very much. [Applause.] I thank this committee most sincerely for the most courteous attention that you have given me. It is a compliment I never expected to deserve or to have; and I apologize for keeping the floor so long. [Applause.]

Clarence A. Barnes of Mansfield.

Mr. Barnes of Mansfield: I expect to take up this matter upon a phase of it which has not been brought out already in debate, and will discuss as little as possible the propositions which already have been advanced, probably much better than I ever could hope to do. The question is not whether the crimes of the gas companies and the railroads have taken place in this State or not. No one has argued that

had the I. and R. been on the statute-books these crimes that the learned district attorney tells about would have been prevented; but it has been argued most ably by the gentleman from Brookline in this division (Mr. Whipple) and by the learned district attorney (Mr. Anderson), and by the leader from Brookline (Mr. Walker) also, that the passage of the I. and R. would remove the distrust which exists in the hearts of the masses of the people of the Legislature and of the courts, — that it would remove that distrust by shifting the responsibility of the Legislature and the courts as it exists to-day under representative government, upon the masses of the people, where they say that responsibility belongs.

It is my contention, Mr. Chairman, that the difficulty is not with things as they are at present, but what we need more than any change in our form of government is men of the type of the district attorney who is chairman to-day (Mr. Pelletier), and of the type of the district attorney (Mr. Anderson) who has taken his seat, and I do not think, Mr. Chairman, that the crimes which have been set up here as having existed would be apt to be repeated in the affairs of this Commonwealth. No system of Utopia that could be even conceived of would expect to pass a law which would stop crime before it started. It is more important to stop and to punish crime than it is to try to define ways and means to stop crime before it even starts. I submit, Mr. Chairman, that the distress which has been painted with such eloquence will not exist in the hearts of the people if these crimes which have gone on are stopped by the agencies and under the laws which we already have.

But there is in the hearts of the masses of the people to-day a distrust which does exist, and I submit, Mr. Chairman, that it is a distrust largely of the manufactured variety. The gentleman from Brookline in this division (Mr. Whipple) with great eloquence painted the picture of the horny-handed son of toil who went home at night and contemplated the inequalities of life, the man who saw the millionaire ride by in his limousine, who seemed to do but little for all he had, while he, the toiler, who worked with his two hands and worked so hard, obtained so little. I cannot hope to equal the splendid way in which the picture was painted, and I recall the argument of the gentleman in this division to say that this man was contemplating some of the isolated instances of crime which have been narrated by men whose very lives have been spent in fighting such forces as they say have existed in this Commonwealth. But suppose, Mr. Chairman, into this home of this man who broods and broods and broods, this man who has so little, there comes some one who says: "Don't you know why it is you have so little and why the millionaire has so much? Why, it is because you are honest. Don't you know that that millionaire, with his money and his corporations, controls the Legislature of our land, and makes the laws to his own advantage, so that the dollars can roll into his coffers? Don't you know that the millionaire, who has everything, and the corporations, who have everything, are controlling the policies of our very courts, and don't you know that the lobbyist controls the Legislature for pay?"

Suppose, Mr. Chairman, that not into the home of this one man, for one night, a voice of that sort came, but suppose it came into the

homes of thousands of men, not for one night, but night after night, poisoning the mind of the toiler and making him think that everything was corrupt which succeeded; how long would it take that man to begin to "see red?"

Such voices, Mr. Chairman, do go into the home of the toiler; they do go in night after night. Why, Mr. Chairman, in my own experience as a member of this Legislature a few years ago I will say that my own mind had been poisoned to the extent at that time that I expected, when I saw the leader from old ward 8 over there (Mr. Lomasney), to find horns on him. And the chairman of the Railroad Committee at that time, Mr. Chairman, appointed by the gentleman from Brookline (Mr. Walker) when he was Speaker, I looked upon with the greatest distrust. And it was only after a service of some time in the Legislature that I came to the decision and conclusion that the gentleman from ward 8 was a conscientious and able man and that the chairman of the Railroad Committee was equally conscientious. But, Mr. Chairman, my contention with regard to this matter and with regard to the question of this manufactured variety of distrust which exists in the hearts of the people is the chief question to be considered by this Convention. If it is true that the rank and file of the people in this Commonwealth are righteously distrustful of their agencies of government, then, Mr. Chairman, I am perfectly ready for the change. But I submit that the article of distrust which has been admitted by the minority members of the I. and R. to exist is manufactured distrust, the voice of the slanderer which goes forth day after day into the homes of the common people. It is a peril; not a peril of the far east, but a peril nearer home, — the peril of the yellow journal.

Mr. Chairman, the proposition is, where rumors and scandals are put forth day after day without investigation in the columns of a paper, where homes, by reports which are not thoroughly investigated, are ruined and where reputations of such great value as has been set forth by the learned district attorney (Mr. Anderson) are taken away from a man over night, — in the words of the great poet:

> Who steals my purse steals trash; 'tis something, nothing;
> 'Twas mine, 'tis his, and has been slave to thousands;
> But he that filches from me my good name,
> Robs me of that which not enriches him,
> And makes me poor indeed.

[Applause.]

My task is not a pleasant one. I have no bitterness in my soul because of anything which has been printed concerning me, but I conceive that this phase of the matter, answering the most important point in the whole argument for this measure, the question of distrust, should be argued upon the question of whether the distrust is real or whether it is a manufactured variety. And I wish to turn, Mr. Chairman, to a paper that was printed the day after the gentleman from Brookline (Mr. Whipple) made his speech and just read a line or two of what that paper said concerning his speech. And I submit, Mr. Chairman, that there is not a man here who will not know that the statement is deliberately distorted and is a half truth which goes out into the homes of people who believe and from the mouth of a leader of the bar in this Commonwealth whom they all respect and revere. Listen to this:

Mr. Whipple was cheered to the echo by the delegates and by an audience that crowded the galleries when he asserted that the people who opposed the initiative and referendum in this State are the people who want to retain their grip on the Legislature, who want to stand pat while the dollars roll in from the laws they have secured from the law-making body which they control.

Why, that takes in everybody here who opposes that proposition, Mr. Chairman. It takes in everybody outside of here who honestly opposes the proposition. The gentleman from Brookline never made the statement nor intended it that way; but it goes into the homes of the people who night after night take that and see it, and because they see it in the paper they believe it, and of course the statement never was made. Would you call that a manufactured article of distrust or a real distrust?

And right along in the same article, in the next column it says:

The people realize the enormous disparity in the distribution of wealth. There are fortunes that would make the fortune of Crœsus look like a ten cent piece. The legislation has gone on and the opponents of the I. and R. would stand pat and let the dollars roll in. There is a feeling that these fortunes were not honestly gained. Is it fair when you have the power to go to the Legislature and by combinations if not by bribery add millions to your wealth out of the pockets of the people?

Never intended in that way; never intended by the gentleman from Brookline to include every fair-minded, conscientious man who had a real objection to submitting to the people a lot of undigested legislation.

Further along in the same article it says:

The authors of the minority report are much concerned about the right of property. I wonder if they are not much more concerned about the right which has come to be recognized in this Commonwealth, a right to take property from the people who do not realize it is being taken.

Now this paper has put all that into the mouth of the gentleman from Brookline. It is a half truth. He did say there were certain people down on State Street who sat in a little room who planned all these things out and put them through, but he never intended to include every man in this Convention elected by his constituency and who has come in here, sworn to do his duty; but this paper includes them all. The man who gets his education perhaps in the lower grades and can scarcely read and write, who reads reports of that kind day after day and night after night, thinks that is true. It is not what we up here, who know that it is not true, think about it; it is the question of the distrust which exists in the heart of the toiler and which is not real and which should not be there.

In the editorial on the same day in the same paper what has it got to say concerning the courts of our land? With regard to a decision made perhaps by the revered judge who is a member of this Convention (Mr. Morton of Fall River) it says:

Worse than that, even, when the express words of the Constitution do not prohibit the law, our conservative Supreme Court is constantly reading words into the Constitution or contracting its limitations. This is nearly always done not intentionally but with the same evil result, to protect some great special interest.

There you are for your courts, Mr. Chairman. No respect for any member of this Convention who opposes the I. and R., no respect for any Legislature which ever sat here and no respect for the courts of our land.

The cartoon I will not even advert to; that is even worse than anything that is printed.

There is not a man who does not know that is a controversion of the truth. It is a half truth. The gentleman from Brookline in this division (Mr. Whipple) knows it perfectly well, and yet I have not the slightest doubt, Mr. Chairman, that in thousands of homes those statements from a paper which boasts the largest circulation, — or a circulation larger than all the other Boston papers put together, — that there are thousands of homes in which it actually is believed that those statements were made by their friend and champion, and that all of the people here who oppose it, as well as their constituents, are tools and crooks, corruptionists and bribers.

I would not advert, Mr. Chairman, to this phase of the discussion were it not for the fact that yellow journalism has taken hold of this proposition in the first instance and is outside the Convention to-day the champion of it, and I have no doubt that all those who oppose the I. and R. have received manufactured letters and forms and requests and telephones containing threats and everything else; if they do not vote for that measure they will be branded as tools and everything else.

Mr. Webster of Haverhill: I should like to ask the honorable member if he has any idea that those who are in favor of the I. and R. have received letters from various banks, trust companies, street railroad companies and other corporations urging them to go back on the pledges that they have made before the people who elected them to this body and vote against the I. and R.? I ask the honorable member if he imagines any such thing?

Mr. Barnes: I should not say, Mr. Chairman, that anybody who had anything to lose, whether honestly acquired or not, would feel particularly anxious to have the doors left wide open for any sort of a proposition to be advanced after the adoption of the I. and R.; so I should say if the people he mentioned have got anything at all that they want to protect, they probably would not ask any one to advocate this I. and R. measure. [Applause.]

Mr. Webster: I must apologize to the Convention for the fact that my hearing is not quite as acute as it should be for a man of my age. It is a sacrifice that I have laid upon the altar of my country, as I lost my hearing in my country's service; but I did not catch any direct answer to my question. Now I know perfectly well that every member of this Convention has been approached by letter from banks, trust companies, street railway companies and every other form of large corporate interest, urging him, even in the case where they know that as a man of honor he could not respond but with a refusal of their request, — urging him against all his campaign pledges to go back upon his word. The gentleman made the statement that the Convention had been approached by letter with all kinds of requests to vote for the I. and R. I ask him again if he thinks, — and I do not protest against that as improper, only as we may regard and take into due consideration the source, — I ask him again if he thinks that the solicitation has been entirely one-sided?

Mr. Barnes: I am very sorry, Mr. Chairman, to learn that my brother's hearing is bad, but I wish at the same time to congratulate him on the power of his speech and lung power as well. Answering

his question, Mr. Chairman, I do not know that I can say any more than I have said already. I have no doubt that both the opponents of the measure and the adherents of it are writing and having written for them all the letters that they can obtain. And further than that, Mr. Chairman, the learned District Attorney (Mr. Anderson of Brookline) and the gentleman from Brookline (Mr. Whipple) pictured with dramatic eloquence the little room down on State Street from which all of these matters up here in the Legislature were manipulated; and I ask him or either of the gentlemen, Mr. Chairman, if they think that room on State Street should be painted black, what would they say about the little room at No. 1 Beacon Street, where the Union for a Progressive Constitution is held? They have to have a room, they have to have their propaganda, and who is in charge of it? Well, I received a letter from the Union for a Progressive Constitution, Mr. Chairman; it came from Room 904, and I went in there and looked at the doorplate a week or two ago, and I found out that the room next door was occupied by the editor of the paper from which I have read. [Applause.]

Mr. CREAMER of Lynn: I wish to correct a misstatement of fact. The headquarters for the Union for a Progressive Constitution are not at No. 1 Beacon Street; they are down at Scollay Square. [Applause.]

Mr. BARNES: The letter which I received was during the campaign for the Convention and it was soliciting a pledge for the I. and R., and it was from that address that I have given. I think I can produce the letter. If I am wrong, I am sorry for it, but I think I have that letter and will try to produce it.

Mr. CREAMER: I will make a further statement, that the headquarters for the Union for a Progressive Constitution have been where they now are for the last six months.

Mr. BARNES: It might have been the Progressive League, then. I will try to find that letter, Mr. Chairman, and produce it.

Another gentleman who received a letter from this Union sent a reply, addressed to the Union, and his answer came in a letter signed by the editor of the paper from which I have read.

Now it has been said by the learned District Attorney (Mr. Anderson) that no constructive amendment has been offered and that the opponents of the I. and R. are without a single positive idea.

The CHAIRMAN (Mr. Pelletier): When the gentleman refers to district attorney, does he mean the United States Attorney?

Mr. BARNES: Yes, Mr. Chairman. [Laughter and applause.]

Mr. ANDERSON of Brookline: Mr. Chairman — [Renewed applause.]

The CHAIRMAN: Does the gentleman yield to the United States Attorney? [Laughter and applause.] Mr. Anderson of Brookline, also United States Attorney.

Mr. ANDERSON: In the interest of correct nomenclature, and in order to protect adequately the reputation of the present presiding officer, I desire to say that the proper appellation of the federal office which is now occupied by me is not "District Attorney," but is "United States Attorney." The learned gentleman now occupying the chair, as I understand it, is correctly designated as THE District Attorney. [Laughter and applause.]

Mr. BARNES: I am very glad to be corrected, Mr. Chairman. The remedy which I have the temerity to suggest to the gentlemen who

have just spoken as well as to the great attorney who sits in this division (Mr. Whipple) and to the majority members of the I. and R. committee, is not to waste so much time upon an I. and R. proposition which is said by the gentleman from Brookline in this division to be no very extraordinary thing, no panacea, — I believe he said it was somewhat innocuous but would serve to remedy that distrust; that these men employ their magnificent talents, their wonderful ability to frame laws and statutes, in trying in some way, either by a bill for a censorship or in some manner to compel yellow journalism to differentiate between the freedom of the press, which we all stand for, and unrestricted license, which we ought not to stand for. [Applause.]

Now, Mr. Chairman, I desire to produce the letter which is headed "Union for a Progressive Constitution. Committee on Initiative and Referendum. Room 905, No. 1 Beacon Street, Boston," dated December 26, 1916, and present it to the gentleman from Lynn with my compliments. [Applause and cheers.]

Mr. Creamer: If my knowledge of mathematics is correct, December 26, 1916, is more than six months ago. [Applause; cries of "Oh!"]

Mr. Barnes: I feel that it is only fair to commend the wisdom of those who run this Union in removing the headquarters so that it will not be quite so close to the source which it was next to in December, 1916. [Applause.]

It is my opinion, Mr. Chairman, further, that the proposition of corporation control which has been pointed out is merely at this time being aped or attempted to be aped by yellow journalism. It is no better for yellow journalism to get up here into the State House and to have its own lobby working overtime upon a proposition of this sort at this time than it was for the New York, New Haven and Hartford Railroad ten or twelve years ago to produce its own lobby to prevent its company from being disrupted. I do not stand here as a defender of the New Haven Railroad, but I do say that the yellow journal proposition is no better than the New Haven was if it existed in the form in which it has been alleged that it did exist. I need but point, Mr. Chairman, to the part played —

Mr. Brown of Brockton: I should like to ask the gentleman if he sees any difference between a lobby which seeks to benefit the people in the open and a lobby which seeks to rob the people in secret?

Mr. Barnes: Yes, of course, Mr. Chairman, I see that difference; but further, Mr. Chairman, I submit that if the I. and R. proposition goes through in the form in which it is advocated, yellow journalism will then have all of the power in this Commonwealth which was attributed to the New Haven Railroad ten years ago. [Applause.] And I wish for a moment, Mr. Chairman, to advert and merely to mention the part played by the yellow sheet in our own war with the neighboring country of Mexico. I need but point, Mr. Chairman, to the part played by yellow journalism and its attacks just before the United States entered into the world war, upon our ally England, when the yellow sheet was barred from that country. And who is there here who does not recall in the history of our own country not many years ago that the mind of the fanatic, inflamed by the glaring headlines, seized the assassin's pistol and shot a martyred President? And coming right into our own, — nearer home, Mr. Chairman, who does not recall that within two or three years we have found that the attorney

for the yellow sheet, who was pictured as the champion and the defender of the people and who constantly was making his attacks upon the gas company, all the time, Mr. Chairman, was receiving a yearly retainer of $5,000? And who does not recall the pure food expert —

Mr. CREAMER: I should say I am still without the evidence that the gentleman from Mansfield said he would give me. I should like very much to have it.

Mr. BARNES: Is Mr. George in the room, Mr. Chairman?

Mr. CREAMER: I understand, Mr. Chairman, that the gentleman who now has it refuses to give it up.

Mr. BARNES: Well, I had it in my hand, Mr. Chairman, I will swear to that, five minutes ago.

The CHAIRMAN: I suggest the matter be referred to the Sergeant-at-Arms. [Laughter.]

Mr. BARNES: I think I have brought out most of the matters which led me to make the statement early in this debate that the sentiment or the distrust of the people has been constantly fanned and constantly stirred up by the agencies which I have attempted to point out. It was said early in this Convention that the Convention did not have its Sumner, its Choate, its Dana, or its Webster. But, Mr. Chairman, allow me to express the opinion that there have developed in this Convention many minds which would compare not unfavorably with the great names of 1853. But we of lesser attainments find it necessary to apply to this and other propositions the acid test of common-sense. We have in this Commonwealth, Mr. Chairman, what has been considered by other States as a progressive Constitution and good courts.

Mr. CREAMER: The letter is in front of me, but I am not allowed to have it in my hand. [Applause.] I want to say, Mr. Chairman, that this letter is at least a letter of visible government. It has on it as one of the officers of our union, the name of Mr. Grenville S. MacFarland, but I should like to ask, Mr. Chairman, if that is not visible government? I should also like to ask of the gentleman from Mansfield, where is the letter from State Street asking support against the initiative and referendum that he speaks about? Is he willing to show that too, or is that the invisible government that we have heard about?

Mr. BARNES: I have not got that letter, Mr. Chairman, and I have not seen it, did not know it had been written; but perhaps the gentleman from Lynn has it and maybe he will produce it if he has. We have had in this Commonwealth, Mr. Chairman, years back, the passage of the free textbook bill which has been referred to before in debate, a liberal and progressive measure by which the poor little boy of ward 8 did not have to feel that he was an object of charity as compared with the rich little boy from Brookline who had plenty of money to buy his books. The Australian ballot law was passed years ago to prevent corruption at the polls. The property-holding qualification for public office was long ago removed, giving the poor man an equal chance with the rich for public office. The picketing bill was long ago passed in the interests of labor. The short hours of labor have been enacted into our statute law. Factory inspection at the instance of labor has been enacted in our books and lastly the Workmen's Compensation Act has been passed at the instance of labor.

And in all these matters, Mr. Chairman, the I. and R. was not necessary. These bills, Mr. Chairman, now laws, are mile-stones in human progress. When humanity has called, Mr. Chairman, Massachusetts always has responded. [Applause.]

Mark N. Skerrett of Worcester.

Mr. Skerrett of Worcester: I have read, Mr. Chairman, with a great deal of interest, the minority report of the committee on the Initiative and Referendum, and in my opinion it has been prepared with a great deal of care. I have listened to the remarks made by the delegate from Southborough (Mr. Choate), the delegate from Amherst (Mr. Churchill) and the delegate from Somerville (Mr. Underhill), and while I have a great deal of respect for the opinion of these gentlemen, I must say that I do not quite agree with them in their statements concerning our representative form of government.

I have served, Mr. Chairman, like many members of this Convention, as a member of our State Legislature, and during my term of service I became each succeeding year a stronger advocate of both the initiative and the referendum. I now propose, Mr. Chairman, to tell the members of this Convention why I am an advocate of these two great measures.

I should like to take the delegates to this Convention back some seventeen years, or in other words, to the year 1900, and give the members of this body some idea of what took place in our State Legislature that year. Many of you remember the time preceding the year just mentioned. We had a railroad corporation in Massachusetts that is still in existence, although leased to another road, namely, the Boston and Albany Railroad, which up to the year 1900 was one of the very best railroad corporations in this country. While it did not have the great number of miles of trackage that some of the western railroad companies had, it was considered one of the best railroad systems in the United States. And in the year 1900 what took place? The New York Central Railroad lines, owned and controlled by people outside of Massachusetts, through their officials, looked with longing eyes upon the Boston and Albany Railroad, and during the year 1900 these foreign capitalists came to the Massachusetts Legislature and had a bill introduced to allow the lease of that railroad system, the Boston and Albany, to the New York Central Road; and lo and behold, that lease was sanctioned by our Legislature, despite the protest of many of our prominent citizens in this Commonwealth. And what took place after this lease was made to that foreign corporation? The people of Massachusetts were given the worst service on the Boston and Albany Railroad that I think I have ever witnessed in my lifetime, and I have lived in the city of Worcester since my birth.

The next year, in 1901, with a service the worst that the Commonwealth of Massachusetts ever has seen, men living along that line were compelled to go to the Legislature for relief. It was an absolute fact, Mr. Chairman, that we had to come here and introduce an order to get at least decent passenger service on that great railroad system. We got no relief from the officials of that great concern, the New York Central Railroad. We made complaint after complaint. The railroad officials paid no attention whatever to the passenger service. They side-

tracked the passenger trains on every siding to allow the fast freights to go through. Month after month, the Worcester members in the House of Representatives in the year 1901, were obliged to go to the Union Station in Worcester to wait there until some one of the trains, several hours late, came in to take them to Boston to attend the sessions of the Massachusetts Legislature. The people were absolutely disgusted with the action of the Legislature concerning the granting of this lease I refer to, and later allowing such poor service during the year 1901. And I want to say that if the initiative and referendum had been on our statute-books they would not have tolerated the lease that was forced upon the people of this Commonwealth.

The year 1901, I was a member of the House of Representatives, and the Boston Elevated Railway Company, one of the great public service corporations of this State, came to the Legislature with a bill to allow it to build a subway under Washington Street in the city of Boston. Everybody in the Legislature realized that the proposition was fair in some respects. I am not here to find any fault with that great public service corporation. I think that every corporation, whether public service or otherwise, in this State, while it lives up to the laws of this Commonwealth, should be absolutely protected. But that great company came here with a proposition that looked at first to be all right. The company desired to construct a subway under Washington Street and there was a great need for it, by the way. The company agreed to build it, to pay the cost of construction, which at that time was estimated at $6,000,000, to employ none but union labor upon that great project, to have eight hours constitute a maximum day's work and two dollars a minimum day's wage. But in return for these favors, the company asked the Legislature, in the bill presented, for a lease of the subway for the term of forty years. We had as Governor of the Commonwealth of Massachusetts that year, a prominent man, a Republican, Winthrop Murray Crane, who is a gentleman very well known to every man in this Convention, either personally or by reputation. His opinion was sought concerning this bill. He said that the bill itself was all right except one part that he was not in favor of, namely, the lease for a term of forty years. He suggested that the term be shortened to twenty-five years. Those in charge of the measure decided to put the bill through despite the fact that the Governor made that recommendation. The latter also suggested that the referendum be attached to the bill, that the people of the city of Boston might have an opportunity to determine whether or not they wanted to accept the provisions of the bill; and again the people interested said that they would not listen to the suggestion. The bill was reported in the House and on the final day that the vote was taken five roll-calls took place, and I see at the present time in the Convention several men who were in the Legislature that year. The number of men who voted that day against the bill on the first roll-call, if my memory serves me right, was forty-one, and on the final roll-call the number dwindled to twenty-nine; and despite the statement that the Governor of this Commonwealth made, that bill went through the House and it also went through the Senate. When it reached the Governor's office the Governor promptly vetoed the bill, as he said he should, and it came back into the House again the following week, and what was the result? The press in the mean-

time had taken up the matter, and when the vote was recorded on the day it came in the House on the question whether or not the veto of the Governor be sustained, 136 members of this House voted to sustain the veto of the Governor.

Now, the point that I am trying to make about the matter is this: If I voted in favor of the bill in the first place I should vote against the Governor in the second instance, in order to be consistent; and I think when that great principle of the referendum was involved, as it was in that case, in order to have the vote of any member of the Legislature of that year consistent, after voting for the bill he should have voted against the Governor when the veto was read and when the question came up for a vote. And I cite that case, Mr. Chairman, as an example in Massachusetts of a specific instance where our representative form of government has proved a failure. Questions of such character, Mr. Chairman, and votes of that kind have induced the people of Massachusetts to come forward and favor these great measures, the initiative and referendum. If it had not been for the Governor of the Commonwealth, a Republican, advocating a referendum for the city of Boston, the bill above referred to would have passed, the subway would have been built, and leased for a term of forty years, and that would have been the end of it then and there. But there is a case, where we had the spectacle of a Republican Governor of this Commonwealth saving the Democratic city of Boston and urging the members of the Legislature to stand up for democratic doctrine, which he believed in, and which properly should have been settled by a referendum.

Mr. Brown of Brockton: I should like to ask the gentleman if he is not aware that the corporation now wishes that it had been twenty years instead of twenty-five?

Mr. Skerrett: I am not aware of that fact. The following year, Mr. Chairman, that same Governor of this Commonwealth advocated in his inaugural address a measure which became a law, namely, that no person should serve on boards of directors both of savings banks and national banks doing business together in this Commonwealth. The Governor himself advocated that measure. But I am inclined to think, Mr. Chairman, that if any member of the House of Representatives had advocated the measure it would not have passed; but the members did not relish a passage-at-arms with the Governor and, accordingly, another good act was passed.

Now, the following year 1903, with the President of this Convention so ably directing the destinies of the Commonwealth as Governor, we had the great coal strike of that year and a State investigation was conducted in this Commonwealth. I was a member of that committee; we had a very thorough investigation of the coal situation in Massachusetts. We had the spectacle among hundreds of others of a concern in the city of Cambridge paying the exorbitant sum of $2,500 for one hundred tons of coal. With the assistance of the Attorney-General of this Commonwealth, a gentleman who sits in this Convention, the gentleman from Lancaster (Mr. Parker), the coal committee prepared a bill which made it illegal for any combination to be formed to restrain trade, which bill the members presented to the Legislature, and as a result one of the most bitter fights of the year ensued. Despite every effort that we could make to have that

bill pass the House, it met with a defeat by an overwhelming number, although the members of the coal committee advocated the bill and endeavored to do what they could to relieve that situation, as the suffering among the poor was intense.

You are all familiar with the story of the New York, New Haven and Hartford Railroad, and with the condition of the Boston and Maine Railroad, both roads brought into their present condition by the action of our Legislature, our representative form of government, which I maintain is directly responsible for the poor financial condition of both the above-named railroad systems.

Now I have been an advocate of the initiative and referendum for some years, and I think that it is unnecessary to take too much time in this debate. I have listened with a great deal of care to the arguments both for and against it, and I want to say to you, Mr. Chairman, that I believe absolutely what the gentlemen from Brookline (Mr. Whipple and Mr. Anderson) say about the upper body of the Massachusetts Legislature, and I refer now to the Massachusetts Senate. I do not think there would be any great danger of such a determination upon the part of the voters of this Commonwealth calling for this measure if the members of the Massachusetts Senate would give more heed to considering several of the measures which have come before it, the Senators having paid little attention to these measures which have been favorably acted on in the House and passed by that body. I think it is due particularly to that fact, more than to any other, Mr. Chairman, that the people of Massachusetts have advocated these great measures.

I want to take just a minute longer, Mr. Chairman, to read to the delegates at this time a statement which bears upon this question and is something that must interest the members of the Convention, — an article in the July 1917 issue of the Review of Reviews, headed "What about the Initiative and Referendum?"

President Wilson, then Governor of New Jersey, in a speech at Kansas City in 1911 said:

> If we felt that we had genuine representative government in our State legislatures, no one would propose the initiative and referendum in America. They are being proposed now as a means of bringing our representatives back to the consciousness that what they are bound in duty, and in mere policy to do is to represent the sovereign people whom they profess to serve, and not the private interests which creep into their councils by way of machine orders and committee conferences. It must be remembered by every candid man who discusses these matters that we are contrasting the operation of the initiative and referendum, not with the representative government which we have in theory, but with the actual state of affairs.

I want to say, Mr. Chairman, in conclusion, that I think every member of this Convention, who has served in our Legislature, has often realized the absolute futility of doing anything progressive and making successful the best efforts of many members of the Legislature who have come here representing the wishes of their constituencies, in presenting some of the very best legislation that ever has been proposed in Massachusetts but which continually has met with defeat. I have seen many bills go through our House of 240 members meeting with success in the lower branch of the Legislature, only to be quietly put to sleep by the Senate with a bare majority of 21 votes. The

members of that body do not favor grabbing any legislation by the neck and strangling it, throttling it to death and throwing it lifeless upon the floor of the Senate; they put the quietus on it, so that nobody knows how it is done. And the Honorable Senators meet you afterwards and say: "The time is not ripe for this legislation; we gave it a good deal of consideration; but we think the matter ought to be referred to the next General Court," or "We will give you leave to withdraw," or "There does not seem to be any great demand for it." That has been my experience in the five years I was a member of the Legislature, in the years 1901–2–3–4, and 1905. I have seen enough during those five years, Mr. Chairman, to make me an ardent advocate of both these measures. I have seen enough during those five years to make me feel that the time has come in Massachusetts when the people should have something more to say, and I think they are going to have something to say after this Convention passes a vote upon these two measures. [Applause.]

Debate was continued Friday, August 31.

Dennis D. Driscoll of Boston.

Mr. Dennis D. Driscoll of Boston: It is not my intention, Mr. Chairman, to take much of the time of the committee. Owing to statements made on the floor of this Convention by delegates who are opposing the I. and R., and my many years as a representative of organized labor and representing them at the State House, I felt it would be unfair to the people to allow the statements to be made without being corrected. The honor was conferred upon me by the President of this Convention of serving on the committee on Initiative and Referendum. It was a pleasure to me, and one of those honors that I shall cherish through life, for the fairness and squareness of all the members of that committee, for the opportunity given to everybody to speak either in favor of or opposed to the I. and R., and the time extended to the members of the committee, as well as the courtesy of the chairman of the committee in giving everybody an equal chance to speak. During the sessions of the committee each member was asked if he had any amendment or suggestion or alterations to make, so that we might have a people's measure to be submitted to the delegates of this Convention.

I want to call to the attention of the delegates attending this Convention that in the infancy of the I. and R., and before the time of the gentleman mentioned by Mr. Underhill of Somerville, Mr. Carey, the Massachusetts State Branch of the American Federation of Labor introduced to the representatives of this Commonwealth an initiative and referendum bill. At the beginning of those days I had been honored by the labor movement of this Commonwealth by holding the position of secretary and treasurer for sixteen consecutive years, elected annually, without any opposition; and I am proud to say that during that time the labor people of this Commonwealth find, quarterly and annually, itemized receipts and expenditures to show their honesty to the public and the interest and welfare of their organization. I remember a meeting held by the representatives of organized labor in Boston, when we were honored by the presence of our United States Senator, Henry Cabot Lodge, who addressed the

representatives of organized labor in Faneuil Hall, in opposition to the initiative and referendum, and for an hour and a half the representatives of organized labor paid him the best tribute ever paid by any organization in this country. Not a man left the hall, nor was there any interruption, and the applause given to our United States Senator, while we were in favor of the question he was opposing, showed the square deal which organized labor was willing to give and which it has been striving to receive itself from representative government.

I prepared a few notes here, because of the active part that I took, as a representative of organized labor, to bring about the defeat of members of representative government who did not represent the interests of the people after their election, and so that no statement made here by me to-day can be used by any political candidate for office, in a political campaign, with injury to any man in this Commonwealth. The labor movement, not only of the city but of the Commonwealth, has always tried to get the opposition to come before them and address the representatives of organized labor. We do not carry horns; we are a part of the human family, and we demand the respect that belongs to us. Take the great President of Harvard College, Charles W. Eliot, with his attack on organized labor. Well do I remember the great meeting organized labor held in Boston and gave to him the opportunity to address the representatives of organized labor in public, on the question that a strike breaker was a hero; and after his meeting with the representatives of organized labor his feelings and his opinion for the working people changed, and as to his treatment by the representatives of the trade-union movement, I leave it to him to speak, and as to the actions of members of organized labor. I could refer you to a delegate of this Convention, when representative government forced legislation and did not listen to the demands of the representatives of labor, when we were honored by champions of the people who sat here, the representative from ward 5 and ward 6, when the question was up for submitting a new charter to this city. I can refer to the President of this Convention, John L. Bates, who addressed the organized labor of Boston. I can tell you of the tribute paid to him and the excellent address made in Wells Memorial Hall, Boston. I can refer you to Robert A. Woods. I can refer you to Robert Luce, and some of the judges of the municipal courts.

I am not pledged by any newspaper, by any organization, only as a man and as a representative of the trade-union movement of this Commonwealth; and when I came to this Convention I told the people in the district which I represent that if I was elected I should vote in favor of the initiative and referendum. I have received one letter since I came to the Convention, and I have no objection to the banks, the trusts or employers sending letters to the delegates of this Convention, presenting their opinions upon this question. Organized labor has that right, and does it, and it assists in bringing about success.

I want to call to the attention of the delegates of the Convention the statement made by delegate Underhill of Somerville, when he said that the great opposition that took place here between the President of this Convention and organized labor was not the question of the eight-hour bill, it was the question of the over-time bill, and that

was the difference of opinion that existed, and the labor movement pays the highest respect to the presiding officer of this Convention. Oh, yes, I know something about the eight-hour bill. I represented organized labor, and the same fight that now exists in the State Senate of this Commonwealth existed for five years, by the cleverness of attorneys of this Commonwealth. The State Senate can tell why they are opposed to the word "requested" or "required" in the tour workers bill. You will remember the fights on the eight-hour bill, — whether it was the power of unknown government, or whether it was the power of the corporations, or the loss of organized labor. We know the men. We went into their districts, and we went before the people, and we have the confidence of the people, and the people responded by sending new representatives, who brought about the enforcement and adoption of the eight-hour law. The eight-hour law having been adopted by the representatives of representative government, and vetoed by the Governors of this Commonwealth, I had the honor of having interviews with some of the Governors on that subject, and when it would be vetoed the same gentlemen who favored the bill would vote to sustain the veto. After a fight of years in the interest and welfare of the people, I think it was under the administration of Governor Eugene Foss when the eight-hour bill was referred to the Supreme Judicial Court, and the fifth section was declared unconstitutional, and it was brought back again to the House of Representatives and the Senate and adopted, leaving the eight-hour law as it stands to-day.

What I want to call attention to is the fact that many men who always champion the interest of the people and of organized labor, when they say they stand between the capitalists, the employer of labor, and organized labor, — the men who voted against the eight-hour bill did not stand for the people, between organized labor and the employers of this Commonwealth. The people who enjoy the eight-hour day are those people who stood between the labor movement and the employers of this Commonwealth; and you see the people who are not members of organized labor, never were and never will be, enjoying the eight-hour law in effect to-day; so that the men who say they stand for the people forget their interests when they are selected as members of representative government.

I want to call attention to the words of the minority report of this committee. The seven gentlemen who signed that minority report say that organized labor, with the power it has in this Commonwealth, would destroy the government if the I. and R. was adopted, and that if the I. and R. was adopted great curses would come upon our Constitution through the great power of organized labor. I want to say to the delegates of this Convention that we are the best supporters of the Constitution and the government, not only of this Commonwealth but of the country. [Applause.] In this time of war the membership of our organization is now ready to face the lines in France. The members of our organization are preparing to go away, the sons of members of organized labor and the members of organized labor themselves, as we are told, fighting for democracy, and we are going out to the front and backing up the government and the Constitution; and we defy any man who sits on that committee to prove that organized labor is not the supporter, rather than a destroyer, of the govern-

ment of this Commonwealth and of this country. I do not want it to be said as was said on this floor by the delegate from Southborough (Mr. Choate), who said the street car men, with all their troubles and fights, did not have time to read these subjects that are referred to them. Take my advice, and do not get in opposition with them. They fought for years and the labor movement fought for it before they had their organization, to enforce the adoption of a nine-hour law in this Commonwealth, so they would have a chance to read and be posted on the subject. But representative government when it was in power did not bring it about, until the street car men themselves, and the power of labor, made it a public issue, and a few years ago the nine-hour law was adopted. They have the time to read. They are the brightest men, willing to discuss the questions; and if you do not believe it meet them and talk with them when they are off duty. When he said that the workmen and everybody in this Commonwealth were happy now because there was plenty of work, I pray to God that that time never will come again, with the false happiness of work at this time of the year, and the greatest of sorrow brought out across the water while this great war is going on. That is not happiness, it is false happiness, and that does not make the working-men of this Commonwealth happy. They would rather see the country at peace, and the working-men without the sorrow which is going on across the water. Delegate Underhill spoke of the one-day-in-seven bill. The one-day-in-seven bill before the State Senate here was defeated, and was the cause of a strike in Boston when that great organization of the Elks held their Convention here, and so a strike in this city brought about the enforcement of one day's rest in seven for hotel and restaurant employees in this Commonwealth. I say these questions are what brought the labor movement of this Commonwealth strongly in favor of the initiative and referendum. And while they say, as they did before the committees, that the labor movement is the destroyer of the court, — we are not the destroyers of the courts; we are admirers of the judiciary. I know something about the courts of this Commonwealth, and I had rather see the initiative and referendum adopted, to do away with those dark-deed meetings, staggering the representatives of the government of this Commonwealth, — and I know what I am talking about, — obliging men religiously to come into a Convention to represent the people of this Commonwealth. I have got the facts from men who are delegates themselves at the labor conventions. That is the reason we believe, as do your private institutions and some of your representatives in this Commonwealth, that some of your highest officials interfered in the appointment of the judiciary not two years ago, whether it was a juvenile court or a Superior Court. The labor movement may have said that men who presided over the Senate may have been rewarded by being given an appointment to the judiciary of this Commonwealth.

I know some members of the judiciary, I know their great work; I do not uphold the interference of a certain judge on the Superior Court bench in the appointment of a probation officer, who may have had his political experience here sitting on the Social Welfare Committee, and bringing a division amongst the men in that office. I know the great work of the judges, I am an admirer of the men and respect them. As I said years ago on Boston Common, in the biggest dem-

onstration held there, in the interest of Moyer, Heywood and Pettibone, in their Colorado strikes against capital, that I admired the judiciary of this Commonwealth and we stood loyally behind them, and the difference between labor and the judiciary is that of the question of injunction. If the people of this Commonwealth want the right to elect judges, that is in their hands, and not in the hands of the labor movement, — in the hands of the people. I do not want religion exempted, either, on the initiative and referendum. I want the people to have the same power as members of representative government, so that we can discuss these questions with all our rights.

I trust the delegates assembled here will get in closer touch with the representatives and the members of organized labor of this Commonwealth. I feel that the adoption of the initiative and referendum will be bringing closer together capital, labor, corporations, and that they will see the differences that stand between them. We claim an open fight and a square deal. We are with the government, we want the strength of the government, and we want to have the people keep their eyes on it. I hope the day is not far distant that every man will interest himself and vote on election day, — not for the men of his party, but for the men who are for the best interests of the people. Knowing the men of the trade-union movement all over this country, the honor was conferred on me to address many of their meetings, and the initiative and referendum was discussed and indorsed there. They say there is no demand for it. The State branch of the American Federation of Labor has a membership of 180,000 men and women, and the four representatives of the steam railroad men came before the committee and indorsed the initiative and referendum. Is not that worth any recognition as a demand from the people? We do not say that the representatives of this government are corrupt. We say that the best men of this Commonwealth, honest and conscientious, sat here in the representative government of Massachusetts, and we differed with them on questions in the interest of the people. But the labor movement believed that, with the adoption of the initiative and referendum, we should not have any fear of the labor laws that exist to-day in the hands of the people; and the laws mentioned here by the delegates, adopted as laws in this Commonwealth, were forced, — forced by the power of organized labor, going out on the public platform, meeting man to man, on the record of the votes of representative government. The people voiced their sentiments and voiced their feeling; that brought about the adoption of the law now in effect in this Commonwealth. I trust the delegates to this Convention will get closer in touch with the representatives of organized labor, and you will find us honest, our character clean. We do not carry revolvers, but we are ready to discuss the question in the interests of the working people of this Commonwealth, and by the adoption of the initiative and referendum will give a strengthened power to the representative government of this Commonwealth. [Applause.]

Augustus P. Loring of Beverly.

Mr. Loring of Beverly: The oath that is taken by a witness is to tell the truth, the whole truth and nothing but the truth. That is the basis on which I wish to address this Convention. I think we all mean

to tell the truth and nothing but the truth, and I mean to tell, in so far as it lies in me, the whole truth about this question.

I hold no brief for any man or any class of men. I am speaking simply because I believe this is a great public measure in which I take a great interest, on which I am entirely unpledged, on which, so far as within me lay and the opportunity I had, I took the advice of the people that I represent. I found that advice was very divergent and so I am not bound to advocate, so far as my constituents are concerned, either side of the question.

The delegate from Brookline who spoke yesterday (Mr. Anderson) gave a startling picture of the corruption among the voters of this State. I speak advisedly when I say among the voters, because, as the investigation which he laid before you showed, there was no member of the Legislature that was convicted or even presented by the grand jury for corrupt practice. If any undue influence was exercised it was exercised among the voters; if the money was spent it was not spent to corrupt members of the Legislature but to influence the voters. I merely pass this on at this time that you may think of it. I do not expect anybody in this Convention to go to the voluminous records to which we were referred by the gentleman from Brookline, because from the small sample he exhibited to us it would require superhuman effort to pick out any decisive result. And as a matter of fact, there was no decisive result to those investigations, unless we can say it put certain public service corporations of this Commonwealth effectively and conclusively on the scrap-heap.

The gentleman from Lynn who spoke in favor of the I. and R. (Mr. Creamer) made a statement or two statements on which to base his argument, which I shall take up as my present theme in speaking to you gentlemen. He said that no scheme of government could succeed or be permanently successful which was not founded on efficiency and on equity. I subscribe absolutely to those principles, and I believe that in discussing this matter of the initiative and referendum we should consider those two questions: Will it conduce to the efficiency of this government? Or will it effect equitable considerations that make it imperative to adopt it even if inefficient?

Mr. Anderson of Brookline: I should like to ask a question and perhaps make a correction. If I understood the delegate now speaking, he stated that in effect I said that the money taken from the treasuries of the public service companies and from other sources was not used to corrupt members of the Legislature but was used to corrupt the voters. He said he used the phrase "corrupt the voters" with intent. Now I beg at that point to correct him. He misunderstood me, or has not quite correctly stated the import of what I said. I did not charge that any money had been used, except in rare instances, for criminal corruption. There was nothing that I said that indicated that any money had been used for the purpose of "corrupting voters." So far as the voters knew of the use of the money, if at all, it was used for ordinary campaign purposes, — at least, so far as my argument went and so far as my knowledge goes; but when the men who were thus financed, through what perhaps appeared to them to be the ordinary political means of endeavor, into the Legislature and reached the Legislature, then they woke up to the fact that they were the creatures of the financial arrangements made in their behalf by others.

So that if you choose to apply the word "corrupt," which is a little ambiguous word and perhaps a sinister word, to the whole undertaking of financing a Legislature that you may control it, it was the members of the Legislature who really were controlled, — and if that means corrupted, call it corrupted, — and not the voters. I want the member, so far as he deals with what I had to say about it as being worth reply, to get the exact import of what I said and not misunderstand me.

Mr. LORING: I am very thankful to the member from Brookline for explaining, more clearly than I explained, the situation which he took in the matter. If there was any corruption of the Legislature, as I understand his explanation and as I understood it at the time, it was entirely indirect, and came from the way in which the money was spent, — not directly into the pockets of the Legislature for legislators, but rather into the pocket of the voter.

Mr. ANDERSON: I do not want that last statement to go as an interpretation of what I said. I made no suggestion that any of this money had gone into the pockets of the voters. I stated a moment ago, that, limiting myself to that which I know, not something which I might guess as being worse than that which I morally know, the money taken from the public service company treasuries was used along what seemed to be ordinary lines of political endeavor, except as controlling the press might be deemed to be extraordinary lines of political endeavor. I did not say either that a dollar of this money ever went into the pocket of any member of the Legislature or that it did not, but I have expressly limited my position as not charging criminal corruption either against members of the Legislature or against voters.

Mr. LORING: I accept the explanation of the gentleman from Brookline; I thought the case was much more serious. But the fact is, Mr. Chairman, I have not been in politics since the days when Governor Robinson ran against Governor Butler. In those days I remember —

Mr. BROWN of Brockton: I often have wanted to find somebody who knew something about that, and I want to inquire if he has any knowledge about who paid for dropping the monkey wrench in the machinery so that the voters could not vote for Butler. [Laughter.]

Mr. LORING: I was active in that campaign; I was on the State committee and aided Mr. Robinson in the election which he afterwards achieved. Further than that, I was on the executive committee and I never knew that anybody dropped any monkey wrench in any machinery.

Mr. BROWN: Thank you. Is the gentleman unaware of the fact that there was a monkey wrench dropped into Kiley's printing press and that Butler had no ballots when the working-men went to work at six o'clock, and so lost the election?

Mr. LORING: If that is true, I did not know it and I do not know who dropped the monkey wrench. But what I was going to say was that at that time the report was brought to Governor Butler that there was serious corruption, — that men were being paid for their votes; and the report was that Governor Butler said: "Gentlemen, take all the money you can get and vote as you like."

Now I think that is an attitude that any voter can take; he can

take all the money he can get and vote as he likes, and I think he generally does. I do not think you can buy many votes in this Commonwealth.

Mr. DONOVAN of Springfield: I take it from the gentleman's statement that his chief objection to buying votes is that the votes would not be delivered. [Laughter.]

Mr. LORING: That, Mr. Chairman, was Governor Butler's view of the question. I did not say it was mine. [Laughter.]

Mr. BROWN: I was going to ask, sir, he being on the executive committee of the Republican committee and managing the campaign, if he never was familiar with the theory that in the case of the colored voters he bought best who bought last.

Mr. LORING: I am learning a great deal this morning. [Laughter and applause.]

As I said before, my political experience has been very small. I may be down in the catalogue as a lawyer, — probably I am; but for every hour that I have given to the law I have given three or four to manufacturing, and if I stand here to speak to-day I stand here to speak for the efficiency of Massachusetts as a manufacturing State. It is only through her efficiency and through her equity in dealing with the laborer and with every other interest, that she has made the progress which I am proud to say she has. [Applause.] With adverse soils and adverse climate, with the soil, a little scattered here and there, pretty good between the rocks but mostly rocks, she has made progress unequalled by any State in this Union. And that progress has been made, not by any aid that the companies have got or the individuals have got from legislation, but in spite of every handicap that climate, soil and legislation could put in the way. We have had bad systems of taxation to add to our sterile soil. We have had restrictive legislation. I do not say that that was bad, because I was a believer in it and the companies with which I have had connection adopted the very measures long before they were enforced by legislation; but they have been handicapped in comparison with other States. In spite of this, Mr. Chairman, and in spite of everything the manufacturing companies of Massachusetts have gone ahead and now stand at the head, as they always have, of any in the United States or I may say in the civilized world. [Applause.] What do the names of Lowell and Lawrence, those two great cities, stand for? Do they not stand for the name of John Amory Lowell, who dammed the Merrimack River and set up mills, and for Amos Lawrence, the abolitionist, who did the same thing? They were men who believed in human efficiency and human education. Did not John Amory Lowell consign a whole fortune to the founding of the Lowell Institute, a great institution for the education of the people, free and unrestricted? Did not Amos Lawrence take the poor black man into his cellar and pass him on to Canada when to do so was a dangerous thing for his life? Are those the men of whom anyone would say that they did not regard the equities of life as well as the efficiency? I tell you, Mr. Chairman, that it is not only on account of the efficiency of the corporations of Massachusetts that they have made Massachusetts and themselves successful, but it is also on account of their equity.

I want to speak a moment about the inefficient. The New York, New Haven and Hartford Railroad was one of the inefficient; there

are others which are among the inefficient. The Boston and Maine Railroad was inefficient, and that is the reason or one of the principal reasons why it went down. It was not because it was investigated and investigated and the time of its people taken up so they could not run the railroad and attend the investigations, because if they had not been inefficient they would not have been the subject of investigation. We all know, Mr. Chairman, that in 1907, at the time of the panic in the New York stock market, when Northern Pacific in one day went up to $1,000 a share, everybody said there was going to be skinning of skunks in Wall Street, and we all knew that they were after old man Morgan, and we all knew that old man Morgan was the biggest man interested in the New York, New Haven and Hartford Railroad and in the Boston Elevated Railway and in other companies in this State. They went after old man Morgan and they did not get him, but they did destroy some of the companies he was interested in. And I tell you, Mr. Chairman, that they never would have got those companies, — they might have got Morgan, but they never would have got those companies if those companies had been efficient; if they had not relied on methods which we all deplore and which we all think wrong to boost their prosperity. But, Mr. Chairman, you cannot make a company prosperous, — and that is what I am coming to, — you cannot make a company prosperous by legislation, no matter how you obtain that legislation; whether you obtain it honestly or dishonestly, you cannot legislate any business into prosperity. The only things that can be legislated to yield prosperity are the natural resources which can be given away to people or allowed to come under their control. As the gentleman from Brockton (Mr. Brown) has said on the floor here, if you give the coal and the iron in the ground to somebody he can make an immense fortune out of it. But there is no iron and there is no coal in the ground of Massachusetts. What water power there is has been made of the best use so far as possible for the public by public-spirited men and there have been no undue profits obtained by any one so far as I know in Massachusetts through the legislation of this State. If large fortunes have been accumulated in Massachusetts through the natural resources of other States it was not because there was any aid from Massachusetts or her lawmakers.

Mr. Brown: Thanking the gentleman, and with great respect to him, I should like to ask him this: Do you not feel that the Legislature can legislate adversely to prosperity?

Mr. Loring: Mr. Chairman, I think I answer that question Yes.

Now, Mr. Chairman, the question resolves itself in my mind as to this measure that is now before this Convention. Is the I. and R. an efficient and equitable measure? If it is an efficient measure, then let us adopt it. If it is an efficient and equitable measure we certainly ought to adopt it. But I am not persuaded so far as I have got, so far, that it is either. I probably should not have got on my feet at all in this Convention to talk to you, because I am not used to speaking in public. I have been a business man and I am used to doing things, and not to talking. But the gentleman from Boston (Mr. Coleman) who has relations with Ford Hall said that at Plymouth, or rather on the Cape, there was a large corporation which had existed for nearly a hundred years and had an honorable history, and that the powder was hidden in the ground; that he was down there one Sunday night

addressing five hundred members of the workers and officers of that corporation, — they were all mixed in together, — and none of them knew and he did not know that the powder was going to be touched off and to blaze up in a strike the next morning. Mr. Chairman, I want to say right out that the corporation was the Plymouth Cordage Company; that I have had the honor to be the president of that corporation for nearly twenty years; that that corporation is nearly one hundred years old; that the water power which turned the wheel of the mill in 1824 and supplied the power is scarcely sufficient to supply the water for the boilers to-day; that when we went to the United States government to get a channel so that we could get our hemp from Manila and from Mexico brought up to our wharf and not have to unload it in Boston or New York and bring it by train, we could not get one cent from the United States government, because they had to dig a channel in Manchester harbor to accommodate a yacht club. Gentlemen, this Commonwealth took a more liberal view. They said: "If you will stand one-half the cost we will put in one-half the money," — I mention this because it is legislation that we have profited by, and the only legislation we have profited by, — "and to the extent of $100,000 we will help you dig that channel." We went ahead; we dug that channel, the State put in its money and we put in twice as much as the State put in, and we brought our hemp direct, and we brought the port of Plymouth from a port having no commerce to one of the large ports of entry of this Commonwealth by the means of that channel. And, Mr. Chairman, last winter when there were embargoes on the railroad we were within an hour and a half of shutting down our mill because we had no raw material, when a cargo of sisal came up that channel from Mexico and we put it in the plant and we did not have to shut down our mill and throw 2,500 men out of employment.

Now, Mr. Chairman, to refer to the matter of that strike, because I think a simple explanation of it does throw some light on the whole situation, especially on the situation of unrest in the industrial world to-day. Of course there is unrest, we all acknowledge that, and if there is any way of stopping that unrest I for one would not stop it. I believe, Mr. Chairman, that when you are sitting down and not doing anything you are not getting ahead. If there is not an unrest among the workers they never would be anywhere. What is the labor-union for if it is not to voice that unrest? I am no enemy of labor-unions. I am willing to talk to a union man or a union delegate or any man who represents labor, and I want to get at his point of view, and I believe every successful manufacturer wants to get at his point of view and he wants to coöperate with him. As the gentleman from Ford Hall said, what we need is coöperation, not competition and all that follows from it. What of the laws that are passed by this Commonwealth and by the Federal government? Do they give us a chance to coöperate? Are they not trying to force us to cut each other's throats every second of the day? How can we coöperate when every law is against it? And so, gentlemen, we are forced to stand on our own feet and we are forced to ask the people who work for us to back us up and to down somebody else even if we do not want to. I believe, Mr. Chairman, in living and letting live. But I am straying from the matter of that strike.

Mr. COLEMAN of Boston: I am very glad indeed that the gentleman from Beverly has identified the illustration that I used referring to a town on the Cape. I want to say that I am well acquainted with some of the men who are in control of the management of the Plymouth Cordage Company and I hold them in the highest respect and the greatest esteem. I do not know any industrial company in Massachusetts which is being led by men more enlightened and as far as I know more efficient in the conduct of their business and more anxious to be equitable in dealing with their employees than are these gentlemen, whom I know personally, in command of this company. I want to point out the fact that this very condition of things emphasizes the point that I was making when I referred to that company as an illustration. Even with such gentlemen conducting their business in such an intelligent and progressive manner, according to the circumstances and limitations of their trade, they nevertheless were subject to this costly strike, this tumultuous disturbance of their business, without apparently any warning, coming out of a clear sky and due entirely to the general conditions which I was trying to describe and for which they personally were not responsible.

Mr. LORING: I thank the gentleman very much for his kind reference to myself and my associates, and I am rather overwhelmed by it. But, Mr. Chairman and gentlemen, I do not think that the gentleman who last spoke understood the condition wholly, and while he says that it was a symptom of the general unrest, there too I will agree with him. It was, and it was a good sample of it. And that was just exactly why I am going to take your time by speaking about one isolated incident which otherwise I should not have the cheek to mention.

Mr. BROWN: With the gentleman's consent I should like to have it appear that his works were not organized by the American Federation, at least, and therefore there was no opportunity for them to come to him by representatives, as organized labor usually does.

Mr. LORING: That remark of the gentleman from Brockton reminds me of a common question, as they say, which is put to a witness and he is asked to answer yes or no: "Have you stopped beating your mother yet?" He is to answer it yes or no.

Now, Mr. Chairman, it is true that we were not organized, and it is perfectly true that there was every opportunity for those people to come to us and mention anything that they had in their minds. I will take this up now, though it comes out of order. But the officers of the American Federation of Labor, when they heard we had a strike, came down there, and they stayed in town 24 hours and they left town in disgust, and the disgust was not with the officials of the company. Mr. Mansfield, who is well known to most people in this assembly, came down, and he left town, not in disgust simply but in disgust and anger, because the workers said he had been bought up by the corporation, and he wanted to sue somebody and he could not find anybody to sue. [Laughter.]

The facts, Mr. Chairman, were these, as I shall endeavor to recount the incidents of this strike, which again I apologize for bringing before this august assembly, because it was an important matter to us but is not an important matter to you except as pointing a moral. On Sunday night, as the gentleman from Boston (Mr. Coleman) mentioned, he was in Plymouth and addressed an assembly. On Saturday

night we had heard that there had been a meeting in the house of a certain clergyman of socialistic tendencies down there, and that it had been decided to call a strike of the Cordage Company on Monday morning.

That was all the notice we had. We got that notice from somebody who was at the meeting. Somebody always leaks. What were we to do about it? We attended the forum on Sunday night. We knew we were sitting on a keg of gunpowder but we did not know where they were going to strike, we did not know who was going to strike, and there was nothing that we could prevent or nothing that we could do. We were not conscious of having given any provocation whatever for that strike.

I shall have to explain to you something about the cordage business. We make the binder twine, among other things, that binds the grain in the wheat fields. We make an immense amount of binder twine every day, thousands and thousands of feet and miles of it. The twine comes from the spinning machine and is wound up on bobbins; then those bobbins are taken to the balling machines, where the twine is made into balls, and afterwards packed in bags and sent to the grain fields. It is a self-evident proposition, Mr. Chairman, that no company can have bobbins enough to hold more than the product of one or two days' twine, and that if you stop the balling of that stock you stop the mill, because you have stuck a plug right in the end of the pipe.

Now, Mr. Chairman, when we went to the mill on Monday morning we went knowing that something was going to happen, or fearing that something was going to happen. There were seventy of the ballers, and they are among the skilled workers of the cordage plant, and the ballers worked for an hour, and then they shut off their machines and said they were not going to work any more. We asked them: "Why not? Why don't you want to go on with the work?" They said: "We are not going to work any more, we are going to have a strike." We ran the mill until twelve o'clock, that is, the twine mill; there are three mills down at Plymouth, and one up at Welland. We ran the mill until twelve o'clock, then we had to shut down because we had no more bobbins. In the meanwhile we had invited the ballers to come to us, or we would meet them anywhere, at their own hall, at the Opera House, or anywhere, and discuss the situation. No, they would not discuss, they were going to strike. We asked: "What do you want?" "Well," they said, "we don't know what we want, we are going to strike."

Then at twelve o'clock we shut down the twine mill, and then word had been passed around that it was not safe for people to work in the rope mill, and after dinner most of the foreigners did not come back to the rope mill, and so the company had to shut that down too. That threw out of employment perhaps three-quarters of the people.

The next thing we asked was to have a conference. We asked them if they would not appoint a committee and come before it and state their grievances. After some consultation a committee was appointed. On that committee was one man representing the American workmen. The rest of that committee represented aliens and non-English speaking operatives. If I could have spoken Italian and Portuguese, or if they could have spoken English, I think we could have settled that matter

then and there, but we were unfortunate in not being able to understand each other and we were unfortunate in our interpreters. But we had to do the best we could. It was then that the representatives of organized labor, the representatives of the I. W. W., and the representatives of I do not know who, came in and wanted to take a hand in the strike. But the operatives, even the non-voting operatives, I mean the foreign operatives, said: "This is a family quarrel, and you fellows keep out of it; we will settle this thing ourselves."

The strike lasted for five days, and then the State Board of Arbitration and Conciliation, which had a right to do so, summoned us all before them, in the armory, and we all went there, and that was the first chance we had to talk with those people in assembly. We had asked them if we could not talk with somebody, if we could not talk to the whole of them. We went before the State Board of Arbitration, and they sat as moderators. We explained the matter, and they explained to the State Board of Arbitration that they wanted a 10 per cent raise in wages. That was all right. We said: "We think that 5 per cent would be fair, and we will pay you 5 per cent now, and you go back to work; and if the State Board of Arbitration says you are to be paid 10 per cent, or any other sum, we will pay you that, but it shall date back to the first day you go back to work." The State Board of Arbitration said: "That is a fair proposition, you better take it, men."

Then there was lots of evidence as to the cost of living and the increase in wages. We had been increasing wages right straight along, and we thought we had kept up with the procession, but, Mr. Chairman, I am not sure that we had. We were willing to hear everything that was to be presented; and while I believed at the beginning of the strike we had caught up, and that our offer of five per cent was a fair offer, by the time the strike was over I know it was not a fair offer, because the cost of living had advanced faster than the wages in the meanwhile.

Now, that is why I do not care anything about the statistics in the State's reports; they are just as useful as a last year's bird's nest. [Laughter.] By the time they are published they are gone; they are like last year's snow, there is nothing to them; and it is just the same about the increase in wages. The increases in wages have been nearly monthly; they have not been once a year or anything like it, they have been increasing right along. There is one thing that I think is overlooked by the ordinary person when he says the cost of living has increased twenty-six per cent and wages have increased thirty per cent. He forgets the fact that the man has a family to provide for as well as for himself, and while his wages have perhaps doubled, his expenses have increased fourfold. There is another thing, on the other side, that people do not look at. These foreigners eat different food from what we do. While their food may have increased more than the cost of our food, — as a matter of fact it did increase more than the food we eat, — on the other hand, their rent had not increased one cent. There are all those things to be taken into consideration, or to be considered calmly, and not jumped at on any newspaper conclusions, or any reports of the market that you get in the newspaper, or that you get from obsolete reports of the government.

Mr. COLEMAN of Boston: Some seventeen or eighteen years ago I

was rather closely associated with one of the younger manufacturers of the State who was very successful in his line of industry. He had no interest whatever in what is commonly known as welfare work in connection with manufacturing plants. With great pride I directed his attention to the extraordinarily fine welfare work connected with the Plymouth Cordage Company. I think they have been leaders in that line of effort for certainly fifteen or twenty years. I know no manufacturing concern in this State that has done more for the good of its employees along the line of what is called welfare work than has this concern in Plymouth. I was trying to get my friend, the young manufacturer, to do something of that sort in connection with his shoe factory; but he, I found, had been to Plymouth, had looked over the plant of the Plymouth Cordage Company, and had a great contempt for welfare work applied to an industry where the scale of wages was too low. It happens that in the shoe manufacturing industry the rate of wages is high, I think the second highest of any industry in the country, exceeded only, if I mistake not, by the wages paid in the automobile industry. His argument with me was to the effect that it was a good deal better to cut out welfare work, which in the last analysis was really charity from the employer to the employee, and raise wages, pay the highest possible wages, and let the employee in a self-respecting way, as he said, spend his own money as he saw fit; and I never could get any appreciation from him of the splendid welfare work of the Plymouth Cordage Company, because he said that their rate of wages was altogether too low.

Now, I am not sufficiently acquainted with wages in that line of industry to know whether the wages of the Plymouth Cordage Company are less or more than they are in other similar lines of business; but I do know that wages in that line, as a whole, are very much lower, — I suppose necessarily, — than in the shoemaking industry or the automobile business. Now I want to ask the gentleman who has the floor whether the fundamental dissatisfaction on the part of his employees was not really a question of wages, and a question of wages, — not perhaps so much with reference to what workers were getting in the cordage industry, — but what other operatives in more favored industries were getting.

Mr. LORING: I will try to answer the question, but I want to protest, in the first place, against this name "welfare work." We do not give away anything down at Plymouth. If we do anything, if we give any facilities to our people, it is because of something that they need and that they want.

Now, Mr. Chairman, I emphasize this point. Some years ago we got up a complete system of insurance for old age, for sickness and for accident, and we got so far as to have all the blanks printed, and were ready so far as the company was concerned and so far as the foremen in the mills were concerned, to put it into operation. The operatives, for some reason I do not now understand, were suspicious that we were going to get a hold on them somehow by putting this into operation, and so, gentlemen, we simply dropped it. We thought it was a good thing, and we see it coming by law now; but they did not want it and they did not get it, and they do not get anything that they do not want. We believe, Mr. Chairman, that a man is entitled, as some of the labor men have said on this floor, to wages sufficient

to make himself comfortable, to provide for his family and bring them up and educate them, but we believe that he is entitled to something more. We believe that he is entitled to adequate support for his old age, and not to leave dependents in the poorhouse when he steps down and out. [Applause.] We believe further, Mr. Chairman, that he is entitled to have something in his lot in life besides hard work; and if we can set up a bathing beach, where he can enjoy the pleasures of the seaside at the noon hour and after he gets through with his work in the afternoon, at a small cost to us but an infinite gain to him, if we can lay out in every man's front yard, whether he hires his house from us or whether he hires his house elsewhere, or owns it himself, — if we can provide him with a garden spot, — we believe we are giving him something to which he has a right.

We began that policy nineteen years ago, — not this year, — a back-yard garden, as they call it since they became so fashionable; and every man down there practically either has a garden or raises chickens or ducks or geese, or whatever he likes. Everybody cultivates something and has an interest outside of his work, if he wants to have it; and they all want it.

Now, coming back to this question of wages. It did resolve itself into the question of wages before that strike got through; but I want to bring out now, Mr. Chairman, the fact that they had to have something to talk about after they had the strike, because you cannot shut down a mill forever and get away with it. Now, gentlemen, they began to talk about wages. We left it to arbitration, how much they were to get, to the State Board of Arbitration. The operatives told the State Board of Arbitration that they did not care much about them. We told them the mill had been shut down practically three weeks. The operatives lost about $75,000, and the Lord only knows how much we lost. Now, we said: "Gentlemen, we will take a vote, — if we agree to leave this with the State Board of Arbitration, — will you leave it to a referendum as to whether you will go to work next Monday?" They said they would. All right; everybody was tickled to death, especially the one American on the committee. They all thought, and we all thought, that our troubles were over. Well, sir, when the time came to take a vote, there were seventy men who said no vote should be taken, and they were the same men who made that strike. What was the company to do?

Mr. Harriman of New Bedford: I am interested in what the gentleman has said, and I should like to ask him as to what percentage of the people in his employ are American citizens, and also, as he perhaps might like to state, what the percentage would be of the more newly acquired citizens, — newly acquired residents of this country?

Mr. Loring: We have a large mixture of employees, and I shall have to say a word more than I meant to say, and take up more time necessarily. The company since I have been president of it, that is, for nearly twenty years, has increased over threefold. We are over three times as large as we were twenty years ago. That means that we have had to take on lots of additional help, and we could not keep only our old employees. In the first place, I will say that twenty-five per cent of the people who were working for us twenty years ago are working for us still, and that means that practically none of the people who worked for us twenty years have left our service voluntarily.

I should say, in answer to the question of the gentleman from New Bedford, that at the time of the strike, which was a year and a half ago, we had about 45 per cent Italians, we had half the remainder Portuguese and Western Islanders, and perhaps one-fourth of the whole employees were straight-out Americans. One of the complaints, — coming to the question now of whether it was wholly wages, — was that we preferred, in making promotions, straight-out Americans to the Portuguese or the Italians. That was one of the complaints. Now, Mr. Chairman, the answer is perfectly obvious to every man in this room. Those straight-out Americans have been working for us for twenty years or longer, and they were the fellows who were entitled to promotion and the people who knew the business, and naturally they got a majority of the appointments. But there were Italians and there were Portuguese who had been with us a long time, who stood in the line of promotion, and got it when promotion came.

Mr. Moriarty of Boston: I should like to ask what the dividends paid by the Plymouth Cordage Works are.

Mr. Loring: I am sorry to take so much time. The dividends of the Plymouth Cordage Company have been a uniform 8 per cent. As I have explained, the company has increased very rapidly, very materially. We have called in new capital from time to time. The last time we called in capital it was paid in at $150 a share, not at par.

I should say in further explanation that we have searched our hearts and we have searched the records to find a successful form of profit-sharing, and that if we could find such a successful form it should be put into operation. We did put into operation a form of profit-sharing that was a rough and ready one and we believe, Mr. Chairman, that that form of profit-sharing, while it was equitable to the operatives in the mill, never will prevent a strike. We believe when the strike is coming no form of profit-sharing that you can invent will prevent it.

Now, Mr. Chairman, the form of profit-sharing was very simple. We considered the regular dividend as equivalent to the investor's return on his stock. When we gave or do give an extra dividend to the stockholders we give to the operative the same percentage on his wages that he has earned during the year. [Applause.] It is a rough—

Mr. Brown of Brockton: I want to ask the question, sir, because I think it is a tribute. Does the gentleman know of another corporation that is doing so much for its help and trying to work out its general welfare as he is doing?

Mr. Loring: Oh, yes, I know of several of them, Mr. Chairman. [Applause.]

Mr. Coleman: In order to round out the picture will you kindly tell us what the minimum and average wage is in your establishment for men and for women?

Mr. Loring: I did not come primed with statistics, and they change so often I could not tell you, but I think we pay a little more than cotton mills and I know we pay less than the shoe industry.

Mr. Coleman: Will the gentleman give us just a rough idea?

Mr. Loring: I think the minimum wage for a lumper is, — well, there have been so many raises lately that I could not say, but a little while ago it was $12 a week. We employed until lately very few

women, — that is, eighty-seven per cent of our employees were adult men and there was only thirteen per cent of women and minors, and the women, to the best of my belief, get in the neighborhood of $10 at the present time, doing light work; that is, at the present time. Now there are some women doing spinning. Before that, women only unravelled knots and untangled, because, Mr. Chairman, in a business that is going to be successful, as I said before, you must be efficient. Now we find that, taking the dirt in one room in our mill, we —

Mr. HARRIMAN of New Bedford: I think the gentleman said in the first of his remarks that legislation could not do certain things. I should like to ask him if his industry has not received the benefit of a protective tariff?

Mr. LORING: Mr. Chairman, no, sir, it has not. [Applause.] I will tell you just why.

Mr. DONOVAN of Springfield: This question follows logically the question of the gentleman from New Bedford (Mr. Harriman).

I would ask if the Plymouth Cordage Company is favored by free trade in labor or has been so favored.

Mr. LORING: I do not quite understand what the gentleman means.

Mr. DONOVAN: The gentleman has stated that practically three-fourths of his employees are aliens. With that statement does he understand what I mean by free trade in labor?

Mr. LORING: If the gentleman means that every man has an inalienable right to work, and work where he pleases, I think I understand; otherwise I do not. [Applause.]

I want to get back to the tariff question now, although the high price of butter has not much to do with this Convention.

Mr. HARRIMAN: I want to say, Mr. Chairman, that the gentleman's answer is illuminating. If he receives no benefit from the tariff, — and I did not ask him for the purpose of putting his industry in bad, — that is a strange thing that labor has for years had to listen to the talk that a tariff was what made the standard of wage possible for the workers of this country.

Mr. LORING: We have not been very much benefited by the tariff because there is no duty on binder twine; it is absolutely free, and that is sixty per cent of our product. There is a tariff upon rope, but we make such good rope that we export it, we do not sell all our rope in this country. [Applause.]

Now, Mr. Chairman, I will get back to the initiative and referendum, or rather the referendum [laughter] as it concerns this strike. We thought when we were going to get the referendum of our working people whether or not they would go back to work on a five per cent insured increase and any increase that the State Board of Arbitration would give them, that we were through our troubles. But when they went to vote there were about 70 men there and they said the others should not vote on that question, and the company was right up against it and we did not know what to do next, until we sat down and thought it over. Then we said: "Gentlemen, we will open the mill on Monday morning and if anybody wants to come back to work he shall come back to work if the Commonwealth of Massachusetts can protect him." [Applause.] On Monday morning there was a large force of police down there. I should say that theretofore in the strike we had got on pleasantly. I shook hands with the men all

around the street and there was not a window broken. On Monday morning we opened the mill and just a few of the Americans straggled in, but we turned over the engines though of course there was no money turning over the engines with those few employees; but we turned over the engines and by noontime there were three hundred and fifty people who had come back into the mill out of two thousand. In the afternoon we were running very fairly well, and practically all of the American operatives had come on. On Tuesday a few of the foreigners came in; on Wednesday all the Portuguese and Western Islanders came in, and on Thursday the mill was running just as if it never had stopped and there did not seem to be any ill feeling. There was none on the part of the management, there was none on the part of the employees. Everything was running just as nice as possible.

Well, the State Board of Arbitration went ahead and made their award, and they made a pretty good award considering they did not do the business and did not understand it. But we found when they made the award that they had raised some people out of proportion and other people they had not raised enough; so we raised the other people and then we gave them five per cent more, because in the meanwhile, — and that is the reason I say these statistics are no good, — in the meanwhile the cost of living had increased so much that an award that would have been fair at the time of the hearings was not fair at the time it was given.

Now, Mr. Chairman, there is the history of the strike. I should not have gone into it except that the gentleman from Boston (Mr. Coleman) who mentioned the company said that the powder was buried in the ground and somebody threw a cigarette and it flared up. Now who flared up that strike? It was not the bulk of the operatives in that mill; it was seventy men out of two thousand who made that strike. The bulk of the operatives in that mill, if they could have voted, would not have gone on strike; they would have come and said to somebody else, — not to me, — perhaps to me in the last case, because my office is up here in Boston; the other men have their office down at Plymouth, but they would have said to somebody: "We want more wages; we think this, that or the other"; and they knew we would take it into careful consideration and they knew they would get at least a civil answer; and that is what they ought to have done before they struck. But they did not do that; they did it because the powder was buried there, as the gentleman from Boston said, and because they were bound to have a strike. Who buried that powder? Was it some of our competitors? I cannot say. We are forced into competition. We have had every sort of competition that man has. We "busted" the trust three times. We have not got everybody's good will, but we have always got along in our own family. Who buried the powder in that mill? It was men who had not worked there but a short time who went on strike; that precipitated that strike.

Mr. DONOVAN: This may be a good place to inform the gentleman, if he is not aware of the fact, that in the conditions within the industry and all such industries *there* lies the powder, not in the heads of individual men. I had intended, or I do intend later if the opportunity presents itself, to give an outline, if I may, of the conditions that beget industrial unrest and that make this proposition, this resolution

that is before us now, the initiative and referendum, a very important measure that will tend to alleviate that unrest. I believe that that answers the question suggested by the gentleman from Beverly (Mr. Loring). Nobody spreads the powder, no one man or set of men; but the conditions growing out of the industry which we are discussing have created that industrial unrest which broke out in the strike as described by the gentleman from Beverly.

Mr. Loring: I am very much obliged for the remarks of the gentleman who has last spoken, but I do not entirely agree with him and I will go on and explain why I do not fully agree with him. I think I know that that powder came, — and I am going to say it right out now and not bother you any more by keeping you in mystery as to what I was going to say, — I do not think it came from the voters; I think it came from the aliens. I think it came from the same men who are going up and down Oregon and in Butte to-day and making trouble. It came from people who have no stake in this country, people who are not voters, people who do not care one rap about the United States or the Commonwealth of Massachusetts, or anything else. And there is the unrest, there is the trouble that comes from those people, and not from the honest and sober workers of Massachusetts. [Applause.] It is their business to bedevil the thing. [Applause.] If they had had in their minds anything that they wanted they knew how they could get it, but that was not it. What they wanted was to make trouble, and they struck the wrong place. They made a lot of trouble, not only for the company, but they made a lot of trouble for the wheat growers in the northwest because we could not send them as much twine as they wanted. They made a lot of trouble for the honest workers down in Plymouth who could not go in and do the work in the mill and earn the money they were entitled to earn and they wanted to earn. And, gentlemen, they were not willing that an honest vote should be taken as to what should be done. They wished to carry out their will irrespective of any vote.

Now, Mr. Chairman, in spite of that experience I came to this Convention not only entirely unpledged but without my mind made up about the initiative and referendum. I have sat here every day and I have heard every speech that has been made since the Convention started. [Applause.] I have not been one of the fellows who has stayed outside attending to any other business. And, gentlemen, I think that the question of the initiative and referendum is not half as big a question as I thought it was when I came here. [Laughter.]

I have come to the conclusion, Mr. Chairman and gentlemen, that we are all aiming at practically the same result. I believe that we want to perfect this government if we can perfect it so as to make it absolutely efficient and absolutely equitable. We want to deny no man his proper voice in the government of Massachusetts. We want to have every man, as the gentleman from Boston in this division (Mr. Hale) said, "have a stake in the government." But, gentlemen, the question is: Does this measure give the men any more equitable part in the government, — I mean the general voter, I mean all the voters, — and is it a more efficient measure to accomplish that result? Of that I am very much in doubt.

In traveling around my district to try and find out what some of

the more sensible people and less sensible people thought of this thing, — that is, what the average man thought, — I talked with a shipbuilder down in Essex. He thought I was coming down to talk about building a steam trawler. Really I was down there talking politics, but I did not tell him. I wanted to get his unbiased opinion. He said in old times he liked it better; he did not have to go trotting up to the polls every three or four days to send a representative to the Legislature. He said that there was a primary law that was a positive nuisance, that the person who put it on the statute-book ought to be kicked all around the Commonwealth. He said: "I don't care for the referendum, because I will have to go and vote oftener." He said: "I want to employ somebody to vote for me. I have enough to do to attend to my own business, and after I select a good man and a man who is qualified and who wants to go and debate these questions, I think I have done my duty and I should not be called upon to do anything more."

Now that is one man's view. There are lots who will not agree with him at all. On the other hand I went to the other end of the town, to the great shoe machinery works. I found there lots of men who wanted to make the laws themselves. They could not go to the Legislature; they had to work for their living. Anyway the Legislature is not large enough to take in all the fellows who wanted to go from that end of the town. [Laughter.] Those men wanted the initiative and referendum because they wanted to make the laws themselves.

Now, Mr. Chairman, there is what I represent. [Laughter.] As the result of that I feel perfectly free to follow my own inclinations, which, as I before said, are not very strong. But I do believe that this measure is not an efficient measure. I believe, in the first place, that the getting of signatures to a large petition is not an efficient or even an illuminating way of getting any opinion about any public question. If I was one of these corrupt corporations I think I should look upon the initiative and referendum as a very good source of starting legislation even if I did not get it through, because any one with sufficient money can start a petition; there will be no trouble about getting the signatures. I do not regard that as an efficient way of starting legislation.

Mr. HARRIMAN: The gentleman said in his remarks that the strike probably would not have been declared in this industry had not seventy men refused to allow the others to vote on this question; in other words that if the question between him and his employees could have been decided by a referendum vote he had no reason to doubt that a settlement could have been arrived at, and arrived at justly. I ask him now, would it not have been better to have had that referendum, and if that be true would you not carry it as far as to say that when the Legislature refused to allow the people to pass judgment on matters that were fundamental to them it would not have caused as much damage as finally resulted between him and his employees? [Applause.]

Mr. LORING: There is a wide difference between a State wide referendum and a referendum to the gentlemen whom I had met in the armory and to whom I had talked and with whom I discussed the situation for three days. I lived in Beverly in the old town-meeting days and there I think we had as good a form of government as you

can have anywhere. There were political tricks in the old town-meeting days. I remember perfectly well the Hon. John I. Baker, who was as astute as any politician that sits in this body. And the Hon. John I. Baker put a vote and he saw that he was going to lose it, and he thereupon suggested that as it was an important vote and as the town hall was crowded, — it was a large town, — that we should go out and stand on the opposite sides of the street and be counted, and that those who voted in the negative should stand on the further side of the street and that those who were going to vote yes should stand on the nearer side of the street. [Laughter and applause.] Well, sir, I went out and I stood on the farther side of the street and wondered why I was not counted. Then we found out that the gentlemen who stayed in the hall had reconsidered the motion. [Laughter and applause.]

That only leads me to say, Mr. President, that if I can get with any body of men and talk the question out with them face to face, I am not afraid of the result of the vote. It may be against me and it may be in my favor, but whichever way it is, — and I do not care if half those people are foreigners, — whichever way it is I am pretty sure that the majority is going to be right. And if there was any way in this initiative and referendum of talking this matter out adequately I should be in favor of it and I should be sure that the final vote was right, even if given by less than a majority of all the voters of the State, or even if given by a majority of those present and voting.

But, Mr. Chairman, I think that is the second serious defect in this resolution. I think that the shipbuilder down in Essex was right when he said that after sending a man who was willing to go to the General Court, who was able to go to the General Court and who had the ability to debate these questions and decide them, he was going to give him his proxy to go and speak and vote for him. It is what we do in all our industrial companies. I could not run the Plymouth Cordage Company if I took a referendum vote on every subject that came up. Why, gentlemen, I know the case of a small foundry where the owner had some big contracts and he was running day and night to fill those contracts, and the men who were working for him knew that they had got him, and they came to him and said: "We want thus and so, or we will strike." "All right," he said, "take it"; and he gave them what they wanted. In two days again they came to him and said: "We want something more." And he said: "All right, take it." Before the week was up they came once more. This time he said: "I am done; I am through; I throw up my hands. Take the foundry, fulfil the contracts and take all the profit there is in them." They said: "All right, we will do it." And he said: "I will work just the same as the rest. I will keep the books, I will keep the accounts straight and I will attend to the payroll." So they appointed those who were employed in the office as a committee to run the office, and they appointed all the foremen in their former places, but every time they saw a man come into the office the ladlers dropped their ladles, the fellows who were putting coke in the cupola dropped their shovels and they all filed into the office to see what was going on, and the iron got cold and the castings were useless, and after trying it one week they said: "It is no use, the cobbler has got to stick to his last. You run the work and we will take our share."

Now, gentlemen, I believe in the cobbler sticking to his last. I believe if you are in a manufacturing company you want to appoint your men to run that company, to do your voting for you, to decide your policy. If you have not got confidence in them elect people that you have got confidence in, and then let them do it. [Applause.]

Mr. Morrill of Haverhill: I should ask the gentleman to carry out his statement to a logical conclusion, why we should not have progress, — if that is his contention. When this country first became an independent country things did not work smoothly immediately, nor do they in Russia. I do not believe the gentleman would advocate giving the Czar his job back again just because at first things do not run smoothly. Those men had not acquired all the technical details over night, just because there was a sudden change of ownership or management or whatever you want to call it, — control.

Mr. Loring: If there is one thing that I believe in in this world, it is progress. I believe if you stand still you are dead; the iron gets cold and you cannot run it in the moulds; but I believe you do not want to make progress in the wrong direction. I believe that when you change something you want to change it for the better, and if this is going to be a change for the better, let us make it. But I say so far as I am concerned, I do not think that this is a change for the better.

I am ashamed to take up so much time of this Convention in talking about things that do not seem to have much bearing on the business before us. But I am going to tell you about another interesting experience that I went through. I went into the Iroquois Iron Company —

Mr. Bodfish of Barnstable: I should like to ask the gentleman if he wishes us to understand that he runs the Plymouth Cordage Company by appointing agents who have the power of veto upon his will, as is the present case of amending our Constitution; and if he does not run his business that way and he thinks it is a good way to have the amendments to our Constitution made, why he does not run his business that way.

Mr. Loring: I am afraid I have not wholly taken in the question. As I understand it, I say, No; I do not appoint people with a veto over the way I run my business, because when I give a man a job to do I let him do it his own way. I do not tell every man just how he is going to do his job; I could not do it; I do not know myself. When I select a man to do a job I select a man who I believe knows the job better than I do and who will do the job right; and until he does it wrong I have confidence in him and I let him do it and I do not interfere with him.

Mr. Hale of Boston: What the gentleman just said is to my mind one of the most fundamental points in this whole debate, and I am very glad that the point has been brought out. I should like to ask the gentleman from Beverly now if when he has delegated a particular work to a particular head of a department, and that head of a department does something which he does not think is correct, whether he does not change the act of the head of the department; in other words, whether he does not hold back to himself a power of control over his agents.

Mr. Loring: I do not take any such autocratic position. If I can-

not show my agent that he is wrong the probability is that I am wrong and the agent does just the way he did before. In other words, you have got to trust the men whom you put in there unless they are wholly incapable and wholly inefficient. That I concede. If you find that in your opinion, and in the general opinion of those who have the voting power and have the management of your corporation, any one proves to be wholly inefficient, that person gets an intimation to that effect.

Mr. HART of Cambridge: May I ask the gentleman, in case he has designated agents to carry out his purposes and he afterwards discovers that those agents are receiving retainers from other people who have no connection directly with the business and following their directions, what he would suggest as a remedy?

Mr. LORING: I should kick them out. [Long applause.] I should not change the charter of the corporation. [Renewed applause.]

Mr. ANDERSON of Brookline: If the gentleman instead of being president of what I understand to be a very well organized and perhaps even a Massachusetts corporation, with a simple and presumably effective form of government, found himself the president of one of these congeries of corporations sometimes called trusts, with a species of gerrymandered representative government, so that there was power of voting vested in various bodies of stockholders or trustees or of some of the other numerous ramifications of the modern industrial enterprise, to get some of these unfaithful agents in; and they came back year after year, so that his beautiful and simple proposition of "kicking them out" was not available, — what would he do under those circumstances? Would he not try to find some other method of organizing his industrial machinery so that there would be at any rate an appeal from the decisions of those agents whom he could not "kick out" and whom he knew were making decisions which were affecting the interests which he was bound to safeguard?

Mr. LORING: Mr. Chairman, the United States District Attorney —

Mr. ANDERSON: United States Attorney.

Mr. LORING: United States Attorney, — I beg his Honor's pardon, — has put one of those hypothetical questions which are so much used in murder trials, [laughter and long applause], and which are so embarrassing to the witness. It would be difficult for me to answer the question satisfactorily, probably, to the gentleman and perhaps to myself. But I would say that if a corporation was as badly organized as that it would be sure not to succeed. It would be lacking in that efficiency, it would be lacking in that equity which is absolutely necessary for any corporation, municipal or private, to have in order to be efficient and successful.

I further say, gentlemen, that if I answered the question as the gentleman evidently hopes and expects me to answer it, I should be stultifying everything that I have so far said. I have said that I did not believe that this was an efficient remedy for curing the state of affairs which I think may exist to a limited extent at times, but which I do not think is the prevailing atmosphere of any business, private or public, in this Commonwealth, and therefore I respectfully decline to answer the question in the terms in which it is put.

To get back to my unfortunate anecdote, I went through the plant of the Iroquois Steel Company in South Chicago and I remarked that

it was the cleanest and one of the most orderly plants that I had ever seen in my life. Now an ordinary blast furnace is about as dirty a place as you can ever get into, but this place was perfectly clean. Of course you could not eat your meals off the floor, that goes without saying; but you could walk through it and keep moderately clean and come out of it without changing all your clothes. I remarked on that to the gentleman who was showing me around, and I pointed to a placard which read: "This is the dirtiest place in this plant." He said: "The foremen meet once a week and decide where that sign shall be put up. There is always a place that is the dirtiest place in the plant, and that sign has got to go somewhere."

Now, Mr. Chairman, I do not believe that the Legislature is the dirtiest place in the plant in Massachusetts. [Applause.]

Mr. Herbert A. Kenny of Boston: If I understood the gentleman right in his earlier remarks, he said that he had 2,500 employees and that when the question of strike came up he could not get a referendum to the employees on the strike because of the 70 delegates who represented them. Did I understand him to say that if he could have got a referendum to the employees there would have been no strike?

Mr. Loring: It was not 70 delegates. It was 70 men who started the strike. They were not the delegates on behalf of the other men.

Mr. Kenny: Well, as I understand, these 70 men represented these 2,500 men; is that right?

[Cries of "No."]

Mr. Loring: They did not represent anybody in the world except themselves.

Mr. Kenny: Well, Mr. Chairman, do I understand the gentleman to say, then, that the 70 men prevented a referendum?

Mr. Loring: They did.

Mr. Kenny: Does not that body of 70 men, therefore, apply to the Legislature of Massachusetts, who do not represent the people and who are preventing a referendum? And if a referendum is good in settling strikes, why is it not good in law-making?

Mr. Loring: The first point is, those 70 men did not represent the employees and were acting antagonistically to the employees, as was admitted by the employees. In the second place, I already have explained the reason why that differed from a referendum to the voters, — a referendum to our employees, — because I had had the opportunity to meet the employees and to talk for over a day and a half and they had talked to me for over a day and a half and we talked to each other for three days, and if we did not know pretty nearly what was in each other's mind, if we had not threshed it out, there was no opportunity of ever doing that. Now, gentlemen, you cannot do that with the voters of the Commonwealth. You cannot get them in one forum and talk the matter over. I believe in the old town-meeting and I was perfectly willing to take the judgment of the old town-meeting. I believe in democracy; I believe in pure democracy. If you can get the men together and talk it over I am willing to abide by the result whether I think it right or wrong.

But under this proposition you cannot do that. That is my objection to the initiative and referendum. The first objection was that the initiative is an inefficient way of starting legislation. My second objection is that the referendum would not get a fair expression of

opinion or as good an expression of opinion as you could get from a body of men who were elected and appointed to discuss the question and decide it. I may be wrong; if this Convention says I am wrong I am going to believe I am wrong, but I do not believe it is. [Applause.]

Mr. Sanford Bates of Boston: I realize what is in store for me when I attempt to question the gentleman now on his feet, but I also realize quite keenly the point that he has brought out, that a referendum on a technical or an administrative matter is unwise in a great many instances. But I want to follow his simile just a little bit further, Mr. Chairman, and ask him to take himself back to his factory once more and assume that a question came up which treated fundamentally of the welfare of his employees. For example, do his employees desire to give up a certain percentage of their wages and establish a fund for their own insurance? Or take another question, do his employees desire to work half an hour longer each day in order that they may have a half-holiday on Saturday? In a question of that kind would he think it proper or fair to his employees to allow one or two superintendents to decide that question or is there not a field, — my question arrives simply at this, — is there not a field in large public questions which do not require technical discussion or debate? Is there not a field in an industrial plant or in a Commonwealth or in a community where the people rightly and intelligently can decide questions for themselves on a referendum?

Mr. Loring: I do not want to thresh over old straw a second time. I already have referred to the question of social insurance, which we presented to our employees, which they did not want and they did not get. We did not put it to a vote. We found out that they did not want it, and they did not get it.

Now as to the half-holiday on Saturday, we treated that in exactly the same way. Several of the employees came to us and said: "We would rather work half an hour longer a day and get a half-holiday on Saturday." We inquired around, found that was so, and the people who had the deciding of it found that there was a sentiment among the employees in favor of it, and we regulated the hours of labor in accordance with that sentiment.

Mr. Creamer of Lynn: I should like to ask the gentleman from Beverly if he thinks it is possible under our present system of government in Massachusetts to get the same efficiency, the same responsibility, that he gets in his business?

Mr. Loring: I was just coming to that when I spoke about the signs not being up on the Legislature. I do not believe that is the question that is the most burning question before this Convention. I believe that the administrative branch of this government requires the attention of this body much more than the Legislature does. [Applause.] And I believe that the sign is up in two or three other departments rather than in the department under discussion to-day. I believe that if we devoted some more of our attention, — I am sorry to have taken, really I am sorry to have taken so much time [cries of "No, no!" and applause], — I believe that if we go into the other questions with the same thoroughness and the same desire to arrive at a sensible and proper result, this Convention is going to accomplish a good deal.

Now, Mr. Chairman, it has been said that people who are opposed

to the I. and R., — and I did not start out that way, I started out with my mind perfectly fair, — ought to make some constructive suggestion; that they have not made any so far, and that if they did, then they would be talking. I agree to that entirely. I do not believe in destructive action. I do not believe in all these investigations and all this ripping up of things just for the fun of ripping them up and not accomplishing anything in the end. But I do believe in constructive action, whether it be in private or in public. Now, Mr. Chairman, if the method we have to-day of amending the Constitution is not a proper way, if it is difficult for a good amendment to get the necessary majority in the Legislature, I do not think that you have made out a case for doing away with the Legislature's amending the Constitution. I think you have made out a case where some more reasonable method of taking the vote in the Legislature should be suggested and perhaps adopted. I have not given these matters much consideration; I have been busy about other things. But I believe, Mr. Chairman, as I look at the matter to-day after sitting here and hearing these debates, that if a constitutional amendment was passed through the Legislature on the same majorities and in the same way as an ordinary bill is passed through the Legislature, and passed through the Legislature twice, perhaps by a majority of all the members, taking the Senate and the House together, — if a majority of the Senate and House together would say that an amendment ought to be submitted to the people, I believe that would be a sensible, a conservative and not experimental way of perfecting amendments to the Constitution. [Applause.]

I thank you for your attention. [Applause, — Mr. Loring rising and bowing in acknowledgment.]

Mr. Moriarty of Boston: I understood the last speaker to say that there have been so many increases in his factory, the cordage works in Plymouth, that it was impossible for him to tell what the wages were, but he thought that the average was $12 a week.

[Voices, "No, no."]

Mr. George of Haverhill: That was the minimum.

Mr. Moriarty: That was the minimum, $12.

Mr. George: A lumper.

Mr. Moriarty: If the minimum is only $12 a week and those increases have been taking place monthly, as he said, God knows what the poor men were getting a few months before.

Now, Mr. Chairman, during the debate about the Plymouth Cordage Works, when every man got on the floor to ask a question of the learned gentleman on my left (Mr. Loring) I heard a chorus of "Don't answer — No." I want to say that when I asked what dividend was paid by the Cordage Works they also said "No." They were satisfied to have the part of the poor unfortunate laborer come out, but as far as the financial part they did not want that to come out. [Applause.] It was not my intention up to this morning to take up anything like that. But I could not let it pass without making some comment on it.

I want to say that it seems to me that we assemble as a State Board of Arbitration on labor and capital, as far as this Convention has asserted itself up to this time. I want to say that labor, or organized labor, asks this Convention for nothing as far as legislation is

concerned. Organized labor is in a position to go out and get their conditions. [Applause.] All legislation fathered by organized labor in the House and in the Senate on the other side of the building was not for the organized man and woman; it was for those who unfortunately are unorganized, man, woman and child. Their time and their money have been spent for bettering the conditions in the mill industry. The well-known bill, the fifty-eight-hour bill, again in a few later years the bill for fifty-four hours, the bill for the tour workers of eight hours a stretch, the bill for the eight-hour day for women and children, — that was defeated in the Senate last year and one of the speakers who made an eloquent address on this floor in opposition to the I. and R. was one of the men who registered his vote in opposition to an eight-hour day for the women and children in this Commonwealth. [Applause.]

Mr. Churchill of Amherst: I should like to correct the speaker, Mr. Chairman, to this extent. I did not register my vote against an eight-hour day or a fifty-hour week for women and children. I registered my vote against the measure which was before us at that time.

Mr. Moriarty: I should like to ask the same delegate if he offered any substitute if the one that was there was not satisfactory?

Mr. Churchill: I do not wish at any time to defend any vote of mine before this assembly, which is not interested in that. I am desirous only of having the extent of it stated. I should be very glad to explain to the gentleman the reasons why I voted against that measure, or to anybody else who is interested. I simply deny what is the assumption that is constantly made and which makes really one of the reasons why I must oppose the initiative and referendum, — the assumption that because a man is against a given measure, whatever its details, whatever its application, whatever the time at which it is proposed, that therefore he must be against the general principle and purpose that underlies that bill. That is the assumption, Mr. Chairman, that is constantly made, that if, for example, a man votes against a one-day-in-seven hotel bill which is specific, he therefore is against one day in seven. And it is because when such measures come before the people it is natural for us to say: "The principle is a good one, let us vote for it," whereas as a matter of fact the measure may be in itself not properly prepared, not properly digested and not taking care of proper interests, but destroying some of those things, although it is aimed in a right direction. It is because of that situation largely that I am against the submission of such measures to the people, because the discussion and the understanding cannot be adequate. [Applause.]

Mr. Moriarty: I still have not got any answer to my question, — whether he introduced a substitute. If he did not, in my opinion and in the opinion of the people I partly represent, he was against the principle when he did not introduce a substitute.

Mr. Churchill: I will ask the gentleman this question: Whether he will here and now accept my statement that I desired to see a forty-eight-hour day for women and children in the textile mills of this State, and that I am thoroughly in favor of the principle?

Mr. Moriarty: As an individual or as a senator representing the people?

Mr. Churchill: As both.

Mr. MORIARTY: I want to say that as long as I have brought out that statement I am going to take another thing that the same gentleman voted on in the Senate. He voted No on two platoons for the firemen. [Cries of "Good" and applause.] He voted No on a maximum to the injured workmen.

Mr. CHURCHILL: I am not quite sure what the gentleman is referring to and I object seriously to taking up any time of this assembly in defence of my votes. I do not intend to do it, but if the gentleman refers to the increase of workmen's compensation from the $10 maximum to the $14 maximum he will find that I voted for that bill.

James T. Moriarty of Boston.

Mr. MORIARTY: I intended to pick out nobody, but as long as from my earlier remarks the cap fitted somebody and he realized who it fitted, I had to continue.

I want to say that in all of the laws that the labor movement has come here asking the Legislature year in and year out to help out, it was helping out the poor unfortunate that had no organization. It was the poor unfortunate who happened to work in such places as the cordage works of Plymouth. In an answer the last speaker (Mr. Loring) said that he knew a number of manufacturers in this Commonwealth were in the same position as his firm held, with a minimum wage for men of $12 per week, and they had been advanced monthly. I feel that the strike at the cordage works did a very great justice to the people of Plymouth.

I still want to take up the remarks of the first man who rose in opposition to the I. and R. (Mr. Choate), who said that the car men, the street-car men, did not have time to look into things that were liable to be put on the ballot. Is it not a terrible thing that at this time in life the men who carry you to and from your business have to work so long hours that you are not safe in their hands? [Applause.] It may be that that train that went against the bumper in the North Station last night, — it may be that that motorman had worked long hours, and on the front page of your papers this morning you see where twelve people or more were dangerously injured.

Mr. Moriarty continued his argument Tuesday, September 4.

Mr. MORIARTY: I have got a few facts which I wish to present to you. As long as the Plymouth Cordage Company has brought its case in here I suppose it is public property. I have here in my hand the report of the State Board of Conciliation and Arbitration, Boston, April 4, 1916. It says:

> Having considered the said application and heard the parties by duly authorized representatives, investigated the character of the work and the conditions under which it is performed, which is the subject-matter before the Board, the Board awards that the following prices be paid by the Plymouth Cordage Company of Plymouth for work as there performed:
>
> Beginners, girls or boys, $6 per week, $1 per day.
>
> Women or girls of one year experience in preparation rooms, $7.50.
>
> Men receiving $9 per week, 12½ per cent increase.
>
> Men receiving over $9.60 per week, and less than $12, 7½ per cent increase. All others, 5 per cent.
>
> Piece work. Opening, 6 per cent increase; spinning, 8 per cent increase; baling, at the rate of $1.50 per 90 bales per day, plus bonus rate for each bale in excess of 90 bales as paid January 16, 1916.

All other increases 7½ per cent.

The foregoing are to be construed as applied to wages paid and prices for piece work as paid by the employer January 16, 1916.

By agreement of the parties the decision is to take effect as of the date of the return to work of the striking employees.

The 5 per cent increase as paid by the employer to be considered as included in this award by the Board.

BERNARD F. SUPPLE, *Secretary.*

It was said here Friday that the unrest of the people in the Plymouth Cordage Works was by outsiders, or a few new employees brought in there. I should like to ask a lot of you men as delegates here if anybody would have to come in from the outside, if you were working under those conditions, to arouse you to go out and look for improved conditions. The cause of the strike was low wages and long hours, and what the men and women struck for was to better their condition. The average wage in the Plymouth Cordage Works prior to the strike was $10.03 per week. And the delegate said that the people living in Plymouth were a contented lot of people. They asked a minimum wage before the Board of Conciliation and Arbitration of $12 per week for men and $8 per week for women, — that was what they asked for, — and an 8-hour day and the abolishing of piece work.

I asked the delegate what the dividend paid by the Cordage Company was, and I was answered that it was 8 per cent. I should like to ask if that 8 per cent also paid for the $200,000 that was put in to widen the canal coming up to the Plymouth Cordage Works, or if it was the surplus left over after taking away from the poor unfortunates who were getting the low wages there, and who were responsible for every dollar that was put into that canal. I have some figures here that have been looked up since Friday in regard to the Plymouth Cordage Company as to its fairness to the employees on wages. How does it happen that in the year 1912 there was a surplus of $1,247,594, and a reserve of $85,000 and a total of $1,332,594, and for the year 1916 a surplus of $2,611,619 and a reserve of $180,811? Assets were $7,680,032 in 1912 and $12,522,418 in 1916, difference from 1912 to 1916 $5,000,000. Then they come here and say they come with clean hands, that they did not know what the trouble was until the night before the strike took place, that the people in Plymouth were discontented at the conditions being handed out. I gladly say, to take the words of the speaker who preceded me, yes, there are a lot of other concerns in the State in the same position as the Cordage Works, — taking his statement.

Organized labor makes no apology to any member in this Convention or in any halls making laws in this country for its conduct, neither does it apologize for any individual who has done wrong in times may be that he should not, but organized labor makes no apology; and I say to all of you delegates that if any of you represented masses as we represent them and could come in here with as clean hands as organized labor brings in here [applause] there would not need to be a fight now on the initiative and referendum, because we should have had it some years ago. Organized labor, for ten years prior to the legislation going on the books for the Workmen's Compensation Act, knocked upon this door year after year, with the result that it was turned down for ten consecutive years, but after persistent knocking we did get a bill, not satisfactory to the worker, anything

but satisfactory to the worker, but year after year we have bettered it, and we are going to continue knocking at the door of this Legislature until we have a perfect Workmen's Compensation Act for the benefit of the employee who unfortunately is hurt at his work.

Organized labor is not a destroyer of the courts. Far be it from such. We recognize the courts as being the authority, and we recognize the authority established in them. The only criticism that the organized labor movement has of the courts is when the court steps outside of the duties invested in that court. When it goes outside of what is invested in the law then we have a right to complain, but we come to the right place to complain, we come to the legislative halls year after year, trying to benefit our conditions.

But let us see who is responsible for the uprising so much talked of in the west, and the I. W. W. movement. We have an alliance of manufacturers who go into those countries in Europe, those foreign countries, and picture on the billboards the fine conditions in Massachusetts. They show the employees coming out of the mills and the manufacturing places in Massachusetts, with a fine big boulevard running from the mill to the bank on the other side of the street, intimating that when a man leaves his work on pay day he does not have to spend even any of the money that he has got in the envelope, but he walks right across the street and deposits it in the savings bank. The employers' alliance are responsible for that advertising in Europe. Yes, I should be apt to say that some of the chambers of commerce were responsible for those advertisements in Europe. The labor movement, or the organized labor movement, has tried year in and year out to stop that kind of labor coming in here to break down the conditions of the American citizen. The organization that I represent in part will not take a member into its fold without he first signifies his intention to become a citizen of the United States. I should like to know how many employers' organizations do likewise.

I have heard the opponents of the initiative and referendum here practically admit that they do not believe in majority rule, that they still want to be governed by the minority. To-morrow we have some of the young blood of this country being drafted and going away to their encampment grounds to be trained, — for what? To stop the minority government of Germany. You are sending your United States soldiers in transports across to France to fight against minority ruling, to uphold the President's message, or the answer to the Pope, that the United States wanted the dethroning of the Kaiser of Germany on account of minority rule. You men are afraid that the majority may rule. The majority are going to rule [applause], whether it be allowed in this Convention or whether we have to have conventions year after year until we do get majority rule.

The State Senate, — I do not know whether I ought to get bold here and say that in my opinion the Massachusetts State Senate has stolen or killed more good legislation for the people than any forty men in this country that ever were got together. When they want to duck their vote, so that their people will not know their action, they agree to pair with one of their brother Senators who does not live in a neighborhood where they may be able to get after him. He goes away for a day and is paired. Organized labor through its meetings and through its councils and through its Central Labor Unions in the various cities

of this Commonwealth discusses public questions, which brings information to its members. We run maybe the most open forum of any organized body in the world. Our meetings on Sunday held in this city, the Boston Central Labor Union, have the door wide open. You do not need to make yourself known. You may come right in and listen to the discussion. Yes, and we will allow you the privilege of the floor if you will agree to answer questions on the subjects you take up. There is a wide open forum looking for an uplifting of the workingman, woman and child, in all of their toil.

I do not like to take up too much time, because I realize there are many others to follow me, but I do not think that I ought to leave this matter too lightly and have some of you men go out and find the responsibility, the class of people that is coming in here and making an uprising in both the labor movement and in the industries of this Commonwealth. But I believe this: The labor movement is not responsible for those situations; but the demand is growing all of the time, and the unrest is getting larger, coming from the west here closer all of the time. I asked one gentleman who is an honorable delegate to this Convention, a member of the Arkwright Club: Is it possible that on all of the differences between the labor movement and your large organization that the two organizations, the organization of the State Branch of the American Federation of Labor and your organization, should not be able to sit down at a table and see how far they are apart, not for the benefit of the two combined, but for the benefit of the community? The whole situation has been that the large employer, when he came to meet a representative of organized labor, one of those so-called labor leaders, — and I do not claim to be a labor leader, I am in the employ of a labor organization, — did not understand the situation. The organization that I represent never named me as a labor leader; it was the employer who employed the men whom I represented who gave me that name, and I have never heard anybody give a definition of what a labor leader was. I am not one of those men who carry the labor movement in my pocket. I try to represent the men honestly, and I am going to continue to do that. But the labor movement always is willing to sit down and talk over matters. No, they will not always submit their cases to arbitration; and I would ask, after that decision of the State Board of this State, allowing a 5 per cent increase, with a surplus of $5,000,000 in four years, is it a fair increase in wages? No, we shall not always allow our cases to go to arbitration in regard to the 8-hour day. That is our principle, and we are here to establish the 8-hour day.

Mr. Loring of Beverly: I want to say one word about the surplus. That is owing to the immense appreciation in the cost of raw materials. Our company necessarily had to carry nearly a year's supply of raw material, and that raw material has advanced over threefold of late years, owing to the difficulties in Mexico and the Philippine Islands, and that has caused the increase in the surplus. As I said, that award was obsolete when it was given, and we had to increase the wages from the amount awarded by the State Board.

Mr. Horgan of Boston: Without any desire to inject the Plymouth Cordage Company unnecessarily into this proposition, after listening to the statement of the gentleman from Beverly (Mr. Loring) in connection with the surplus which is spoken of, I desire to ask, if that

is so, how, according to the statement for the fiscal year 1916, the Plymouth Cordage Company had, in its possession, manufactured goods and dye materials, stock in process, amounting to $5,963,000, in addition to the surplus?

The CHAIRMAN (Mr. Pillsbury of Wellesley): The gentleman addresses his question to a gentleman who has not possession of the floor. The chair thinks that the committee may properly be reminded of Rule No. 16:

> No member speaking shall be interrupted by another but by rising to call to order.

The gentleman from Boston, Mr. Moriarty, has the floor.

Mr. MORIARTY: I am going to say that bringing men from Europe, giving them small wages, working them long hours and under poor conditions in the factories, is responsible for the I. W. W. being here. It is un-American. The American labor movement is not one ounce responsible for those conditions, but the American manufacturer, so called, is responsible for the I. W. W. movement in every part of this country. The labor movement as a whole consists of law-abiding citizens. There never has been brought to the labor movement anything in regard to the violation of law and the loss of life that cannot be doubled, yes, trebled, against the employing forces of this country. Why, if some of you men will read the report of the industrial commission in the mining industry, where the mining interests hired gunmen and detectives and brought in the military and shot down innocent babes in their mothers' arms, testimony that came out before the industrial commission, you will see what the situation has been. Yes, and I will say that every bit of that responsibility rests upon the moneyed interest of this great (so-called) free land. Labor does not want to destroy, but wants to build up, so that its offspring shall not have to go through some of the things that the fathers and the forefathers have gone through.

I had the pleasure of going to work before I was 13 years old in a cotton mill as a back boy, and I rose and went to work at ten minutes past six in the morning and worked until twelve noon, and went to work at one and worked until six, five days per week, and worked from ten minutes past six on Saturday morning until twelve noon, and received three big silver dollars every pay night, whether I earned them or not. But I did not continue to do that. I went out and learned a trade, and that trade was in the same position as the poor unfortunate in the mill. We did not have an organization. As I said here on Friday, the fight of organized labor is not for the organized man, it is for the poor unfortunate who is not organized. The labor movement has a way by organization of getting its fair and honest demand. Why do all of the business men, why do all of the lawyers, why do all of the reformers and why do all of the philanthropists becoming interested in legislation, look to the tail of the labor movement for their benefit? One year it is the employer working them. One year it is the lawyer working them. The next year it is the reformer. But it is everybody trying to juggle the poor men and women who toil. This year just passed they came to the Legislature and asked that there be a commission of five appointed, to be appointed by the State Board of Labor and Industry, for permission to lay aside the labor laws in the industry of this Commonwealth under the guise that

they were in the employ of the government, getting out war orders. A schoolmaster in Quincy had the audacity to go before that committee and ask them if he could not use the boys under the age of sixteen from ten to twelve, who were working in some of the trade schools in Quincy, if he could not put those boys in the Fore River Shipyard, with that big cloak, trying to help out the government at the detriment of the working-man's son. That school teacher! Just imagine the authority that that one man took upon himself. Yes, and some of the other big interests in this country or in this Commonwealth, have been asking that the laws be set aside. When ten per cent of the work in their industry is being done for the United States government they want to work also those minors and women and men outside of the hours established in this city, they want to work them on the 100 per cent, not the 10 per cent for the government. And I would say to the delegates here that if the power was shifted around, and the labor movement should use its power and stoop to some of the things that the employers stoop to, it would be worse than the I. W. W., because we have the forces. But the movement in my time never has done that, and I hope in my time that it never will do that.

But I say to you men who are the handlers of industry sitting in this Convention, that you want to beware and take heed of some of the men in this Convention that the rising is coming. The organized labor movement will not be able to stave it off. We ask your help in the establishments in this good old Commonwealth to put them under the banner of the organized labor movement; and putting them in control of the movement that has been established, the movement that is here to stay, will be the only way to stamp out the I. W. W.

In conclusion, the initiative and referendum brings important subjects to the people; it would protect the industries of the Commonwealth and perhaps bring more here. We are told by our employers, in all kinds of trades and callings in this Commonwealth, that we have got the most educated mechanics in the Commonwealth in the United States. The building trades mechanic of this Commonwealth is heralded from coast to coast as being the best mechanic in his line of trade that there is in all of this country. They say the same of the mill industry, and they say the same of practically every other industry. If it were not so, how could they thrive against the conditions of the south? We have wiped out some of that. When the President of these United States signed the child labor bill it put the cotton industry in a far better position than it ever was in before in this Commonwealth. It will give them an opportunity. And I say to the Arkwright Club here that the best thing for the Arkwright Club to do, the best thing to do for the employee of the mill and the best thing to do for the Commonwealth at large is to sit down around a table with the representatives of the people you employ and see if you cannot come to an honest, sound understanding for the benefit of the Commonwealth and its citizens.

Mr. Chairman, I am going to conclude by saying that I hope that when this Convention votes, the initiative and referendum will be carried. And I want to say in conclusion that as far as the courts are concerned the labor movement is not here to get the initiative and

referendum to deal with the courts. The courts, as far as the labor movement is concerned, are third, fourth, fifth, yes, I would say out of the question altogether as far as the initiative and referendum is concerned. We believe that if it is put within the power of the people the learned attorney now sitting on the bench will go along as the law provides. All that the labor movement asks is a square deal, and it will do its share in defending this flag as much as any body of men brought together in this country.

Henry V. Charbonneau of Lowell.

Mr. CHARBONNEAU of Lowell: The proponents of the initiative and referendum have made their principal arguments mainly on the ground that there is much social and industrial unrest in the Commonwealth, and that if the initiative and referendum were adopted the people would have a greater voice in framing legislation. Gentlemen have pictured with much eloquence the inequalities in the distribution of wealth and the social unrest existing in the Commonwealth. It may be admitted at the outset that there is an unequal distribution of wealth in this State, but that is not a condition peculiar to Massachusetts; it has existed everywhere since the beginning of history. Men have been trying for centuries to legislate against it, and we have come to such a degree of perfection in our laws in Massachusetts that it still is possible in this Commonwealth for a poor boy to rise to wealth and influence. There are many men who are leaders in our industries to-day who have come from the humblest and poorest families. It is not unusual to find big contractors who, fifteen or twenty years ago, were simply laborers.

As to industrial unrest: There may be some, but I have taken the trouble to speak to my fellow-delegates from Lowell, a great manufacturing city, and to many workmen in the mills and to some of the employers, and the unanimous answer to my questions is that at the present time there is less industrial unrest than there has been in the last twenty years.

Mr. DONOVAN of Springfield: I should like to ask the gentleman before he leaves that question to explain, if he can, why there is less industrial unrest at this time. Did you say industrial unrest?

Mr. CHARBONNEAU: Yes.

Mr. DONOVAN: Or did you say less unemployment?

Mr. CHARBONNEAU: Industrial unrest. The reasons advanced by the men with whom I have spoken were that there is at the present time less unemployment than there has been in the last twenty years, and that the wages are higher now than at any time in the history of the mills.

Mr. DONOVAN: I want to ask the gentleman this question: As to what is the explanation, if he can give any explanation, for that state of affairs. Is it not due to the fact that we are in the midst of a world war, and that the workers are being employed to a greater extent than ever before in making guns and machinery for killing the workers, the citizens of other nations?

Mr. CHARBONNEAU: It may be that the war industries have contributed to some extent to the prosperity of the city of Lowell, but the prosperity is remarkable. It is not unusual at the present time

to see men working in the mills go to work and back in automobiles. It even has been found necessary for one employer to provide parking space for the machines of his men.

Mr. Chairman, even if it were true that there is some social and industrial unrest in the Commonwealth, it does not follow that the initiative and referendum will be a cure or even help to remedy it. I have here a sheet which indicates the States that have adopted the initiative and referendum, and among them are such States as New Mexico, Nevada, Oklahoma, Montana, Arizona and Maine. As to the western States the conditions are so different that they cannot well be compared with this Commonwealth, but Maine is a State that very much resembles the Commonwealth of Massachusetts. It was originally a part of the Colony of Massachusetts Bay. It was peopled by about the same people as we have here in Massachusetts. It has a great seaport, great cotton industry, shoemaking industry, farming, and in most ways it is probably the State that most closely resembles Massachusetts that has adopted the initiative and referendum in this country.

What has Maine accomplished in its nine years of initiative and referendum? The hours of labor in Maine as prescribed by law are fifty-eight, as compared to Massachusetts' fifty-four. Children can work in the mills at the age of fourteen for fifty-eight hours, and in case of urgency, or where they work on perishable material, they may work in excess of fifty-eight hours; even young girls of fourteen may be made to work, with the consent of their guardian, more than fifty-eight hours per week. There was a provision passed even after the initiative and referendum was in force in Maine allowing this, and that was in 1911. Now, Maine has no mothers' pension law, and in about every line of social welfare the laws of Massachusetts excel those of Maine. The factory inspection laws and laws to that effect are superior in Massachusetts to those in Maine.

One of the greatest difficulties to my mind in the initiative and referendum is the difficulty of amending a law once it has been passed by the initiative and referendum.

Mr. Webster of Haverhill: In view of the gentleman's observation regarding our sister New England State of Maine, I should like to ask him if from the operations of the initiative and referendum in that State he would argue any great danger of too rapid and radical change in the legislative institutions of New England under the operation, supposititious, of this reform.

Mr. Charbonneau: I had not advanced any such argument, but I brought these facts forward to show that the initiative and referendum will not bring about social legislation, as is contended for by the proponents.

Mr. Webster: I thank the gentleman from Lowell for his continued courtesy, and would further ask him this question: Then wherein is the great danger of revolutionary legislation, too rapid and radical changes, which so many honorable members seem to fear from the operation of the initiative and referendum?

Mr. Charbonneau: Mr. Chairman, for my part I have no fear of revolutionary legislation from the initiative and referendum.

Mr. Webster: I thank you.

Mr. Charbonneau: It has been urged also that the people will

have a greater voice in framing legislation if we have the initiative and referendum. Of course it is very difficult to define what is meant by "the people", but under the proposed measure it would require some 25,000 signatures gathered in at least four different counties. Well, now, who could obtain those signatures? It is certain that an ordinary workman in a mill cannot take the time or spare the effort to go in four or five different counties to get the necessary number of signatures. So that if we select the number of citizens who will be able to avail themselves of this method of initiating legislation I think that we shall come to the conclusion that the number is very small, that the great majority of the people of the Commonwealth will be unable to use the method because of its expense, and if some one is employed to get the signatures the expense comes up at the present rate of getting signatures to some $200 or $300, and that would be beyond the means of a great many of our citizens. Under the present system the poorest workman in a mill can draw up his bill and mail it to the State House if he cannot come himself, and the bill will be printed, and a committee will make a report on it, and the Legislature will have to pass on it whether it is worth while or not.

Mr. WHITEHEAD of Fall River: I should like to ask the gentleman if he is not aware that in the State of Maine the fifty-four hour law for women and minors was passed by the referendum vote of the people. There is no fifty-eight hour law in any New England State for women and minors.

Mr. CHARBONNEAU: I have examined the statutes of Maine, and I have the citation here. I have followed it to date with the citations ordinarily used by lawyers, and I find no such law as the gentleman says there is. But, Mr. Chairman, as I said before, I think that the greatest difficulty in the way of the initiative and referendum is that of amending laws once passed that way. It is well known that it is very difficult to draft a law that will work well. Experience has shown that a law must be amended several times before it will work out justice. Good examples of this are the Workmen's Compensation Act and the mechanics' lien law. The Workmen's Compensation Act was passed after commissions, several of them, had reported. Extensive hearings were had, and finally a bill was drafted and passed by the Legislature. The mechanics' lien law was passed after a commission of very able men, comprising one a judge of the Land Court, one a register of deeds for a county, had considered the matter; after extended hearings a report was made and the Legislature passed a law. Now, I have here the last Blue Book of the Legislature. It is the General Acts of the year 1916. In this book there are six amendments to the Workmen's Compensation Act, and two amendments to the mechanics' lien law. If these measures originally had been passed by the initiative and referendum it would have been necessary to submit each and every one of these amendments to the people.

Mr. WALKER of Brookline: I should like to correct a statement of fact, Mr. Chairman, which the gentleman has just made, because he misunderstands the measure. He says that when a law has once been passed by the people, as I understand him, amendments to that law cannot be made by the Legislature. He is mistaken. Under the measure as proposed the Legislature has a clear right to amend or repeal a law passed by the people. Any perfecting amendment that

the Legislature saw fit to pass could be put upon a law passed by the people. Of course the friends of the initiative and referendum might immediately ask themselves: "If that be so, then what is the use of passing a law by the people, for the Legislature can amend it?" The reply to that is that such an amendment would be subject to the referendum, and although the Legislature may make such an amendment a referendum may be taken by those who do not believe that the amendment ought to become the law of the State. I simply correct the gentleman in a matter of fact.

Mr. CHARBONNEAU: I understand from the decision of the Supreme Judicial Court that a law that has been submitted to the people cannot be amended by the Legislature, and it is upon that that I base my assertion that the Legislature could only propose an amendment and that it would have to be submitted to the people for ratification, the original law once having been passed by the people.

Mr. Chairman, another difficulty in the way of the initiative and referendum is that it should not apply to certain classes of legislation, certain laws that relate, for instance, to real estate, because land laws are very complicated and a very slight change sometimes might affect a large number of titles, and it is very difficult for ordinary men to understand complicated laws. I have looked into this last Blue Book here, and I find a law that comes exactly under this description, and I should like to read it to see whether it is suitable to be referred to the ordinary voter. It is Chapter 108. It is "An Act relative to contingent remainders," and it reads as follows:

> A contingent remainder shall take effect, notwithstanding any determination of the particular estate, in the same manner in which it would have taken effect if it had been an executory devise or a springing or shifting use, and shall, as well as such limitations, be subject to the rule respecting remoteness known as the rule against perpetuities, exclusively of any other supposed rule respecting limitations to successive generations or double possibilities.

Gentlemen, that is only one act of the Legislature concerning real estate, and it would be easy to find a large number of others. It seems to me that it would be idle to submit measures of this kind to the electorate, because men would not take the trouble to read them; they are too difficult, and once passed might shake a large number of titles and do a lot of damage.

It is generally admitted that under our present system the laws of Massachusetts are excellent, to such an extent that in many States our statutes are copied. I was talking to a gentleman who has sat in both Houses of the Legislature in New Hampshire and has practiced before the courts for a number of years, and he says that it is nothing uncommon up there in the Legislature of New Hampshire to take a statute word for word and pass it, copy it directly from the statutes of Massachusetts. In view of the present status of our legislation, in view of the fact that our laws are good, that there is no, — or practically none, — social unrest at the present time, it seems that the proponents of the initiative have failed to make out a case in favor of their measure.

As for the initiative for the Constitution, enough probably has been said. I have gathered some notes on that. But I shall say this: That there have been some sixty-four amendments submitted to the people, of which forty-four have been adopted and the others have not.

It makes an average of some one amendment every twenty-five or twenty-six months, and it seems that it is sufficiently easy to amend our Constitution without going to any change.

These being the facts, Mr. Chairman and Gentlemen, I submit that there is no demand and no need for the initiative and referendum.

Ezra W. Clark of Brockton.

Mr. Clark of Brockton: It may be deemed by the members of this Convention presumption on my part to enter into the discussion of this question after the presentation of so many able and somewhat exhaustive dissertations by men cultured and eloquent, and with many more of a like nature and of like ability to follow. However, as this is one of the major matters, in my opinion, before this Convention, and as it is receiving considerable public attention, I believe that every delegate should have an opportunity to present the case as he sees it from his viewpoint, that we may have the largest possible light to aid in determining our final attitude toward this very important question.

Before I engage in the consideration of the problem itself, it may not be out of place to state that I came to this Convention chamber unbound and ungagged as regards any of the proposed amendments, and because I refused to pledge myself in favor of the initiative and referendum the Union for a Progressive Constitution actively worked to prevent my election. On the other hand, gentlemen, forces claiming to stand for an open-minded Convention did all in their power, even to circularizing my city to compass my defeat, because I persisted in maintaining an open mind. But I did not come here altogether unobligated. I most sacredly pledged fealty to the welfare of the people and to the weal of the Commonwealth.

Now, gentlemen, let me say to you what I feel and actually believe in regard to the Constitution of 1780. The Constitution of 1780 in my opinion will stand unquestionably as an enduring monument to the wisdom, the skill and the genius of its framers. But the 20th century has ushered in a new age, characterized by conditions and ideas undreamed of a hundred or even fifty years ago, demanding a wider latitude and broader scope for the exercise of its ingenuity and the development of its new and larger life.

I should state at the outset that I shall make no attempt at an argumentative dissertation on the various theories regarding different forms of government. This has been done, and far more ably accomplished than I could do it were I to make the attempt. But I shall endeavor to present in my humble, simple manner, a few concrete and specific illustrations of the present economic conditions for the purpose of showing the urgent need of some device, — I do not say at this point that it is the initiative and referendum in exactly the form that we have it now, I am not saying that at this point, but some device, — whereby the overburdened and outraged citizens of this great Commonwealth may find some relief, and democracy be reinforced and established so firmly that the oligarchical forces now in the saddle will take warning and retire.

This may be as opportune a time as will offer for me to present my views regarding the two essential, fundamental, elemental features

that will determine the attitude of each individual mind of this Convention toward this question, for I believe that we should study this question, with its great magnitude, in something of a philosophic manner, in a practical manner, and not wholly theoretically. One of these factors, as I look at them, is chiefly pyschological, and the other is composed of the facts and arguments advocated and presented, as they have been, very ably by many gentlemen.

For the purpose of illustrating more clearly the idea that I wish to present to you in this statement, let me introduce to you a suppositional person as a member of this body at this time. Then I shall proceed to say that this gentleman was very fortunate in his mental, temperamental and physical heredity. He has been equally fortunate in his environments along the pathway of life. His associations have been with the educated and the cultured, the prosperous and well-conditioned. We could sit and listen to his silver-tongued oratory for hours without a break in the charm that holds us spellbound. To bask in the halo of sunshine that always encircles him is a benediction to each and every one of us. There is another type that I should like to present and introduce to you, gentlemen of the Convention. This gentleman is a close student of all that is said and done in this chamber. His vigorous mind works overtime devising the best methods for attacking the citadel of the initiative and referendum forces. As you go down the aisle past him you can hear the thrill, and feel the vibrations that emanate from the operation of his mind. As he is doing to-day he has been doing for years, in the employ of the great interests, of the corporations or of the wealthy, single individuals who have come up to his office in the great towering buildings down town. These gentlemen, — they are gentlemen, and I am glad they are here, — have been well-favored and well-fed. They live on the sunny slope of life. They know little of the conditions that obtain just over the crest on the northern side, where the bleak and chilly winds blow and where the masses of their brothers are struggling. They have not observed, so intent have their minds been on their duties to their clients that they have not observed, the dark and ominous clouds looming up on the horizon. They have not heard the muttering thunders that portend the gathering storm that may bring in sight trouble ere many years pass.

Now I want to say a word in regard to these gentlemen. Personally they are the most affable, the most lovable men. I enjoy being in their presence. I am glad they are here, for a two-fold purpose they serve. They serve to show us what the interests will do for those who serve them faithfully, and another purpose, a very laudable one, they serve, they serve to present a side, a feature, of this many-sided question that perhaps I could not be able to present, that I know I would not be able to present, that the honorable gentlemen who are on this side of the question that I am espousing would not be able to present, because they have not the knowledge, they have not been to the school where that knowledge is obtained. I am glad they are here, because I want this question presented in all its phases, in its totality, before we take the final vote upon it. I hope that I am not hide-bound, that I am not tied down to a little narrow pathway, and that my mind is not shut and closed to the arguments presented by the gentlemen scattered all over this chamber to whom I have

been pleased to listen; but, Mr. Chairman, there are facts, there are conditions, and, as the late President Grover Cleveland said on an occasion, "this is a condition and not a theory." These gentlemen whom I have just described by two suppositional men know very little about these conditions. It makes very little difference to them personally whether they pay $8, $10, $15 or $20. They do not feel the difference.

Permit me, Mr. Chairman, and through you the gentlemen of this committee, to occupy a few minutes in studying the coal situation. We do not care much about coal to-day; but there is coming a day when we will, — some of us. Those of us who have bought coal in 1917 for the coming winter have paid from $2 to $5.50, — and I am not certain but that in some individual instances more than that, — additional to what we paid a year ago. From $2 to $5.50 additional! Is there an adequate cause for it? Let us study the situation. If there is, let us walk up like men and pay it, and not grumble. If there is no just reason for it, let us find a cause, if we can; let us demand a correction of these conditions.

We are told that there has not been as much coal mined in 1917 as there was in 1916, — the corresponding months. What are the facts as brought out by a commission appointed by the President of this country? That commission investigated the conditions, and came back to the President with a report that there had been more coal mined in 1917 up to the present time than was mined in 1916 in the corresponding months. That reason, that excuse, falls to the ground.

What is another excuse that is presented? It is the additional cost, the extra cost, of mining coal in 1917 over that of 1916. What is the report of this commission appointed by the President as it comes back? This commission says that it cost exactly thirty cents a ton more to mine coal in 1917 than it did in 1916. More coal mined in 1917 than 1916; only thirty cents a ton additional, as an excuse for charging from $2 to $5.50 a ton extra when it reaches Brockton.

I got these figures from men who know; they are facts. Some men will smile over it. I am pleased to see them smile.

What is the trouble? Oh, the trouble is this: Because the United States government has demanded of the railroads so much of their rolling-stock that there were not cars sufficient to bring the coal into New England. Well, that looks plausible, it looks very plausible. But what are the facts? What are the facts?

The facts, you will find, gentlemen, if you will go down to the freight offices of the New York, New Haven and Hartford Railroad, are as follows: In 1916, during the months of May, June, and July, there was brought into New England by the New York, New Haven and Hartford Railroad 51,574 carloads of coal. What about 1917, when there has been such a shortage of coal, such a shortage of rolling-stock, shortage of cars, that they could not get the coal here? In 1917, during those same months, May, June, and July, there was brought into New England by the New York, New Haven and Hartford Railroad 62,891 carloads, — being an excess in this present year, in those corresponding months, of 11,317 cars over last year.

What is the cause? What is the cause? There must be a cause. Now, when we doctors are called to treat a case the first duty of the physician is to ascertain the disease, the cause; to diagnose the case,

in short; and if he cannot diagnose it he stands very small chance of being able to prescribe a remedy.

The other day during an investigation, the assistant Attorney-General, I think it was, was investigating the matter; he asked William S. Scott, president of the Missouri and Illinois Company, which leases coal mines near Belleville, Illinois, and so on, — I need not stop to read the whole of it, — why he charged $6 a ton for coal that cost only $2 to mine.

"Because you can get it. You are a lawyer, and you would not do a piece of work for $5 if you could get $10, regardless of the cost of it. Everybody's doing it," he said. And I guess they are, if they are situated so that they can.

Here, gentlemen, is the clue to the whole situation. It is avarice, it is greed, it is mercenary commercialism, that is at the basis of this whole thing.

How are we going to get at it? It must be reached; there must be a remedy provided for it when we have diagnosed it. This patient, which is our great Nation, our government, with its democracy, with its hundred millions of people, must not be allowed to die for the want of a remedy. It must be devised; it can be devised; it will be devised. I am not a pessimist, if I do talk like one; I am an optimist. I believe that we are coming out by and by all right; but it is going to take a tremendous struggle, and we have got to convert a few of these men such as I see round over this chamber at the present time. They are good men, they are honest men; they will be converted as soon as the light breaks upon them. Why, gentlemen, some of you remember that when St. Paul was going down that road fully determined to destroy anybody who thought anything different from himself, he was honest, just as honest and sincere as he was after the light shone upon him. These men are honest; and when they see the light, when it comes to them in its effulgence and its brightness, these men will be with us, — these great, able lawyers, who can twist things around and move them in any way, any direction they see fit.

Well, now, if the coal situation were the only situation that was troubling us, we could get along with it; we could stand that, and we could smile. But I wish to say one thing right here, before I leave this. I wish that I could bring to the gentlemen in this Convention a realizing sense of what is going to take place in Massachusetts a little time hence, — and it looks to-day as if it would occur before we would adjourn, before we would have completed our work up here. But bear in mind, whether you can realize it or not, bear in mind that a few months hence, when the biting blasts of winter are sweeping over New England, and you are cozily and comfortably seated in your well-warmed offices, down town and in other cities, there will be huddled mothers and children in the little garret kitchen, poorly clothed, scantily fed, shivering over the scanty embers on the family hearth. This is not fiction; these are facts. I am a physician, and I go into all classes of homes. I know, gentlemen of this Convention, that what I am saying are absolute facts. Bear these things in mind. And those children, we are expecting, you expect, will grow up to be loyal, patriotic citizens of this Commonwealth and of this great Republic. Can they fail to have some bitter feelings in their hearts when, in after life, — if they survive this treatment, as many of them will

not, — but those who survive, will they not have some feeling in their hearts that something was wrong in the system, in the laws, in the government of old Massachusetts, the land of the Pilgrim Fathers, the land that is so great and so good, that was so good that it attracted me from my northern home up in the shadow of the north pole, in northern Vermont?

I love old Massachusetts, my adopted mother. She has been good to me; and if I did not return something to her in some form, according to my little ability, I should be an ungrateful adopted son.

But, gentlemen, I said if the coal situation were the only one that confronted us of an adverse nature, we should try to stand it. Will you kindly bear with me while I say a few words in regard to the food situation? And I will make this just as simple, — because I cannot rise above my simplicity. I was born in a simple, humble home, and I cannot get over the simplicity of early life.

Mr. GEORGE of Haverhill: I am very much interested in that coal situation. I was one of those who got stung last year. I should like to ask the gentleman from Brockton if he thinks that any kind of Constitutional amendment that we are liable to pass here will have any effect on the price of coal mined down in Pennsylvania and hauled into this State by the interstate roads that run from Pennsylvania to Massachusetts. I want to know what he thinks about its real effect on the price of coal. Because if there is any, I want to take a hand in it.

Mr. CLARK: I think that there is an opportunity, as I said a little while ago, to relieve the situation, to cure this disease; and I believe it is going to be done. And a little later I am going to take up, if I am permitted to go on, the benefits to be derived from the adoption of this amendment or something of a similar nature. But I am very glad that the gentleman called me to a halt, because I had something right here, — I had slipped it under another paper [laughter], and I had lost sight of it. I remember hearing an address when I was a schoolboy on this subject: "There is no good we have without its attendant ill." And I have come to learn that we can reverse that, and say: "There is no ill we have without its attendant good." I am very pleased that the gentleman arose and arrested my attention. [Laughter.]

Here is a little something that is illuminating on this very point. It is very presumable that some of the gentlemen in this Convention own stock in the Pond Creek Coal Company. I have some figures here that may be interesting to others, — of course these gentlemen know all about it. The par value of the stock in the Pond Creek Coal Company, as reported downstairs here, is $10 per share. The dividends that were expected to be declared on these shares was $10, — one hundred per cent for twelve months. But there is a fear on the part of the directors at the present time that, owing to the interference of our dictator at Washington, the dividend will have to be cut to $4 or $5, — not more than forty or fifty per cent. What are these men going to do this coming winter?

Another, — the Island Creek Coal Company. The par value of this stock is $5, and the anticipated dividend for the coming year was $20, — making four hundred per cent. But this company is fearing that they will have to cut the dividend to $11 or $12 on every $5. That will be only a little over two hundred per cent.

Now, here is something that I clipped from one of the Boston papers the other day. It says: "Bandits get $20,000 in South End holdup." Now, I submit, I submit, Mr. Chairman, if every man who has bought coal this summer has not been held up just as effectually as was that man or those men in the South End! And I further submit if the bandits who held up these men in the South End were not gentlemen compared with the bandits who are holding us up, and holding the poor laboring man up, — whose wife and children this coming winter must suffer because of it! It is a holdup! It is a dastardly holdup! and the worst of it is, there does not seem to be any law as yet that gets hold of it.

Well, now I think I have got round to the food situation. I do not see any more papers that were slipped underneath there; but if anyone does, I hope he will stop me again. The food situation! I came from Vermont, as I told you a little time ago, — way up in the north end of the State. I left many friends there, among the farmers in whose families I had practiced for twenty years before coming here. One of those gentlemen wrote me last December early that he had harvested his potatoes and sold them. He had eleven hundred bushels of potatoes; he had some thirteen or fourteen hundred bushels of grain. But his great joy came from the fact that he got a dollar a bushel for those potatoes. He was happy. A thousand dollars of that money he was going to put into the payment of the mortgage on his farm. He was elated. But a few days later, gentlemen, that farmer was chagrined when he learned, — even before those potatoes had been wholly paid for, before they had been removed from his premises, — that those potatoes were held by the purchaser, by the Boston man who went up there, the Boston dealer, the middleman, at $1.75 a bushel, and not a bushel of them could be bought for less than that. And what, gentlemen, was our disgust when those potatoes reached us and we paid $3 a bushel, and a little later $4 a bushel!

A gentleman down here in the town of Abington, — maybe all of you have heard of Abington, it adjoins Brockton —

Mr. George: In view of the well-known opinion that the Constitution follows the flag, I should like to ask the gentleman from Brockton if the initiative and referendum adopted by Massachusetts is to follow up to northern Vermont and regulate the price of potatoes there?

Mr. Clark: I have the fullest confidence that the initiative and referendum is going to follow out of this Convention, and it is going to follow up to where the people are, and that they are going to get a chance to vote on it; and if it works out here as we believe it will, Vermont will be ready to accept any such innovation, any such reform. [Laughter.] I know the people of Vermont: they are reformers.

Down here in the town of Abington this last spring, early spring, a gentleman bought a bag of potatoes that came down from Nova Scotia. In that bag he found a little note that read: "I received $1.50 for this bag of potatoes. I would like to hear from the purchaser and learn what he pays for it." This man paid $6.25, and he wrote to Nova Scotia, to the man who wrote the note that he found in the bag. If I understand correctly, there is no tariff on potatoes coming in here. Quite a handsome little profit!

Now, the middleman went into northern New England; he bought

every potato that he could buy last fall at ninety cents to a dollar a bushel; he stored them in his great warehouses; he piled them, in some instances, where they were not to be kept too long, to the roof of the warehouse. He said to the people: "There is a shortage of potatoes; I cannot sell them short of so much a bushel." And we did not get them unless we paid the money. It was practically saying: "Your money or your life!" We had our choice.

This summer, in July, I was out in the central part of the State, and I was told by a gentleman that there were hundreds of bushels of the old potatoes there still; they could not sell them, because the new potatoes were on the market and were better. They were held back. There was no surplus of potatoes last year; but there was not the shortage that was claimed by the potato dealers after they got control of them.

What about the flour situation? We were told to eat less and to put less food into the garbage. It was all good advice; it is what the doctors are teaching all the time, — to eat less and be healthier, and save doctors' bills. It is all good advice. But there is a limit to this. I know an instance in this very State, — I shall not call the name, perhaps I had not better name the city; it is not more than a thousand miles from Brockton, — where a certain wholesale dealer in groceries was appointed chairman of the committee on conservation. And he was an excellent conservationist, for he piled his storehouse, his warehouse, full of flour, and he went off where he thought the people would not learn of it and secured another one in an outlying town, and he piled that to the rafters with flour at $8 or $8.50 a barrel. Immediately this conservationist, so that the people would not consume that flour too rapidly, said: "Flour is $16 a barrel." He was a wholesale dealer, and the little corner grocerymen who were selling flour at $10 to $12 a barrel were told by this gentleman that they must not sell any more of it at that price. "Why," the corner groceryman said, "I am making a good, fair profit; and my customers, some of them, cannot afford to pay more." This gentleman said: "You put the price of your flour up where I tell you, or you cannot have any more goods from me." That is the condition of things.

Permit me to digress just a little here and say that the middleman through his avarice, through his commercialism, high commercialism, has allowed his good judgment to run away with him. Had the middlemen of Massachusetts organized, not for the purpose of exploiting the people, but for the purpose of establishing some organization for the fair regulation of prices, for the stability of prices, they would not have killed the goose that laid the golden egg. But unless they stop pretty soon, and do something along this line, the disorganization of all our distribution facilities is going to drive the people to something, — socialism or something else, — I cannot tell to-day what it will be. And these men will have themselves to thank, or to blame, for the conditions that will come to them. I do not want to see it any more than you men do; and I am talking to-day as I am talking because I believe that I realize something of the dangers that are confronting us.

What was the condition a few years ago? The farmers in northern Vermont sent to the commission merchants of Boston their produce. Why did they not continue it? Because at too frequent intervals a

commission merchant failed, and he failed to return the money for those goods sent him, those products. The farmers got tired of it; hence they became the easy prey, the ready victims, of the designing middleman, who is not satisfied with twenty-five per cent, who sneers at fifty per cent, who demands one hundred per cent just because these goods pass through his hands.

The New York, New Haven and Hartford Railroad has been referred to. It might be just as well, perchance, if I did not broach that matter; but there are some things connected with that subject which have not been said as yet, which it seems to me might be said.

The United States district attorney (Mr. Anderson of Brookline), gave us an enlightening address the other day in regard to the criminal methods of the New York, New Haven and Hartford Railroad, in regard to the wreckage of that great railroad system that had furnished New England with its transportation facilities for a half century. But there is something more than a railroad wreckage, gentlemen. Coincident with, and dependent upon, that railroad wreckage, was the wreckage of homes, of the happiness and the lives of thousands of citizens, right here in the old Bay State. Now, what has been done?

Let me tell you in the first place, though, a little something about where that stock is owned, and who owns it. A little less than one-half the number of stockholders of the New York, New Haven and Hartford Railroad live in Massachusetts, — twelve thousand and some hundreds of them; in New York, forty-three hundred; distributed as follows, — gentlemen, note that the stock of the New York, New Haven and Hartford Railroad is not owned by Wall Street, it is not owned by the great financiers, the millionaires, — distributed as follows: One to ten shares each, 12,200; 501 to 1,000 shares each, only 201 persons. What about the women, what about the orphans, whose lives have been wrecked by this great wreckage of Wall Street? Of the 26,000 stockholders, 10,813, almost 11,000, — approximating, fifty per cent of the stockholders, — are females. Then a considerable number are in the hands of trusts and guardianships; and these undoubtedly are left for the benefit of widows and orphans, very largely.

Do you wonder that there is a feeling in this old State that something has gone wrong, in spite of the fact that the Massachusetts Legislature has been in session nearly half the time for the last ten, twelve, fifteen years, has been studying very carefully all these conditions and the needs of the people? Do you wonder they feel that something has gone wrong somewhere?

Now I want to pay my compliments to the Massachusetts Legislature. I have been a member of that body for eight years; I was in the Senate five years. And, barring the great honor that I have of occupying a humble seat away back up here in this body of most distinguished citizens of Massachusetts, I regard my service in the Massachusetts Legislature as the most honorable that ever came to me politically. I want to say this: Those men, with few exceptions, were honorable men. I do not say I think so, or I thought so. I know so. I have been reading human nature for a half century; I used to read it in my earlier life when I was teaching school. I made a habit of studying human nature; and I believe that any man who is skilled in studying human nature cannot sit in the Legislature of Massachu-

setts, — six months, or even five months, — and not be able to point to the very few men in that body who are not worthy of confidence. I believe that I could do it. I say unqualifiedly that nearly all those men were honorable men; and I have no hesitancy in saying that there were a few men in the Legislature who should not have been there. They misrepresented their constituents; or if they did not, I pity their constituents.

Now, what has the New York, New Haven and Hartford Railroad Company asked of the Massachusetts Legislature? Well, after it began its pillage, its wreckage, its work of destruction, it found that it was cramped a little; after it had disposed of this stock, scattered it among the widows and the orphans and the elderly couples all over this Commonwealth, and to some extent all over southern New England, like Alexander the Great it wanted other worlds to conquer. What did it ask for? Previous to three or four years ago the railroad corporations of this State were prohibited from issuing bonds and short term notes in excess of the amount of outstanding stock, if I understand it correctly. Lots of these things I do not know; I wish I knew more; but that is the way I understand it. The New York, New Haven and Hartford Railroad Company came up to the Massachusetts Legislature and asked for the passage of a new act that should authorize the corporations of Massachusetts to issue twice as large an amount in bonds as they had outstanding stock. Why? Because bonds looked good to those great Wall Street financiers and to men who wanted their money placed where it would be safe. And they wanted to crush the stock still lower. It was out of their hands; it was in the hands of the people that they cared nothing about. Did that go through? Of course it went through. The committee on Railroads was composed of honorable men, of fine men. But, gentlemen, those men knew, and they were selected because they knew, what the needs and what the wants of the railroad were. Now, I am not criticizing the men. They understood railroading, but they did not understand it like those great lawyers that came before them. So that went through, and millions upon millions, tens of millions, of bonds were authorized to be issued. Well, then, what came next? Then this last winter, 1917, they had issued, — presumably, — I cannot say as to this, whether or not they had issued bonds to the full extent that they were permitted to under that law; but, be that as it may, they came to the Legislature in 1917 and asked for the privilege of issuing forty-five millions of preferred stock. Why preferred stock instead of common stock? Their reason was this, that the common stock would not sell, nobody wanted it. Of course nobody wanted common stock. And the people, the common people, the masses of the people, had got done buying stock of any kind of the New York, New Haven and Hartford Railroad. Hence Wall Street financiers wanted preferred stock. They knew that it would fall to them if anybody bought it. And so the Massachusetts Legislature passed that bill. I wrote to the Governor, asking him if he thought it was wise, if he did not think the whole thing should be sold for junk and begin new. I received a letter from him, a very courteous one.

Here is the bill:

The New York, New Haven and Hartford Railroad Company is hereby authorized, for the purpose of paying its floating indebtedness, to issue, subject to the ap-

proval of the Public Service Commission and to the provisions of chapter two hundred and ninety-nine of the General Acts of the year nineteen hundred and fifteen, shares of preferred stock [not of common stock] not exceeding four hundred and fifty thousand in number, of the par value of one hundred dollars each, upon which the company may pay dividends, from its net income [what percentage?] not exceeding seven per cent —

on preferred stock. Seven per cent on preferred stock! And there is the common stock sunk beneath all this immense weight. That was not enough, — that is not all, I mean, — the issuance of forty-five millions of stock. You remember I said a few minutes ago that the railroad companies of this State under a law passed three or four years ago could issue bonds and floating indebtedness, short term notes, to the extent of twice the amount of outstanding stock. This forty-five millions of preferred stock, when it is issued, will enable the New York, New Haven and Hartford Railroad Company to issue ninety millions more of bonds. You might just as well put the stock, the common stock of that great railroad corporation, that stood so high and was considered as safe as the Bank of England, a few years ago, beneath the pyramids of Egypt. It would be easier to recover than it is now!

I do not like to talk of these things; I regret that I can. Because it is a sad commentary on our utter helplessness. We are placed at the mercy of Wall Street, — there is no question about it. So far as our great corporations are concerned, and so far as the coal situation is concerned, we are in almost as lamentable and irretrievable a position, perhaps. Though I hope we are going to devise a way out of it. I am not a pessimist, notwithstanding all I have said. And we are at the mercy at the present time of the middlemen who deal in the food products. But, Mr. Chairman, the day is coming when there will be a device to help the people out of these things. It may be that commission merchants will be appointed by the Commonwealth of Massachusetts, by the government, right here in our States, — commission merchants; it will be taken out of the hands of these middlemen, and these commission merchants will be amenable to the government, and the food products from all northern New England will pass through their hands.

I am not going to say this is going to happen; I hope it will not be necessary. But if conditions continue as they are to-day, something of that kind is going to take place; the people will demand it, and I cannot put myself athwart the pathway to prevent it.

Mr. Chairman, I want to say a few words regarding tenement conditions in the Athens of America. I told you that I had the honor of serving in the Massachusetts Senate for five years; four years of that time I was chairman of the committee on Public Health. One year, I think it was the second year, — second or third year, — as I was serving in that capacity a bill came before the Legislature providing for the improvement of tenement conditions in this State, and especially in Boston. That bill was referred to the committee on Public Health. A hearing was advertised, and the society for the improvement of social conditions, — I do not recall at this time the name of that association, — came before the committee; and the most skilful attorneys also appeared in opposition, representing the landlords who owned these tenements. I was asked if my committee would like to visit some of these subterranean places. I said: "If you have any

subterranean places right here resembling the catacombs of Rome I should like to see them; because I never had the privilege of visiting the catacombs of old Rome, and if you have anything here that simulates them I should like to visit them much." So we were conducted right over here, hardly more than a stone's throw from the gilded dome of this Capitol. We entered a narrow doorway on a level with the street; we passed down a narrow, rickety stairway, ending in a dark, underground passageway; we wound around through that till we came to a little living-room, a cellar, a veritable cellar. The only daylight that entered that room was from the one little window in which I think there were four small panes of glass, — probably fifteen inches high. There stood in the center of the room a pale, frail, little woman, quite neatly attired, with a flatiron in her hand, and a light suspended from the ceiling overhead, throwing its light on those clothes, those garments, that she was ironing for some wealthy landlord, presumably. There sat at her right hand, in a high chair, a little child, perhaps three years and a half or four years of age, — pale, anemic, almost the whiteness of chalk, deformed by rickets or rheumatism. On the other side in the cradle was a child of perhaps a year and a half of age that looked very little better. And those are the children that we are raising up to be the future American citizens of this great Republic! Of course they will be loyal! Of course they will be patriotic! No, gentlemen, those children are not going to live, many of them. Thank heaven! Thank heaven they are not! Life would be only a curse and a burden to them, were they to survive. I asked that mother why they lived down there in that darksome, noisome place. She said: "Because we cannot afford a better." I asked: "Have you a husband?" She replied: "Yes." I asked what wages he was earning; she told me. I have forgotten the exact figures; they were small; they did not warrant a tenement such as they ought to have lived in. I came out of there; I was asked if I should like to visit another place. I said: "Yes; I want to get more of this, if you have it." I went into another place, where I passed between the ashbarrel and the heaps of refuse. I had to keep my phylactery, — cloak, whatever it is, — close, to prevent its being soiled, so that I should present a fit appearance to reappear in the State House. I passed down into another tenement, — a dark, dismal place where human beings were living. I came out of that. I went to a third. I was asked if I wanted to see more. I said: "No; I have seen those *ad nauseam*." I asked: "How many more have you?" They said they had listed over eight hundred in the city of Boston, and that there were probably something like a thousand, somewhere between eight hundred and a thousand of those catacombs, here in the Athens of America; not all of them within a stone's throw, but the first one that I saw almost within a stone's throw, of the gilded dome beneath which they make laws to mete out justice and equity to all the people in the length and breadth of this Commonwealth.

I fancy I hear someone about to inquire, — I expected it from my friend over here on the right (Mr. George of Haverhill), but he has not put in an appearance yet, so I will bring it up, — I fancy I hear someone about to ask: "Hasn't the United States Government made arrangements to take care of all this condition of things that has

arisen? Haven't we given the United States Government full scope and power and authority to relieve the situation?"

Continuing his argument after the noon recess Mr. Clark said:

I fancy that someone in this chamber might like to ask me if the President has not full power and authority at the present time to relieve all these situations that I have endeavored in my simple, humble way to portray and present to you; and that all will be serene in a little time, and the people safeguarded in their rights and interests. Let us hope so. But let us not be too optimistic, for I confess that in my investigations and observations I have not seen very strong evidence of the President giving us great relief from the situation in which we find ourselves placed. But grant that he may, grant that he will, for the sake of argument, — what is the situation then? We are relieved by a dictator who has absolute power and authority that Emperor William might envy. And just think of it, members of this Convention. The great Democratic Party, — and I mention this not for any partisan purpose whatever, because I am with it myself, I favor it, — but just consider it, just think of it, the great Democratic Party that always stood for personal rights and personal liberty without much interference by the government, finding conditions such that at the very beginning of the second term of its administration, after a long rest and respite, it finds it necessary to establish an absolute dictatorship to safeguard,— I was going to say the rights and the interests, but it is much more than this,— it is to safeguard the lives of the people, and save them from freezing and from starvation. I do not know how successful it is going to be, but that is the situation.

Now, gentlemen, I have not yet told you how I am going to vote on this proposition. I have said nothing about the I. and R. as yet. [Laughter.] Some people think I have been talking about the I. and R. in the hour that I was on my feet in the forenoon. I have said nothing about it. You do not know whether I am going to vote for it or against it. [Laughter.] I simply have been portraying to you facts. But I ask you this: Supposing this works out pretty well, and we find ourselves relieved from the oppression of the dealers in the necessaries of life, and we continue this, how long may it not be before we shall have a man in the Presidential Chair who will say: "The people stand it pretty well; they like this kind of a government pretty well; I think I will continue this dictatorship, and we will have a great army and a vast navy"? What is to hinder establishing here within the next ten years, gentlemen of this Convention, an absolute dictatorship that shall not be ephemeral, that shall not pass away in a year or two years? Who knows what is going to happen?

Permit me to digress a little here and say that after this war this old world will not be the same as it has been. Those of us who live to see it will live in a new world, — new governments, managed differently. I do not know what they are going to be; no living being knows to-day. But let me ask you this question, members of this Convention, whether you are in favor of the I. and R. or are opposed to it: Which is the more dangerous, which do you think is fraught with the greater danger, — to give the people a little more liberty in

legislating for themselves, or to establish a dictatorship in Washington? Take that question with you; think it over; answer it yourselves before you vote on this question.

Now, as I said this morning, I am not an alarmist, I am not a pessimist, I am not anticipating these things are going to happen. Because I have great confidence in the American people, in the electorate, in the masses of the people. I believe the masses are honest; I believe they are intelligent. But they are not as well-informed as I wish they were, and as I believe they are going to be, — not as well-informed.

While the other members are getting in, if you will pardon me I want to tell you a little incident that happened out in Illinois some years ago, — that is, the story says it happened; I was not there. An old farmer living out on the prairies, before the steam engine had made its way over those vast tracts, before it had even gone beyond Chicago, — this farmer took up a lot of land there, and he began to plow and to cultivate and to produce vegetables, grain, and so forth, for the Chicago market, Chicago being then but a small town. The only rig he had, the only team he had for doing his work on the farm, for plowing, cultivating, transporting his vegetables, and his grain to market, consisted of an old-fashioned ox cart,— if any of you gentlemen ever lived up in northern Vermont you know what this is,— and an ox yoke and a pair of brindle steers. But, alas, in the latter part of the season one of this yoke of brindle steers died. The old farmer was at a loss to know what he should do, how he should transport his potatoes, his other vegetables, and his grain, to the village of Chicago. He studied the problem, and he conceived a brilliant idea. It was to hitch up the one brindle steer that was left, put one end of the yoke on, putting that steer on one side of the tongue, the pole to the ox cart, and he put his head into the bow on the other side, to hold that up and keep it even. As they plodded along toward Chicago on the soft roads, dirt roads, everything went well. He had a little brad, and, occasionally bradding the brindle steer, they got along with the load remarkably well, and he was congratulating himself on his skilful device. Presently they came to the streets of Chicago, which were firmer and smoother, and the wheels rolled more easily, the load was not so heavy; and the steer, at the sights he saw in the village, and the sounds he heard, began to elevate his horns and his caudal extremity, and he began to increase his pace. The old farmer found it very difficult to keep pace with the steer; his legs began to twist and wind around, he began to pull. He saw that things were going badly, and he called out: "Stop us! Stop us! Somebody stop us!"

Now, gentlemen, what I want is that somebody should stop us before we drift into a condition where we shall be yoked up with socialism, with oligarchy, with a dictatorship, or any of these forms of government that are inimical to our democracy. Our Nation is now making its passage through the swirling waters that separate the Scylla and the Charybdis of anarchy and of oligarchy, or of socialism and a dictatorship.

Now, gentlemen, the reason that I have spoken to-day here, and have presented you these many facts, — and I want to say that it has been my purpose not to present a single thing, nor to make a single statement, that was not an absolute fact, — I have done it for

the purpose of bringing to your minds and to your attention the conditions that do exist in the United States of America, in old Massachusetts, for your consideration. And I believe every statement that I have made is an absolute fact; I have intended that it should be. I have given careful study to my data before presenting it.

I cannot say whether I have satisfied the majority of you men, I cannot say that I have satisfied a single man here, that there are conditions that demand a remedy, that demand treatment at the hands of those in power, in authority, — of this Constitutional Convention, to begin with, — I do not know that I have. If I have not, I have failed utterly in my purpose; and if I have not, it is because you do not know these facts and do not fully believe that I understand them. I believe you give me credit for intending to be truthful. But I believe that I have more than the intent; I believe that I have stated absolute facts in every instance.

Now, as I said a little while ago, I have not told you whether I have faith in the initiative and referendum as a remedy to meet this cancer on our body politic or not. I have not told you what I do believe. I intimated this morning that the people would demand something, and I feared that it would tend toward socialism. Now, do not understand me that I am a socialist or favor socialism. I am working here to-day to the best of my ability to prevent this consummation in this State. But I know the progress that it is making, — socialistic ideas, — and I believe that something must be done.

What may we reasonably expect the initiative and referendum, as embodied in the resolution before us, known as the Walker plan, to do if it be adopted? I need not spend much more time here, because already I have taken more time than ought to be allotted to a small man like myself. I need not spend much time to point out to you the safeguards that are embraced in this proposition, — far beyond those in the I. and R. adopted in most of the western States. It has been pointed out to you the length of time that it takes to get a matter before the people, — two full years and something more for an amendment to the Constitution, and a long time for a change in the laws.

Now, there has been sent out broadcast over this State, that is, to a good many men, a letter asking them to write, to communicate, with their representatives, urging them to vote against the I. and R. Now, nothing was said in that circular letter about the nature of this initiative and referendum. Why, a man came to me in Brockton the other day and wanted to know about it. He asked: "Can they change the Constitution in a week or two, if the people start out to do it?" He said: "I don't want you to vote for any change, any initiative and referendum, that will enable the people to change the Constitution over night." That is the way he expressed it. I asked him: "My good friend, will you explain to me what the Walker method embraces, what it is?" "Why," he replied, "I don't know anything about it." I went on and told him of the length of time, the number of petitioners that it would be necessary to secure before it could go before the people, and I compared it with the present method, and I told him it would take two full years. "Oh, that is a different thing," he said, "I didn't know anything about that." It had lost some of its terrors.

Another gentleman came to me, a professional man. He said: "I got a letter the other day, and like a fool I wrote back favoring the initiative and referendum; and when I got home the other night, and sat down in my parlor, I thought that I didn't know anything about the initiative and referendum, — nothing about what I was talking about." Well, he did not. Very few of the people in this State know what the initiative and referendum is.

Now, let me tell you what I anticipate it may do. And I want to say to you gentlemen that I am not over sanguine in regard to this initiative and referendum; I do not know that it is the best thing. I had been waiting for such men as we have right down over here, and over in here, and over in here, to present something that is better than this. I want something better; I want the best that there is. But I have not seen anything; nothing comes in as a substitute. Everybody seems to agree that we have got about the best way that ever was proposed as an amendment to the Constitution. I think there may be some little amendments put on this that those who favor it will accept. And if there are any improvements, I am with them, gentlemen.

Now, what is going to be the first result of proposing the initiative and referendum to the people, and by the adoption of it? The first, and perhaps the most important, result is going to be a relief of the tension that now exists among the voters and the people of this Commonwealth, — the tension that exists, the unrest, the distrust. The people will feel that it is their government, they have got it in their own hands, and if they make a mistake the mistake is theirs and the responsibility is theirs.

Why, gentlemen, do you know, — you do know, you know more than I do, every one of you [laughter], but do you know this one thing, — do you know that responsibility always begets conservatism? You let these people who have been clamoring for more power, for the initiative and referendum and for everything else under the sun, have this power given them, and the weight and sense of responsibility will come home to their minds, their hearts, and their judgments, and they are going to stop and think. There is going to be more thinking among the people; that is one of the great benefits to be derived from it.

It is going to be educational. Mr. Chairman, a deep and abiding interest in, and concern for, the welfare of our government and the institutions established under it, are essential to their safety and perpetuity. How are you going to get the people interested in the government? They are not interested very much now. At our last primaries not more than twenty-five per cent or thereabouts, I think, came out in many of the districts. I am not certain as to the percentage of the voters in the State at large at this present time, but in many of the districts not more than twenty-five per cent of the voters came out. Why? Did I say they were not interested in the government? I did not mean that. They are interested in the government, but they are not interested in the system. They lack faith in the system. They say: "I don't think it makes much difference which man is nominated, which man is elected. They treat all of us alike, with few exceptions, when they get up to the State House." The candidate has great difficulty in getting out the voters. Even with the use of the limousines

and giving these people a ride in the limousine to the polls, he has great difficulty in getting them out to secure his nomination. Then when it comes to election it is not quite so bad, but it is lamentable.

Now, so long as these conditions exist there is the greatest opportunity for the demagogue and the ring politician to carry out his schemes. He can do it. There must be something done to awaken the interest of the people, or we are in great danger. Now, I believe, — I may mistake, I am perhaps just as liable to mistake, possibly more so, than a majority of the men here, but I believe, — that when the people feel, the mass of the voters know, that they can act and have their vote tell by the use of the initiative and referendum, they are going to begin to do some thinking.

Then, here is another point. I believe that the mass of the people are honest; I believe the middlemen, the mass of them, are honest. Notwithstanding what I have told you this morning they have been doing, the mass of them are honest. And I believe the people are intelligent; that is, I believe they have native intelligence, native ability, mental ability. What is the trouble? They have not the information.

This very resolution known as the Walker plan provides that there shall go out to every voter in the State before that voter is called upon to exercise his judgment on a matter, under the initiative and referendum, a pamphlet or a circular telling him all about it. As already has been said, there will be meetings held, the people who are interested this way and that way will hold discussions in the forum. And I believe that it is going to make for a more intelligent, a better informed, electorate; and that is the need to-day. The country and the government very much need the elemental, rugged, and plain judgments of the working-men; and the working-men need the protection and fostering care of a strong democratic government. I have no sympathy for that class of labor leaders who are bringing disgrace upon the laboring men in some isolated districts of this country. I am as strongly opposed to it, and censure it as vehemently, as any man in this chamber. I am in favor of democracy, reinforced if need be, extended if need be, to meet the twentieth century conditions. Democracy was pretty good in my boyhood days up in old Vermont; but, as I said at the beginning of my simple talk this morning, the twentieth century has ushered in new conditions, demanding new methods of dealing with them.

Now, I want to say in closing that I am proud of the fact that I am permitted to occupy a humble seat in this chamber, with this body of distinguished men, for every one of whom I entertain a high respect [applause]; and I am not going to ask you to vote for the I. and R. [Applause]. I simply am going to say to you that if nothing is presented before we reach the time for voting on it that looks to me to be an improvement on that, I think that I shall feel morally bound, — and if I do thus feel I shall act in accordance with that feeling, — I think that I shall feel morally bound to support it. [Applause.]

But I want to say this. I have said something this morning in regard to two suppositional or hypothetical men whom I brought in here and introduced, — about their prejudices and so forth. Now, you may ask if I am not prejudiced, and if the men on the side of the I. and R. are not prejudiced. I say we are. I am prejudiced myself;

I admit it. We are all prejudiced, more or less. Some of us more than others, however. But what I am going to say is this, fellow-members of this great Convention, to be a member of which is a high honor: Let us divest ourselves, so far as we are able, of all prejudice and all feeling and all preconceived notions, and enter into the study of this problem and of other problems, and acquit ourselves in such a manner that lasting honor will abide with the Constitutional Convention of 1917. [Applause.]

Charles G. Washburn of Worcester.

Mr. Washburn of Worcester: In the brief time for which I ask your attention it is my purpose, as far as it may be possible, to consider whether the initiative and referendum is needed at the present time in the Commonwealth of Massachusetts. If I am successful in confining my remarks to this question I shall at least have attained the distinction of making a somewhat unique speech upon this subject. The discourse has spread itself over a very wide area, and I do not hope to be able to so entirely resist the example that has been set me as not now and then to wander from the legitimate path of my argument.

At the outset I desire to refer briefly to the standing of the Massachusetts Legislature as a legislative body. That subject was referred to rather definitely by the distinguished gentleman from Brookline (Mr. Anderson) now sitting in the third division in the immediate vicinity of the chief proponent of this measure. I trust, gentlemen, that my designation is within the rule; both respectful and intelligible. [Laughter.] The other day, in his very interesting speech, — interesting to me because it was so straightforward and evidently uttered with such an honest purpose, — he dealt at some considerable length with the delinquencies of the Massachusetts Legislature in years past. I do not think that the picture was overdrawn. I believe it to be true that what we commonly refer to as the capitalistic interests have in years past attempted at times to influence legislation; not necessarily or always because of any sinister purpose, and often, I believe, that they might protect the properties which they represented. But some of the things that they did, some of the methods that they used, are to be utterly condemned. My friend referred to the condition in New Hampshire, where he asserted that Speakers of the House and Presidents of the Senate had been elected at the behest of a great railroad corporation. I do not know what the fact may have been, but for the purpose of my argument I will assume that his charge is true. It so happens that a few days ago, indeed, I think it was on the very day that the gentleman made his speech, I found myself in company with a man, a resident of New Hampshire, conversant with the legislative conditions there; and he confirmed all that my friend in the third division (Mr. Anderson of Brookline) has said. But he added that as soon as the people realized the conditions there prevailing and desired a change, the old order of things ceased to be.

Now, gentlemen of the committee, without in any way seeking to mitigate the offences committed by these great corporations, my suggestion is that the people always can remedy those conditions when

they will, and that already they have remedied them to a very large extent.

I am here, my friends, to speak the truth as I see it, with no great pride of opinion, but conscious of the fact that if we would reach a correct conclusion we must have a composite picture made up of the honest convictions of every man here. Therefore I am led to say that while the insidious influence of organized capital is to be treated with reprobation, with no less reprobation should be treated the influences, insidious and otherwise, of organized labor.

Mr. BROWN of Brockton: I should like to ask the gentleman if he sees no difference between the objects of organized capital in its profit-trading capacity with respect to the people, and organized labor which seeks to bring to the people only that which the government guarantees to them under the Constitution. [Applause.]

Mr. WASHBURN: I think perhaps that before I finish what I have to say I shall have sufficiently answered the question of my friend in the second division (Mr. Brown). If not, and if the patience of the committee be not entirely exhausted, then when I have finished my remarks, if he will repeat his question I shall endeavor to answer it.

The point I made when I was interrupted was this: That the sinister influence of organized capital, which to our shame at times has been exercised over some of our legislative bodies, is to be deplored; no less is to be deplored the influence of organized labor, when their accredited leaders sit in the gallery of legislative bodies and hold their stop-watches on the assembly.

Now, Mr. Chairman, I am a believer in organized capital, and I am a believer in organized labor. No man lives with any more sympathy for the laboring man than I have. I have seen business from both angles. I would be the last person in the world to minimize the fearful burden that is strapped upon the back of labor. It has taken over one hundred years to lighten that load, and we are not through yet. The progress is slow and painful, but the end, as I believe, almost in sight. But our legislators, if they are to be freed, as they ought to be, from the one influence, should be freed from the other.

Mr. Chairman, the progress of the human race is slow indeed. May I tax your patience while I draw a picture of the House of Commons as it was in the time of the elder Pitt? I do not trust, Mr. Chairman, to my own poor powers of description, but shall rely upon a master in the use of the English language. Lord Macaulay, in his essay on the Earl of Chatham, says of the House of Commons as it existed at the time to which I refer:

> Scarcely had the executive government become really responsible to the House of Commons, when it began to appear that the House of Commons was not really responsible to the Nation. Many of the constituent bodies were under the absolute control of individuals; many were notoriously at the command of the highest bidder. The debates were not published. It was very seldom known out of doors how a gentleman had voted. Thus, while the ministry was accountable to the Parliament, the majority of the Parliament was accountable to nobody. . . .
>
> If we are right as to the cause of these abuses, we can scarcely be wrong as to the remedy.

Now, listen to this:

> The remedy was surely not to deprive the House of Commons of its weight in the State. Such a course would undoubtedly have put an end to parliamentary corruption and to parliamentary factions: for, when votes cease to be of importance, they

will cease to be bought; and, when knaves can get nothing by combining, they will cease to combine. But to destroy corruption and faction by introducing despotism would have been to cure bad by worse.

When these enormities developed in the House of Commons, it was not sought to remove the evils by establishing another system of government, but by purifying the system which still existed.

I will venture to say that it would be absolutely impossible to reproduce in the House of Representatives at Washington such legislative scandals as existed there within three or four years of the close of the Civil War. I assert it as a fact that legislative integrity, and, I will add, commercial honesty, in this country, never was at a higher point than it is at the present time. [Applause.] Shall we now proclaim that the representative system is a failure? It is freer from imperfections than it ever has been before although it is far from perfect yet.

Mark you, I am now speaking particularly of the Commonwealth of Massachusetts, and it is the Commonwealth of Massachusetts for which we are legislating. I am not talking about the State of New York, or the State of Oregon, or the State of Nevada. I will say here, lest I forget to say it elsewhere, that if I believed that the adoption of the initiative and referendum would improve existing conditions, I should be for it. I even can conceive, Mr. Chairman, under some conditions, of favoring the recall of judicial decisions, — but not under conditions now existing in Massachusetts.

Mr. Chairman, perhaps I owe it to myself to say that I came into this Convention unpledged, what I call a conservative of open mind, ready to listen to this debate and to be persuaded, with the burden of proof on the proponents of the measure, who have assumed it. That has been my position: Inclined against this proposition, but not committed against it.

My first proposition is this: That the initiative and referendum as here proposed is a blow at Constitutional government. I suppose that I have a right to rely, in what I may say of the views entertained by the proponents of this measure, upon this pamphlet sent to all of us and entitled: "A Reply to the Report of the Minority of the Committee on Initiative and Referendum."

Mr. Walker of Brookline: I should like to say for myself personally, — and I do not know how many others I speak for, — that I did not see that pamphlet until it was in print; that I do not subscribe to all of the statements therein contained, and that I regret some of the references therein made.

Mr. Washburn: I have listened with interest to the disclaimer of my friend in the third division (Mr. Walker). It may be that I shall be so fortunate as to refer only to these allegations in this report with which he is in complete accord. It is not my intention, Mr. Chairman, to make any personal references in this debate, unless they shall be of an adulatory character, and I trust that I may give offence to no one.

Taking up this pamphlet issued by the proponents of the initiative and referendum, and as a direct answer to my suggestion that the initiative and referendum is a blow at our present form of government, I read this headline: "Initiative and Referendum not a Substitute for Representative Government; it is an Essential to Democratic Representative Government."

Now, Mr. Chairman, I take it that there is no one within the sound of my voice, and no member of this Convention, who does not believe heartily in a democratic form of government. I assume, Mr. Chairman, that every proponent of this measure is as sincere as I am, and is seeking as earnestly for that which is best for the Commonwealth of Massachusetts. There is no room here for personal quarrel; we are all actuated by a common purpose, and the only question is: Which view is right?

As bearing on this question of whether or no the initiative and referendum, — I speak generally, because once we start upon this road no one knows where we may end, — is a substitute for representative government, I shall now read, Mr. Chairman, an utterance of the President of the United States. I mention his name with great respect. He should have the support of every loyal citizen in the Nation [applause]; and, if for no other reason, because of the admirable manner in which he has defined the position of the American people in this great war, in his recent note to His Holiness the Pope. [Applause.] And thus speaks Mr. Wilson:

> There are many evidences that we are losing confidence in our State legislatures, and yet it is evident that it is through them that we attempt all the more intimate measures of self-government. To lose faith in them is to lose faith in our very system of government, and that is a very serious matter. It is this loss of confidence in our legislatures that has led our people to give so much heed to the radical suggestions of change made by those who advocate the use of the initiative and the referendum in our processes of legislation, *the virtual abandonment of the representative principle*, —

That is the sentence that I would impress upon your minds:

> *the virtual abandonment of the representative principle*, and the attempt to put into the hands of the voters themselves the power to initiate and negative laws, in order to enable them to do for themselves what they have not been able to get satisfactorily done through the representatives they have hitherto chosen to act for them.

And now mark this, — mark this: I am not saying that under some conditions the initiative and the referendum might not be resorted to. What I say is that it is admitted by this great authority to be the virtual abandonment of the representative principle. What I say is that the conditions have not yet arisen in Massachusetts which should compel us to abandon the representative principle.

Why, gentlemen of the committee, do you realize that under the law as it now stands, any one in this Commonwealth can cause a bill to be introduced on any subject? It must be heard by a committee; reported to one branch or the other of the Legislature; debated at length; and finally disposed of, before the Legislature can be prorogued. That is why our legislative sessions are so long. And so long as that custom shall endure, — which I trust will be as long as the stars move in their courses, — you never will be able to shorten your legislative sessions. Complain of their length? No, no. What price do we pay for a democratic form of government? One is the privilege of unlimited debate. That is part of the price we pay. And whatever it may cost in time or money, the price should cheerfully be paid.

And now, Mr. Chairman, I may as well take this opportunity to state that I am in favor of keeping the government of this Commonwealth, the legislative body and the executive, in as close contact with the people as possible. For that reason I am in favor of annual

elections [applause]; I am in favor of annual sessions of the Legislature; I am in favor of the annual election of the Governor in order that the people may exercise the prerogative which they enjoy under the Constitution, and recall any public servant who has committed any breach of his trust. [Applause.]

And now I am going to quote again from this pamphlet, without attempting to charge any individual with any responsibility for it, but because in my opinion it defines the issues in this debate with admirable precision. Here is what the authors of this pamphlet say:

> In America, not only is it necessary to overcome the influence of highly organized interests upon a majority of our representatives in the popular branch of our Legislature, but also in the Senate, the less popular branch, which is so small that it is rarely ever out of the absolute control of the anti-popular, undemocratic forces of the community. When these difficult obstacles to majority rule have been overcome, another obstacle appears in the veto power of the executive, and when these three obstacles have been overcome, the undemocratic, anti-popular forces, nothing daunted, appear still again behind the courts, which have assumed the power to set at naught the will of the majority that has survived the obstacles of two independent branches of the Legislature and the veto power of the chief executive.

Obstacles! The House of Representatives an obstacle! The Senate an obstacle! The veto power of the Governor an obstacle! And the courts yet another obstacle! To what? To carrying immediately into effective operation what is thought for the time being to be the will, perhaps, of a minority of the people.

Why, the other day my distinguished friend from Newton (Mr. Powers) made a quotation from Lincoln's first inaugural address. I wondered then why he did not read it all; and I shall exercise that privilege now. In his first inaugural, Lincoln said:

> If by the mere force of numbers a majority should deprive a minority of any clearly written constitutional right, it might, in a moral point of view, justify revolution, — certainly would if such a right were a vital one. But such is not the case. All the vital rights of minorities and of individuals are so plainly assured to them by affirmations and negations, guarantees and prohibitions, in the Constitution, that controversies never arise concerning them. . . .
>
> A majority —

Now, mark these words:

> A majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. [Applause.]

That, my friends, is the kind of government which I claim we have now. Free from fault? Free from weakness? Free from many shortcomings? Oh, no! a thousand times no! Because these legislators are frail, mortal men like ourselves who elect them. But I assert, as I said earlier in this discussion, that the standard of conduct is constantly rising.

This, of all times, is a most unfortunate time to strike a blow at the integrity and the independence of our legislators. Do you want to degrade the Massachusetts Legislature by withdrawing from the members that sense of personal responsibility which dignifies their work and keeps them in the main true to their task? Would you reduce it to the level of the Legislature of Oregon, where by the testimony of their own people it has fallen almost beneath contempt? My theory, Mr. Chairman, is that we should invest our legislators with the greatest possible area within which to exercise their power, and then hold them to a strict responsibility for its exercise. [Applause.]

Do you ever stop, gentlemen of the committee, to consider the kind of legislation with which the Massachusetts Legislature is concerned, — how intricate many of the problems are; how carefully they are sifted; how often they are amended in the progress of debate, and sometimes sent back by His Excellency the Governor to have some palpable or hidden mistake corrected?

Why, at the moment there comes to my mind that great piece of legislation, enacted, I think in 1894, for the benefit of the residents of the metropolitan district, when a great area of land was taken out of the center of the State and made into a reservoir. It was, I think, one of the greatest legislative achievements in the history of the Commonwealth. A whole town was wiped out; ancestral homes were razed to the ground, — for the benefit of people residing fifty miles away. Why, that could not have been accomplished two hundred years ago in any country of Europe without a war; and yet through the orderly processes of the Legislature, and under the protecting arm of the court, all rights were respected, and, speaking as accurately as a human person can speak, no violence was done to the rights of any one.

I do not know whether that act would come within the operation of this proposed initiative and referendum law or not; but it will serve as an illustration, — and there are hundreds of them. Does any one believe that the electorate of Massachusetts could pass intelligently upon such a question as that spread upon the ballot? Why, they tell me that this very year in California there are some thirty questions to be submitted, and the ballot is four feet square. There is no State in the Union where the legislation is of so complicated a character as it is here in Massachusetts.

I pause at this point, — I might have done it earlier, — to ask a question. It will not be rhetorical; it will be an honest question, asked for an honest purpose. When this debate began I sat here and have listened to most of it, in order to ascertain what great measure on the statute-books has been delayed in its passage by any obstacle imposed by the Legislature. I have waited to hear what statute upon the statute-books would be recalled by the people if they had an opportunity to exercise their rights under the referendum. There may be such, and if there are, I should like to know what they are. I pause for a reply.

Mr. William H. Sullivan of Boston: I accept the challenge of the gentleman, and I speak advisedly when I say that the people if they had a referendum would take away in the Workmen's Compensation Act the right of the insurance companies to do business in Massachusetts. If they had the referendum they would do away with the present Workmen's Compensation Act and put up a proper Workmen's Compensation Act. [Applause.]

Mr. Washburn: I am obliged to the gentleman for his interruption. We have heard something here about invisible government. It exists; it always will exist; it ought to exist. If it did not exist, this government would come to a speedy and an unhappy end. What is this invisible government to which I refer and to which the legislators and the courts are responsive? It is the invisible government of an educated public opinion.

Why, Mr. Chairman, the salvation of this country is that every member of a Legislature, national or State, every Governor, every

man in any executive position, every judge, from the highest to the lowest, might be taken out of his place to-day, and those places could be filled by as good or better men to-morrow; and those reserves, as I will call them, numbered by the hundreds of thousands and the millions, are the ones who are forming the public opinion, which, acting deliberately, slowly, but surely, ensures in the end just legislation, and enlightened judgments from the courts. [Applause.]

I shall not refer, as I had intended to, — because I will not trespass too long upon your time, — to the initiative and the referendum as it operates in some of the western States. I think it is fair to say that that law is of very doubtful expediency in any one of those States, but of still more doubtful expediency in Massachusetts, where we are operating under conditions that are widely different. I believe there is great misapprehension as to a correct expression of the public will as reached through the initiative and referendum, — yes, and as reached through the direct primary.

I am glad of this opportunity to refer to that laboratory experiment of the direct primary in order that we may learn by experience and not go into the great commercial experiment of the initiative and referendum. I am prompted to refer to a suggestion made by Senator Lodge in an address he made in 1912 upon the recall of judges. Personally I believe it is logically necessary to yoke up the initiative and the recall of judges; but in the progress of the chariot of reform, the recall of judges and judicial decisions has been tossed overboard. For what reason I do not know, because it seems to me just as logical as the other parts of the program. In speaking of the direct primary, Senator Lodge refers to the contest that arose over the seat of Senator Stephenson of Wisconsin, and he goes on to say:

> It appears that in 1909, at the time when Senator Stephenson was nominated in the primaries, the expenditures at the primary election by all candidates, exclusive of the amounts spent by the senatorial candidates, is conservatively estimated on the returns required by law at $610,174, and if the amount expended by all the senatorial candidates be added, the total amount spent in those primary elections comes to $802,659, while the total vote, Republican and Democratic, was 230,291. In other words, it cost $3.48 per vote to get that number of voters to the polls, and I believe that I am right in saying that only about one-half of the Republican vote of the State was actually polled in the primaries. Nothing in the past under the old Convention system has equalled this really appalling expenditure at the primaries in a single year and in a single State.

I shall hazard this statement, that the leaders of both the great parties in this Commonwealth would abolish the direct primary and go back to the Convention system if they dared to. [Applause.]

Now, someone might ask me, — but it is an awkward question and so I shall ask it myself: Do I believe in the people? Do I believe in the judgment of the people? Do I distrust their ability to reach correct conclusions when acting in haste, when uninformed? I say "Yes." But I add that they never are wrong, or rarely, when they can exercise deliberate, painstaking, careful, well-informed judgment. Have the people ever been wrong in this Commonwealth? I think they have. Again I quote from Senator Lodge. He says this in an address on the public opinion bill in 1907:

> If, on the other hand, you ask me if the popular decision in a moment of excitement and clamor, with no opportunities for deliberate discussion, has always been right, I answer "no," and I will give you an example from the history of this State. A little more than fifty years ago there was a movement here called the Native

American or Know Nothing movement. It was carried on by secret oath-bound organizations. They not only swept the State and crushed Whigs and Democrats out of existence, but they actually elected all but two of the members of the Legislature. If they had not been restrained by the Constitution and by the laws and the methods of representative government, they would have excluded from citizenship every man of foreign birth or of a different religion from their own. If they had been acting under a popular mandate, which would have been easily obtained in that year, to the effect that only citizens of American birth and of the Protestant faith should be entitled to citizenship, that constitutional change would have been made. But as there was no public opinion law —

he was then speaking on that subject —

the Legislature were only bound to the general principles of their party; they were not deprived of motion and sense of responsibility by a mandate. They were open, even with all their power, to the effect of public opinion expressed by a strong minority outside, and they had time for reflection and for cooling down. Thus, by the forms of representative government and by the absence of anything resembling the mandate for which the public opinion bill provides, they were held back from the violent extremes which the passions flagrant at the election would have demanded and enforced.

Oh, no, my friends, human nature has not yet reached that point when any man or body of men can have conferred upon him or them despotic power to exercise without the most mature deliberation and unhindered by the obstacles that lead to reflection. There is no man in this room, I care not who he be, Republican, Democrat, Progressive or Socialist, who has a deeper faith than I have in a democratic form of government or its capacity to reach a higher state of perfection in the administration of the affairs of men than any form of government that has ever yet been devised.

I wish I might adequately express my feelings in my own language, but I find them so well expressed by another that I venture to read a short quotation. I do this for another reason. I am glad to spread upon the records of this Convention an utterance of one of Massachusetts' great statesmen, bred in the best traditions of the olden time, whose voice was always raised in behalf of the weak and of the helpless whenever they stood in need. I read these few lines from the first volume of the autobiography of Senator George F. Hoar. [Applause.] The quotation is from an address to a Republican Convention; when I read it, however, you will see that it has no tinge of partizanship, but breathes forth a spirit of brotherly love and of confidence in mankind. These words were spoken shortly after President McKinley was assassinated:

You and I [the great Senator said] are Republicans. You and I are men of the north. Most of us are Protestants in religion. We are men of native birth. Yet if every Republican were today to fall in his place, as William McKinley has fallen, I believe our countrymen of the other party, in spite of what we deem their errors, would take the Republic and bear on the flag to liberty and glory. I believe if every Protestant were to be stricken down by a lightning-stroke, that our brethren of the Catholic faith would still carry on the Republic in the spirit of a true and liberal freedom. I believe if every man of native birth within our borders were to die this day, the men of foreign birth, who have come here to seek homes and liberty under the shadow of the Republic, would carry it on in God's appointed way. I believe if every man of the north were to die, the new and chastened south, with the virtues it has cherished from the beginning, of love of home and love of State, and love of freedom, with its courage and its constancy, would take the country and bear it on to the achievement of its lofty destiny. The anarchist must slay 75,000,000 Americans before he can slay the Republic.

Of course there would be mistakes. Of course there would be disappointments and grievous errors. Of course there would be many things for which the lovers of

liberty would mourn. But America would survive them all, and the Nation our fathers planted would endure in perennial life.

[Applause.]

Those sentiments, Mr. Chairman, are my sentiments. I have expressed my doubt of the wisdom of adopting this suggestion of the initiative and referendum as tending to better existing conditions, in a spirit of absolute honesty, but also, Mr. Chairman, in a spirit of great humility. I have no pride of opinion about my views. I shall go further, and say that no man in this assembly at the present time has a right to be certain in his mind that he is right.

This condition of mind, it seems to me, must follow upon the world conditions that prevail. Prior to 1914, and for a period of over fifty years, we had been the most prosperous Nation upon the face of the earth. We thought we knew what our troubles were, and we believed in our power to deal with them. We invented devices with which we subdued the forces of nature. We brought the most distant parts of our great country within the reach of the human race. We harnessed all the forces of nature to the chariot of industrial progress. We waxed fat, we were proud of our achievements, and we were confident of the future. And then, almost in the twinkling of an eye, an overruling Providence that guides our steps, for some purpose as yet undisclosed, brought all our prophecies to naught. Those great powers that we had harnessed to the chariot wheels of industrial progress were turned into engines of destruction in the heavens above, in the earth beneath, and in the waters under the earth.

Is there any one here so arrogant as to say that he knows what is best for the Republic and for the Commonwealth? There is not one. All that we can do, with abundant charity for the views of our fellows here, is to express our opinions, give the reasons for them, and then confidently leave the result to the decision of this great tribunal. Mr. Chairman, in saying what I have said this afternoon, I have sought merely to make a small personal contribution to the end that we may reach the wise conclusion we all desire.

Now, Mr. Chairman, I have a few moments remaining, and I shall be most happy to yield. [Applause.]

Mr. Brown: The late Senator Hoar, to whom the gentleman has paid an eloquent tribute in which I join, was pleased to say in 1890 that there was a difference between organized capital and organized labor. And he proceeded to point out that organized capital in the shape of trusts was organized for the purpose of making a profit upon everything that passed through their hands, and to build up their personal fortunes, while organized labor was engaged in doing for the people that which the government ought to do for them.

Now, the gentleman has seen fit to couple with the name of organized labor, — which I consider in a certain degree in thus coupling them sacred, — that of organized capital, organized for a vicious purpose, — which I think is cursed; and I desire to ask him: Does he see no difference between organized capital coming here and abusing wealth by corrupting the Legislature, and organized labor coming here without a dollar to offer, with nothing but the cause of humanity to plead, asking the Legislature to lighten the burden of humanity, even if they sit with stop-watches to find whether organized capital

has got them or not? Is there any difference, I ask you; why do you couple them together?

Mr. WASHBURN: Of course, Mr. Chairman, I should deny that all capital is organized for an evil purpose. I conceive that organized capital is much more effective than disorganized capital, and that organized labor is much more effective for its own protection than disorganized labor. That is why I am in favor of both. But if the gentleman wants to know whether I think the human life is above the dollar, I say: "The human life!" every time. [Applause.]

Mr. BROWN: I only just want to ask the gentleman, Mr. Chairman, did he understand me, in my question, that I was not opposed to organized capital? Did he understand that I made a distinction between organized capital, which misuses wealth, and capital which uses wealth?

Mr. WASHBURN: I did.

Mr. CREAMER of Lynn: I understood the delegate from Worcester to express a fear that the initiative and the referendum if adopted as outlined in the Walker resolution would be a possible injury to constitutional government. Did I understand him correctly?

Mr. WASHBURN: Yes.

Mr. CREAMER: Last week that very ardent and irrepressible and persistent reformer and revolutionary, Mr. Powers of Newton [laughter], told us how the Constitution of the United States was changed once, almost in the twinkling of an eye, by a man named Brown; not our Brown of Brockton [laughter], nor our Brown of Springfield, but Brown, Justice of the Supreme Court of the United States. Now, I should like to ask the delegate from Worcester if he thinks there is greater danger to a constitutional change by a voting majority, after two years' deliberation and discussion, than from a case such as the gentleman from Newton outlined the other day?

Mr. WASHBURN: I think, Mr. Chairman, that if I had to elect between tribunals that should change the Constitution, I should prefer that tribunal presided over at one time by John Marshall, and now by Chief Justice White, to a tribunal consisting, perhaps, of a majority of a minority of the uninstructed voters of Massachusetts.

Mr. ANDERSON of Brookline: I rose at the time when the gentleman from Worcester was reading from President Wilson's book, to ask him if he would be good enough at that time to state when that book was written. It seemed to me that it would be fairer, so far as our judgment is to be influenced by one who has the obvious standing to influence our judgments that President Wilson had, and has, to let us know at what stage of his political thought he gave utterance to the doctrines there enunciated. Some of us, I may venture to say, not very many years ago, thought the German army existed for the purposes of defence. There was a stage in the political development of a good many of us when we should have regarded the doctrine of the initiative and referendum as revolutionary. President Wilson has given utterance in recent years, — and I am well aware that it has been said that he changed his views when he became a candidate, — to strong expressions in favor of the initiative and referendum, for substantially the same reasons that I feebly undertook to utter the other day, as being not destructive of representative government, but as supplementary to, and corrective of, representative government.

Now, if the gentleman will be good enough to give us the date of the quotation that he gave us from the present President of the United States, I shall be grateful.

Mr. WASHBURN: I recognize the propriety of the question. I should not have referred to the matter myself, but I do know that it is quite important when quoting an opinion of President Wilson's to state the date. [Laughter and applause.] But the gentleman will remember that I was, so far as my feeble powers would permit, speaking in a commendatory way, — as far as a rock-ribbed Republican could, — of the President of the United States; and I thought it would be tempering justice with mercy [laughter] if I abstained from mentioning the date. [Laughter.]

There is another difficulty, that in the book from which I read the date is not given. But I have in this pamphlet, the paternity of which is not eagerly sought, apparently [laughter and applause], by at least one of the proponents of the initiative and referendum, a quotation made from a speech at Kansas City May 5, 1911. Now, that is something over six years ago. President Wilson then said, among other things:

> If we felt that we had genuine representative government in our State Legislatures, no one would propose the initiative and referendum in America.

That is just the kind of government that I contend we have in the Massachusetts Legislature. [Applause.]

Mr. ANDERSON: I pay my tribute of respect to the gentleman who admits that he is a rock-ribbed Republican; and venture to say that we came as near getting an answer to our question as one ever would expect from one who makes so frankly that confession. [Laughter.] But we still are entirely in ignorance as to the stage in the political knowledge and development of the President of the United States of the views expressed in the quotation read. Passing that as immaterial, it is of course well known to every one who has followed the debate that the President of the United States in 1911 expressed what I undertook to paraphrase a moment ago; and again, about a year later, in a telegram concerning the proposed new Constitution in Colorado he expressed the very earnest hope that "No legislation will be enacted which will either impair or repeal, directly or indirectly, the initiative and referendum or the direct primary law; these are the instrumentalities by which government is brought nearer to the people, and should be preserved."

But, passing that, I do venture to ask the learned and exceedingly interesting delegate from Worcester one other question. I digress to say that I was intended by nature either for a farmer or a college professor, I never was quite sure which, for I never have been able to get over the strong attraction that a beautiful piece of oratory or literature has for me. I felt it the other day when the learned gentleman from Amherst (Mr. Churchill) was addressing the Convention; I feel it to-day in listening to these beautiful and fitting quotations, — which have absolutely nothing to do with the subject-matter before the committee [laughter], but which so appeal to one's sense of literary finish, furnish the oratory, and add charm to the elocution.

I understood, however, the gentleman to admit the existence of substantially the same kind of invisible forces dominating in the Com-

monwealth of Massachusetts that I had undertaken to describe. Indeed, I was flattered to have him say I did not overdraw the picture. I venture to ask him now, having listened to him with careful attention for over an hour, what remedy, if any, has he to suggest to the people of the Commonwealth? So far as I have observed, it is only the present (almost) bankruptcy of the corporations from whose treasury the sinews of war for the invisible government had been drawn which led to the higher standard which he claims exists at present. If that be so, then what hope is there for the future, if ever prosperity return?

Mr. WASHBURN: To show my entire good faith [laughter], and to demonstrate that the President of the United States, great man as he is, can change his mind at least every three years [laughter], I will state that I have discovered that the quotation that I read was written in 1908.

Now to come to the second question. I want to state that the gentleman has entirely shifted the position of the proponents of the initiative and referendum. When we were treated to that great figure of the rodents and the rotten cheese, the other day by the gentleman in the fourth division (Mr. Whipple), that champion of the initiative and referendum assumed the burden of proof to sustain the proposition that the adoption of the Walker resolution would better existing conditions. It is not for me to go further in suggestions for bettering existing conditions than to say that we might well intrust the Legislature with more responsibility, and hold our legislators to a stricter accountability. [Applause.]

Mr. SAWYER of Ware: Would it not have been fairer to have quoted that opinion of the President made at a later date and indorsed by the people, rather than to have quoted an earlier opinion which would be somewhat misleading; the fact that the President and Theodore Roosevelt, two candidates for President of the United States in 1912, and both indorsing the I. and R., carried every State in the Union with two exceptions at the polls, would indicate that the opinion of the President at a later date had the indorsement of the people of the United States, and has the most weight, and should be the one to be before the Convention, rather than this spasmodic opinion of an earlier date?

Mr. WASHBURN: I understand the gentleman to ask if I ought not to have quoted the 1912 opinion of President Wilson, instead of the 1911 opinion, and in preference to the 1908 opinion. [Laughter.] Well, I will say to the gentleman that the 1908 opinion was the one that happened to fall beneath my notice, and it suited my purposes so admirably that I did not feel called upon to look any further. [Laughter and applause.]

And now, answering the second part of the gentleman's question, as to that other candidate for the presidency, whose name is not unfamiliar to us, I again refer to this book of doubtful paternity [laughter], and on page 2 I find this suggestion. I will read it all. It has pained me deeply to have the gentleman in the third division (Mr. Sawyer) charge me with unfairness; and I hope I shall not lay myself open to that charge again:

I believe —

said Ex-President Roosevelt, he then was — no date is given [laughter] —

I believe in the initiative and referendum, which should be used not to destroy representative government, but to correct it whenever it becomes misrepresentative. . . . In the great majority of cases it is far better that the work of legislation should be done by experts chosen to perform it. But when the men thus delegated fail to perform their duty, then it should be in the power of the people themselves to perform it.

Now, my proposition is that the time has not yet come in Massachusetts when we need that weapon. My early ancestors carried a gun into the field when they planted the crop; they took a gun to church to protect their families. When I till the field I carry no gun [laughter]; when I go to church I carry no gun. Because it is not needed. If the occasion arises I shall be the first man to discover which end of the gun to put at my shoulder. [Applause.]

Debate was resumed in the Committee of the Whole, Wednesday, September 5.

Nelson Sherburne of West Springfield.

Mr. SHERBURNE of West Springfield: I appreciate highly the honor of opening the debate at this time with our colleague (Ex-Justice Morton of the Supreme Judicial Court) whom we admire and love so well presiding. [Applause.] I only wish that it were possible that some one more eloquent and more worthy of the occasion might open this debate.

I feel that perhaps I owe an apology to the Convention for taking any part of its time, after the long debates to which we have all listened so earnestly and after apparently everything has been said that possibly could be said both for and against this proposition. My only justification in entering the debate is due to the fact that as a member of the majority committee submitting this proposition I feel it to be a duty which I owe the Convention to state briefly some of the reasons for the faith that is within me and that influenced my vote in the committee. But I wish to assure the Convention of two things. One is that I shall indulge in no personalities; another is that I shall confine myself strictly to a discussion of the initiative and referendum.

We have listened patiently, with unusual patience, to the lengthy arguments submitted, and I have been intensely interested in many of the arguments against this proposition, many of them submitted eloquently and skilfully, but none of them has convinced me that I made a mistake in voting for the initiative and referendum. In the early days of the debate we listened to an exhaustive and skilful argument on the social compact by the gentleman from Southborough (Mr. Choate), who undertook to prove to us that when the fathers framed the Bill of Rights it was in their mind to bind future generations to that particular form of Constitution and deprive them of the right forever to make any change therein. I listened to that exposition with amazement, because if that were true all my life I have been laboring under a misapprehension. As I read the Constitution there were certain sentences therein that stood out clearly to my mind. The people reserved the right to change, alter or amend the Constitution. All power rested finally in the people. And so after the gentle-

man had concluded his address I took out my Constitution and reread it to see if possibly I had not made a mistake. But no, I found the language plain and not easily misunderstood. And so after the gentleman had concluded, with all due deference to his high standing in his profession, I must say that his argument was unconvincing, and as he sat down there came to my mind those lines from the "Merchant of Venice," where Bassanio, referring to his loquacious friend who had just taken his departure, said:

> Gratiano speaks an infinite deal of nothing, more than any man in all Venice. His reasons are as two grains of wheat hid in two bushels of chaff: you shall search all day ere you find them, and when you have them, they are not worth the search.

I was interested also when our friend the ex-Congressman in this division (Mr. Powers), referring to an investigation which he had made in Oregon and Washington relative to the operation of the initiative and referendum, emitted this most peculiar paradox, that out of one hundred persons whom he interviewed relative to the merits of the initiative and referendum ninety-nine were very favorably impressed with the fact that they had secured prohibition and woman suffrage by means of the initiative and referendum, for which only a small number of people had any use. Now, that may be logical, but it seems to me that an instrument through which the people had secured these reforms which they so strongly favored certainly must have proved of great value to those communities.

The other day, Mr. Chairman, the gentleman from Boston in the second division stated very emphatically and warningly to the delegates that there was no such thing as a mild referendum. I wonder, Mr. Chairman, if at that time the gentleman had read the substitute proposition which has been offered by my friend of the committee in the third division, for certainly if there ever was a mild referendum that proposition is it.

We have waited long and anxiously for the birth of my friend's measure. We were very anxious, because we imagined that possibly he might evolve some proposition that would be so virtuous that it would entirely replace the proposition for which we are contending. Well, gentlemen, the mountain has labored and the mouse has come forth, and how any man favoring in any degree the principles of the initiative and referendum could vote for that emasculated proposition with the idea that he was voting for the principle of the initiative and referendum is far beyond my imagination.

We listened the other day to an attack by the gentleman in the fourth division (Mr. Barnes of Mansfield) upon a certain newspaper in Boston. He referred to the fact that the headquarters of the Union for a Progressive Constitution were at one time located in close proximity to the headquarters of that newspaper, carrying the implication that that organization and every man who favored the initiative and referendum were controlled by that newspaper. I wish to bring a few facts to your attention which it seems to me will utterly disprove that contention. I am about to read a few names from a letter-head of the Union for a Progressive Constitution and when I have finished I will leave it to your good judgment to say whether these men are controlled by any newspaper or any power on earth:

Charles Sumner Bird; Charles H. Jones of Weston, president of the Commonwealth Shoe & Leather Company; Edward A. Filene, the

well-known merchant of Boston; Bernard J. Rothwell, ex-president of the Boston Chamber of Commerce; George F. Washburn, president of the Massachusetts Real Estate Exchange; Marcus C. Coolidge, mayor of Fitchburg; Ralph S. Bauer of Lynn, president of the American Board of Trade of Essex County; Professor Edward H. Lewis of Amherst; Alvan T. Fuller of Malden; Professor Arthur N. Holcombe of Harvard University; Alexander McGregor, ex-Councillor; Fred T. Fosdick of Fitchburg; John H. Fahey of Boston; Robert Treat Paine of Boston; John W. Haigis of Montague.

I shall leave it, gentlemen, to your own judgment to say whether any one of these gentlemen is controlled by any newspaper or any individual.

Mr. LUMMUS of Lynn: Do I understand the gentleman to be contending that the management of the newspaper that he mentions has but a comparatively small weight in the councils of the Union for a Progressive Constitution?

Mr. SHERBURNE: Comparatively so, yes.

Mr. LUMMUS: May I inquire of the gentleman, then, how a pamphlet which has been circulated, entitled: "A Reply to the Report of the Minority of the Committee on the Initiative and Referendum," signed, "Union for a Progressive Constitution, Committee on Publicity, Grenville S. MacFarland, Chairman," happens to have been circulated over that signature, without the knowledge and consent of the gentleman from Brookline in this division (Mr. Walker), who told us yesterday he did not agree with it, if Mr. MacFarland has such a small weight in the councils of the Union for a Progressive Constitution.

Mr. SHERBURNE: The gentleman who has just taken his seat has exactly the same knowledge of that pamphlet as have I. I will allow him to answer his own question.

And in addition to this list of well-known gentlemen I shall read the list of two or three well-known newspapers in the Commonwealth of Massachusetts which favor the initiative and referendum: The Springfield Republican, The Boston Post, the Boston Advertiser and the Lynn Item, the latter in the gentleman's own town. I do not imagine for a moment that any other newspaper controls the activities of any one of these four papers whose names I have just read. I do not know exactly the line of argument which my friend the ex-Attorney-General (Mr. Parker), a member of my committee, will take when he rises to participate in this debate, but I imagine that he will rise in his seat and most solemnly warn the dear people of Massachusetts against themselves, and the dear people of course, knowing how close to their best interests my friend always has been and is, will take due notice thereof and govern themselves accordingly.

We have listened to some most eloquent debates on this proposition, some most learned and skilful arguments, but, when we stop to think of it, every great reform which the world ever has known, every great scientific discovery, has been subjected to exactly the same opposition, the same arguments, and many of the great inventions of to-day, which the world could not possibly do without, were condemned as foolish and dangerous with the same vigor and eloquence of argument to which we have listened against the initiative and referendum! As a simple illustration, a few years ago a well-known athlete discovered that by throwing a baseball in a certain way he could cause that ball

to change its direction after it had left his hand. He immediately announced that fact, and at once all of the college professors and scientific gentlemen proved absolutely by their books and their philosophy that it was an utter impossibility; no round object thrown from a man's hand could possibly change its direction. The unfortunate athlete who had brought all this condemnation and satire upon his devoted head at once challenged these gentlemen to a demonstration, and the moment they appeared upon the baseball field all of their marvelous scientific doctrine and philosophy went a-glimmering. The ball curved. And just so with the initiative and referendum. They say it cannot possibly work, and they can prove it by the books. They say that the voters will not discriminate, they will not read. But what are the facts, Mr. Chairman? We find that out of all of the initiative and referendum propositions that ever have been submitted to the people in the United States practically two-thirds of them have been rejected by the people and about one-third accepted. Again, Mr. Chairman, the ball curves. The people do discriminate. They know what is good for them. They know that they want it, and they vote for it when they have the opportunity.

There has been considerable criticism here because certain believers in the initiative and referendum have seen fit to criticize the Legislature. Because we have maintained that the Legislature was not always responsive to the best interests of the people they have stood here and in answer they have pointed to poor old Massachusetts. There she stands. Well, poor old Massachusetts has had to stand for a good deal in my time, but nothing more humiliating than some of the arguments brought forward here in her defence, and I have been moved on several occasions to rise in my seat and defend Massachusetts from some of her defenders. Now, I claim that is a legitimate argument. If the Legislature always was responsive to the best interests of the people there would be no need of the initiative and referendum. If conditions were so altogether lovely as our friend from Amherst (Mr. Churchill), with his one year's experience in the Massachusetts Senate, honestly believes, we should not stand here to-day and advocate any change; everybody would be perfectly satisfied. But I believe that to be a legitimate line of argument, and I am going to describe briefly some particular pieces of legislation,— one in particular of which I had intimate knowledge,— to prove that upon that particular occasion the Massachusetts Senate did not respond to the will of the people.

Mr. Bartlett of Newburyport: I want to ask a question for information. I understand the gentleman speaking is of the committee on this subject. I want to ask him why his committee reports (apparently unanimously) against the initiative and referendum in towns and cities.

Mr. Sherburne: We believe that is purely a local matter and should be left to the towns themselves. No question of State wide importance could possibly be voted upon by towns and cities voting individually. All of their matters are purely local matters, and that is why we leave it to them.

Mr. Bartlett: Then the constitutional amendment does not provide that there shall be the initiative and referendum in cities?

Mr. Sherburne: That is it. I was a member of the Massachusetts

House of Representatives in 1904, 1905 and 1906, and I was particularly interested the other day when the gentleman from Somerville (Mr. Underhill) in his defence of Massachusetts, in the effort to prove that the Legislature was responsive, referred to a certain measure known as the full crew bill, of which he claimed the honor of having secured the passage through the House. He referred to it as a most meritorious measure, evidently in the interest of the great traveling public as well as the men who worked upon the trains, and because of the fact of his indorsement of that bill I propose to give him a little history relative to it. It became a law, I believe, in about 1911. My experience was in 1904. I was a member of the committee on Railroads, before whom that bill came for action. The committee gave one brief hearing on the question, and after the proponents and opponents of the measure had talked briefly the committee went into executive session. This occurred during my first year's service, and during the first month of my service, and of course I was at that time somewhat younger than I am to-day and somewhat more innocent relative to the methods of securing legislation. Because of the fact that everybody spoke favorably regarding that proposition, in the innocence of my soul I took it for granted that the committee would gladly welcome it and vote unanimously to submit it with a favorable report. But what was my astonishment, when the chairman called for a vote, to see fourteen hands go up in opposition. I was the only man who favored it. I dissented. The bill came before the House, and after a somewhat lengthy argument we carried it through the House in spite of the opposition of the fourteen members of the committee, carried it through overwhelmingly. I thought then, again in my innocence, that of course the Senate would bow to such an obvious popular expression from the popular branch of the Legislature and that the passage of the bill was a sure thing, and I was mentally patting myself on the back as I walked out of the chamber. No sooner had I reached the corridor than one of the slick, suave gentlemen, a member of the lobby, approached me smilingly and said: "Well, Sherburne, you have got your bill through the House, but let me tell you one thing; we,"— mind the we,— "we have a deep grave waiting for it over on the other side," and he told me the exact vote by which the measure would be beaten. He knew whereof he spoke. I visited the Senate on the day upon which the vote was taken, and as I sat there and witnessed the cold-blooded manner in which they blackjacked that meritorious bill, so evidently in the interests of the great public, as acknowledged by my friend from Somerville, I felt a stronger sympathy and a closer fellow-feeling than I had ever known before for that well-known Biblical character known to us as a certain man, who went down to Jericho. [Laughter and applause.] Of course I did not know the Senators as well then as I do now, so I came away from there in fear and trembling, one hand on my watch and the other on my pocket-book. But since then I am happy to say that individually I have found the Senate a most honorable body of men, and I think they want to do the right thing. Of course I have no reference to the Senate of recent years, I know nothing about it. I hope and pray that the members are far superior to some with whom I have had experience. I know that at that time I made no claim or charge that these men were bribed or that there was anything unlawful in the

transaction, but I found out definitely that there were certain powerful interests back of these men against which they did not dare cast a vote, and so I bring that forward as an argument for the initiative and referendum and for this reason.

I know, the gentleman from Somerville knows, and I think we all know, that if that bill ever had been submitted to the people in the form of the initiative and referendum it would have been put on the statute-books immediately. But some gentleman, I expect, will rise and say: "Yes, but the Legislature did finally respond, the bill did become a law." Yes; but for years before that time, and for years after, that same old grave yawned over there, and every year it passed the House by a big majority and the honorable Senate laid it decently to rest. And what I claim is that while the Legislature may have responded, they responded, — oh, so slowly! The people had suffered under that bill for years; accident after accident had taken place, caused directly from the insufficiency of manning the trains, — two men on a train. Accident after accident happened to my personal knowledge. I live in a railroad town, I investigated, and I know whereof I speak. The traveling public was in continual danger. And yet the bill never became a law until after the necessity for it had practically disappeared. I mean by that, after the trains had all been equipped with air-brakes. But during the period when it was needed, they did not respond.

Now, the other evil to which I wish to refer is that iniquitous thing known as the "fellow-servant" doctrine, under which the people of Massachusetts were mangled and crushed and killed in the factories and workshops for generations; it was not until after fifty or sixty years of agitation, — fifteen years after England herself had repudiated the doctrine, — that we could persuade the Massachusetts Legislature to abolish that most inhuman theory! If we had had the I. and R., we know, — it is not a theory, we know, — that the people would have abolished it years and years before. So I claim that while the Legislature may be at times responsive, it is not sufficiently so, and we need the initiative and referendum as an additional piece of machinery to enable the people to secure the things they really want. And they do want it, — because the gentleman in the third division (Mr. Youngman) the other day stated that his objection to this proposition was that if we passed it here the people would vote for it and accept it. Of course they want it!

Now, Mr. Chairman, coming down to a definite conclusion, is it not perfectly obvious that, laying aside all of the fine, technical, eloquent arguments, and all the chasing around Robin Hood's barn in search of an argument to disguise the real one, the real argument is that these men who oppose the I. and R. distrust the people?

I believe that our whole system of government here, — the one thing above all others that makes it safe and workable and livable, — is a right thinking majority; and if I could believe that the people were not right thinking, that they were incapable of passing directly upon their laws, I could say with the gentleman from Amherst (Mr. Churchill): "God help us! There is no help for us." All of our safety and stability, and democracy itself, rest absolutely and entirely upon a right thinking majority; and, so believing, I believe that the people of Massachusetts are right thinking enough and in-

telligent enough to pass upon any question of State wide public policy that may be submitted to them.

Now, some gentlemen, I think a majority at least of the Convention, favor the principle of the initiative and referendum; but many of them wish to load it down with exclusions. They say: "Yes, we can trust the people, but only so far; we cannot trust them to deal with the great questions of the judiciary and of religion." But, Mr. Chairman, if the people are intelligent enough and right thinking enough to legislate on statutory matters, there is not any reason under the heavens why they cannot legislate on constitutional; and I believe that when we submit this proposition to the people we should say to them: "Yes, we have confidence enough in you to trust you all the way. We will make no exclusions. We believe that you will deal rightly and justly with these great questions, as well as with the smaller ones."

The other day, Mr. Chairman, my good friend from Amherst (Mr. Churchill) declaimed most dramatically: "Shall the stone which the builders rejected become the head of the corner?" Now, Mr. Chairman, we accept that metaphor. The stone for which the fathers found no place in the groundwork of the edifice, is now, in the fulness of time, found to fit perfectly into the almost completed structure, and will, if we, the delegates assembled here to-day, but grasp our opportunity, indeed become the head of the corner. [Applause.]

Charles E. Hibbard of Pittsfield.

Mr. Hibbard of Pittsfield: I desire to speak for a few minutes on the resolution now under consideration, not because I have the honor of being president of the Massachusetts Bar Association, an unmerited compliment paid me by my friends, but because for more than sixty years I have lived in this Commonwealth and have enjoyed the benefits, opportunities, privileges and blessings made secure to every citizen under the provisions of our present Constitution. I have another reason for speaking and it is this: Having the honor to represent in part the First Congressional District which as you know is composed principally of the hill counties of the western part of the State; coming as I do from Berkshire, one of those hill counties, which was the birthplace of that movement which resulted in the Convention of 1779 and the Constitution adopted in 1780 under which Massachusetts has grown, prospered and made for itself a record second to no other State in the Union; coming as I do from the home town of one of the great men in the Colony of the revolutionary period, who, in intellectual power, in ability to express by voice and by pen clearly and lucidly his views on political and governmental problems, in devotion to the cause of the Revolution and in love of liberty, measured up to the stature of any man in the Colony, with few if any exceptions, the Rev. Thomas Allen, the first pastor of the First Church of Christ in Pittsfield, who belonged to the church militant as well as to the church triumphant and proved his right to membership in each by preaching from his pulpit on Sunday and on the following week leading his flock, musket in hand, into the battle of Bennington; coming from the adjoining town to Lanesborough, where lived that revolutionary

hero, Colonel Jonathan Smith, whose life and services to the State and Nation were so eloquently and fittingly portrayed by the delegate from Lancaster (Mr. Parker), a few years ago at a memorial service, who was a delegate and played no inconspicuous part in the Convention of 1779 and who, as a delegate to the Convention of 1788 called to ratify the Federal Constitution, is said by his homely yet eloquent speech, not only to have stemmed the tide which was setting strongly against its adoption, but turned that tide in its favor and the Federal Constitution was adopted by a small majority and subsequently by other States which were awaiting the action of Massachusetts; coming as I have said from this historic section of the State and with my mind filled with such historic memories, I cannot satisfy myself that I would be discharging my full duty as a delegate, or that I would be loyal to the memory of the fathers did I remain silent and content myself with simply voting "no" on a resolution which, as I believe, if adopted by the people, would undermine the very foundations of our Constitution and put in peril the rights and liberties of the people which the founders of the Commonwealth sought to make secure, and as we know did make secure for at least the past one hundred thirty-seven years.

As early as 1774, there was an organization in the western counties, having its headquarters in Berkshire and headed by Parson Allen and known as the Constitutionalists, and after five years, during which there was no government of the people adequate to meet the pressing needs of that perilous time, by agitation, by petition and by entreaty, supported at last by Essex and other counties in the eastern part of the State, a Convention was called in 1779 for the sole purpose of framing a Constitution for the new Commonwealth of Massachusetts. The Bill of Rights in our Constitution is attributed to John Adams, and I would not if I could detract from the credit which is given him; but I would say that Pittsfield, by a committee headed by Parson Allen in a letter written to Colonel William Williams, Pittsfield's delegate to the Convention of 1779, instructed him to demand in the Bill of Rights nearly all, if not all, the rights which are named therein. At the risk of seeming to give Berkshire County too much credit for the Constitution, I would say that in every speech delivered in this Convention, the speaker when he speaks of the government of Massachusetts as a "Government of laws — not of men" unconsciously pays a tribute to Berkshire County and Parson Allen, for it was the voice of Berkshire speaking through Parson Allen which demanded of the Convention of 1779, a "Government of laws and not of men."

As provided in the Act of the General Court, there assembled on the first day of September, 1779, in the meeting-house in Cambridge a Convention of delegates of the people fully representing the wisdom and patriotism of Massachusetts, assembled for the sole purpose of framing a Constitution for the new Commonwealth. I shall not attempt any eulogy of the great men in that Convention, for we all know their names and the distinguished services which they in their day rendered not alone to this Commonwealth but to the Nation.

Robert C. Winthrop once said of that Convention that it contained "as great a number of men of learning, talents and patriotism as had ever been convened here at any earlier period." To which Governor

Bullock added the statement "that it has never since been equaled by any public body in this State unless possibly by the next Convention which met in 1820."

They knew what the people wanted. They knew they had thrown off the yoke of Great Britain and declared their independence. They knew they had renounced the doctrine of the Divine Right of Kings. Consequently the Constitution must be framed for a democracy. They also knew the people, having renounced the Divine Right of Kings, would never consent to establish the divine right of the majority. So the fathers adopted the basic principle of representative rather than a pure democracy, that basic principle which Senator Lodge has said was the great contribution of the English speaking people to the science of government.

Allow me to read to you, not because it was written by Parson Allen, not because it was the word of Berkshire sent to its delegates in the Convention of 1779, but because I believe these words embodied the hopes, the aspirations and the desires of the great body of the people represented in that Convention:

> Knowing the strong bias of human nature to tyranny and despotism, we have nothing else in view but to provide for posterity against the wanton exercise of power, which cannot otherwise be done than by the formation of a fundamental Constitution.

Again, Mr. Chairman, let us listen to these words coming from the same source, because they furnish us with the motive power behind the men who framed the Constitution:

> Let it not be said by future posterity that in these great, these noble, these glorious days we made no provision against tyranny among ourselves.

These words, Mr. Chairman, in my opinion, embodied the sentiment and the purposes which actuated every delegate.

The Constitution which had been submitted to the people in 1778 had omitted a Bill of Rights and for that reason largely the people refused to ratify it. The demand of the people for the formulation of a Bill of Rights was met in the present Constitution. To make secure and to preserve the rights and liberties of the people as set forth in the Bill of Rights, the delegates established a frame of government comprising three independent coördinate departments, the executive, the legislative and the judicial. That there might be an opportunity for deliberate action and consideration of matters of legislation, they divided the Legislature into two departments, the House of Representatives and the Senate, that each might be a check on the other, and over all they placed the Governor, representing all the people, and intrusted to him the power of veto. Wisely they provided that the justices of our courts should be appointed by the Governor, giving them a tenure depending solely upon good behavior, to the end "that the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity would permit" might be made secure. The Constitution so framed by the fathers was adopted by the people and time was, and it was not so very long ago either, when the sons of Massachusetts took pride in her Constitution, took pride in saying that the Constitution of Massachusetts furnished the model after which was patterned the Constitution in many other States; and they took especial pride in the remark said to have been made by John

Adams: "I made the Constitution for Massachusetts which finally made the Constitution of the United States." Under that Constitution, with changes merely in detail and not in principle, we have lived one hundred thirty-seven years, and upon the basic principle of representative government has been built the glory and the prosperity of the Commonwealth. It is now claimed by some that the end which the fathers sought to secure in the Constitution has not been attained and a most radical and fundamental change is now proposed as set forth in the resolution now before the Convention.

Elihu Root in his address in accepting the presidency of the Convention in New York in 1914 said: "In a State with such a history as ours, the burden of proof rests upon the men who would make a change." Cannot we with equal force and with as much pride say: "In a State with the glorious history of Massachusetts the men who would make a change in our Constitution must bear the burden of proof." And believing that the proponents of the resolution providing for initiative and referendum would accept this burden of proof, I have listened with much interest to what has been said up to the present time. I listened to the delegate (Mr. Walker of Brookline) who has in charge the resolution to see how he would meet this burden of proof. He first says there is a public demand, as though a mere public demand, if it exists, is a sufficient excuse and reason for this body of delegates, men of intelligence, men who love the Commonwealth and who have enjoyed the benefits and blessings of our Constitution, for recommending to the people such a radical and revolutionary change in our fundamental law as is embodied in the resolution providing for the initiative and referendum. Where there is a strong, determined and lasting public sentiment in favor of a change, the Constitution provides the manner by which that change may be made. But to return to the delegate's assertion that there is a strong public demand, I deny its existence. Every man's judgment upon that subject must be based upon his own experience and knowledge of men as he meets them. I want to say right here that there is no great public demand in Berkshire County or in the First Congressional District, as far as I know, for the initiative and referendum. There are a few socialists who have spoken to me on the subject and there are also a few so-called labor leaders and a few agitators, but outside of this there is no demand of any magnitude. [Applause.]

Mr. Bodfish of Barnstable: I should like to ask the gentleman if he is willing to submit his case as to whether or not there is a public demand, to the people, — by submitting the amendment to them. [Applause.]

Mr. Hibbard: To be frank with you, I am not willing.

Mr. Bodfish: Thank you.

Mr. Hibbard: I am not willing because the people are not prepared for it, have not given the subject sufficient study and would not be able to do so if the question is submitted to them this year.

Mr. Walker: I do not mean to claim that we should submit this matter to the people merely because we think there may be a demand for it. There are other reasons, and excellent reasons. But, Mr. Chairman, when the gentleman stands there and says there is no demand in Berkshire County for the initiative and referendum, I should like to read the returns from Berkshire County. This question was

put on the ballot in Berkshire County in three representative districts, and the question was put on the ballot distinctly for the constitutional initiative and the legislative initiative, — both questions. The second Berkshire district voted 841 to 237, more than three to one, in favor of the initiative and referendum. The fourth Berkshire district voted 3,217 to 975, more than three to one, — nearly four to one. The sixth Berkshire representative district voted 901 to 322, nearly three to one. So I say it is not fair to say that there is no sentiment for the initiative and referendum in Berkshire County. [Applause.]

Mr. Webster of Haverhill: I ask not a question; I make a statement. I come from a district which has voted more than eleven to one for the initiative and referendum. [Applause.]

Mr. Stoeber of Adams: As one of the delegates coming from the Berkshire hills and the Berkshire district I should like to ask the speaker to what extent he has mingled among the working people in that district to find out whether or not there is any demand for the initiative and referendum. [Applause.]

Mr. Hibbard: It is pretty difficult to answer that question with any degree of patience. Why, I was associated with, worked at the bench with, laboring men before the gentleman was born. [Applause.] My life has been lived among the laboring people. I never yet held an office, a public office, that I did not hold because the laboring people believed in me and voted for me [applause], because I always have belonged to the party in the minority. But that is a personal matter. I was saying that I did not find in Berkshire County, in the first district, any great demand for this measure. I went all over that district. I met men,— business men, professional men, laboring men. I did not meet any labor men. I make a distinction between "laboring" men and "labor" men. [Laughter.] I did not have a single man in that district,— and I went all over it,— ask me how I stood on the initiative and referendum. I never had a man mention the subject to me unless I mentioned it to him. The only person who asked me to pledge myself resided in Boston and was a secretary, clerk, or president of some organization for a progressive Constitution. [Laughter.]

Mr. McLaud of Greenfield: Coming from part of the first district I do not wish to cast any reflection on the truthfulness of the speaker in stating that there was no public demand. I met the gentleman in Greenfield at the time he was going over his district. Possibly he did not hear of any public demand. But I think the gentleman knows that I personally ran against a man who was far better qualified than I, — in the matter of education, at least, — to attend this Convention; a man who had lived his entire life in Greenfield; a man who belonged to one of the best families of western Massachusetts; a man who is honored and respected in Greenfield. And yet I, practically a stranger in Greenfield, with a residence of only sixteen months, defeated him; and I defeated him upon the one and only issue of the initiative and referendum. [Applause.]

Mr. Hibbard: I am very glad to hear the gentleman's explanation. [Cries of "Louder."] I am very glad that the last gentleman explained to me how he happened to beat the gentleman from Greenfield. I always had been told, or have been told, that it was because his opponent left the State and went off south somewhere for his

health. [Laughter and applause.] However that may be, I want to say again that I had no man ask me after my election if I proposed to vote one way or another on this. We have in our city two daily newspapers, and I never have seen an editorial in either one of them, and I do not know how they stand.

Mr. STOEBER: I was much impressed by the statement of the speaker that the laboring men in the Berkshire hills are not in favor of the initiative and referendum. I should like to ask him if he can name me one single labor-union or labor organization in that district that did not come out and favor the initiative and referendum. [Applause.]

Mr. HIBBARD: I am not familiar with the inside, internal workings of the labor-union. I know some of the members; and I know that on the morning of the election there was a circular put around by those organizations, saying: "Vote for one!" and they did. [Laughter.] But that, of course, is beside the subject. I am sorry I got into that subject. Of course I do not deny that there is some interest there in the initiative and referendum; but I tell you my experience, and that is the only guide I have. I do not take any man's word, I take my own experience.

In this matter I do not think there is a better illustration of the truth of that remark made by Edmund Burke, I think, — or it was some other philosopher if not he, a judge of human conduct, — "that six grasshoppers under a fern leaf would make more noise and attract more attention than a herd of cattle quietly grazing on a near-by hillside." [Laughter and applause.] And so I say of the paper in Boston: It can make more noise, attract more attention, than forty clean, respectable papers in other parts of the State. [Applause.]

I do not believe there has been a Constitutional Convention in Massachusetts since 1779 where the responsibilities were graver or greater than the one now in session.

I was speaking of the importance of this Convention and believing that each delegate should act according to the dictates of his own conscience, and after hearing the evidence and the arguments, I have been somewhat surprised at the statement made here and in the newspapers that a certain number of delegates have pledged themselves in advance to vote for the resolution now under consideration. As I look at it, it is our duty to review the workings of our Constitution, and if we find it has not secured the end sought by the fathers, to recommend to the people such amendments and changes as we, after mature deliberation, believe to be necessary to meet the demands of the times; and I have listened carefully to the arguments made in order that I might intelligently understand the situation.

The delegate from Brookline (Mr. Walker) says the Legislature has not been and is not now responsive to the demands of the people; does not in matters of legislation represent the will of the people, and the legislation has not been such as to promote the interests of the laboring people. A few years ago this same gentleman had an ambition to be Governor of the Commonwealth, and had he been elected, I doubt not, he would have made a most excellent Governor. I remember well when he came into the western part of the State during his campaign, and I recall very distinctly some things which he said. Among other claims made was this: "Wherever you go throughout

the Nation, men will point to Massachusetts as the leader and guide among the States; search the statutes of all the States and in not one of them will you find so much progressive, beneficent and wise legislation as you will find in Massachusetts." I believed that to be true then, and I believe it true to-day, but I did not believe the words which followed, namely: That for all these benefits we were indebted to the Republican Party and that that party should be kept in power, and he be made Governor.

I have not attended a Democratic or a Republican rally in Berkshire County in 20 years, when the candidates for State offices have not pointed with pride to Massachusetts and solicited the votes of laboring men on the ground that they were indebted to their particular party for the great progressive legislation Massachusetts had inaugurated. What has happened? What has changed things? Have any of these laws been repealed? Here they are, a monument to whom? A monument to the legislators of Massachusetts. Personally, I need not be told, neither need I search the statutes to find what legislation in this Commonwealth has done to promote the interests of laboring people during the last 60 years, because I know. Another delegate from Brookline, Mr. Whipple, spoke feelingly of the downtrodden, the oppressed and wronged people (of Brookline, I suppose) [laughter] and we were told about certain "rodents,"—I say "rodents,"—I suppose that is the classical word to use in cultured Boston, but up in the country we say "rats." [Laughter.] I mean we would describe them as rats. I was a good deal disturbed by his remarks, although he did tell us that these same rodents had departed because of the scarcity of cheese, but were waiting an opportunity to return when a new supply was furnished. I said I was disturbed, because I had voted for a good many men as members of the Legislature, whom I supposed, though not statesmen, were, at least, partially honest. I went out into the hall and looked at their pictures as they adorned the walls of the corridor, and I wondered that some gentlemen, whom I could name, should allow their pictures to stand out so prominently among that class of men. I was very much gratified when the gentleman from Somerville (Mr. Underhill) spoke a word of praise, as well as vindication, of himself and of the Legislature. Had the gentleman waited he would have saved himself the trouble of vindication, because when the third delegate from Brookline (Mr. Anderson) appeared on the scene, he told us that these rodents were not the legislators, but were the lawyers.

After hearing the gentlemen mentioned, and others, who have spoken, I want to put this question to them and to all those who favor the initiative and referendum: "Do you think it necessary, in order to furnish a background and proper setting for your pet resolution that you should belittle Massachusetts, blacken the reputation of legislators, and damn the legislatures of the last thirty or forty years?" Every speaker, even the last, has told us what a great improvement there has been in the matter of legislation, — less corruption, less invisible government during the past few years. The gentleman from Brookline (Mr. Walker) who first spoke in advocacy of this resolution read from Elihu Root a description of the politics of New York. What it had to do with Massachusetts I do not know. Evidently he intended to convey the impression that Mr. Root was a Progressive.

If there is a line in any of Elihu Root's writings or speeches that indicates that he has sympathy with the initiative and referendum, I have yet to see it. However, any one who knows the politics of New York State knows there has been a vast improvement during the past five or ten years; that the old bosses are dead and have left no successors and that there has been a general purification and house-cleaning. If the conditions so eloquently and feelingly described by the previous speakers exist in Massachusetts, is it possible that in this old Commonwealth, where, under the present Constitution her population and wealth have marvelously increased, where education and charity have been more liberally fostered and encouraged, where science and art and the industries have been developed as in no other Commonwealth, where protection and care have been extended to the weak and the helpless to an extent without a parallel in any other State in this Union, there is not political virtue enough, nor civic pride enough to remedy any and all such defects as may exist?

I oppose the initiative and referendum because, in my opinion, it would remove and destroy those safeguards which, under the ninth article of amendment, our fathers placed around the Constitution and which they thought and found essential to secure its orderly amendment. But that is not all. It would shear the Legislature, in a measure, at least, of its duties in legislation, which are contemplated and provided for in the Constitution, and enable it to evade that responsibility which always should accompany political power and thus destroy the principle of representative government which the fathers placed as the corner-stone in our Constitution. Further than that, it would take away that power which the Governor has, and which has been exercised so many, many times to advantage and the benefit of the people; and, then again, the initiative and referendum being adopted would open the way for an attack upon the judicial system of the Commonwealth. Why, Mr. Chairman, is there a man in this body of delegates so simple, so easily deceived, that he believes that an attack on the judiciary would not immediately follow? Two delegates who have spoken on this resolution and have avowed their loyalty to the judicial system of the Commonwealth appeared before the committees of Judicial Procedure and of Labor, sitting jointly, claiming to represent organized labor, in favor of a resolution declaring labor a personal right, not a property right, and forbidding judges to issue injunctions in labor disputes. As late as last January, the Massachusetts State Branch of the American Federation of Labor petitioned the Legislature for an amendment of the Constitution providing for the election of judges of all our courts. A change from an appointive to an elective judiciary would be immediately followed by an amendment providing for the recall of judges and the recall of judicial decisions. As the delegate from Brookline (Mr. Anderson) so frequently said in his speech: "I may be wrong," but it is my opinion, if the initiative and referendum were adopted, it would be but a few years before we should see an elective judiciary and the recall of judges in this Commonwealth. The advocates of this resolution tell us it is a moderate, conservative measure. To my mind, there is no such thing as a moderate, conservative compulsory initiative, at least, so far as relates to the Constitution. As evidence of its conservatism, they tell us they must secure 50,000 signatures, but, gentlemen, how

long will it require 50,000 signatures? It will not be many years before there will be an initiative petition to reduce that number. In the matter of the public opinion bill, every Legislature since that bill was passed, has been besieged by the leaders of labor organizations petitioning to have the number of signatures reduced. They say, it will be difficult to secure that number of signatures. Mr. Chairman, to certain men in Boston, with the aid of newspapers, which have reduced the gathering of signatures and of coupons to a science, it would be like picking blue-berries on the Berkshire hills or cranberries in the bogs of Cape Cod. [Laughter and applause.]

We congratulated ourselves a few days ago that we had got rid of the sectarian issue, and we politely, and with great grace, ushered that issue out of the political arena. Now, under the initiative and referendum, we would turn around and open another door and invite it to reënter, an invitation which we may be sure, will be heartily accepted. I object to it on another ground which seems to me of vast importance, not alone to the Commonwealth, but to the Nation as well. Every one who has any knowledge of public affairs knows there is under way at the present time a definite and determined movement to break down the Federal Constitution and to change our representative republic into a socialistic democracy. Every Socialist, every one who wants a change of any kind, is out against the Constitution of the United States, and as in 1789, the action of Massachusetts, under the leadership of Jonathan Smith of Lanesborough, was used to induce other States to accept it, so if Massachusetts can be brought into the initiative and referendum column, she will be held up as a shining example, and all the more shining because of her previous record; and if that day ever comes, there are men not in Massachusetts alone, but throughout the world, who have looked to Massachusetts in the years that are passed for guidance and for wisdom in government, who will feel, as Hosea Bigelow did on another occasion when Massachusetts was tempted to yield her proud position of leadership and to sacrifice ideals that had made her great, and say with him:

> And there's Massachusetts, God forgive her.
> She's a-kneelin' with the rest.

[Applause.]

Thomas J. Boynton of Everett.

Mr. Boynton of Everett: I did not intend to occupy the time of the Convention at all upon this question, but the powers that be decreed that I should speak for a few minutes, — at least to place myself on record. I have been convinced as the debate has progressed that if the gentlemen who are in opposition to, and those of us who are in favor of, the initiative and referendum were to meet two by two on the street or in our offices and engage in ordinary conversation, where we were not charged with the responsibility of advocating a cause, where we could talk as man to man and see as eye to eye, we would agree on many of the essential things that have come up in this debate.

It seems to me there is pretty substantial agreement as to certain things in our present representative system. Gentlemen who have favored the measure, gentlemen who have opposed the measure, admit

that there are evil things in that system and of course that they need correction. The question seems to be as to what the proper remedy is, and the objection is that the remedy we offer is not the proper remedy.

Much has been said here in regard to social unrest. The gentleman from Beverly (Mr. Loring) the other morning speaking on this question referred to social unrest, and said that unrest is a good thing, — it stirs things up, it makes for progress. Now, that is a statement to which we also agree. We all agree, Mr. Chairman, that a condition of perfect repose would be a condition of stagnation and death. We all agree that the unrest that impels a man to strive earnestly and by every legitimate means to improve his condition and that of his family, that impels the ignorant to seek education and enlightenment, that moves the wicked to forsake his way, and the unrighteous man his thought, is beneficial to the community and in larger degree to the individual more directly concerned. But, sir, when the conviction takes possession of the minds of a considerable number of men in the community that no matter how soberly and uprightly they may order their lives, that no matter to what degree they are willing to sacrifice and deny themselves, that strive as they may and toil as they may there is nothing in this world for them or theirs except the crumbs that fall from the rich man's table, we have a type of unrest that is quite different from that to which I have just referred.

Now, it is easy to ignore this type of social unrest; it is easy to wave it gracefully aside. And it is just as dangerous as it is easy.

But I do not propose, gentlemen of the committee, to discuss social unrest, further than to make the distinction I have just drawn, and to suggest that at least as a partial remedy for it the men who possess the conviction of which I have spoken will be better satisfied and more content in spirit, will feel surer of an eventual remedy for their condition, if they can feel that they themselves may participate in making the body of laws, which they feel is now framed against them, and that in the course of time, in the fulness of time, after fair opportunity for discussion and debate, it is possible that a majority of the people of the State may be able to amend the fundamental law, the Constitution, and that a small minority of the citizens shall no longer have power to forever bar and prevent an amendment of the Constitution.

It is said in the discussion of this question that the amendment of the Constitution by the people is an exceedingly dangerous thing. Let me say, at this point, gentlemen, that I am obliged, by reason of this order shortening the time for debate, to cut up my address, and to drop out connecting links, and you will pardon me if such remarks as I make seem to be quite desultory and disconnected. It is argued, as I say, that it is a dangerous thing that the people should have the authority finally to amend their fundamental law. And in support of that, one of the arguments offered is the opinion of Professor Barnett in regard to the state of things in Oregon, wherein he declares that Oregon no longer has a written Constitution. Now, I do not know about the Constitution of Oregon; I am not prepared from personal knowledge to say that it has anything at all that answers to-day to a written Constitution. I do believe that that statement of Professor Barnett that has been quoted to us is an over-statement of the fact.

But for the moment let us suppose that that statement is one hundred per cent correct, and that Oregon has no written Constitution. What of it? What has happened in the State of Oregon? When we say that a State has no written Constitution that sounds ominous to us who have been accustomed to a written Constitution all our lives. But in the State of Oregon life is as safe, the rights of property are as sacred, and both life and property are just as well protected this day and this hour as they are in the Commonwealth of Massachusetts. What disaster has overtaken the State of Oregon? I assert none. The State is growing, it is increasing in population and in wealth year by year, property is safe, life is safe, rights are protected, and its people are as happy and contented as those of any State in the Union from the Pacific to the Atlantic.

It may be, gentlemen, that we have attached undue importance to a written Constitution. I do not assert it. I believe in a written Constitution, and I believe in giving a reasonable degree of permanence to the Constitution. I would not vote for a measure that I did not think provided for a reasonable degree of permanence in our fundamental law; and I am willing to support this resolution, because I believe it will accomplish just that thing.

We have had much discussion here of the Legislature; we have listened to eulogiums of the Legislature; we have listened to some criticism of that body. I have listened with great interest to the gentlemen who have eulogized the Legislature and who have had some disparaging remarks to make about the body of the voters generally and as to their capacity to decide upon measures of great importance to the community. It appears, if those gentlemen are to be believed, that the great mass of voters, the electorate of the Commonwealth, is peculiarly subject to prejudice and passion and is not to be trusted.

That leads one to reflect for a moment as to where the members of the Legislature come from themselves, from what source they are drawn. From whence do they spring? Right from the common people! "Behold I show you a mystery." On the first Monday of November the member of the Legislature-to-be is a member of the mad, unthinking throng, he is just one little unit of it, and in twenty-four hours, when the vote has been declared that announces his election, he is somehow transformed to a cautious, deliberate, safe and sane sort of a person. I hope before this debate closes that some gentleman will rise and explain by what wondrous accession of grace or understanding a man is thus transformed from a single unit of a passion-swayed mob, by the simple act of his election to the Legislature, into a calm, deliberate, wise, just, intensely virtuous and patriotic man. [Laughter and applause.]

Members of the Legislature, Mr. Chairman, are men, like the members of this committee, men like ourselves, tempted in all points like as we are. And therein comes the great distinction, perhaps, between measures that are initiated and members of the Legislature. It is the divine wisdom that would teach all men to pray "lead us not into temptation," and it is in this point of temptation to men that the weakness of our representative system is most marked, that is where it develops.

There are these distinguishing things, gentlemen, between an initiated law, a law initiated by the people, and a member of the Legisla-

ture, — who may have been initiated by the people or may perchance have initiated himself. The initiated law, for instance, will have no mortgage on its homestead, about the payment of which it is troubled; its promissory notes are not in the hands of any loan shark or of any banking institution where the loan is liable to be called, involving difficulty of payment; the initiated law has no political future about which it is concerned and worried; it has no worries about whether it is going to be elected next year or the next; it is not susceptible to any proffers of financial aid, either directly in person or indirectly by way of a liberal contribution to next fall's campaign fund. And, gentlemen, there is this further and most important distinction, that whatever language is contained in the initiated law before election will be precisely the same after election. [Applause.] The initiated law never will return to its constituency with a mouth full of apologies and lying explanations and excuses for pledges broken or for confidence betrayed. [Applause.]

Members of the Legislature are not after all so different from men in general. They represent fairly, upon the average, the average intelligence of the communities they represent, and so the average intelligence of the State. But when we elect men to the Legislature, whether we will or no we make, to use a common expression, "markers" of them; they are singled out from the rest of the community, and they can then be made the subject of pressure. If there are great interests having matters to come before the Legislature, the financial condition of the member is studied; his ambitions are studied; his every frailty is studied, — and studied by men who know scientifically how to play upon all the weaknesses known to mankind. And when the hour comes for pressure to be applied to that man the attack is made at the weakest point in the line of his moral defences.

Now, the argument here has proceeded largely upon the line that matters of corruption are always wrought by money, by the use of financial considerations. But it is quite true that a man may be intimidated by fear or seduced by hope; and in either case there occurs a corruption of mind that is absolutely inconsistent with the public interest. It probably is true that men are swerved from the right line quite as often by fear, by jealousy, or by ambition, as by the lust of gain. These are matters all of which we have to consider.

Now, I do not intend to be understood, — I am aware that these things sound bitter, — I do not intend any bitter criticism of the Legislature. The Legislature of Massachusetts at all times has had in its membership a large number of very high-minded and honorable men. I do not intend to impeach men because they are members of the Legislature; but these are the frailties that are common to our human nature, they are common to members of the Legislature just as they are to members of the electorate; the difference being, gentlemen, that in the case of an initiated law and in the case of a measure submitted to the people the pressure cannot be applied to the people at large as it can be applied to individual members, — a few of whom may be absolutely essential and who may be quite sufficient in number to turn the scale in the Legislature in favor of special interests and against the public interest. That seems to be the difference between the initiative and referendum and the system of representative government as it now exists in this Commonwealth.

I had wanted to say a word with reference to the report of the minority of the committee in regard to the social compact doctrine. We are met with the assertion that we have a solemn social compact; and if that part of the report of the minority means anything, I suppose the committee mean that it is an unbreakable compact. I submit, gentlemen, that to say that we are a free people, and then to say that we are governed by an unchangeable Constitution, is a contradiction of terms. For it is of the very essence of freedom that a free people makes its own laws. That must necessarily be so.

It sounds strangely to be told of an unchangeable Constitution at a time in the history of the world when men are saying everywhere, with an emphasis never before heard, that not only Czars and Kings and Kaisers, but Constitutions, — all the instrumentalities of government, — derive their just powers from the consent of the governed, and when the consent is withdrawn the authority passes.

But there is this further remarkable thing to be observed in regard to the preamble of the Constitution of Massachusetts in which, if anywhere, this social compact is embodied. It is this, — and I offer it for the consolation of the minority gentlemen of the committee, — that after the initiative and referendum has been adopted and has become a part of the Constitution of the Commonwealth, the old preamble, with all it says about the social compact, every word of it, will apply to the new condition of things with precisely the same force that it has had in regard to existing conditions for the last 137 years. [Applause.] I think, Mr. Chairman, that the talk about the social compact was not the elucidation of a great constitutional principle, but that it is a very fair illustration of what might be called a figment of the legal brain, a phantasm of the legal mind.

I observed in reading the report of the minority of the committee a statement that the people are more interested in men than in measures; and when I read that statement I turned again to the signatures of the signers of that report, and as I read the names and considered the matter of personal charm and attractiveness, said to myself that after all it was no wonder they thought so. [Laughter and applause.] But in all my observation of political life in this country I never have known any man who could interest the people at all in himself except as he stood for a principle in which they were interested. [Applause.] It is quite true that a man may so identify himself with a great principle that people become interested in him and in his success as representing its success also. It is quite true that a man may so identify himself with a great cause that, though like old John Brown of Ossawatomie he die upon the scaffold, his soul goes marching on. [Applause.] But apart from principle, I believe the gentlemen if they consult their own experience will agree with me that it is impossible for a man to interest the people in the individual.

But the great argument against the initiative and referendum seems to be the tyranny of the majority. They say we are afraid of the tyranny of the majority. That means we are afraid to put power in the hands of the people. And that fear means simply the fear, — as has been said many times on this floor, — of the abuse of power, in whatever hands it may be placed. Every executive officer of the Commonwealth is clothed with some power which he may abuse. Every judge of the Commonwealth is clothed with power which he

may abuse. Wherever power is placed in human hands there is the possibility of its abuse.

Now, the only place, the only source, from which we may know definitely about these things is that of experience; and there has been very considerable experience in the United States with the initiative and the referendum, and with government by majority, if you put it that way. Yet in the course of all this long debate no one has presented an instance of tyranny and of oppression on the part of the majority. If it be said that the initiative and referendum has not been long in use, I grant that is true; fifteen years is not a long time historically, it is not a long time in which to try out a system of government; it is a very brief time. But in this country the initiative and referendum has been tried in a great number of communities, covering exceedingly varied conditions, from Ohio through to the Pacific Coast, and in all the experience thus gained no instance is cited where religious freedom has been attacked, where civil rights have been assailed, or where the rights of the minority have been ruthlessly sacrificed because of the rule of the majority. The thing has worked out, so far as we can understand, on the whole well.

Now, we have the testimony of some witnesses from various States in which the initiative is in force, who give us their testimony. The gentleman from Newton (Mr. Powers) the other day said he had made inquiry in Oregon as to its work there. Well, I have not made inquiry in Oregon. I made inquiry of a man from Oregon who was in my office within the last six months on a matter of business, — a very successful and intelligent lawyer of Portland, — and asked him how he thought the initiative and referendum had worked out in Oregon. He said that originally he was a standpatter, that he had been opposed to it from the beginning, but that he was unable to name any measure in which he felt the people had made a real mistake. That is the testimony of just one man.

The initiative and referendum has been tried in Arkansas. Dr. David Y. Thomas, Professor of Political Science in the University of Arkansas, writes:

> There can be no complete democracy in law-making without complete democracy in Constitution making. Constitutions are often found to stand in the way of laws for which there was no strong demand when the constitutions were made.
>
> The experience of Arkansas furnishes a good illustration for this. For some time the State had been experiencing a great educational awakening. The people wanted better schools. Better schools would mean more taxes, which some people did not want. The Constitution limited the district school tax to seven mills. All efforts to induce the Legislature to submit an amendment raising this limit ended in failure. Finally the initiative was used to submit an amendment raising the limit to twelve mills and this was adopted in November, 1916, by a larger majority than was given to any other amendment. In the same way amendments were submitted authorizing cities to issue bonds for improvements and limiting the sessions of the Legislature to sixty days. The latter checked local legislation and cut down expenses. It never could have been secured through the Legislature. Indeed, the Legislature tried to block its operation after it had been adopted by a large majority.

From Michigan. Governor Ferris of Michigan writes:

> I am most enthusiastically in favor of the statutory initiative and referendum and I am just as enthusiastically in favor of the people having the power to control their fundamental law as their statute law. Therefore, the initiative should apply to constitutions and constitutional amendments. When Governor of Michigan I worked hard to secure the adoption of these principles for our people and we succeeded. They work well here in Michigan and will work well in Massachusetts or

any other State. I am one of those old-fashioned Americans who believes in the doctrine of our fathers that the closer the government is brought to the people the better and safer a government it will be. The initiative and referendum are simply modern instruments to secure concrete realization of this principle in the twentieth century. The closer this principle is adhered to the more safe and stable will our government be, and the more steady and secure will be our progress.

Governor Cox of Ohio says:

I unequivocally endorse both the initiative and referendum in its scope and application in Ohio. We initiate constitutional amendments and I would regard any change here as subversive to the best interests of government.

We have been entirely satisfied with the initiative and referendum. I think if it were proposed to go back to the old order of things it would be defeated four to one. There has been no annoyance in the matter of initiating absurd things, either in legislation or in organic changes. Experience has demonstrated, too, that it is not an easy thing to procure a referendum; in fact, it's quite impossible unless the legislative act in question has created a deep-rooted resentment.

Senator Shafroth of Colorado writes:

The essential point in the argument for inclusion of power to amend the Constitution as well as to enact statute law under the initiative is that the larger power is essential to exercise of the complete operation of the initiative. Constitutional limitation frequently serves as an effectual block to the demands of the people for remedial legislation, and a Legislature unresponsive to the popular will, which refuses to submit a constitutional amendment to authorize the needed statute, can by inaction thwart expression of the popular will. The initiative without power to amend the Constitution is the mere husk of direct legislation, without the substance.

I have a communication from Hon. George F. Cotterill, Chief Engineer of the Highway Commission of the State of Washington, and former mayor of Seattle:

With all the demonstrated value of the initiative and referendum in the State of Washington, since constitutional adoption in November, 1912, it is recognized by every student and believer in progressive democracy that its usefulness has been vitally reduced and limited by the absence of the right by initiative of the people to present amendments to the State Constitution and submit them to the referendum.

I have also a communication from Mr. Samuel Gompers, President of the American Federation of Labor:

The constitutional initiative is the most important factor in any amendment. No people can be free who can not control their organic law. The Constitution may stand squarely in the way of State laws necessary for the public welfare and the people be powerless to enact such laws until the Legislature first submits an amendment to the Constitution.

Senator Robert L. Owen of Oklahoma writes:

I regard the right to propose constitutional amendments by initiative petition for adoption or rejection at the polls the most important instrument of self-government which the people of any State can secure. The right of statutory initiative is important, of course, but it does not go far enough. Statutes of the highest importance for the well-being of the people and needed to meet the rapidly changing necessities of commerce and industry and of modern life are frequently blocked for years because some change in the Constitution must precede their enactment. If the Legislature is unresponsive the people have at hand in the constitutional initiative a remedy by which reasonably prompt action may be taken before great injury is done, and this is just as necessary for business and professional men as for the wage-workers and farmers. Why in the name of eternal liberty shall the people be denied the right to change the Constitution?

I have also some opinions from California. Senator Phelan of California writes:

In California we have long since ceased to debate the wisdom of the initiative and the referendum, and under this system we have a real democracy.

At one time a political machine, controlled by selfish and corrupt interests, dominated the entire State, dictated legislation and named office-holders. Now the people control their government. The abuses of the older system were infinitely greater than any possible abuse which may arise under the more popular system. The people make mistakes possibly and yet they are singularly few, but their mistakes lean towards popular rights rather than against them. It may be said of this reform that, "E'en its failings lean to virtue's side." The people have shown a wise discrimination in voting for statutes and constitutional amendments. The entire State is made a debating ground and the citizens are educated in public affairs and in the realization of this ideal, we have, at last, a government of the people.

Senator Hiram W. Johnson of California says:

Conditions, not unfamiliar, in many American States, had rendered it absolutely essential that the people of California reserve the power themselves to amend their Constitution and to initiate laws or to halt the enactments of an incompetent, a corrupt or a recalcitrant Legislature. Modern conditions, economic changes, and rapid and marvelous development have made it necessary of late to change, or alter, or modify various provisions of our State Constitution; and, at times, it has been imperative in the struggle for social and economic justice that the people themselves, in order to preserve their progress and advance, should have this right. The friends of reaction and the enemies of progress, when they think their materialism is invaded, ever present the bogie man of "unconstitutionality" to any measures designed to ameliorate human suffering or to lighten the human burden. Just as the people have the right, therefore, to frame a Constitution, and themselves to adopt it, they should have the right to amend or modify it.

The objection most often urged at the time of the contest over the initiative and referendum in California was that the people were unfit to legislate for themselves. This is an indictment of democracy itself. Our opponents painted in glowing terms the virtues of representative government. Their argument, substantially, was that a blacksmith elected to the Legislature was at once transmuted into a different man, competent and fit to pass laws for his fellows; but that the same individual, as a mere blacksmith, simply a citizen, without the sanctity and the glory which transfigured him as a legislator, was unfit and incompetent, and incapable of passing upon a law submitted to him. The people, it was asserted, by popular vote should ratify a Constitution prepared for them by those they selected for that purpose; but, in the same breath, it was vehemently denied that these same people who could ratify and adopt a Constitution, had sufficient ability or competency to amend that Constitution.

Now, as I have said, Mr. Chairman, these are simply the statements of individual witnesses. They may amount to much or little; but the basic fact, the real and important fact, about these various States is this: That no State that has adopted the initiative and the referendum has ever abandoned the idea; after the experience they have had, they still adhere to it, and no serious attempt, so far as I am informed, has ever been made to secure the repeal of the initiative and the referendum.

Mr. Chairman, I have occupied more time than I intended. In closing my remarks let me say I noticed the other day that the gentleman from Boston in the second division (Mr. Youngman) referred to the speech of Lincoln at Gettysburg; but there was one sentence of that speech that he carefully avoided. I think we may appropriately quote that sentence in favor of this measure, which is essentially a measure for the government of the people by themselves. And so I say, sir, that I am in favor of this measure, as a measure that will tend to preserve and keep clean, pure, and strong, representative government in the Commonwealth of Massachusetts; and as a measure, too, that will tend to insure the fact that "Government of the people, by the people, and for the people, shall not perish from the earth." [Applause.]

Charles Mitchell of New Bedford.

Mr. Mitchell of New Bedford: I rise not so much with the notion that I can add anything by way of information or argument to this discussion, but partly to state my position upon the question, which I think is the position of a good many members of this Convention; and partly, perhaps, to refer to certain phases of the question that have been alluded to somewhat in the course of the debate.

My friend from Brookline, the author of this measure, at the opening of the debate referred to men who are open-minded upon this question. I think that I can say I have been within that category. I have not approached this question as an advocate or a partisan, but as a student. I have not only been open-minded upon the question, but I have tried to be receptive to every argument that might be advanced to convince me that the proposition is feasible and ought to be adopted. I think from the beginning it has been understood that my position is unfavorable, but I have tried also to make it understood that my mind was open; and I do not say even now that my mind is not open upon the proposition.

This has been my attitude for two reasons. In the first place, this proposal is offered in the name of democracy, and whatever is put forward in the name of democracy is entitled to very full consideration by all of us. In the next place, I am friendly, personally and politically, with some of the men who are the leaders in advocating this measure. I believe absolutely in the sincerity of those gentlemen. I believe that they think, and that they believe they have grounds for thinking, that the adoption of this measure will be for the great benefit of the people of the Commonwealth. I think that those gentlemen will credit me with equal sincerity when I say that after listening to the brilliant presentation of the argument for the initiative and referendum, after having listened carefully to the debate, — and more carefully, perhaps, to the remarks of the people who favor that measure than to the remarks of the people who oppose it, — after reading somewhat upon this question, I must say that my objections have not been removed, that they have been strengthened rather than abated, and that I do not feel that I can accept their conclusions or that I can support the pending measure. [Applause.]

Now, Mr. Chairman, a good deal has been said about social discontent and unrest. I should like to ignore that question for the sake of saving time, but it has been alluded to very forcibly again by the gentleman who has just spoken. I am not going to ignore that question. I think no man need apologize for speaking on it, and I do not propose to ignore the fact that discontent and unrest exist in our community. I do not believe that it is all manufactured. I think that we have discontent and we have unrest in this Commonwealth. I suppose they have discontent and unrest also in commonwealths having the initiative and referendum.

I do not usually like personal allusions, and I do not propose to go into any competition in a recital of early struggles. I will say simply this, that I think I know fully as well as any gentleman here the limitation of hard conditions and the sting of want of opportunity; so that any statement regarding the existence of unrest and discontent

in our community always comes to me with sympathy and evokes a sympathetic response. I do not propose to ignore the fact that these things exist. But, Mr. Chairman, the question for us to decide is: What have the initiative and referendum to do with it? Is this unrest, is this discontent, going to be removed by the adoption of the measure that is proposed? That is the real question. I confess that I have listened very carefully all through this debate and have heard no real suggestion to satisfy my mind that the discontent or the unrest that exists is going to be abated or done away with by the adoption of the initiative and referendum.

Some years ago in crossing the ocean there was a very good and a a very patriotic English woman on board; it was the year after the Titanic disaster, and there was a good deal of apprehension regarding icebergs. I remember that this good woman in consoling her friends said that really there was not much danger, that we should get through safely; she understood some new rule had been made by the British Board of Trade, and the icebergs would not come down so early as they had been coming. Now, I confess that I can see about as much connection between the initiative and referendum and the evils that have been spoken of as there was between the rule of the British Board of Trade and the icebergs. That is, I do not see how these evils that have been so eloquently referred to are going to be removed by the adoption of the pending measure, or any measure substantially in accord with it.

If I were to analyze this discontent and unrest, — in so far as it has found expression here and before the committees of this Convention, — I should say that it has shown itself in three lines of criticism: In criticism of our economic system, in criticism of our legislative system, and in criticism of the judiciary.

Concerning the first two I do not propose to speak in any detail at all, because of the limitation upon my time. I will say simply this as to the first, — that I listened with great interest to the very interesting speech of the gentleman from Boston in this (second) division some days ago, in which he told us of the great concentration of wealth, or the tendency to great concentration of wealth, which had developed within the last generation. I was greatly interested in what he told us regarding conditions in our economic life; but I listened in vain all through the gentleman's speech for any suggestion pointing out just how the initiative and referendum are going to help in the reforming of these conditions. Personally, I think that so far as legislation can have anything to do with the matter, that legislation is likely to be Federal legislation, and I do not think that anything that we can do by way of legislation in Massachusetts is going to have any very material effect in removing the evils prevalent in our economic life.

Now, in so far as the evils of our legislative system are concerned, I shall not say more than a word. Perhaps I may dismiss the subject with a sentence. I have been irritated, just as gentlemen here who favor the initiative and referendum have been irritated at times, by the slow progress of the Legislature in correcting some of the evils which are prevalent in our social life. But when I came to analyze that feeling and to find the cause I made up my mind that I was expecting the Legislature to legislate in anticipation of public opinion rather than in response to public opinion. That is, a great many of

the good things we want we have to wait for; we should have to wait for them under any rational system of legislation. And that explains, I think, to a great extent, why the Legislature has been so slow in passing some of the great statutes that have made for the good of the people of the Commonwealth.

I want to spend a little more time in discussing the criticism of the judiciary, and I do this because at the very opening of the debate the gentleman from Brookline in the fourth division (Mr. Whipple), — I had almost said "the eminent gentleman from Brookline," but all the gentlemen from Brookline are eminent, and so the compliment would add no distinction, — the gentleman from Brookline in his speech referred to this matter at length. As I understood him, — and his friends here will correct me if I misunderstood him, — his statement was that our court necessarily had had to deal with questions of a political and partisan nature; that the very exercise of that jurisdiction by our courts had bred a dissatisfaction and criticism of the courts, and that in some way that criticism would be removed or abated by the adoption of the initiative and referendum. I did not quite see just what his theory was with reference to the operation of the initiative and referendum in the removal of this criticism.

Now, I dislike to differ with the gentleman's analysis, because of his undoubted authority in questions of this character, and because we all know that he has given a good deal of original thought to this problem; and yet I think that his analysis of the nature of this criticism is wrong. I think that most of you will agree that the criticism which we have heard of our Supreme Judicial Court has not been a criticism growing out of the adjudication of the court in political causes or in partisan causes, but it has been rather a criticism growing out of the decision of the court, or the adjudication of the court, upon statutes relating to social conditions; it has arisen in construing social legislation. I think that is perfectly apparent to any of us who have heard the discussions upon this floor and before our committees.

And now I want to discuss for just a few minutes just why the court has to deal with that class of questions, and just why this criticism which we have heard is incident to the jurisdiction of the court with reference to these particular questions. If the framers of our Constitution had provided simply a frame of government, had prescribed what the powers of government should be, and the persons and the bodies by whom they should be exercised, then every constitutional question would be a public question, and it would be very easy to refer constitutional questions to some body other than the Supreme Judicial Court. But they did not make that sort of a Constitution. The framers of our government provided not only for a frame of government and provided what the powers of government should be, but they also incorporated in the Constitution certain provisions for the safeguarding or the protection of fundamental private rights. And what is the result? Why, the result is that every time the Legislature has passed some great remedial measure, such as the Workmen's Compensation Act or the various employers' liability acts, or the acts with reference to hours of labor, immediately some individual or some private interest has called in question the constitutionality of the particular act, upon the claim that it violates one of these

private rights. And while I call attention to the fact that the court in almost every case has sustained the statute which was questioned, and has held in almost every case, — in practically every case, — that the statute as enacted was within the powers of the Legislature, still the very fact that these statutes have been called in question, that somebody has had to go to the expense of defending them, and there has been long delay sometimes before it could be definitely determined whether or not the statutes were constitutional, has of necessity been the cause of more or less dissatisfaction, and has resulted in a criticism, — I think a very unjust and thoughtless criticism, — of our Supreme Judicial Court.

Now, how are we going to avoid that sort of criticism? It seems to me that it cannot be avoided; it is inherent in the very nature of our government. We have a written Constitution, — we have a written Constitution which protects these private rights; every time that a statute is called in question as a violation of one of these private rights, the question arises, and then criticism also arises. I confess I do not see just what the initiative and referendum can do in abating or doing away with that criticism. It seems to me that the effect of the initiative and referendum if adopted would be to increase and intensify that criticism, rather than to abate it. Because the very people who now say that the court is to be blamed because it may set aside a statute passed by the Legislature, will say that the court ought to be blamed ten times more because it sets aside a statute enacted by the people directly.

Of course under the initiative and referendum system the court will have to pass upon the same kind of questions, and will have to pass upon them in just the same way; and it appears to me, as I say, that instead of this criticism being done away with, our last state will be worse than our first. So I fail to see how there is any remedy whatever in the initiative and referendum, so far as this matter is concerned.

But our friends who present the initiative and referendum say that even though it may not operate to correct these evils that we speak of it ought to be adopted in the interest of efficiency and democracy.

Mr. Walker of Brookline: It seems to me that it would be interesting at this point to point out this difference between the Constitution as it is to-day and the Constitution as it would be under the initiative and referendum, in regard to the courts and their power to declare laws unconstitutional.

As it is to-day, when the court declares a law unconstitutional, the people have to come to the Legislature to get a change of the Constitution as a result of such decision, in order that they may have that law which they believe to be necessary to their welfare. For instance, in New York the Supreme Court of New York declared the Workmen's Compensation Act unconstitutional, and the people of New York were obliged to go to their Legislature and ask them to submit a constitutional amendment which would permit a workingman's compensation law to become effective. In that case the Legislature yielded, acceded to the request of those who petitioned for such an amendment, submitted it, the Constitution was changed, and the law went through. The Legislature might have refused to do that thing; then the people could not have had the law, even though a majority of them wanted

it. Under the initiative and referendum, if the court declares the law, — passed by the people, if you please, — unconstitutional, or whether passed by the people or by the Legislature, unconstitutional, the people have the remedy in their own hands, and they may change their own Constitution so as to permit the passage of that law. In other words, the people with consciousness of power to get such laws as they see fit would not be so restive as they would when they are conscious that their will may be blocked by the Legislature, and perhaps a Legislature under the undue influence of interests that are opposed to such legislation.

Mr. DRESSER of Worcester: Referring, if I may, to the last speaker (Mr. Walker), he has twice mentioned the decision of the New York Court of Appeals upon the Compensation Act, — which declared it unconstitutional. The point of that case was that the statute that was passed allowed the old remedies to remain and then annexed the new compensation remedies. That was held to be an arbitrary taking of property. The Montana court had decided exactly the same way upon the same type of statute. Every court in the country I think would have held the same, because that type of statute removed none of the evils. However, when the matter was presented to the Legislature for a constitutional amendment that point apparently was observed, and the authority then given allowed the type of act which now exists generally throughout the country to be passed and everywhere sustained, — an example, it seems to me, of the desirability of wide discussion of a technical subject among men who have time and opportunity to devote themselves to it.

Mr. MITCHELL: I am glad to have heard this statement by my friend from Brookline. I do not think it yet reaches the criticism which I make; that is, — even though the people can under the proposed amendment, if it is adopted, change the Constitution, and even though they may know that they can change the Constitution, that will not lessen in any particular this unreasonable and unintelligent criticism of the court. That was the point I was making. It will not be any consolation to the people to know that under the Walker plan they must wait for two years or more to secure an amendment to the Constitution to do the thing that they may want to do.

Now, with reference to the question whether the initiative and referendum is efficient and really democratic. I will say this: I did think some time ago that it might be possible to submit a cut and dried constitutional proposal to the people for their adoption without deliberation, — and by "deliberation" I mean *real* deliberation, not simply hanging round for a period of two years. That is, I thought that constitutional amendments, while very important, were usually simple and easily understood. But I confess that my experience of this body has shown me the futility of that view. We have spent weeks upon the discussion of two measures. The first, the anti-sectarian resolution, started out as a very simple proposition; it became more and more complicated with amendments and discussion and details. And the proposal that is now before us is still more lengthy and still more complicated. I confess that I can hardly see now how it is practicable to submit to the people without legislative consideration any constitutional amendment that involves anything at all complicated or difficult to adjust or understand.

But there is in my mind, Mr. Chairman, a still greater objection to the proposed measure. The proposal as I understand it is to submit an initiated amendment to the Constitution, — even though it may have been rejected by the House of Representatives and by the Senate, — directly to the people, for their adoption or rejection; and that act of the people is to be by a majority vote, that is, a majority of the people voting on the question itself. Take an illustration: Suppose that an amendment is submitted to the people after having been rejected by the House of Representatives and by the Senate, and at the election suppose that twenty-five per cent of the voters vote "Yes," that twenty per cent of the voters vote "No," and that fifty-five per cent of the voters, — either because they do not understand the amendment, or, understanding the amendment, they do not understand what its consequences might be, — do not vote at all. Then we have an amendment written into our fundamental law by twenty-five per cent of the electorate, if my mathematics is correct.

Now, Mr. Chairman, I do not feel that I can vote for a proposal to hand over myself and the twenty per cent of the people who vote "No," and the fifty-five per cent of the people who did not vote, to the unrestrained control of the twenty-five per cent of the people who voted "Yes." I know the gentlemen have said that we now adopt constitutional amendments by a voting majority, or a mere majority. That is true. But it is a mere majority, plus a two-thirds vote of the House of Representatives, plus a majority vote of the Senate. That is, under our present system we have an effective legislative safeguard. That safeguard under the present measure is practically abolished, and there is no attempt whatever to substitute even an equivalent popular safeguard; even Oklahoma provides that her Constitution shall not be changed except by a majority vote of the people voting at a regular State election.

Now, Mr. Chairman, why is it that a voting majority, a mere majority is unsafe? Of course the objection that lies on the surface, and that most commonly occurs, is that a change in our fundamental law may depend upon a temporary public feeling or even upon an accident of the weather. But it seems to me that there is an objection that is deeper than that. Under our present representative system, where the representatives in theory and actually represent the whole people, it is comparatively important that all the people act. It seems to me that in a system which depends wholly upon the direct action of the people it is vitally important that all the people act. Unless all the people do act you do not get real democracy. That is the objection that I have to the pending measure with reference to that particular. It seems to me that it does not provide for real democracy, which is the rule of the whole people. In the illustration which I put we did not have a victory of the majority over a minority; we had a victory of one minority over another minority somewhat smaller, with the majority of the people inactive.

I think it is vital under any system of this sort that there shall be a change of the Constitution only by a preponderating public opinion, expressed not by inference and not by guess work, but by a vote upon the proposal itself.

I want to say a word concerning the legislative initiative and referendum. My objection to that is the same objection that I have

had from the beginning, — that it is impracticable, and that we cannot have reasonable legislation that way. At the beginning of this debate the gentleman from Southborough (Mr. Choate) by way of illustration spoke of the street car conductor as not being competent under this act to legislate directly. I have noticed that the illustration of the gentleman has been attacked a great deal more than its principle. In order that there may be no misunderstanding as to my position, and in order that I may be not thought of as setting class against class, I will add an occupation that shall include even the gentleman from Southborough. I will say that lawyers and street car conductors cannot be real legislators under the present measure. That is, let a street car conductor go to the polls and have presented to him a dozen more or less complicated subjects for a simple answer of yes or no to them, — I do not care whether the pamphlets that have been spoken of have fallen around him like leaves of autumn for weeks before, the street car conductor under such circumstances cannot be a legislator. But you elect that same street car conductor to the Legislature, give him the tools of legislation, let there be face to face discussion upon a proposal with the opportunity of amendment in process, and that street car conductor becomes a real legislator and you get real legislation. I hesitate, Mr. Chairman, to say to what the lawyer might attain under similar circumstances. [Laughter.] But the point is, — the trouble is not with the lawyer, not with the street car conductor; the trouble is with the system under which you ask him to legislate. You may get under such a system enacted essays, you may get this thing or that thing, but I do not see how you can get laws.

Now, Mr. Chairman, I want to conclude by asking a question, — a question that seems to me to have but one answer, and that answer is conclusive, or seems at present to be conclusive to me, of this whole controversy. There are some 665,000 registered voters in this Commonwealth. Prior to the election of delegates to this Convention, a campaign was carried on from one end of the Commonwealth to the other in favor of this resolution, so that presumably the 665,000 voters had an opportunity to say by their action in the election of delegates what they thought of the initiative and referendum, whether they wanted it adopted. No member of this Convention, not even my distinguished friend who sits beside me (Mr. Cummings) received more than 162,000 votes. That is, there were over half a million voters in this Commonwealth who heard all the arguments for the initiative and referendum, presumably, and who turned their backs upon the initiative and referendum. If you object to that putting of it, put it as you like. There was absolutely no response from over half a million voters of this Commonwealth upon this proposition.

There are men in this Convention who are willing to assume this obligation of direct legislation. It is a serious obligation. But do they feel, do any of us feel, that we have a right to impose upon those more than half a million voters of this Commonwealth who have given absolutely no sign that they wish to assume this obligation, this duty, which is sure to be difficult and may be impossible for them to discharge, — do we feel that we have a right to impose this duty upon those more than half a million voters of the Commonwealth? So far as I am concerned, Mr. Chairman, I do not feel at present that

I have any right to vote to impose this duty, — not this right, not this privilege, but this duty, this unasked obligation, — upon the people of the Commonwealth. [Applause.]

E. Gerry Brown of Brockton.

Mr. Brown of Brockton: I shall say a few words upon the subject of a "compact," — and only a few. I shall then pass to a definition of democracy, which was accepted when the forefathers founded the Republic, — a principle which is cited in effect when the opponents of the initiative and referendum pass criticism upon it. I shall then prove to you that there has dropped out of our representative system the direct democracy of the town. It was the town as a source of authority which made the forefathers point to the Constitution with so much pride, that which warrants the words of the gentleman from Pittsfield (Mr. Hibbard) and others. This town unit has dropped out of our Constitution. That one essential fact has not been alluded to in this Convention. Because the town-meeting has dropped out we present the principle of the initiative and referendum to take its place. We admit that it is not perfect; but at the same time, we demonstrate that the town-meeting principle has gone and challenge and demand that those gentlemen who are opposed to the initiative and referendum shall come forward with some proposal to take its place.

First, as to the "compact." The word compact is used twice, — and the second word compact relates to the first word compact; then there follows a semicolon. The "compact" refers to the thought of men entering into an agreement of forming a government; after the semicolon it says "and of forming a new Constitution." The making of a government comes after the word "compact," and therefore could not have been alluded to when speaking of the word "compact" which comes before. If anything additional is needed the unanswerable argument is in this fact: That our Constitution for the first time recognized the truism that a man is born free and that he has inalienable rights.

Tell me, you who say so much of the forefathers, think you that they, while declaring that men were born free, would then undertake to bind posterity by an unalterable compact? They could not; it was not in their thought.

Who originally enunciated that profound truth that man is born free? Algernon Sidney did not. The nearest he came to it was his declaration that government was not in a King but was in the people as a whole. He found it was not in the Governor but in the governed. Just who discovered that government was in the individual as a unit, and not in the people as a unit of units, I do not know. But I love to think that it was on Massachusetts soil. I find it very near, strange to say, coming from the mouth of a woman, — Anne Hutchinson, the disturber of the forefathers in the colonial days. The men had a habit of gathering each week to discuss what the ministers had said, but they left the women out. But Anne was bound to be heard; so she got the women together. I do not subscribe to all that she said, but Anne Hutchinson taught that the spirit of God dwelt personally in man and by inward revelations they discovered the Divine Will.

Sir Henry Vane, Governor, accepted it, and much was he denounced and he departed from this Commonwealth.

In this American Republic every man is a sovereign. Every man is a sovereign! He also is a unit of the larger sovereignty. The forefathers first gathered those units into another unit: the town. This unit is now lost from our Legislature. The Constitution first provided that the town should elect the representative. With this fact in mind one does not have to ask: "How are the magistrates and the officers always accountable to the people?" It is through the town. One does not have to ask: "Where is the representative to be instructed by the people?" It is in the town-meeting. In this connection note that the two legislatures essential for constitutional amendment were then practically made up of the same legislators from the same towns. Again note the size of the town. It was only about two hundred votes! Only two hundred votes to elect a representative. The representative government we are considering was built on this direct democracy:

> The natural limit of a democracy is that distance from the central point which will just permit the most remote citizens to assemble as often as their public functions demand, and will include no greater number than can join in those functions.

Gentlemen, for a moment let us pause and pay tribute to the most perfect human government that ever was constructed. If there is time I may suggest how we may return to it. The man was the unit; the men gathered in the town made the town the unit, the town to do for the man what the man could not do for himself; the towns were aggregated into the States, the State to do for the town what the town could not do for itself; the States as units were aggregated into the Union, and the Union was to do for the State what the State might not do for itself. Thus continually flowed true democracy to and from the town-meeting, and the man the originating unit. Such a government is safe. The town-meeting was the pure democracy, the direct democracy! Is that the democracy that gentlemen are afraid of? In such a democracy do you say that the majority was not intended to rule? Out of the town came the power, — back to the town went the power for instruction. One in all, and all in one. You have heard that said elsewhere. It is the Higher Government. The government on earth should be a pattern of that Higher Government. How else may His Kingdom come and His Will be done on earth as in heaven?

To our forefathers was given that thought. They were godly men, even though they were narrow. "A frequent recurrence," said they in the Constitution, "to the principles of piety, justice, moderation, industry, temperance and frugality is absolutely necessary to preserve the advantages of liberty and to maintain a free government."

It has been said here that this government has three branches. Mr. Chairman, there are four. I will number them. Number four is the judiciary; number three is the legislative; number two is the executive; number one is the other branch of government, — the sovereign out of whom all power comes and back to whom all power returns. In the Constitution that sovereign said: "Here, No. 2, there are certain things which you cannot do for me under any consideration. You cannot touch my conscience; I am free to think, because that is my God-given attribute; I am free to speak; I am free to write. See to it that you do not touch those rights. But in the matter of prop-

erty, which is to be exchanged from man to man, there needs to be some administration of government that property may be protected as well as other rights. No. 2, you are an executive part of my power. No. 3, you are the Legislature, and may within certain limits, as I prescribe, do certain things, and only certain things. If you, No. 2 and No. 3, differ and disagree, No. 4, the judiciary, is the last word. The judiciary, if you disagree, will settle the difference; and if you go beyond your limits he will stop you. I so charge you." That is all there is to this government. There is no distinct line of demarcation between the judiciary and the legislative and the executive. Why? Because sovereignty is always a unity; you cannot think of sovereignty except you think of it as a unity.

The representative is a unit of power of the sovereignty. In name, yes. But do the opponents of this resolution claim that a representative can know the will of three thousand people whom he represents? That now is about the size of a representative district. How does he know its will? How can he know it? If the people in such a representative district cannot legislate, as the opponents say, how can they with greater discrimination elect the legislator? Wherein does it require any larger discrimination, as has been said by the gentleman from Everett (Mr. Boynton), for them to pass upon a quantity certain, which is an act of legislation, than it does to pass upon a quantity uncertain, — and that is the legislator?

The gentleman from Amherst (Mr. Churchill) said that the forefathers were afraid of majorities. No! He cannot prove it. For a good proof of what they feared turn to the address of William Tudor, delivered in 1779 in commemoration of the March 4th massacre; there you will read that the greatest danger that is about to confront the Republic is that men may become too virtuous. God save the mark in this day! [Laughter.] "Beware of the men that become too virtuous," he says. "Resist beginnings," he says, — using an old Revolutionary phrase. That's what they were afraid of, — they were afraid of entrusting power to men, even under restrictions. They lived when there were more than a thousand little petty kings. Only a few years before, 1773, — Tudor refers to it, — Gustavus III, in Sweden, addressed the orders of the nobles, the orders of the clergy, the orders of the peasants, the orders of the burghers in that Nation. If ever you need felicitous sentences and you do not care to use what has been given to us by the President of the Convention, go to this address and find them. And yet, after Gustavus had used them, his soldiers, by his orders, took possession of that government, and it passed from a constitutional government directly to a monarchy.

Ninety per cent of our legislators are honest under all conditions, — I would make it even higher, — but a small per cent are doubtful. Some of the vicious always take part in legislation. The vicious seek to be corrupted. There is enough of the vicious to hold the balance of power. It is the dishonest balance of power in these halls that you have got to fight, not the honest man, — not the man like the gentleman from Amherst (Mr. Churchill), who may in his honest conviction cast a vote against labor measures, — we can stand that. But, sir, it is known, as you know, that there are, and always have been, certain men, as human nature runs, who can be approached. The gentleman from Brookline (Mr. Anderson) has shown that to the king

of the lobby gravitate men in this Legislature when they get through serving the people. Then the lobby own a certain number of men before they get there and can deliver them. If two speakers are running for the office, enough votes to elect are controlled by the lobby.

Alexander Hamilton in the New York Convention said that representation was imperfect in proportion as the public favor was checked. We say that the public favor, or the public influence, is checked because of this condition and the size of the representative district and because of the influence of this lobby. Hamilton, writing to Lafayette, said this: "A Constitution ought to be like a suit of clothes. It ought to be made to fit the wearer." Well, now, that is just exactly the principle. You may alter the suit of clothes, — the Constitution, — that is being made here to fit the wearer, but you cannot alter the wearer to fit the suit of clothes. You may bend your system to accommodate events, but you cannot bend events to accommodate your system.

The gentleman from New Bedford (Mr. Mitchell) says: "How will the initiative have any effect?" Blackstone said men would retire to the cellar whenever the law made it profitable for them to go there. Which is better? That men should be driven to the cellar, where it cannot be known what they are doing, or will you bring them right out into the open with this resolution? Is the reason of this Commonwealth so far unbalanced that you fear error? Stand with Jefferson, who said that error may safely be left free if reason is left free to combat it.

I wonder why the gentleman from Pittsfield (Mr. Hibbard) did not throw a few bouquets to Shays's Rebellion up in Berkshire. [Laughter and applause.] They did well. They felt they had a right to rebel. And what said Jefferson at that time? "I hope that you will not be too severe with your rebels in Massachusetts. The tree of liberty needs to be nurtured at the root with human blood in order to keep it alive."

Mr. Hibbard of Pittsfield: When did Shays's Rebellion occur?

Mr. Brown: Shays's Rebellion, sir, as I remember it, occurred so recently that in one of the Constitutional Conventions they did not dare to speak of it except with bated breath. I am not claiming that it occurred before the Constitution was founded.

Mr. Hibbard: I thought the gentleman claimed that Berkshire was to blame for Shays's Rebellion before the Constitution was adopted.

Mr. Brown: Well, I sometimes let things slip, but if I get a chance for correction I will hit it right. [Applause.] It was in the Convention of 1820 that if they dared to rise to even talk about that Rebellion it was "Sh! Sh!" [Laughter.] "Do not tread on eggs. We have got them quieted down."

Sir, I regret that every Constitutional Convention has met under some fear. The Convention of 1853 met under a fear. It had not anything more to get it together than just what they got this one for, — to "lam somebody." [Laughter.] And in order to "lam somebody" they mutilated this Constitution by taking out of it the provision which our forefathers put there, that in order to build up this Commonwealth the Legislature always should have not only the power, but the Legislature should use it to encourage commerce, to encourage trade, to subsidize education, to encourage piety, to encourage

agriculture. And the Convention took this section out. As to the Legislature that our friend from Worcester (Mr. Washburn) is so proud of, in 1855 a legislator could not get office unless he had subscribed in secret that he did not know anything. "I know nothing!" That was the answer when asked about the power that then ruled. "I know nothing." There are prominent men of Massachusetts who have come and gone, who now are honored, who "knew nothing." And they did not, as it later developed, in this matter. [Laughter.]

The gentleman from Somerville (Mr. Underhill) gave the best possible reason for the initiative and referendum. He deplored the fate of a gentleman in this Convention whom you all know, — a commoner, — a man whom I was glad to see come up for Governor; and yet because he did his duty, — and I believe he so viewed it, — and vetoed the overtime bill, the only way that those opposed to the bill could express themselves was to hurt one who ought not to have been hurt. To get out an opinion on that economic question it was necessary to get at the man.

Come now, you blackheads who have a political future before you, do you wish some time to be murdered politically simply because you dare to do your duty as you ought to do it? Will you not stand for the initiative and referendum, and let us put the economic question before the people on its own merits? The economic question ought to be a political question. That is all labor said about the judges; the economic question is not for them to determine. Settle economic questions by a reference to the people! Let them say yes or no. If you fear the intelligence of the people, why not adopt the method of the alternate or counter-proposition? Send down two questions; if one is revolutionary, frame another as an alternate. Let them both be framed so that the affirmative may be maintained on each. The one that gets the larger number of votes to be the one that is accepted. Thus you educate. And that is what we want the resolution for,— to educate, to awaken the people.

What is the trouble to-day? Political apathy, — the most deadly foe to any government. Political apathy! The people have got tired of voting for men; they have gone from one party to another, — rebelling in 1871, 1881, 1891, 1892, — going from one party to the other. This resolution will awaken the people to an interest in things which they now do not take in men. I hope we may pass the resolution.

Continuing his argument Thursday, September 6, Mr. Brown said:

What I desired to impress upon this Convention, and more particularly upon those who are opposed to the initiative and referendum, was first, that when the Constitution was adopted representation was from the town; it was a direct democracy. The representative returned to the town to be instructed, and the town could reach its representatives at any time. Now there has come representation by districts. Instead of the representation being a few hundred voters in a town, as it was in the beginning and as it continued for many years, the representation has now risen into the thousands in each district. The principle of democracy, a fundamental principle of democracy, is that democracy is effective only so far as it can project its will from the center; therefore it is impossible for a representative to know the will of those whom he represents. The representative is

that in name; he is not that in fact. If representative government is to reflect the will or to interpret the will of the people, it is absolutely impossible under the present system of representation.

Now, sir, I hold that this Convention is equivalent to a committee on the state of the Commonwealth. We have demonstrated an imperfection, and, as a remedy, we suggest the initiative and referendum. It is incumbent upon the members to recognize this imperfection and to offer a remedy. The imperfection is here. While I am speaking, I deplore the fact that the gentleman from Worcester would go so far as to say that if it suited his purpose he would use a bird's nest eight years old and try to make us believe that there were eggs in it from which he could hatch his birds of promise.

What is quoted here about direct legislation is not applicable. Direct legislation, government by petition, is entirely different from the initiative and referendum that is under consideration here. It does not destroy representative government. It is another arm of the representative government; it is giving the people a method whereby they can act; it is an exercise of legislative power under constitutional restrictions.

How, under the Constitution, can the representative be called to account? Is it by defeating him? Will any one say, especially any of those who have been defeated or elected, what it was that brought defeat or election? Can a man when he is defeated put his finger right on the cause and say: "I was defeated because I cast that one vote in the Legislature"? What way can the evil be reached? Only by the cumbersome method of electing some other representative. There is no way of binding the representative. He must be taken on faith.

Gentlemen make deductions upon the basis of their fears as to imaginary changes. Well, that has been done in other years. Hamilton made his predictions. De Tocqueville made his predictions in 1835. But which of these predictions came true?

You, who are opposed to the initiative and referendum, why do you not say that you stand in fear of what the many are going to do to wealth? Why do you dissimulate? Why do you express such great fear that it is the common people who are going to lose their rights? Gentlemen, try to take away some of the rights that the people now have, try to take them from those people who think that they have not got rights enough, — try it and see what will happen. No, you stand in fear that if the people are given a little more liberty immediately they will rush upon you and attack your wealth. The forefathers had the same idea. They feared it, but their fears were not justified.

I commend to your attention the circular that was sent out by the framers of the Constitution in 1780. It is very interesting. It discloses the exact condition of the State at that time. We should educate these people who are coming into this country in the principles of citizenship. The only organization that is doing that to-day is the labor-union. If something can be said against them, remember also the good work that they are doing in this respect. The expense? But we build armories to prepare the people against the foes without; we should develop a system of education to protect our Commonwealth against our foes within. There is danger if the work is neglected. So far as I have been able to interpret the labor movement

for twenty-five years, there is no objection to wealth honestly earned and properly used; the objection is to wealth that is improperly used. Countries have fallen when luxury corrupted men, — and men are prone to be corrupted.

I want to speak of the gentleman from Norwood (Mr. Willett), who has risen once or twice to speak of wages and to speak of himself, and I want to pay a tribute to him. If everybody who had wealth would take as much interest in his own town and develop his town or his community as the gentleman from Norwood has developed Norwood, there would be less of unrest to be talked of in this Commonwealth. [Applause.] There is no war between capital and labor, as the honorable chairman (Mr. Harriman of New Bedford) said in his address; the irrepressible conflict is between labor and privilege. It is a war against those who take something for which they render no equivalent.

I hope, sir, that the gentlemen who are opposed to the initiative and referendum will see in it an attempt to connect the representative directly with his people. He is not connected now. You say it belittles him. Does it belittle a representative to know what his people want? Would not a man prefer to go into the Legislature and know that he was fighting for the majority of the sentiment in his district?

Frank F. Dresser of Worcester.

Mr. Dresser of Worcester: The gentleman from Brockton in the third division (Mr. Brown) in his interesting address referred to a very critical episode in our history that has some analogies to the question under discussion, and I beg your indulgence for a moment to recall to your minds the circumstances of Shays's Rebellion, which he mentioned.

Shortly after the adoption of the Constitution, in 1780, and a few years afterwards, there was very considerable unrest. Then, as now, wealth and political acumen seemed to center in Boston, and the people in the western part of the State, in Worcester County and in Berkshire County, were a little uneasy about it. After the Revolution currency was depreciated and taxes were high. There was no money in the western part of the State. Everything was carried on by barter. Whatever business there was, whatever money there was, was in Boston and the coast towns. The towns elected their representatives, and even then there was the same argument that we have heard recently here, that their representatives misrepresented them. For some reason or other it was felt that as soon as a man came down from one of the hill towns of Berkshire or of Worcester to the Legislature in Boston, and voted according to what he learned and thought there, he had become corrupted, so that all through the western part of the State there was extreme unrest from that cause. That showed itself in the votes of various towns, one town voting for the "recall," — using that phrase, — of its representative when he did not vote exactly as the town-meeting wished. There was another vote which will evoke some echoes in some members of this Convention. That was the vote of the town of Gardner that the inferior courts and the tribe of lawyers should be "entirely annihilated." The reason why they were so angry against the courts and the lawyers was that because of the depreciation of currency following the War of the Revolution, the

necessity of barter, and the very straitened circumstances of the people, creditors wished to preserve their debts by turning them into judgments if they could not collect them, and therefore brought many suits in the courts. In Worcester County in one year nearly 2,000 suits were entered in our courts to collect debts. That unrest became very critical in 1786, so critical that men by the hundreds took guns in their hands and gathered in various of the towns in Berkshire and Worcester counties and marched on Springfield and marched on Worcester with arms and with military order under Daniel Shays, who had been a captain in the Continental army, with the purpose of preventing the sitting of the courts. They made their attack on the courts, not on the economic conditions which caused the distress, if any change could have alleviated these conditions, but on the symbol or the instrument which was there to interpret and enforce the existing laws. In Worcester, they posted armed men in front of the courthouse and General Artemas Ward, the Chief Justice of the Court of Common Pleas, going to open the court was met by a line of men with bayonets. Those men who stood there with arms in their hands probably were the ancestors of many of us. General Ward forced his way up until the bayonets pricked his coat, and then the men fell back, and he went in and opened the court, but because of the absence of jurors and of witnesses the court was adjourned. Much the same thing took place in other towns and, if I remember, there was fighting and bloodshed in the streets of Springfield.

The militia were summoned finally, and in the winter of 1786 or beginning of 1787 they made a forced march under General Lincoln to, I think, Petersham, where they surprised and surrounded the rebels, some two or three thousand of them, and dispersed them. As a result of that insurrection there were brought in the Supreme Judicial Court in Worcester County nineteen, — I believe nineteen, — indictments for high treason, and those men were convicted and were sentenced to death. The sentences were not executed, but both in Worcester County and in Berkshire County there were in this very State of ours sentences of high treason, because of this revolt.

Now, the lessons that impress me are these: There were then certain economic conditions which no Legislature could change, which no representative, whether he represented his town or misrepresented his town, could change, conditions that the Commonwealth of Massachusetts could not change, though they did cause undoubted distress. What could be done was done by the Legislature. It eliminated the penalty for debt and various things of that sort, but of course that was very slight relief. What happened? These good people, who were "the fathers," took arms and attacked the courts, forcibly, not, as now I believe, under the form of resolve now under discussion, insidiously. They attacked the symbol and not the cause. But the grounds for their unrest were similar to the grounds that we hear now, and probably as changing economic conditions caused those complaints to pass away so the present complaints in a few years will cease and new changes come. Had there then been the initiative, the frame of government as we now have it would have been overthrown. It is not at all surprising that the gentlemen in the Convention of 1820 disliked to talk about that revolt, because, by the merest chance in the world, this Commonwealth was saved then from the anarchy

that had so strongly impressed the men of 1820 as they had seen it in France, when Constitution after Constitution was overwhelmed.

Mr. BROWN of Brockton: I was going to ask the gentleman from Worcester, if he would permit me, does he claim that if the initiative had been in use at the time of Shays's rebellion it could have destroyed the Constitution?

Mr. DRESSER: We should have lost it, yes. I suppose that we probably should have lost our judicial system, and we probably should have lost our representative system. Those seemed to be the two things which the town-meetings were held out as complaining of. I cannot state what the result would have been at all.

Mr. BROWN: That is just the point, Mr. Chairman, that I wanted to bring out. There certainly was thought in Berkshire County as to the plan on which they would have modeled their government, and I thought if the gentleman could bring it out it would be interesting. But then I do not know as it matters, only I should like to differ with him a little bit in his opinion that it would have destroyed the Constitution. I think a man who will take a gun in his hand to defend his rights must know what his rights are.

Mr. O'CONNELL of Boston: Was not Shays's rebellion really a manifestation of indignant feeling in this Commonwealth that there was collusion at that time between the bench and the bar, as a result of which the people could not secure any redress of widespread evils? And as a result of that uprising against the abuses of the lawyers, over which the judges interposed no control, did it not all result in better conduct on the part of lawyers and judges, which seemed to be impossible except in that violent method of disapproval?

Mr. DRESSER: I do not know about that. Lawyers were not very many, and, referring again to the Gardner vote, they apparently were disliked. That is a commonplace. I do not suppose there was anything in the procedure; it was the mere fact that suits for debt were brought and were prosecuted, which, of course, the creditors had a right to do.

Lincoln Bryant of Milton.

Mr. BRYANT of Milton: I do not rise at this time to make any extended address in an attempt to cover this great subject which has been covered so adequately before I spoke; I can rise only to point to two or three salient matters, as they seem to me, and if possible to throw some light upon them.

One of the points that struck me in the very eloquent address of the gentleman from Everett (Mr. Boynton), who has been honored with one of the highest positions in this State, was the fact that he did not seem to understand why any citizen of the Commonwealth could be so transformed by an election to an office that whereas before such election he was incompetent to pass upon legislation in this Commonwealth, after election he suddenly should be able to do so. Well, gentlemen, there is nothing magic about such a transformation. We have seen it every day when we have examined the careers of public men. The same gentleman who made that assertion in the fall campaign a few years ago was traversing the State in support of the Democratic ticket, and having heard him yesterday we can well understand why the Democratic ticket was successful at that fall election, and

why the gentleman himself was elevated to the office of Attorney-General. I wanted to ask him, if it had not been that I hesitated to interrupt his argument, if during that campaign the first thought that came into his mind when a man came into his office or came up to speak to him was not: "Is this man I am talking to a Democrat or a Republican? Is he going to vote for my party next November?" — or day after to-morrow, or next week, or whenever the election was, — "or is he going to vote for the Republican party?" Was not that one of the foremost things in his mind, and did not that run through his mind every time he talked to anybody? After the election did he feel no accession of grace when he took that great office upon himself? Did he then look upon all his fellow-citizens either as Democrats or as Republicans, or did he then make up his mind that he would treat all men who came before him in his great judicial capacity, because it is a judicial capacity, fairly, whatever their previous politics had been or whatever their previous relation to him had been? I know that he did, gentlemen; knowing the individual I know that he did treat everybody so, and I say that in so much he was transformed and he had accession of grace. And he is not unique in this experience, because we see it everywhere.

But that is not the fundamental reason why I, for one, do not trust the initiative and yet do trust the Legislature. I am a lawyer. I go before juries once in a while. I trust the verdict of those juries with my own matters and with my clients' matters, and I am glad to. But if I said to you that I would not trust the verdict of twelve separate men who had received an argument from the counsel of each side and taken it home and then separately read the arguments and then written a postal to the judge, if I said that I would not accept that kind of a verdict should you say that I did not trust the jury system? And what is the essence that is left out of it? It is the essence of hearing all the facts and arguments, of consulting together, and then of arriving at a verdict as reasonable men. That is the type of verdict that we and all of us are trusting day after day, and that is the reason why I, for one, oppose the initiative and referendum, and say that I do not want the laws that are to govern me put on the statute-book by a lot of men who have not had the chance for deliberation, although those same men, — any 280 of them, pick them out anyway, — I do not care whether they are car conductors, laboring men, lawyers, or anybody else eligible to the House and to the Senate, any 280 men in this State, provided they are honest, I will trust with my life, liberty and happiness after they have deliberated.

Mr. Brown: I should like to ask the gentleman if in his conclusions he has taken into consideration that the junior Senator of this State, who was a member of the Legislature, gave as his experience, and as he believed a common experience for a legislator, that he did not know anything about one in ten of the measures that he voted upon while a legislator?

Mr. Bryant: I do not know about the condition of mind of the junior Senator from Massachusetts, but I know this, that I am satisfied, and I think most of us are satisfied, that we who sit here in this Convention, although we may not stay day after day, have, every one of the 320, a pretty good working knowledge of the acts that come before us, after we have heard them explained by the gentlemen who

are interested in them and opposed by the gentlemen who do not believe in them, — we have a pretty good working knowledge of just what those acts contain and just whether in our opinion they are advisable for the Commonwealth or not. And just so in the Legislature. But whether we do have a good working knowledge or not, I say that that working knowledge is a thousand times better than any knowledge you can transmit to a busy individual, I do not care what his trade, occupation or profession is, by a pamphlet containing 240 pages of fine print. [Applause.]

Mr. Brown: Will you maintain that a legislator in voting does represent the wishes of the people whom he represents?

Mr. Bryant: I am a believer in representative government. If I did not believe that the representatives gathered here in the State House in the long run and pretty exactly represent the wishes of the people who sent them here I should not be a believer in representative government. [Applause.]

Gentlemen, one other point. One of the great evils of democracy is the lack of interest that the people take in the government. If the people only would take interest in the government the government would be better. I will agree to that. And the result of that is this: That we have what somebody has called government by slogan. It is so difficult to get the principles, the details, the essences of the various matters that actually come before the people and on which men run for the Legislature, that everybody gets a slogan, and having got a slogan that general term, which may mean a great deal and may mean nothing, is carried all over the State, and anybody who thinks that a particular slogan represents his views, votes for the man who has adopted it.

Whatever we say about this change of government, it is putting in the hands of a less number of the people an interest in the government, because whatever figures have been offered here, whether from the western States or from Massachusetts, I think invariably, — if I am not mistaken, invariably, — the number of the people voting on these measures has been less than the number of people voting for representative or for their officers in the same election. So I say that the evil of democracy, whereby few people take interest in government, is increased, as far as our practical experience goes, by this new form of government.

Gentlemen, I did not get up to argue this case, but I want to make one suggestion. I want to state one proposition. I do not offer it as an argument against the initiative, and I do not offer it as an argument for the initiative; I offer it as a question and an elucidation of what we may be passing. It well may be that the supporters of the initiative, if they agree with me in my proposition, will think it makes the initiative more desirable. I heard the gentleman from Brockton (Mr. Brown) say that the Constitution should be like a suit of clothes. I hope he remembers what the Bible says about putting new cloth into an old garment. Sometimes when you inject into an old document, an old and carefully framed document, a new principle, you accomplish results which you do not expect to accomplish.

Some time or other I suppose this Convention will have to get down to considering the details of the resolution now before us. We have dealt with general principles, and if it would not seem presumptuous

on my part I should like to deal briefly with the details of this measure or at least a few of them. My proposition is this: Does not the legislative initiative take out of our Constitution the protection of the words "reasonable" and "proportional" as applied to taxation, and the protection of the words "reasonable" and "wholesome" as applied to the police power? In order to develop the thought that has occurred to me I have got to go back a little way into general principle, and I start with the Declaration of Rights, wherein it says, — the Bill of Rights, section 5:

> All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

And I repeat also a short sentence from one of our Supreme Judicial Court reports:

> In our State the sovereign and absolute power resides in the people, and the Legislature can only exercise what is delegated to them according to the Constitution.

That means that all power which now resides in the people, unless they are restrained by the Constitution, can be exercised, — just or unjust powers, wise or foolish legislation, fair or tyrannous matters, — unless the people by the Constitution are restrained from so exercising them.

Now let us see what the people did when they adopted our Constitution in 1780. In the first place, they drafted the Bill of Rights, which is a set of general prohibitions. It contains almost all the prohibitions, not quite all but almost all the prohibitions on the power of the people. Then they set up a frame of government, and what did they do according to the case that I have just read you? Why, they granted various powers to the various parts of the government, some to the judiciary, some to the executive and some to the legislative. They did not grant unlimited powers to the legislative, at least as far as taxation is concerned. Let me read you what they did grant to the Legislature, to the General Court, as far as taxation is concerned. They granted the right, full power and authority to impose and levy proportional and reasonable assessments, rates and taxes upon the inhabitants, etc. As was said in a recent case in our courts, in 183 Mass.:

> In many State constitutions the authority given to the legislative body to enact laws establishing taxation is general, while in others, as in this Commonwealth, the Constitution gives authority only to impose and levy proportional and reasonable assessments, rates and taxes.

Mr. Chairman, I want to ask, where is that power to levy disproportional taxes which existed in the people at the time they adopted the Constitution? Is it not still in the people? Is not the power which they have not granted to the Legislature, to the General Court, the power to levy disproportional and unreasonable taxes, still in the people at the present time? There is no method by which the people can exercise that power, because they can speak only through the Legislature and the Legislature is limited, but is not the power dormant but alive in the people?

Now let us see what this initiative does. The initiative says that legislative power shall continue to be vested in the General Court,

subject to the provisions of the Constitution, but the people reserve to themselves the initiative, which is the power of a certain number of voters to submit laws and amendments to the Constitution to the people for adoption or rejection at the polls. That is, we have a brand new method of legislating, a new piece of machinery. The old piece of machinery which contained the power to pass proportional taxes, the Legislature, is limited, but the new piece of machinery: Where is that limited in the Constitution as to the power to pass disproportional taxation? No clause in the Bill of Rights. The only place where the word "disproportional" is used I have read you, where it refers to the Legislature.

Mr. CREAMER of Lynn: I would remind the gentleman that this greater power to levy taxes that he dreads exists in the constitutions of thirty-four out of the forty-eight states of this Union. Does he contend that that power has been used wrongly in any of them?

Mr. BRYANT: I am very glad that question has been asked, because it illustrates what I said to you when I opened this particular point: That what I am saying may be an argument which to the supporters of the initiative makes it seem more desirable. I am not going to deal with the question whether it is desirable to take out of the Constitution the word "proportional" as referred to taxation. I am not going to deal with that question. If any gentleman thinks it is desirable to take that word out of the Constitution, all I shall say to him is: Do it openly, and not under the pretence of doing something else.

Mr. BROWN: Will you please enlarge a little bit? What do you think of the restriction in the Constitution which says very plainly, after recognizing the right of property, that no property shall be taken without full compensation? How can the people take any property without rendering compensation even if they have got the power?

Mr. BRYANT: I do not want to go into that question, for this reason: The clause to which the gentleman from Brockton has referred is the clause of the Constitution relative to eminent domain, which says that you shall not take property by eminent domain without compensation, if I understand it. It has nothing whatever to do with taxation. Of course when you take a man's property by taxation he has no direct compensation, it is taken under the taxing power. What the gentleman has referred to is the power of eminent domain, which is an entirely different power. Let me put what I was just saying in another way. Here is a document which we call our Constitution, delivered by a principal to his agent, delivered by the sovereign people, in whom are vested all the sovereign powers, to the agent, the Legislature, through which their powers are expressed. In the first part of the document the principal, the people, have expressly prohibited to themselves the exercise of certain powers, have expressly limited themselves, and in the second part of the document they have limited their agent in a special way. Is there any inference to be drawn that that limitation put upon the agent was intended also by the principal to be put upon himself? Is not the inference rather the other way, that if the principal had intended to limit himself by this word "proportional" he would have done it, as he has made the other limitations which he has expressly put upon himself, and would not have confined it deliberately to the agent whom he has appointed?

Mr. Brown: Had you in mind, or have you overlooked, section 23, where it is plainly written that no subsidy, charge, tax, — and I will not read the rest of them, — whatsoever, shall be levied under any pretence whatsoever without the consent of the people or their representatives? Do not the people thus distinctly recognize the fact that the time may come when they will exercise the other power themselves?

Mr. Bryant: I perhaps have not made my attitude clear. I admit that all the general provisions, to one of which the gentleman from Brockton has referred, all the general prohibitions will still be in force if the initiative goes into effect, and the people of the Commonwealth will still be protected by section 23, which the gentleman has read. I merely say they will lose the protection, whatever it is, of the words "proportional" and "reasonable" in the taxing power. Now let us see if those words that may be lost through this initiative are important. Why, gentlemen, if you will examine the tax cases in this State you will find that there is, I think, almost no case that does not deal simply with those words "proportional" and "reasonable", and the only thing that prevents all taxes being put on real estate and all personalty being exempt is this word "proportional". As was said by our Supreme Judicial Court, 'proportional" and "reasonable" forbid the imposition of taxes upon one class of persons or property at a different rate from that which is applied to other classes.

Mr. Brown: I am following the gentleman very closely. Will he direct himself to this question? Could it have been possible that the forefathers in any way could have been familiar with the condition now prevailing which brings up the very question with which he is dealing, that matter of proportion? Having no property except the land and the cattle and other things, that were visible, that a tax assessor easily could find, were they not justified at that time in putting that word "proportional" into the Constitution, while at the present time there has arisen a vast class of property, some of it merely nominal, some of it merely shares of stock that may or may not have values, and all that sort of property? May not an exigency have arisen which they never considered?

Mr. Bryant: I think that is the case, perhaps. I think that exigency was not in their minds. And that illustrates what I said before of the danger of putting new cloth into an old garment.

Let me just say this in passing from the tax. We have an amendment before us to levy a single tax, that is, a tax entirely upon real estate, and to exempt personal estate. There is no need of this Convention passing that constitutional amendment if the word "proportional" is taken out of the Constitution, if they can do that through the legislative initiative, — I am not speaking of the constitutional initiative, — if they can do that through the legislative initiative. Then there is no need of our passing that single tax amendment, because the people can do it by the exercise of their fundamental power, of which they have never deprived themselves, but which they have merely failed hitherto to grant to the Legislature.

Now, consider for a moment the police power. There the power granted to the Legislature is the power to pass wholesome and reasonable statutes, ordinances and orders. Wholesome and reasonable! Are those words of any value in the Constitution? If they are, does the

initiative remove them from initiated acts? The argument is the same as I have presented in respect to taxation. Now, all I say about this principle is that if it is true, as it seems to be upon the cases of our State, that this power is resident in the people, and that now we are going to have a piece of machinery by which the people's will, acting directly, can pass it without the restrictions which hitherto have been put upon the General Court, this is a more dangerous provision in this measure than the provision for the amendment of the Constitution by initiative. If it is intended, and if it is the purpose of this assembly, to remove those words from the Constitution by means of the initiative, it should be done openly and not by indirection.

Mr. WALKER of Brookline: I should like to ask the gentleman, in order to develop clearly his point, whether his argument does not go against the legislative initiative rather than the constitutional initiative.

Mr. BRYANT: My argument does go against the legislative initiative rather than the constitutional initiative, and I say that it is more dangerous to put this legislative initiative into force than it is the constitutional initiative, because, Mr. Chairman, after you have taken out of the Constitution those three great paragraphs contained in article 4, I think it is, the police power and the taxing power, there is very little left which the Legislature ever cares to do.

Mr. WALKER: I should like to say that I agree with the gentleman. This Convention must understand that in giving the legislative initiative, from the standpoint of the conservative it is doing just as radical a thing as in giving the constitutional initiative. I agree with the gentleman in that respect.

Mr. BRYANT: I do not know whether the gentleman means that he agrees with my proposition and will so contend at some future day before the Supreme Judicial Court, but if he does so agree with my proposition what kind of a joker have we got in this measure before us?

Mr. WALKER: I did not mean to say that I agreed with the gentleman in the least. I wish to say that I agree with the gentleman that, from the standpoint of the conservative, the legislative initiative is quite as radical as the constitutional initiative, and in my judgment more so.

Mr. BROWN: Will you please take article 10 and demonstrate that the only suggestion there that property shall not be taken from the individual deals with eminent domain? Where do you find it? I confess I cannot find that there. I read that they cannot take any property for any public use, and of course "public use", the gentleman I hope would hold, is broad enough to mean taxes, for schools, for instance. Taxes in its broadest sense is a public use. What I am trying to get at: Do you hold that initiative and referendum may be used to prey upon property without any restriction? That is what I want to get at.

Mr. BRYANT: I admit, and already have admitted and stated as part of my contention, that whatever restrictions, whatever preventives are contained in the Bill of Rights, would still be in effect as against an initiative piece of legislation, would still control the machinery of initiation. It is my opinion that the clause that the gentleman has read does not deal with taxation, because taxation is taking

from a man without compensation. If the gentleman examines the cases which deal with eminent domain and taxation, I think he will find that this clause does not deal with it; but if it does deal with taxation I admit that that provision, so far as it is a protection, is still a protection against the initiative act. I merely say that the words "proportional" and "reasonable", about which the court almost invariably talks, may not now be a protection to the taxpayer.

Mr. Brown: Do I understand the gentleman to lay down the principle here that when we lay a tax there is no compensation returned? That is what he said. Can the people lay any tax whatever and take property without rendering any compensation? Does he lay it down that they do not get compensation, every iota, for any tax that is laid upon any man?

Mr. Bryant: This is a little out of the main course of my argument. I did not get up to deliver a lecture upon taxation, except simply so far as it applies to the principle that I have maintained. Personally I say that a man who is taxed does not receive compensation in the sense in which it is meant in this particular paragraph. Of course he receives compensation in protection by the State and the schools and all that sort of thing; but this kind of compensation, — as a lawyer I can only give it as my opinion, — is a different kind of compensation.

Gentlemen, I have sat here and listened to this debate with the greatest interest. We have had pictures, mental pictures, presented to us from Lawrence to California, from Shays's rebellion down to the Colorado riots, some dark, some light, but all illuminating. Throughout all this debate, however, and especially in the speeches of the gentlemen who support the initiative, what do I hear? Those who have been most logical in support of the initiative have arrived at the only logical conclusion. No less an authority than the gentleman from Brookline now representing the United States in an official capacity (Mr. Anderson) says that he would feel safe without a Constitution. An ex-Attorney-General (Mr. Boynton) got up here yesterday and said that the protection of the Constitution is too much emphasized, and the delegate from West Springfield (Mr. Sherburne) says that he has confidence in the people and will trust them all the way. They quote us letters from Oklahoma and the western States which say that the legislative initiative is of no use unless they have the constitutional initiative. Gentlemen, what is this attempt, I ask you. Is it a *bona fide* legislative attempt, or is it a drive on the Constitution of Massachusetts?

Mr. Walker: It may clear up the situation a little bit to say that the majority of the committee on the Initiative and Referendum, those who have the matter at heart and intend to accomplish the thing they seek, will do this: They will give the people of this Commonwealth under proper form of expression the power to have such laws as they wish and such Constitution as they wish, and in my judgment it is nonsense to talk about a mild form of the initiative and referendum. The initiative and referendum is the initiative and referendum, and that means the power of the people to have such laws and such Constitution as they wish. If that is radical, if that is dangerous, then the initiative and referendum is radical. Can I be franker than that? I think not. Personally I think it is the most conservative measure we can pass. But I am not here to argue that question. I agree, however, that those who favor the initiative and

referendum intend under proper form and with provision for proper deliberation to give the majority of the people of this Commonwealth an opportunity to have such laws and such Constitution as they see fit. [Applause.]

Mr. Bryant: I am very much obliged to the gentleman from Brookline (Mr. Walker) for promising me that he and his seven associates will get two more who feel as he does and will put on the statute-books and into our Constitution such provisions as those ten, supported by 20,000 signatures, think proper. That is not the kind of representative government that I can support. Gentlemen, what have we heard about the Legislature? How is it represented to us? A poor body, a collection of individuals with no minds of their own, waiting around for a tip from State Street, subject to every whim of their own and to every influence put upon them from outside. And yet what do they want to add to our government? What was described by the United States Attorney as a club! He said, — one of the most logical, if not the most logical man who has spoken in favor of the initiative, — that the initiative would fall out of use but the club would remain. Now, I ask, in all fairness, who is going to handle that club? Is it a majority of the people of Massachusetts? No. Is it a majority of the registered voters of Massachusetts? No. Is it a majority of the people voting at any election? No. When that club, wielded by ten valiant gentlemen, backed up by 20,000, is to be used, there will have been no election to determine whether the selfish interest there represented is supported by a majority of the people or is not supported by a majority of the people. It will be truly Government by club!

Mr. Walker: I do not know whether the gentleman cares to have me interrupt him, but I still think this is the best way of bringing out all the features of the initiative and referendum. I should be very glad to refrain from further interruption if it is the will of the gentleman of or the Convention.

Mr. Bryant: I welcome interruption.

Mr. Walker: I wish at this point to bring out this suggestion. He refers to a club in the hands of ten men with 20,000 backers. I wish to say that that club may be raised by the ten men and the 20,000 backers, but it cannot be used by them, but rather by a majority of the people voting on the measure proposed.

Mr. Bryant: I am glad that the delegate from Brookline and I agree so far. I have had no experience in legislative matters or as a member of the Legislature, but if ten gentlemen, backed by 20,000 votes, cannot use a club that is in their hands, how is it that this Legislature is so bullied and knocked about now? Look at it from a practical standpoint. I am not a legislator. I am not a politician. But do you suppose that if I had 25,000 votes in my pocket and ten men back of me, eloquent talkers, I would not go up to the Legislature and use that club, and that I would not say: "If you don't pass this measure, or some measure, I will go out all over the State with my 20,000 backers and get my measure passed"? Gentlemen, the only answer to that situation is this, which has been made by the initiative and referendum supporters. The only answer is this: That the Legislature will get together and frame a compromise bill, another bill, if there are any defects in this bill. But where do they prove,

and how do they prove, that there should be any legislation on that subject? Is not what they say exactly what will happen, when those 20,000 self-interested people appear? I do not blame them. I should do it myself in the same situation; if I was interested and 20,000 of my friends were interested in the special measure and I could reconcile it with my conscience, I should come up here with 20,000. As a practical matter, will they not come up here with 20,000 votes and say to the Legislature: "We must have some legislation", and then will not all sorts of legislation go on the books as a compromise? Assuming, Mr. Chairman and gentlemen, that the act is defective, and assuming that the Legislature thinks it ought not to pass, so that they offer no compromise measure, then no proper measure ever will get to the people even supporting the principle which the ten desire to have tested out before the people.

Perhaps I do not make myself clear, but I say this: Assuming that a matter is brought here which really ought to be amended, which is in improper shape, and I ask you, Mr. Chairman, whether, in the light of the amendments that have been put on articles here, it is likely that ten men can sit down and write a law which ought not to be amended in some particulars, — I ask, assuming that such a law is brought up to the Legislature, and assuming that the Legislature thinks that such law and the principle involved ought not to pass, where will the people ever get an opportunity to vote on that principle properly drafted into law? Shall we not have come to government simply by slogan? Take labor laws, for instance. Put the word "child" into a law, put the word "labor" into a law, and then go out and say: "Save the children!" Nobody will ask whether that is in proper shape. Nobody will ask whether that really will save the children or whether it really increases their hours of labor. No, gentlemen, use the slogan: "Save the children", and your act will be taken by the democracy which finds it so difficult, gentlemen, and we might as well admit it, to get the real details of any proposition, on the strength of that slogan.

Mr. WALKER: I wish to be entirely frank with this Convention, and I assure you that the gentleman has not hinted at what seems to me the strongest objection to the initiative and referendum. It is an objection. I admit it. I would cure it so far as possible, so far as is consistent with the principle involved. Unfortunately it may not be wholly cured. That objection is the lack of power after discussion to put on a perfecting amendment. I have been long enough in the Legislature to know that no matter how carefully you draw a law, after it has been subjected to criticism in committee, after it has been criticised by the opposition in the legislative halls, it develops weaknesses which the proponents of the measure itself would be glad to cure before it becomes a law. Now let me be frank about this. That is an objection, is it not? It is an objection. I wish I could say that I could wholly cure it. I cannot. I attempted in my original draft partly to meet that position. I promise this Convention that I will make one more attempt before this matter is ready to be voted upon. In so far as possible, consistent with the principle of the initiative and referendum, the defect should be cured, because it is a fair criticism; but it is a minor matter as compared with the vital principle involved

and the great object to be attained by the initiative and referendum. [Applause.]

Mr. Brown: I want to ask the gentleman, — he is very fair in argument, and I should like to ask him, — will he not concede that that same power which he has criticised can be used, at least as a partial offset, to correct any threatened vicious legislation if it should appear? If any vicious legislation appeared, cannot signatures be mustered and hold that in check? Will he grant that some good could come out of the initiative?

Mr. Bryant: I am not quite sure whether the gentleman is referring to the initiative or the referendum, but my main point is this: That no 20,000 or 25,000 or 50,000 people representing one selfish interest ought to have placed in their hands a club to enable them to come up here and say that they are the people.

Mr. Walker: I would simply remind the gentleman that that club is now in their hands. It is used, moreover. We see petitions coming to Congress with thousands of names on them. We see petitions frequently coming here with hundreds of names; I do not know but what thousands of names. Twenty thousand citizens can come up here now and petition this Legislature and threaten all kinds of political destruction to the members if they do not give them their will. We do not increase that power by an initiative petition; we simply give an added power. We permit them to appeal directly to the people if the Legislature refuses.

Mr. Bryant: If the gentleman is right, I simply can refer him to the delegate from Brookline (Mr. Anderson), who stated in his argument that what the initiative would come down to was a club, and if we now have the club, why, of course there is no further need for the initiative. [Applause.] But, gentlemen, there is an essential difference in the club which is now going to be waved, and that is the nail in the end whereby the 20,000 selfish, self-interested people can put that before the people for their own selfish interests if it is not accepted. That is the club that will wave over the Legislature. They will say: "We are the people, and we will prove it to you in the election." The Legislature, if they are composed of such weak-minded individuals as are described here, will yield to selfish interests more in the future than they have yielded in the past.

Gentlemen, I have completed practically what thoughts I had to offer on this particular subject, but referring once more to the remarks of the United States Attorney about not needing any Constitution, those remarks that have come from day to day and every day from the supporters of the initiative and just now have been repeated by the first speaker upon this subject, is not this a drive on the Massachusetts Constitution? Gentlemen, I referred to the powers which now are exercised under our Constitution. They are contained in one article; with the exception of a few unimportant powers they are contained in one article which I read to you. Under the police power, gentlemen, all this welfare legislation is passed, this legislation which stirs up such discontent when it is declared unconstitutional. Under that clause there now can be passed under our Constitution laws for the public safety, public health, public morals, and the only restrictions on those laws, contained in our Constitution are the words "reasonable" and "wholesome". Now, I ask the gentleman from

Brookline (Mr. Walker) or any other supporter of the initiative and referendum what laws that cannot be designated as reasonable or wholesome they desire to put on the statute-books, — not what specific laws; what type of laws. Where do they want to amend the police power? What kind of laws do they want to put on the statute-book that they cannot pass now under the broadest provision that ever was drafted by a Constitutional Convention? All it has to be is wholesome and reasonable and for public purposes. What laws do they want to put on, or what type of laws do they want to put on, that they will say now are not wholesome and reasonable? And what taxes do they want to pass, or what type of taxes do they want to pass, which they now will say are disproportional and unreasonable and not for the public service?

Mr. WALKER: I should say, as the gentleman has asked me the question directly, that it is not the words "reasonable" and "wholesome" that limit that power. If it was, we would have nothing more to say, I assure you. Those are not the words which limit the police power of the Commonwealth of Massachusetts; it is limited in other words in the Constitution. I do not know as I need to make a speech at this time, I do not think it is proper for me to do so, and so I shall not point out the limitations of the police power to the gentleman, but the Convention I think understands that those are not the words that limit the extent of the police power.

Mr. BRYANT: I will refer the gentleman to the decisions of our courts.

Mr. CROSBY of Arlington: I have listened to the argument of the gentleman from Milton (Mr. Bryant) with a great deal of interest. I have not understood the point that he was making regarding taking the words "proportional," "reasonable" and "wholesome" out of the Constitution by legislative initiative. I may be very dense, but I think there are one or two others here who have not quite got his connection. If he would please elucidate his remarks regarding the danger of the legislative initiative, how these words are to be taken out, it would enlighten us.

Mr. BRYANT: If I may have the indulgence of the committee I shall be glad to illustrate a little further. I say simply this: Our Constitution consists of a number of prohibitions, of general prohibitions, such as the gentleman from Brockton (Mr. Brown) has read, — the general prohibition that all controversies shall be settled by a jury; that an accused man shall be faced by his accusers; that nobody shall be deprived of his property without judgment of his peers; and the law of the land. All those general prohibitions on the power of the people happened to be, most of them, in the Bill of Rights.

The second part of our Constitution establishes a frame of government, and grants power to the three agencies which it there establishes. And they are but agencies; they are not exercising sovereign power, they are exercising the power of agents.

No provision in our Constitution prohibits expressly the levying of a disproportional tax. The only thing that the people, exercising their sovereign power, have done in regard to that is to grant to the Legislature the power to impose only proportional taxes. So, as our Supreme Judicial Court has recognized, the grant is a grant of limited and defined powers; and if the Legislature passes a disproportional

tax it is unconstitutional, because they are trying to exercise a power which never has been granted to them.

If that power has not been granted to the Legislature, where is it? Well, it is in the people, is it not? So that when the Legislature wanted more power they went back to the people for the forty-fourth amendment, and the people in the forty-fourth amendment granted to the Legislature the power to make disproportional taxes in certain instances, that is, in regard to intangible property.

Now, if that power is in the people, and if you set up a new machine which does not act through the Legislature, but which acts directly, what brake have you got on the new machine? Here the people act directly; they propose it to the Secretary of the Commonwealth, and they enact it directly. There is no intervention of the Legislature in that act. And so I say that the brake which has been put on that one method of putting laws on the statute-book, namely, the Legislature, is not put on the other method of passing legislation, and therefore the word "disproportional" does not apply to this second method of putting laws on the statute-book.

Mr. Sanford Bates of Boston: I will ask the gentleman how he pursues that argument in the light of the language of the court in Oregon in construing this initiative and referendum act, in which they say that in so far as the people have adopted the initiative and referendum they have become, — to quote the language of the court: "a branch of this legislative department, coördinate with their representatives in the Legislature." And is it not true, Mr. Chairman, if that is so, that the same inhibition which applied to the Legislature would apply also to the people in their capacity as the Legislature; therefore the Constitution still would be held to prohibit a disproportional tax bill if passed by the people as a Legislature?

Mr. Bryant: I admit that proposition. If you think from the language of this act that the people really are acting through the Legislature and out of it, my proposition does not hold water. But read the introduction to the act itself, and see whether the initiative act is an act which passes through the Legislature or one which passes direct from the people and enacted by the people. Let me read the act:

> Legislative power shall continue to be vested in the General Court, subject to the provisions of the Constitution; but the people reserve to themselves the initiative, which is the power of a certain number of voters to submit laws and amendments to the Constitution to the people for enactment.

Is there any intervention of the Legislature there? If there is any intervention, gentlemen, why, then the initiative act is subject to the veto power of the Governor. And does anybody here claim that the initiative act is subject to the veto?

Mr. Brown: Pursuing the same line of thought which the gentleman has,— The sovereign takes to itself the power of legislating. Does the sovereignty in exercising that power of legislation take to itself full sovereignty? I think I make myself clear. It is along the line of the gentleman's quotation from Oregon; it is how this power is being exercised, — whether the people are exercising full sovereignty. And if the gentleman takes that idea, then away goes the whole Constitution; it sweeps everything aside. They begin to exercise full sovereignty, unless it be true that they are exercising merely such portion of sovereignty as has been identified with the Legislature.

Mr. Bryant: I think I understand the gentleman's point, but I think it has been passed upon in our State. In England it is true that sovereignty is vested in the Parliament, but in our State it is not true that sovereignty is vested in the General Court. In our State sovereignty is vested in the people, so that the Supreme Judicial Court says in *Holden* v. *James*, 11 Mass. at 403:

> According to the theory of the English Constitution "that absolute despotic power which must in all governments reside somewhere" is intrusted in the Parliament.
>
> The principles of our government are widely different. Here the sovereign and absolute power resides in the people, and the Legislature can only exercise what is delegated to them according to the Constitution.

Now, that is the only suggestion I have to make as to whether or not that line of argument will be used hereafter to support in the Supreme Judicial Court an act of disproportional taxation that never could be supported to-day, and whether it does not thereby practically repeal those two words; and if we are going to repeal them, whether we ought not to repeal them directly, and not by indirection.

I believe that all that has been presented, in being presented to us here, shows that this really is a drive upon the Constitution; and if it is a drive upon the Constitution it is a drive upon those two words "wholesome" and "reasonable". Because if the gentleman from Brookline or the delegates will take the trouble to look at the decisions of our Supreme Judicial Court when they are passing upon these welfare laws, they will find that the Supreme Judicial Court says not only that the Legislature can pass any wholesome and reasonable laws, but that the Legislature is the judge of what is wholesome and reasonable, and that only in the clearest cases will the court upset the judgment of the Legislature that a certain act is reasonable or wholesome.

Those are the words in the Constitution, joined together with the words "public use," — those are the words in the Constitution that protect us against an unjust use of the police powers. Those protecting words can be made null and void by enacting, through the legislative initiative, unreasonable and unwholesome police legislation. [Applause.]

Albert Bushnell Hart of Cambridge.

Mr. Hart of Cambridge: "Day unto day uttereth speech"; so the Psalmist prophesied of the course of the Constitutional Convention of Massachusetts. We have now sat for fourteen weeks and we have learned a variety of things which were certainly unexpected. We have learned, for instance, that an experienced member of the bar may construct a telling epigram out of dairy products; that a corporation counsel can sympathize with the over-worked voter; that a professor of oratory can be eloquent and that a professor of theology can love his neighbor; that a partizan leader can set an example of faithful public service; that a judge of great experience may solve a judicial problem by a phrase; that rival district attorneys can be brought to agree on the main issue; that a successful manufacturer is a human being; that a keen politician marches under the banner of Daniel Webster; that a devotee of the I. and R. prefers a hand-made measure of his own; and finally, that the President of a deliberative body may please everybody.

Never was there a body of men who liked each other so much. Never was there so much Alphonse and Gaston in any deliberative body as in this Constitutional Convention. We are all good fellows, all well-meaning, we are all right, we are all going to vote according to our convictions and we are sorry that the other people cannot see the force of our arguments. Nevertheless, we have at last, without any definite vote, reached certain results from which we may proceed and upon which we may build.

The first of those is that this Constitutional Convention came here to do something. Now that is a proposition which apparently is not self-evident, since there have been some members of this Convention whose apparent desire was that it should adjourn, having done as little as possible. That is not the wish of the people of the Commonwealth of Massachusetts. That is not the reason for the election of members to this Convention. It was not because of a profound satisfaction with our present constitutional and political arrangements which a Constitutional Convention was expected to ratify by producing nothing. The Commonwealth of Massachusetts is not satisfied with its present frame of government; a majority of the people in this Commonwealth are not satisfied; and we are here to try to meet the reasonable wishes of our constituents, our fellow-citizens and our friends.

As a matter of fact, the Convention is framing up to do a large work. Here is this little document, No. 349, which shows that there are now pending before us twenty-seven major propositions supported by the affirmative report of a committee, and about twenty-five others which are still in the caverns of committee archives and will be reported in due time, — or at least some of them. That is, we may as well face the fact that we have at least thirty-five propositions upon which we shall take yea and nay votes; propositions as to whether a particular thing shall or shall not be submitted to the voters. That is a very large work; a work for which, I may say in passing, the Convention does not seem to have much stomach, because it does not as yet approach or realize its full task.

The next postulate is that the I. and R. is the first measure and the most striking measure, except, perhaps, the reorganization of the executive, which will reach this Convention. We have already discussed in the non-sectarian amendment a measure of vast import pertaining to the welfare of the people of Massachusetts. The I. and R., however, is the first constructive political measure that has come before us, and that is one reason, of course, why it has elicited such great interest.

Furthermore, we have undergone floods of talk about the initiative and the referendum. It is in everybody's mouth: "Initiative and Referendum." I submit, gentlemen, that the question of the referendum is not being debated, has not at any time been debated, is no longer really debatable before this Convention. Why? Because we already have it substantially. Because we have had the referendum for one hundred and thirty-seven years and since 1820 a constitutional referendum on constitutional amendments; because we also frequently make use of the referendum on important acts of the Legislature; because the public opinion bill still farther carries that principle. It would be a very small addition to our system, an addition justified by

the experience of other States and the general character of the government of this Commonwealth, if we extend to the people the right to review any act of the Legislature. And I submit, whether we take action in that direction or not, that within a very few years there will be a normal legislative referendum as there is now a normal constitutional referendum.

The debate this morning has brought out another fact of major interest, — that the legislative initiative is not at all the question that disturbs and distresses the members of this Convention; they are agitated solely over the constitutional initiative. I should not like to make the offer, that if the friends of the initiative and referendum would accept the amendment of the gentleman from Lynn (Mr. Lummus) now pending, by which constitutional amendments should be withdrawn from the Walker measure, the remaining part of the proposition would pass this Convention without difficulty; many of the members would feel enormously relieved if they could go to their constituents and say: "Here, here is the initiative and referendum which you desire and which we promised to give you, — the friends of the I. and R. have abandoned the constitutional provision."

To my mind, though this whole subject has been so illuminated and illustrated by able minds and by fine speakers, it is still involved in cloud and several artificial barriers have been drawn about the question. Our minds are shut in by a variety of difficulties which, when we come to examine them carefully, have no very great force.

What I desire to-day, is to address myself to any members of this Convention who, upon this important question, have not made up their minds. I should like to participate in persuading some of those people that certain objections which have been put here over and over again, which seem to some minds fatal, are absolutely nothing but wind. There is nothing to them; you can disregard them; you can go on and do what you like, so far as most of the objections are concerned that are brought against the initiative and the referendum. May I then speak to any friend who is not yet persuaded, to try to relieve his mind at least of some of the incubuses which have been heaped upon him?

Four of these difficulties I shall speak of very briefly. The clock itself and the hour of adjournment are a guarantee, Mr. Chairman, that I shall not far overstay my time. I am going to speak upon four of these stumbling blocks. The first is the worship of the Constitution; the second is the worship of the General Court; the third is the terror of the initiative and referendum demon, and the fourth is the unintelligent voter. And I propose very briefly to set forth to you what seem fatal weaknesses in each of those four objections. Other objections have been brought, other arguments in favor of the I. and R. might be brought forward; to neither of those outside points can I give time to-day. I shall confine myself to four points in succession. I. The first is the appeal to the Constitution. Mr. Chairman, there is nothing more wholesome and nothing more right than emotion in political matters. "God save the Commonwealth of Massachusetts" is a phrase to conjure with. There is an elevating feeling in belonging to a great community like this, being a part of its organization, and in doing your duty by it. There is not a man here who does not feel an elevation of soul at this opportunity to participate in the large affairs

of the Commonwealth of Massachusetts. We all feel the force of emotion as an argument. Furthermore, let us never forget that emotions are a part of the outfit of human-kind; that political emotions and prepossessions are things that the politician and the statesman must take into account. I honor those who honor the Constitution of their Commonwealth. But after all, whose Constitution is it? Who made it? Who keep it in force? Who have the right to alter it? Who must expect that after they are gone their children and their children's children will go on altering their Constitution?

Mr. BENNETT of Saugus: I should like to ask my learned friend a question which seems to be brought out by what he has just said, and that is: What is the force of the term social compact? Admitting the existence of a social compact, what sort of an obstruction is it, if any, to free amendments to the Constitution?

Mr. HART: The gentleman suggests to my mind a Scotch minister who after preaching an hour and a half remarked: "I will now treat of the devil and all his works." [Laughter.] After I have finished the discussion on other points I shall expect some other gentleman better qualified than I upon that particular point to address the Convention, and I feel sure there is such a person.

Mr. BENNETT: The gentleman has not bestowed the information which one would naturally expect from his generous nature. I thought he was arguing on that very line. I understood him to say something about the sacredness of the Constitution, the right to amend it, the propriety of amending it or something of that kind. Now it does seem to me that this expression which I have heard so many times and the force of which I absolutely do not understand, is in line with the argument which he is making.

Mr. HART: The gentleman honors me by his confidence in my ability to answer any question on any part of this great subject. I am compelled to select some definite portions, omitting others for want of time.

Now, Mr. Chairman, I admire the Constitution of Massachusetts respectfully, but I worship nothing that is made by human hands. Worship of the Constitution in that sense is simply worship of ourselves. We are the Constitution. Some one asked me the question the other day: "Who are the people of Massachusetts?" and I replied that they were the majority of those who vote. That offhand definition needs a little qualification. I will restate it by asserting that the only evidence we have of the existence and the political entity of the people of Massachusetts is the action of a majority in a duly constituted election; that so far as the work of State-making and law-making goes, they are the people and their work is the work of the people of Massachusetts. [Applause.]

If I were to worship any idol in the nature of a document, I should not choose the Massachusetts Constitution, — splendidly phrased by a very great statesman, but highly unorganized. It is, on the whole, the most inconvenient instrument of government with which I am acquainted, either in this country or in any other. A lot of principles flung together in what is no longer a logical order; a Constitution that you cannot teach to children, — that you cannot use in schools with any effect, — because the matter is so distributed that it is almost impossible to classify its principles. There are people in this Conven-

tion who would be very glad indeed to codify the existing Constitution and submit it for your judgment; but that permission has not yet been accorded to the waiting committee on Amendments and Codification. Concentrate your mind on the Massachusetts Constitution; if you insist on worshiping it, — which Constitution? It alters day by day; alters by Supreme Judicial Court decisions and alters by practice and tradition. Where did we get our committee system which has all but the force of law in our two legislative bodies? It is not in the Constitution at all; it is simply an addition to the Constitution, made by the practice of the people of this Commonwealth. The truth is, it is time to codify both the unwritten and the written Constitution. The proper committee might well draw up a codification of the wording of the present 56 articles and 44 amendments, exactly 100 in all. It is the duty of the Convention, a duty which I am perfectly certain it will not perform, to codify also a number of these unwritten practices to add them to the text, and thus to put into writing our well-developed Constitution. The Constitution of 1781 was an immense improvement upon the Colonial charter, which was practically the Constitution prior to that time. Our fathers were proud of making an improvement in a charter eighty-nine years old and we seem to be proud of our inability to make any improvement upon the work of one hundred and thirty-seven years ago. The Constitution is the creature and not the creator.

A gentleman at the back of the third division (Mr. Cusick) the other day much pained me by discovering that I saw no distinction between the Constitution and statutory law. I plead not guilty. I know the difference perfectly. A statute is what the General Court gives you if a majority so wills; a constitutional amendment is what the General Court does not give you if twenty-one Senators do not so will. Let us go a little father into that question. The Constitution is the higher law, but the higher law is subject to change. Subject to change by whom? By the higher authority which is above the higher law. It is nonsense to say that we have a Constitution which binds us absolutely. We have a Constitution which binds us on principles and on particular points so long as those who create that Constitution enact that it should bind us, and no longer. I am aware of the theory of unamendable parts of the Constitution. A member just suggested the doctrine of compact, which is one from which our minds ought to be disabused. Apparently something has already disabused in that respect the minds of the minority of the committee on the I. and R., two members of which set forth that there was something in the compact which would prevent our getting the I. and R. Both of them finally steered into the right road by admitting that, after all, if the Constitution were changed by amendments submitted by this body and duly ratified, those changes would be constitutional; and thus whatever there might be unamendable in the old Constitution, it would then suddenly cease to be constitutional. If that is all there is in the sacred compact we may proceed cheerfully. There are other tests of the amendability of the Constitution. The doctrine of the compact is only one way of trying to put artificial and unreal limitations on the amending power.

Now, gentlemen, I am perfectly free to say to any inquirer and to the members of this Convention that you cannot have a democratic

Constitution in which there are unchangeable portions. I honor the Bill of Rights of Massachusetts, a noble monument to the "good-will-toward-men" which our ancestors felt. I should honor it more and I should honor this Convention more, — I should admire this Convention more, — if it would do something to stop the side-door imprisonments for debt; if it would try to relieve labor from certain operations of the court, which, to my mind, to many minds, seem entirely out of accord with the Bill of Rights. I am going to stand by the Bill of Rights. I expect, as long as I live and as long as my children live, that the greater part of the present Bill of Rights will be there. But remember that the Bill of Rights has already suffered several falls. The Constitution of 1780 was made as much to protect property as to protect personal rights; and those elaborate provisions by which voters in rich districts had a larger influence on legislation than those in poor districts, — that system has given way under amendment. There are other parts of the Bill of Rights that we have to yield. How does it come that 660,000 men are now assembled for the protection of their country? Is there nothing in the Massachusetts Bill of Rights that is contrary to this compulsory service in a foreign country? No, there is nothing, and if there were it would have to act in the face of the higher authority of the Constitution of the United States of America.

II. The second main point to which I wish to address myself is the question of what I have called the sacred General Court. That question of the General Court is a very perplexing one to me. I have listened attentively from day to day and have felt like Dante when he was not quite sure whether he was in the Paradiso or the Inferno. Those legislative devils, — they were painted very black indeed. On the other side, I noticed that one of the recording angels, — I do not remember in which section of the heavenly choir he sat, — that one of the recording angels put a series of questions that seemed to show an infernal knowledge of the ways of the Sons of Sin. Later I was again reassured by the picture painted by a legislator of an occasion when the House of Representatives, sitting in this chamber, showed itself equal to a great emergency, — though the Sons of Alcohol stood outside those doors making wreaths of the "long green" which they intended to put around the heads of members. Why, in that awful moment the House of Representatives did not even call in a policeman to protect its virtue!

Many conflicting statements are made about our Massachusetts Legislature, and about legislatures in general. The result upon my mind, coming from that discussion, is about as follows: First, that no Legislature can ever be depended upon to reform itself; therefore, if we wait for a constitutional amendment which will correct the obvious and admitted defects of the General Court of Massachusetts, we shall wait forever. The second point is that anybody who is familiar with police courts is aware that the testimony of five people who saw A hit B is much more convincing than that of fifty people who say they were somewhere in that vicinity but saw nothing. We have heard man after man, who has been intimate with the Massachusetts Legislature, and has testified that there are occult influences there, influences harmful to the people of Massachusetts. I own that I knew little directly about the Legislature. I seem to remember that some

years ago there was a thing called a lobby bill; that there is a register somewhere in this building; that if you wish to influence the Legislature for pay on other people's behalf, — which is legitimate, — you must go and put your name down. Why? Because they want to know who you are and who paid you and how much he paid you and what it is that you are defending. That statute, I own, shows where the Legislature did something to protect its own virtue.

The character of the Massachusetts Legislature is not the whole question. The Legislature might be absolutely spotless and pure and yet be inefficient, because of a poor system of procedure. In many respects Massachusetts has the best legislative procedure in the whole country except for the lack of the I. and R. I will say freely that so far as I know, there is nowhere else so good a system of committee reports, such a petition system that gives an opportunity to the individual to bring his pet measure before the minds of those legislators, — providing the legislators will apply their minds to it. That is not the question. This Legislature, like every other, is tied up. It gave me a singular feeling when, the other day, I received a circular from a man in my own city asking for reëlection to the State Senate upon the ground that he had been there several terms and was well up in the committees so that everybody knew him; therefore, if you want to get anything from the Legislature you must get it from men who are well up on the committees; they are the men in a position to do the Commonwealth service. That is, this man who has been in the Senate of this State for some time believes that legislative leaders are developed simply by seniority of service; mere staying in the Legislature gives a man competence to direct the affairs of the Commonwealth.

Another point pressed upon us is that the Legislature may be reformed. The protagonist of the minority of the committee on this subject, who has himself had experience in the General Court, says that something could be done in that direction, and he adjured the members of the Convention to vote against the I. and R. because it was not necessary, because we could protest, we could organize, we could urge reform in the Legislature. That led me to examine the list of amendments proposed by members of this Convention and to note those that were proposed by the seven members of the minority of the committee. I lay down no duty for any other man; I will not say that it is the duty of any member of the Convention to submit one amendment or many. Those submitted by these seven men are about the usual proportion; we have here 320 members and about 320 proposals of amendment. That general submission of amendments is not the question; here is the point: These seven members of the minority of the committee, are all really satisfied with the Legislature. If not, why did they not take steps in this Convention to bring to the attention of this body the defects of the Legislature and to suggest ways of improving them? Altogether, there were eight amendments submitted by those seven gentlemen, of which four bore on the legislative department but not one bore on any possible reform of the General Court. That is to say, those seven minority members do not think that any reform is necessary, because if they thought so they would have embraced this opportunity to initiate reform. It is a fair thing to ask how far those in this Convention who are opposed to the

I. and R. are equally identified with those who for years past have been trying to reform the Legislature, have been urging reform, have appeared here in favor of bills, have tried to affect the public mind by speeches, by journalism and in other ways. The truth is that those who make no movement toward the reform of the Legislature do not think it needs reforming, and that is the position in which the minority stand.

Again I judge no man's behavior on that question. If he does not think reform of the Legislature is worth while, that is well. The majority thinks it is worth while to reform the legislative system of this State. That is what the I. and R. means. We are the positive people; the minority people are the negative, and the negative, when put to it, has no suggestion to make. Notice that not a member of the minority of the committee, not a person who has stood on this floor to argue against the I. and R., has made any valuable suggestion by which the defects of our legislative system could be cured. The I. and R. men are equally in the same box with regard to submitting amendments to the legislative machinery. Why? Because they have concentrated their efforts on the only measure that at this stage can possibly pass this Convention, by which the means of securing laws can be improved, by which the attention of the people can be aroused, by which you can have the greatest assurance that a law when passed does represent the will of the people of Massachusetts. We have offered something positive. I accept what has been stated here over and over again, that the burden of proof is upon those who favor the initiative and referendum. Yes, and the minority assists us in that burden of proof when they admit, as several of them have admitted, that the legislative system needs reform and suggest no other reform than that which we offer.

This leads me to the general question of the share of the General Court in constitutional amendments. I have heard over and over again these suggestions, — I could give you quotations were there time, — to the effect that the General Court is buttressed in the Constitution with a share in any Constitution-making that goes along. Of course the General Court has no part in our deliberations and our results, but it will be said: "The General Court at least called the Convention."

Now, Mr. Chairman, I could worship the Constitution if it were remade into a form more symmetrical and beautiful, perhaps, but I could not worship a General Court. The Constitution is made by me, by you, by our fellow-citizens; but the General Court is our creature. Why, the sacred codfish in his airship up in the gallery there might as well say: "Go to, wait for me; no constitutional amendment, no statute, is valid unless it is passed in my presence, and you have not asked me what I think about it." The sacred codfish has as much constitutional right and preëmption with regard to amendments as the General Court of Massachusetts, just as much, and no more, because both the fish and the General Court are parts of our legislative machinery. How it ever got into the minds of anybody that there is a presumptive right to a discussion upon a constitutional amendment filtered through the General Court, goes entirely beyond my apprehension. There we are again, at the distinction between a Constitution and a law. The General Court is a part of the consti-

tutional machinery because we make it so. It is perfectly conceivable that a system of State government might be adopted which dispensed with the General Court. In several States of the Union they are proposing a commission government for the State like that of the cities. It is very likely to be adopted in some States before long. Are you going to say that the people of those States are bound to assume that there are rights of their State legislatures from which they cannot get away? No, gentlemen, we are especially the guardians of the principle that the General Court has such authority as the people of Massachusetts give it now, and as they may choose hereafter to bestow upon it, and no other authority. My great-grandfather, a very respectable man, — I never saw him, — could do a great many things. He could give me a name, give me something to be proud of. But I do not ask my great-grandfather to make a Constitution or laws for me; nor did our great-grandfathers ask such a service from their great-grandfathers. Why, gentlemen, do you realize that the Constitution of 1780 was made by a set of trouble makers? We were told yesterday, — and it was all true, — of the activities of Thomas Allen and the Pittsfield people, the Berkshire people, without whom the Constitution would not have gone through in 1780. How the people in the eastern part of the State hated those malcontents! They looked upon them exactly as some gentlemen here look upon fellows who favor the I. and R., — a deluded people. The adoption of that Constitution was one of the most democratic moves that could be made in Massachusetts; and yet we are told that because it was made one hundred and fifty years ago, therefore we cannot now make something different.

What is that [referring to an object held in the speaker's hand]? Why, it is a hand-grenade. Our forefathers did not have any hand-grenades in the Revolution, therefore our men have got to go to the trenches without them; is that it? That hand-grenade, which is about three years old, is already out of date. It came from a French trench, and was given by a French officer to one of my sons, and it is out of date already. We can make war; and our great-grandfather cannot make war for us; but it is argued that our great-grandfather can make a Constitution for us; or, if he cannot precisely make it, at least he can sew us up in a constitutional bag so that we cannot open it.

III. I now come to the third point, which is the apprehension felt by some members concerning the I. and R. One would suppose from the things that have been said about this measure that it had hoofs and horns. I will not burden you with quotations on this subject. The proprietor of a patent medicine in New England made a great fortune out of his wares many years ago. How did he make his fortune? Why, by a phrase. He advertised: "I won't guarantee that my Golden Discovery will cure every ill that flesh is heir to; it won't cure thunder-humor." He sold thousands and thousands of bottles to people who said: "Well, I don't know what ails I have, but I know I haven't got thunder-humor, so I know it will be good for me." The opponents of the I. and R., at intervals, when something is said about this measure, shake their heads and say: "It won't cure thunder-humor." It is not the advocates of the measure who expect it to cure everything.

I find two sets of conflicting arguments against it. One is that it is out of accord entirely with the American spirit, — a totally unknown system. Another is that it is a throw-back to a discarded method of which our ancestors grew tired. Most reliance is placed on the argument that it is an abandonment of the fundamental principles of American government. That is curious, because if it is the case, think how many of our sister states are without an American or a democratic government. Think of the awful condition of the people in these communities. Since the popular vote was introduced it appears that 350 propositions have been submitted under the initiative and referendum, of which 133 were accepted and 217 voted down. I shall never forget the remark of a friend, a banker in Portland, Oregon, a very conservative man, who had been Speaker of the House of Representatives of his State and was very much against the I. and R. "It is an awful thing, that I. and R.," he said. "Why, it has got so bad in Oregon that in the last election the people had to vote down two-thirds of the measures that were presented to them." In Oregon this immoral method is so deeply seated that people actually use it to defeat measures! It must be said that they had not before their minds the sufferings of the members of this Convention who have been able to see across the ages the Commonwealth of Massachusetts devastated by freak laws passed by the friends of the I. and R.

On this point, Mr. Chairman, I will appeal to any gentleman who has been in the Legislature. Did he ever see any freak laws passed by the Legislature? Why, the number of such laws passed by the Legislature is ten times as many as those passed by the initiative and referendum, taking all the United States together. We have all kinds of testimony for the I. and R. brought before us. Yesterday, for instance, the President of the United States was put into the witness-box and before he got out there appeared to be some conflict of testimony. I believe in such cases it is the latest signature that determines a man's last will and testament. It would appear that President Wilson in his present state of mind and for some years, has been a warm friend of the I. and R.

The two charges against the initiative and referendum that seem to have most weight, that seem to stick closest, and therefore which I would like if possible to erase from your minds, are, first, that it is a minority method, under which a "mere minority" will make the decisions, thence the argument passes to the point that a majority ought not to make decisions; that is, that a minority will decide but a majority ought not to prevail. The point that I want to make here is that a proper vote under the initiative and referendum stands on precisely the same footing as the election of members of this body, as elections to the Legislature, as votes on referenda whether general or local, as votes upon constitutional amendments. The proposition to make any different vote, as, for instance, a majority of all the registered voters, a method under which we should have not a single one of the 44 amendments to our Constitution, or a two-thirds majority, or a majority of all votes cast at the election, whatever it may be, — to put that is a proposition to place a kind or degree of limitation upon the election which shall not apply to any other election. It is to forsake the old system with which the State is perfectly satisfied with regard to other propositions. Such a discrimination is simply and flatly impos-

sible. The people will ask why you do not either try to limit their votes on constitutional amendments submitted to them, or else make the system the same in all measures that go to the people.

IV. Last, gentlemen, I come to a point which seems to me perhaps more important than any of the other three. I have been pained, injured, affronted by the things that have been brought to my notice, some of them from members of this Convention, with regard to the voters of Massachusetts, and I am here in my place particularly to protest against such remarks, such statements as a few that I will read you from the minority report of the committee on the I. and R.:

. . . a great body of the religiously, politically and economically "unorthodox", largely inarticulate, largely unaware of specific means or measures for the betterment of their conditions. . . .

That is the people of Massachusetts.

Again —

Mr. CHURCHILL of Amherst: May I correct an impression that the gentleman was perhaps entitled to get from the form in which it was put? Those words are quotations from a representation before the committee which the succeeding statements in that paragraph are intended to answer. The words are not the characterization of the minority of the committee, but the characterization which a member of the majority made before the committee, and which the minority is answering. I think the gentleman is excusable, perhaps, for his misapprehension, because the fact is not perhaps made quite clear, but if he will read the paragraph I think he will see that that is what is intended by the paragraph, and that is the fact.

Mr. HART: Of course I accept the gentleman's statement and I acknowledge an error in not having caught, — although I read the report three or four times, — not having caught that point.

Again there has been objection to alien votes. There has been objection on the ground that the petition would have nothing but purchased signatures in private interests.

I read from "The Compulsory Initiative and Referendum," which is a kind of textbook pamphlet of the minority:

THE VOTERS ARE VICIOUS.

Factions, Indifference, Impulse, Class, Race, Religious Prejudice, Selfish Interest. — Instead of "government by the people," it is government by factions, indifference, impulse, class, race, and religious prejudice and selfish interest. (Compulsory Initiative and Referendum, p. 3.)

THE I. AND R. A MINORITY METHOD.

Laws by a Very Small Percentage acting without Authority. — Under it laws have been forced before the people by a very small percentage of their number, acting without authority, and have been enacted or killed without time for deliberation or opportunity for study or investigation. (Compulsory Initiative and Referendum, p. 16.)

THE I. AND R. A VICIOUS SYSTEM.

All Varieties of the I. and R. are bad. — There are many varieties of compulsory initiative and referendum. Some are worse than others. BUT ALL ARE BAD, since all embody the principle of "pure" democracy. (Compulsory Initiative and Referendum, p. 23.)

Not "qualified for the Exercise of a Reasonable Judgment." — It calls for a large degree of credulity to deceive oneself into believing that any considerable percentage

of the voters will give to this measure the necessary amount of study and thought, or furthermore, that they would be qualified even then for the exercise of a reasonable judgment on the merits of the bill. (Compulsory Initiative and Referendum.)

SIGNERS OF PETITIONS ARE WEAK-MINDED.

Purchased Signatures and Private Interests. — A government by purchased signatures and by private interests? (Compulsory Initiative and Referendum, p. 47.)

The following are unquestionable quotations from the minority report:

THE VOTERS WISH TO OPPRESS THEIR FELLOWS.

Hastily, Thoughtlessly, Selfishly. — But if, in any case, the majority of voters act hastily, without deliberation; thoughtlessly, without a deep sense of responsibility; selfishly, without consideration of the rights or interests of individuals or of the minority; or ignorantly, without knowledge of the true grounds or of the consequences of their acts; then, in that case, the justification of majority rule is swept away, and democracy becomes in that particular case a failure, and possibly a means of tyranny, — the tyranny of the majority. (Minority Report, p. 3.)

Mere Majority. — Are the members of this Convention willing to accept and recommend to the people a new and additional mode of amendment which makes it possible for a mere majority of voters, unchecked and unrestrained, to annul the work of the Convention and overthrow all these safeguards? (Minority Report, p. 7.) "They have been unwilling to trust themselves, — the very majority that govern have been unwilling to trust themselves, — to act rightly by a mere majority vote, in legislation either statutory or organic." (Minority Report, p. 3.)

THE I. AND R. IS DESTRUCTIVE.

I. and R. Destructive. — Recognizing that wise, just and intelligent legislation for the whole people is rarely possible by direct action of a majority, and that such a mode of legislation had led to the destruction of other democracies. (Minority Report, p. 4.)

Groups, Factions, Visionaries and Selfish Interests. — Their plan opens up the whole field of legislation to the initiative action of groups and factions, of visionaries and of selfish interests, without the slightest requirement of real interest on the part of the public or real conviction that the legislature is mis-representative. (Minority Report, p. 12.)

THE VOTERS ARE TOO BUSY.

No Time from Daily Work. — Few men, however intelligent, can take time from their daily work to form a real opinion upon any such number of important problems. (Minority Report, p. 14.)

THE VOTERS ARE INCOMPETENT.

Cannot form Opinions. — The truth is that the people do not, they cannot or will not, form real and certain opinions which they will express at the polls, save upon great, simple, extraordinary moral and political questions, — questions which have become thoroughly familiar through long public discussion, which make deep appeal to the ordinary man, which present a clear and uncomplicated issue." (Minority Report, p. 17.)

Forget the Rights of Others. — Can we reasonably expect that in that process they will not attack many of those safeguards which we look upon as fundamental necessities, and have therefore placed in our Constitution, or that in seeking their own rights and justifiable liberties they will not tend to forget, or be unconscious of, the rights and interests of others? (Minority Report, p. 19.)

If any gentleman on that committee holds that this is not the opinion of the minority of the committee, I should be glad to be corrected.

Here are others:

NO PROPER CONSIDERATION OF NON-VOTERS.

Consideration for Non-Voters. — It cannot be said that that majority that does not exercise its rights is to be ignored. They are to be bound and governed by those laws as we are; they are as much entitled to be consulted in a change of this later

act as the rest of us are; and if they are not, because of failure to understand the proposition or lack of instruction, or lack of opportunity to learn, yet able to express their views about it, does it give the rest of us, those who have studied it, the right to impose our will upon them? (Choate, Speech in Convention.)

THE MAJORITY OUGHT NOT TO DECIDE.

Majorities that happen. — A majority of the people who may happen to vote at the ensuing election may make that change against the will of those who have said Nay by their representatives in the General Court. (Choate, in Convention.)

Criminal, Adolescent, Inefficient Retainers. — We are invited to substitute for those representative bodies . . . the system of direct legislation by the whole body of the people, including the criminal, the adolescent, the indifferent, and the retainers of special interests. (Address of Governor O'Neal of Alabama.)

These are the exact phrases of enemies of the initiative and referendum. The only way to trust people is to trust them once, possibly, to vote the initiative and referendum down.

Now, Mr. Chairman, I have but five minutes left. In that five minutes I want once for all to record my protest against statements like that about my fellow-citizens in Massachusetts. First of all, how did you come here, — you, you, you, you? Who elected you? Unintelligent voters who were not capable, who did not know what they were doing? The vote was very small, about one-fourth of the usual vote. In my district there are three members sitting here and one got nine thousand votes. He is against the I. and R.; his constituents are intelligent. I only got eighty-five hundred votes; clearly my constituents were unintelligent. But some of the people voted for both, for that gentleman and for me. Were they intelligent at the top of the ballot and unintelligent at the bottom of the ballot? Because that is what gentlemen wish us to believe is the practice of voters in Massachusetts. Every single man here comes into this hall by virtue of a minority vote. The results of our work are going out to the people to be voted upon and adopted by a majority of those who cast their votes. Is there a single member of this Convention who will stand up in his place and say: "I am not in favor of submitting the I. and R. except upon some different basis than a majority"?

Mr. Hart concluded his argument after the noon recess as follows:

In the few minutes remaining I wish first of all to summarize several points made at the previous session with regard to the general character of the I. and R.

(1) I should like to emphasize for the benefit of those in the Convention whose minds are not clear upon this question, the fact that the I. and R. is in accordance with the previous practice of the Commonwealth of Massachusetts in most respects; and the proposed referendum in all respects. The Walker measure confers on that point no further powers than those now enjoyed by the people of Massachusetts except the right to pass upon acts of the Legislature without the consent of the Legislature.

(2) The I. and R. is not out of accord with the American principles of government, because it is in force in a considerable number of States in the Union. Much has been said about the character of those governments, because there have been disorders in Colorado and in Arizona, and upon that I should like to make two remarks. The first is: Who are the people, who own the capital in Colorado and in Arizona, engaged in those mining operations in which there have been

disturbances? They are eastern capitalists to a very large degree. The labor difficulties in those States are due as much to the owners of the mines as to those who work in them. And I suppose there is nobody here who would hesitate to invest money in Colorado or in Arizona in what he thought was a good proposition lest the people by the initiative and referendum in those States should take it away. If you deny that the I. and R. is a reasonable part of the American system of government, you throw a considerable number of States in anarchy.

(3) Let us never forget that the Supreme Court of the United States, having been asked in a case arising out of the Oregon initiative and referendum to rule that the initiative and referendum was not republican government, declined to interfere, asserting that the question as to what was or was not a republican government under the Federal Constitution was a question for Congress to settle, and Congress has settled it by recognizing the authorities of the I. and R. States in every case, without any suspicion or any limitation, notwithstanding the fact that they are dependent in part upon the I. and R.

Mr. CLAPP of Lexington: I rise to ask if the gentleman will kindly refer me to the case in which the Supreme Court so decided.

Mr. HART: If the gentleman will look through these documents he will find a transcript. It is the Pacific Company against Oregon. The Convention will pardon me for not going further into it. I have a transcript of the decision, but I will not take the time to read it because I wish to go back to the question of the unintelligent voter. I began by showing you that I myself was elected by about one-fourth of the usual voters in the Eighth Congressional District of Massachusetts; that every member, every one of the four members elected from that district, was chosen by about the same vote, and that one of us is in a position to say that a fourth of the usual voters are unintelligent voters; that there is not a man sitting here who is not bound to admit that that fraction of the voters who voted for that entire district are intelligent. If competent to pass upon the question whether you and I shall be members of this Convention, are they not equally competent to pass upon legislative questions?

Mr. BLACKMUR of Quincy: Does the gentleman see the difference or distinguish the difference in the capacity to decide between, the voter as a plain citizen whose mind may be absorbed in his own troubles and affairs, and the same voter who voluntarily takes public office and under the duty self-imposed is enabled to devote his time to investigation, discussion and deliberation in a Legislature?

Mr. HART: A deliberate and deliberative Legislature ought to be sufficient for practical purposes, but I submit that there is not a State in the Union in which the Legislature is sufficiently free from influences which do not come directly from the voter. It is invisible government that the gentleman has left out of account. We have heard a great deal about ten men drawing up an initiative petition; about "a secret, irresponsible committee sitting in some study;" ten men, every one of whom has to sign his name and take oath to it. I should like to ask the members of this Convention if they have ever heard of ten men sitting in a study or an office or something of that kind and drafting measures for the Legislature of Massachusetts without signing their names, without any mortal man, except an interme-

diary between them and certain persons in the Legislature, knowing who drafted the bill? What we are asking for is a responsible initiative and not an irresponsible.

Mr. Bryant of Milton: I should like to ask the gentleman whether it would not be possible for ten men with selfish interests to draft a measure and, instead of signing it themselves, to get ten other irresponsible men to sign it.

Mr. Hart: That is precisely what is being done at present by absolutely irresponsible men. That is what I am saying. It is the men in the back offices who draft laws and then other persons present them. The truth is that no measure on initiative is likely to get any headway unless it has the signatures of some known and responsible men who represent some definite principle. People talk here as though the action of ten men was final. For a constitutional amendment you must get fifty thousand; for an act you must get twenty-five thousand; and when you have twenty-five thousand you have a far stronger backing than most of the legislation that now comes before the General Court of Massachusetts.

Now, gentlemen, let me return to this question of the unintelligent voter. In the first place, we are constantly told that there is a distinction between voting for men and voting for measures. Unfortunately for that argument there is no such difference recognized in the law of Massachusetts. The elections for this Convention, or for a Governor, are treated in precisely the same way as a constitutional amendment. The main difficulty with all this argument that the irresponsible will initiate amendments is simply that you leave out of account the fact that the final decision is made by voters, by the same voters who now vote upon constitutional amendments, who will vote upon the amendments submitted by this Convention; they are exactly the voters who will vote upon questions of the initiative.

The member from Southborough (Mr. Choate), — I very much regret that he is not here; he is a man who is accustomed to follow up his words; he is absent by leave of the Convention, — took up the cause of the non-voter. It seemed at first incredible, but I suppose that non-voters' clubs will now be formed on the plan of the Keeley Gold Cure clubs; that there will be meetings of the non-voters, who will boast of the number of times that they have avoided their duties, for this is the statement from the responsible source of Southborough: "That a person who from lack of instruction or lack of opportunity is unable to express his views, — does the fact that he has not voted give to the rest of us, those who have studied the questions, the right to impose our will upon him?"

The non-voter has not had fair treatment in this community. He is looked upon with contempt and suspicion by everybody, by party leaders and by reformers alike. In reality the non-voter is an exceedingly sensible individual. He knows exactly what he is doing. He does not vote, because he is satisfied with the majority that is made without him. It is a literal truth that a man who stays from an election when it is physically possible for him to be there announces in advance in his own mind that he will take what the majority gives. He is relieved from responsibility. We think that very wrong; we want him to be responsible. But the truth is that a non-voter in general is a satisfied individual. Until taxes rise to a certain rate he

is not very much interested in government. I live in a society of a considerable number of people, some of whom do not vote, very estimable persons, and they take what you and I and the rest of the constituency give them. They do not deserve any consideration; we cannot fix up a system of passing on constitutional amendments so as to make it convenient for the non-voter not to vote. You cannot put a premium on a man staying away from an election and thereby preventing those who are interested from carrying the proposition they desire.

That brings me to the final question: What we are going to do with the unintelligent voters? Mr. Chairman, a lot of the unintelligent voters are among the most wide-awake people in the whole community; people whom you and I set down as intelligent and who are intelligent enough to make the political combinations which will carry the elections when the so-called good citizen is unable to do it. I have seen something of the unintelligent voter. I must say he seems to know what he wants just as well as I do. Who are these unintelligent voters? They are not only our brethren and our fellow-citizens, they are the people who make all the amendments to our Constitution. You say the initiative amendments will receive a small vote. The votes on our amendment will also be small, when they are finally submitted to the people, but we all admit that that small vote will be valid. How can you say that a man is unintelligent when he votes on a constitutional amendment, intelligent when he votes for a Governor, and again unintelligent when he votes on a measure that is submitted by referendum? There is no such distinction. Our fellow-citizens are the same as ourselves. "We are every one members one of another."

I scorn, Mr. Chairman, I scorn to accept the votes of constituents in my district and then come here and say, or allow it to be said without protest, that they are unintelligent. I scorn to say: "You are able to vote for a member of the Legislature, but you have not the intelligence to vote upon a constitutional amendment." I scorn to live in a community, I would not live in a community, in which I did not think my fellow-citizens meant on the whole about as well as I do.

Ah, Mr. Chairman, something has been said in this Convention about the foreign-born voters and the difficulty of allowing them to vote. I will tell you one thing, Mr. Chairman: If a man is good enough, intelligent enough, patriotic enough, public-spirited enough, if he is enough of a citizen, to send to the front to lay down his life in order that we may sit quietly in our homes, in order that we and our children may enjoy the blessings of republican government, that man is intelligent enough to vote on any question that is brought before the Commonwealth of Massachusetts! [Applause.]

Mr. Lummus of Lynn: If the gentleman who has just taken his seat is willing to answer a question I should like to ask him one. He said earlier in his address that no member of the minority had introduced any measure tending in the direction of liberalizing our legislative system. I think perhaps he forgot a measure which has been printed and is in the calendar under my name, and I should like to ask the gentleman this: Suppose we require the signatures of four or five per cent of the voters, approximately the same number of voters required in the present resolution, to be affixed in the presence of the

town clerk or in his office at any time within four months that the voter may find convenient, — will that in his judgment prevent the use of the initiative to correct omissions of the Legislature to pass important laws demanded by public opinion?

Mr. HART: I will answer the second of these two questions first. The question is an involved one which would require time which is not mine to give for a thorough answer. The question of compelling four per cent of the voters to register is simply a question of preventing any real initiative and referendum. That is all it means, because it cannot be had in most communities, without an expenditure of time and money, — there has been a great deal said about the expenditure of money here, — which is unreasonable and in most cases impossible. The second point — Has the gentleman a third question, Mr. Chairman?

Mr. LUMMUS: I think perhaps the gentleman has answered my first question, which I thought was one question, and I should like to ask the gentleman a second question, which is this: Is not the answer which the gentleman has just given a confession of his fundamental distrust of the voters, a confession that in his judgment the voters of Massachusetts are so indolent, so indifferent, so lacking in political intelligence and energy, that they will not take even a simple step to help themselves but will remain inert in the face of the great need which the proponents of this resolution assert and insist upon as their reason for urging this resolution?

Mr. HART: If the characterization of the voters as "indolent," and so on, is the gentleman's characterization, I differ with it from top to bottom.

Mr. LUMMUS: I wish, Mr. Chairman, to say that to assert that the voters of Massachusetts to the extent of four or five per cent will not show such interest as to make that form of initiative workable, is in effect to assert that they are negligent or indifferent or inert. I ask if that is the gentleman's position?

Mr. HART: My position is perfectly sincere and straightforward. I do not believe in casting any such difficulties about the vote under any circumstances. I would not believe in asking persons who were interested in a constitutional amendment by petition to appear before a notary or to make oath. I do not believe in causing that kind of difficulties. We are trying so far as possible to reduce the difficulty of legislation. We are trying to divide the burden by giving a part of it back to the principals from whom it came, and there is no use in trying to do what cannot be done. It is like requiring a majority of the total registered vote. You cannot get out a majority of the total registered vote, — from whom? Why, from ourselves. We are the only people in Massachusetts. You talk about being inert; it is we and our constituents who are or are not inert. There is no use trying to make these distinctions. The people of Massachusetts are one. I undertake to say there is not a class, a distinct class of unintelligent and unpatriotic and unprogressive citizens, of this state and another class who are on a higher plane. I do not find it so in my experience.

Finally, Mr. Chairman, the gentleman asked whether I was acquainted with the amendment pending to the Walker resolution. That amendment, I understand, is intended to exclude from the initiative

amendments to the Constitution. I should like to take this opportunity of putting myself on record by saying that the amendments of the Constitution by initiative are an essential part of the whole scheme. If you take that out you make again the distinctions that you have already made, — that the people are competent to pass upon statutes, and the same people, the same fraction if you like, the same number who participated in our election, are not competent to pass upon an amendment that comes in a different way. [Applause.] I do not believe any such thing. [Applause.]

Mr. WALKER of Brookline: I should like to ask the gentleman from Lynn (Mr. Lummus) a question or two in regard to his measure, as he has seen fit to refer to it at this time. I consider that proposition one of the most insidious and dangerous suggestions that has been made to defeat the initiative and referendum, because, in the first place, I believe it is made in sincerity, and in the second place I believe it is utterly impracticable in operation. Now I should like to ask this question of the gentleman. I should like to ask him whether he considers that his proposition is consistent with the minority report which he signed, in the first place; and in the second place I should like to know whether it is consistent with his own argument.

You may remember that we had some discussion here and he objected to the initiative and referendum for one reason, because there was no opportunity for legislative discussion, legislative amendment, legislative formation of a bill before it is submitted. I should like to ask him whether his measure provides for amendment, for legislative discussion or legislative forming of opinion before it is submitted to the people.

Mr. LUMMUS: I did not intend, of course, to make at this time a complete and reasoned argument in favor of my amendment, — which has not yet been moved, — but I am very willing to answer the gentleman's question. In the first place, there is nothing in the minority report that is inconsistent with the substitute which I have offered. In the second place, as to the objections to the private draftsmanship of legislation, — to put it more strongly, the private legislation, subject only to popular veto, which I endeavored to point out to the Convention the other day, — it is quite true that those objections apply to my substitute.

The essential difference between the substitute of which I have given notice and the present Resolution, No. 335, is this: That my substitute is intended to use the principle of initiative action in those cases where there is a preëxisting, real, genuine, popular sentiment in favor of legislation which it has been found impossible to secure from the Legislature; the Resolution No. 335 is intended to enable any group to submit to the people their own privately formed legislation, — formed in precisely the same way, it is true, not when the people take any interest in it, but whenever the proponents of the proposition choose to put it before them by getting a lot of signatures that the gentleman from Brookline admits signify no real popular interest. In other words, Mr. Chairman, it is the difference between a proposition to use this initiative method of action, with its attendant disadvantages, where there is a real popular demand and a real popular need, — because we cannot run governments wholly by logic, we cannot found a government by taking some principle and deducing every-

thing from it by reasoning, without looking at the practical consequences, — and a proposition to let it be the common every-day plaything of any one with a thousand dollars or fifteen hundred dollars to buy the services of canvassers who will get the signatures from those who are accustomed to sign petitions for them. And it is no reflection upon the people of the Commonwealth as a whole to suggest that there are twenty-five thousand people out of six hundred and seventy-five thousand who can be induced to sign petitions for almost anything. That, I think, is the essential difference between the proposition that I suggest and that which has been introduced by the gentleman from Brookline. The proposition which I suggest, although it may be said to involve an anomalous method of legislation, involves that method when it is needed, takes it subject to its infirmities when it is needed, but it does not make it the every-day thing that Resolution No. 335 does.

Mr. Walker: The gentleman who has just spoken has made very able arguments at various times against his own substitute. In the second place, if I can read English, the minority report made it pretty plain that they did not believe in the expediency or the wisdom of the legislative initiative. I leave that to those who have read the minority report. I will call your attention to the fact that the gentleman's substitute requires more signatures, in the first place, than mine. I say "mine"; I mean ours. In the second place, it requires a percentage which if we ever have woman suffrage would require twice as many. In the third place, it requires that these men go to town halls, and that there must be office hours, of course, to receive those petitions. You cannot expect in the country towns to have the farmers come in to sign those petitions unless they know that the office will be open; and in many of our small towns there are no such arrangements made. In the next place it requires us to go before the people and ask that a certain number of voters go within certain months; and in the next place, in order to get it on the ballot, that a certain other number of voters go at a certain other time. Therefore we must not only urge the voters to go at a certain time, but we must urge a certain number of them to withhold their signatures until a certain other time. For these and for various other reasons it is known to be a hostile amendment and that it will not work; and if it receives support in this Convention it will receive support, I assure you, not from the friends of the initiative and referendum, but from those who are utterly opposed to it. [Applause.]

Mr. Lummus: I suppose that the gentleman from Brookline when he calls mine a hostile amendment calls it a hostile amendment subject to the first statement that he made, — that he thought it was made in sincerity. It is not intended, Mr. Chairman, as a hostile amendment. It is intended to put the work of the initiative upon the very footing on which the responsible advocates of the initiative put their argument; that is, it is intended to supplement representative government in those particular cases where a supplement to it has been shown to be necessary.

The gentleman speaks of small towns where the town clerk does not keep office hours. In those towns any one who wishes to find the town clerk can find him within four months; and under the substitute the

voter who desires to sign an initiative petition would know where to find the town clerk.

Mr. Brown of Brockton: Accepting the fact that the gentleman has offered it in sincerity, I should like to ask him this question: Did he intend in making that number of signatures to make them so much harder to get in the case of woman suffrage? As, for instance, did he take into account that if we have woman suffrage a fellow will have to ask his wife whether he can go out nights in order to go down to the town clerk? [Laughter.]

Mr. Lummus: If the proponents of woman suffrage at the time when they present their resolution will insert a provision that no woman shall be entitled to sign an initiative petition, I am perfectly willing to go back to a method by which woman suffrage will not increase the number of signatures required. But if women are to be counted as initiative petitioners I do not see why the number of voters required for the use of the initiative should not depend upon the number of women as well as upon the number of men.

Mr. Sawyer of Ware: I should like to ask the gentleman why, if a voter is competent and it is right to sign a nomination paper for a Governor in his home, it would not be an equally good place for men in the same position to be equally competent to sign a petition to put the amendment upon the ballot.

Mr. Lummus: It seems to me that the two things are as wide apart as the poles. We must have a Governor, we must provide some method by which candidates can present themselves to the people, and we have provided the present way, — which I think the gentleman will agree is far from perfect, — but we must have a Governor. On the other hand, we need not have a particular measure through the initiative. The justification for bringing a measure before the people through the initiative is two-fold: First, that the Legislature will not pass it; second, that there is a real and genuine popular demand for it. The substitute which I intend to offer will require some show of that real popular demand, which is the only legitimate foundation for the use of the initiative; and the present resolution, No. 335, contains absolutely nothing in the way of a popular demand as a prerequisite for using the initiative.

Mr. Sawyer: There has been no abuse of the easiness of running for Governor. The fact that any one can sign a petition in any place has not meant that Tom, Dick, and Harry have been running for Governor. Why should we think that there would be any abuse of public action when it comes to measures, any more than in running for Governor? There has been no readiness on the part of voters to sign this and that paper for this and that man, why should we think the voters would change when it comes to measures?

Mr. Lummus: Men are restrained from running for Governor by the fact that there are other competing candidates for Governor, and a great many men know perfectly well that as against some one of the competing candidates they themselves have no chance. In the case of an initiative proposition there is ordinarily no competing candidate. The gentleman, it seems to me, forgets one of the rational essentials of initiative action. It is not enough to provide some check that will secure the public against an overwhelming number of measures on the

ballot; it is necessary also, it seems to me, to place some check that will insure the people against being compelled to deal with matters in which they have no substantial interest.

The substitute which I intend to offer will insure that there is some genuine and substantial interest in the measures coming up by the initiative; and that will result in a much closer attention to the campaign, in much more general information on the part of the public as to the movement; it will result in people knowing whether the movement is serious or not; it will require the proponents to conduct a real campaign of education to arouse public interest. Whereas under the resolution No. 335 the petitions can be circulated in comparative secrecy, — in comparative ignorance on the part of the public that they are being circulated; in total ignorance on the part of the public of the number of signatures that are being obtained; and the 20,000 signatures that are required in the first place,— and the 5,000 more in addition,— can all be obtained before the bill goes into the Legislature; and then the question whether what the Legislature does will be acceptable or not,— the question whether the petitioners will submit the matter to the people afterwards, no matter what the Legislature may do,— will be determined absolutely by the fathers of the initiative petition, who have in their pockets not only the original 20,000 signatures required but the 5,000 additional ones. My substitute requires that the additional signatures be obtained at a later time in the legislative session, when it will be known whether the Legislature is treating the matter fairly or not. Then if one per cent more of the voters think the Legislature is not dealing with the matter satisfactorily they may then sign and send it to the people. It is not left absolutely to the ten original signers who have the additional signatures in their pockets to make the absolute determination of whether the matter shall go to the people or not.

The gentleman from Brookline, Mr. Chairman, suggests that the numbers required in the substitute are too large. One per cent of the registered voters of the Commonwealth as required in the substitute is about sixty-five hundred; five per cent is thirty-two thousand or thirty-three thousand. I may say this: I have no liking for that exact number as distinguished from any other number, but if the gentleman from Brookline will accept the principle of my substitute I shall be quite willing to move that the number of signatures be reduced to conform with the requirements of his proposition.

Mr. Walker: I should like to ask my colleague from Lynn if it is his intention in his substitute to compel the voter, we will say in Boston, who happens to live in Hyde Park, to come down to city hall to sign that petition?

Mr. Lummus: In the first place, if he did come down to city hall he would have four months in which to do it. It would be quite possible, however, by legislation to require that at certain times, — in the evening, if need be, — there should be an employee of the city clerk at any place within the city that might be convenient, to secure such signatures; and I should have no objection to it. It does not seem to me that there is any need of constitutional action upon a detail of that sort.

Mr. Creamer of Lynn: I wonder if my colleague from Lynn thinks it is an easy thing for a man who is at work all day in a mill or fac-

tory to come down in the evening such a distance as that which I have outlined in order to sign a petition. It seems to me that it ought to be made easy, not hard, for such people to take part in our political life. The substitute of my colleague from Lynn is an endeavor to make it hard for such people to take part in our political life. [Applause.]

Mr. LUMMUS: Such is not the purpose, nor do I think is it the effect, of the substitute which I intend to offer. I think, however, that given four months in which to do it, given such reasonable provisions as the Legislature may make from time to time in the way of sittings of the town or city clerk or one of his agents or employees at such places as may be convenient, it will not be difficult, in a case where the voters of Massachusetts really are convinced that the Legislature on a particular point is unrepresentative, to induce four per cent of them, during four months, to come before some public officer and sign an initiative petition. And if it is impossible and impracticable to require or to induce the voters to do that simple thing, then it must inevitably follow that they do not want that particular legislation very badly.

Arthur H. Wellman of Topsfield.

Mr. WELLMAN of Topsfield: As I have listened to the remarks of the speakers upon one side or the other of this resolution it has occurred to me that they were ranging themselves either for or against it quite largely in accordance with their mental habits of thought. Some of the gentlemen who have argued in favor of this resolution have stated that we are here as trustees. And that seems to me to be a correct statement. We are here as trustees for all the people, under a solemn and serious trust.

Now, there are some rules for trustees, which they generally are expected to obey. Trustees are expected to use care and discretion and prudence in all their dealings. They are forbidden to experiment with, or to speculate in, trust funds. Now we have something far more important in our charge than mere money, and yet I have noticed that some of the advocates, some of the ablest advocates, of this measure, have said to us: "Let us try this experiment." Have we any right as trustees to experiment? Over and over again as I have listened to this debate there has forced itself into my mind the scene where one of these gentlemen who are so eager and earnest in selling mining stock comes to a trustee and tells him sincerely and honestly: "You will make your fortune if you go into this; it is a magnificent thing." But that agent does not know that his statement is true, and no one else does. That trustee has no right to speculate with his trust funds, and we as trustees have no business to be here speculating with the rights of the people.

When we as trustees come to the consideration of this question it seems to me very clear, — and it has been admitted by those who advocate this measure, — that the burden of proof is on those who propose the resolution. But I have noticed running all through this debate that even those gentlemen who have admitted that the burden of proof was on the advocates of the resolution have very soon wandered away and asked us to consider whether we could prove a negative. Gentlemen have arisen here, and with the greatest sincerity

told us that they believed that this measure would do thus and so, and then they have challenged us to prove that it would not do so and so. They have asked us what harm it would do. Are we here, Mr. Chairman, to adopt measures simply because they will not do harm? We are here under a serious duty, as trustees, and we are bound to wait until the burden of proof has been met by those who proposed this measure.

Now, if these propositions are sound it seems to me that they dispose of a very considerable portion of the arguments which have been made in favor of this resolution. But there are some reasons which have been advanced here as to why we should adopt this resolution; they have attempted to meet the burden of proof; and I wish to refer briefly to one or two of those matters.

The first one is that there is an overwhelming popular demand. Now, my notion, — it may be old-fashioned, — is that we have no business here to vote for a measure simply because there is an overwhelming popular demand for it. We are here to use our best judgment as trustees as to what ought to be done. Many and many a time we have seen a popular judgment last for a day and then disappear.

Mr. HART: Not being a lawyer I feel a little doubtful, but I should like to ask the gentleman whether a grown, adult, sane man can put his property into the hands of trustees in such a way that he shall enjoy it and not be liable for his debts. We are told that we are trustees. Who is the principal; and have we more power than he has? [Applause.]

Mr. WELLMAN: The statement in regard to the trust, Mr. Chairman, was not mine originally. It was made by the advocates of the measure. I think, however, that we were sent here by the people to exercise a trust, and that a sane man has a right to put his property in trust under such reasonable provisions as he sees fit to make; and it is frequently done.

Mr. STOEBER of Adams: I should like to ask the speaker if Kaiser William of Germany has not got nearly the same idea of trusteeship that the speaker has just expressed. [Applause.]

Mr. WELLMAN: I should say, — while I am not acquainted with the gentleman mentioned, — that he had absolutely no idea of trusteeship whatever [applause], to anybody on earth. [Great applause.] And more, Mr. Chairman, when anybody rises in this world to take responsibility and throw off all idea of trusteeship, it is time for the democracy of the world to send him to the rear with haste. [Applause.]

But to come back, Mr. Chairman, to the subject I was discussing. I suppose every one of us who has had any sort of experience in life has come to a time when we have found that the popular opinion was against what we thought to be right, and we have been obliged to choose whether we would do right or obey popular opinion. You will pardon me if I mention one such instance which many of you here will remember. One of the first experiences I had in public life was in regard to the endowment orders. At that time those orders were overwhelming in power in this Commonwealth. There are gentlemen sitting in this chamber who remember them. They controlled the Legislature. Some of us in the Legislature after study came to the

conclusion that they were not founded upon sound principles. I remember very well an eminent man in Massachusetts sending for me and telling me that he thought I did not know what I was doing in daring to oppose them. "Why," he said, "the whole people are for them; you can never be reëlected if you oppose them. I could not be reëlected myself, as powerful as I am, if I dared to oppose them." And yet some of us who opposed those orders lived in a few years to see that popular demand absolutely disappear.

Now, in the next place we come to the question as to whether there is any such overwhelming popular demand. I am inclined to think there is not, so far as my experience and observation go. In the first place, there has been an organization very actively trying to create a popular sentiment in favor of the initiative and referendum. I have no criticism to offer. It was perfectly right to do it. The members of this organization are a small minority of the people. They have used almost every available method to instruct the people and to increase this sentiment. While a person who kept himself entirely within range of that organization, hearing nothing else but what that organization put forth, might come to the conclusion that there was an overwhelming popular demand, it seemed to me that it was wise to go somewhat outside of the bounds of that organization. It was well known in my vicinity that I was unwilling to state on which side of the measures in this Convention I should vote; that I proposed to examine each question with an open mind. And yet so far as I recollect, except for the circulars which came to you all, no individual has ever come to me since I offered myself as a candidate to the present time, or has ever written to me, to ask me to vote for the initiative and referendum. But I myself have somewhat tried to inquire. I have gone to this person and that person to talk over this subject, and the thing that has surprised me most is the utter indifference of a large number of the people to this whole subject, and their ignorance in regard to it.

Mr. Bennett of Saugus: I would beg to ask: Does not the gentleman think that is wholly a matter of locality? He lives in Topsfield; if he lived at Southborough, probably the same would be true, or if he lived at Manchester or Nahant, — or Brookline, maybe. No, I do not think it would be true of Brookline. [Laughter.] But do you think that if you lived in Lynn or Fall River or New Bedford or Fitchburg what you say now would be in the slightest degree true?

Mr. Wellman: I have not confined my inquiries to the village of Topsfield. I believe that I have talked quite widely with the different elements in the community, — except that possibly I have omitted the plutocrats of great wealth. I do not know as I have got hold of any of them, but I certainly have talked with working-men and with men who work with their heads; and I have tried to circulate, — without making a business of it, — day after day among different classes of people. I have found that men of intelligence, — I do not refer to unintelligent people, — men of more than average intelligence, have asked me if I would tell them what the thing was. Men have talked with me who apparently are reading every day papers which have advocated this measure in the strongest terms, and they actually did not know what the thing is. The fact is, people will not read what they do not want to read.

Now, as to those who have favored the initiative and referendum, as I have talked with them, for the most part I have found them very much in the attitude of a man who had something the matter with him and had just read the advertisement of a patent medicine and had decided on the whole, without knowing much about it or how it would work, that he would try it. I do not recall that I have met any one who seemed to me, — I do not refer to the gentlemen in this chamber, of course, — to have studied the subject and to have had really an intelligent idea that we ought to adopt this measure, and the reasons why we should adopt it. The small vote, — the attitude of the people when we were elected, when this matter was made an issue, the talk that I had then with various people, what has happened in other States in recent times, where the voters have refused to adopt the initiative and referendum, — all indicate to my mind that there is great doubt as to any popular demand in regard to this matter.

The next reason which has been suggested, of prominence, is that there is in this Commonwealth great unrest. Now, naturally when a subject like that is brought up, any thoughtful man begins to ask certain questions. What is the extent of this unrest? Does the unrest exist to a greater extent in Massachusetts than in other States of like character? Does the unrest exist in Massachusetts more than it does in other States where the initiative and referendum have prevailed? What is the cause of the unrest? Is the unrest justified? Now, it seems to me that this class of questions, which any one of us certainly must ask if we are to decide this question deliberately and on our judgment, has been answered to a very slight degree in this debate.

About the only serious answer which I have heard is the statement that the Legislature is the cause of the unrest. Now, I have listened very carefully to see if there was any proof to connect the Legislature with this unrest, and it seems to me that it is impossible for any thoughtful man to feel that it has been proved that the Legislature has caused the unrest.

Why, unrest has existed all through the ages. The Massachusetts Legislature is no particular cause of unrest. When there is unrest, people seek some cause. It is easy to point out something that is near at hand. It may be simply an accident that it is there. The Legislature has not been shown to cause the unrest.

Why, as to some of these measures, these very matters about which the Legislature is blamed, it seems to be fairly well proved that the Legislature in Massachusetts is one of the best, if not the very best, body in the world to deal with these questions. Now, if the Legislature is doing as well as any other on the earth, is it proper to say that the Legislature is the cause of the unrest?

But it is said that there is corruption in the Legislature. Well, now, it so happens that I have had more or less to do with investigating corruption in the Legislature. When I was in the House it so happened that there was a case of alleged bribery, in which I took quite a part, and which I followed into the courts after I left the Legislature. And when I went into the Senate there was another case of alleged bribery, and I happened to be appointed on the committee to investigate that. And I have had occasion to follow some of these things since.

One of the ablest arguments in favor of the initiative and referen-

dum contained a very fair and proper statement in regard to this matter. The truth is there is very little real bribery in the Legislature, and when one attempts it it usually has not been effective.

But it is said that there is improper influence used on the members of the Legislature, and that this is the great trouble. Now, there is no doubt that there is improper influence brought to bear upon members of the Legislature. This world is human, and we all know it. But when the proposition is made that a majority or a third of the members of the Legislature, at any time, or particularly continuously year after year, have consciously submitted themselves to improper influences, it does not seem to me that there is any evidence, — and I know something about it, — that bears out any such statement. If you say that the Legislature is pretty evenly divided, and that something has happened to influence a few votes, there must be some merit in that measure or you could not get an honest vote of nearly half the Legislature for it. The fact about all this is that in the main the members of the Legislature are honest men.

I have noticed that in regard to all these propositions of undue influence they are in the past; nobody has risen here to say that the members of the Legislature to-day are under undue influence. Now, why is it? The answer is very simple. The majority of the members of the Legislature are honest men. They may be misled; they may make mistakes, — we all do. But when they find out what the mistake is, they have corrected it every time. That is the situation. It is said that the public service corporations now have no money, and that is why corruption has ceased. There are, however, other cases where corporations are financially able to go to the Legislature now, if they see fit, but they do not attempt improper influence. The fact is, we have taught the people that it would have been better for these public service corporations if during past years they never had done anything but present their case fairly and in a straightforward manner to the Legislature. [Applause.] And the people know it.

Somewhat has been said here in regard to the laws of descent and distribution, and a quotation from Daniel Webster was made. If I understand Webster's attitude, he believed that the laws of descent and distribution were of such a character that they would prevent the evils which he depicted. All the changes, so far as I know, in the laws of descent and distribution which have been made since the time of Webster have been in the interest of the many against the few; they have been in the interest of preventing the accumulation of large fortunes in the hands of a few men.

Mr. HALE of Boston: I should like to ask the gentleman whether in his opinion the attempts of the Legislature to prevent the danger which Daniel Webster pointed out have been successful, and whether the Legislature, as the trustees, have performed their full constructive duty in preventing the danger, which Webster foresaw, from arising. [Applause.]

Mr. WELLMAN: I do not believe that any law will prevent in all respects what the gentleman describes. I think that the duty of those who advocate this law is to show, as I was about to say, how this law can be used to prevent the evil to which the gentleman refers, — and which I deprecate, as he does.

Mr. HALE: I should like to ask the gentleman, Mr. Chairman,

whether then he disagrees with Mr. Webster that it was just as important, — I have not the exact quotation here, but I can get the speech very easily if the gentleman desires it, — whether he disagrees with Mr. Webster as to the necessity of the Legislature seeing to it by law, by legislation, that this situation does not arise. In other words, whether he disagrees with Mr. Webster that these laws have a very vital effect on the economic condition of the community. [Applause.]

Mr. WELLMAN: As I already have stated, I have reason to believe that Mr. Webster thought that the laws as they were then essentially established would accomplish the result. Mr. Webster, of course, did not meet the exact conditions which we now have; and no method, so far as I know, has been suggested in this Convention by any speaker which would show how the initiative and referendum would prevent the evil referred to. In other words, — it is perhaps as good an illustration as any, — it seems to me that this would be a most difficult subject to deal with under the initiative and referendum. That is just the difficulty. The laws of descent and distribution are complicated laws; they are laws which I myself after years of study should hate to vote upon without great consideration; they are technical laws. If you put those laws on an initiative and referendum ballot, how can, — I am not talking about unintelligent people, — how can people understand those laws? I do not lack respect for the voters, but I know as a fact the limitations of men. I know that men, ordinary men, and even lawyers, do not thoroughly understand the laws of descent and distribution. They do not hold them in their heads; they have got to study them from time to time. And to put that complicated and intricate mass before the voters does not seem to me likely to result in good laws for the benefit of all the people. [Applause.]

Well, then, it is said that this resolution will give the government back to the people. Somebody has said that men shall live not by bread alone, but by catchwords. It is very easy to get off a phrase like "giving power back to the people"; but it is more difficult to explain just what a particular law does.

It has been argued here as if at the present time it was impossible to amend the Constitution. Well, now, we all know that is not so. Even if a measure fails in the Legislature it can be introduced again the next year. And we all know, in our hearts, that if a majority of the people of Massachusetts to-day want an amendment, and want it continuously for any great length of time, they are practically sure to get it. It is only a question whether you will allow a certain length of time, a certain amount of discussion, a certain amount of intelligence and education, or whether you want to put it through without that.

Now, what does this law do? I do not mean that the Commonwealth of Massachusetts would go to ruin if you passed this law. Some one has said: "What has happened in the State of Oregon?" Why, I suppose that if the State of Oregon had been a despotism for ten or fifteen years it might have gone on pretty well, provided the despot was a decent sort of fellow. The trouble with these laws is not in ordinary times; what will happen when there is a crisis? We do not have a crisis every day; but when we do the strain comes. What can you do with this thing when there is a crisis?

It seems to me that when you provide, as you do, that ten men can fix the form of a law, or an amendment to the Constitution, and nobody on earth except those ten men can ever change it, it is pretty easy to put the proposal in a catchy form so that it will take with the people, — and it may have in it provisions that are contrary to the best interests of the people. But how are you going to explain that in the case of a technical law, to all the people of the Commonwealth? Some people may hear one side, and some may hear another; but it is perfectly obvious that all the people never can hear an intelligent discussion of the law as you would get it in town-meeting or as you get it here. The people of Massachusetts never have had any discussion of the initiative and referendum as we are hearing now, and they never can have it, — all of them; it is impossible. That is the difficulty with allowing ten men to fix a law, and then forcing the people to vote on it when they never can have any opportunity to amend it.

Then, too, I have drawn a great many statutes, and I know enough about that work to know that it is rarely that I am satisfied with the first draft. When I hear somebody oppose it I see there is something that ought to be changed and amended. Now, how are the people going to get first-class legislation and first-class constitutional amendments under such a provision as that? It seems to me that it is absolutely impossible. We are going inevitably,— whatever we do,— we are going inevitably to put into our Constitution and into our laws provisions which will not be, and cannot be, from the very nature of the case, for the benefit of all the people.

Mr. Morrill of Haverhill: I should ask the gentleman if, after he gets that law perfected to his satisfaction, he could go out and get other signers to sign an initiative-referendum petition, would not that be putting something good up to the people? Would that be an undigested proposition?

Mr. Wellman: The trouble is that it never is perfected until the discussion comes in the Legislature; and it is difficult to see how it can be. And, Mr. Chairman, I will say, moreover, that there is no guarantee that the people who write it will intend or desire to perfect that law. Their desire may be to pass a law which is not what the people want; and therefore it seems to me that to leave that thing in that condition is unsafe for the good of all the people.

Another matter which seems to me to be important from my experience is this: We complain, and perhaps with justice, that the people are not careful enough in their selection of the men to represent them in the Legislature; they certainly have the power, but they do not always exercise it. Now, if we pass an arrangement which will make what the men in the Legislature do reversible at any time by the people, the natural tendency will be to make men still less careful in regard to the selection of men for the Legislature. Men will say: "Oh, well, it is hard work; I do not like to fuss round about who shall go there, when what they do largely goes for nothing." The inevitable tendency will be to make voters careless as to selecting men for the Legislature, which seems to me just the exact reverse of what we should desire.

There is another point which I think works in the same direction. If this initiative and referendum law passes, if it becomes part of the Constitution, we may well expect that strong men will hesitate to

enter the Legislature. It is none too easy to get them now; but why should a man seek to go into a body when anything he does can be immediately brushed aside? Will not the tendency of that whole thing be to put weak men in the Legislature, instead of strong?

A great deal has been said in this debate in regard to the matter of agency. Now, the doctrine of agency hardly applies to this matter; it does not seem to me to be very complicated. I look at it like this: If we are going to select an office boy we tell him exactly what to do, and we give him no discretion to amount to anything; if we select a president or a manager of a great enterprise, we give him all discretion, because we expect him to know more than we do. We let him do as he pleases, and if he does not succeed then we try another man. Now, my opinion is that if you apply the errand boy doctrine, as you want to, some of you, to the Constitution, you will have errand boys in the Legislature, and nobody else. [Applause.]

Mr. ANDERSON of Brookline: I should like to ask the member from Topsfield if invisible government, as we actually have it, is not a very nearly perfect illustration of the "errand boy" doctrine as applied to the Legislature. Is it not an undeniable fact, known to anybody who knows the conditions in this Commonwealth, that we have had certain dominating forces in the Commonwealth, which have succeeded in sending to the Legislature year after year a lot of men who have been nothing but the "errand boys" of certain individuals who have possessed themselves of the public service corporation machinery and the other political machinery attached thereto? [Applause.]

Mr. WELLMAN: I am very glad to answer the question. I am as much opposed as he is to invisible government. I do not, however, feel that, as I already have said, a large portion of the Legislature are errand boys for any influence such as he suggested. But I do believe that if you pass such a law as this you will send to the Legislature weak men, who will be subject to influence far more than the men we have had in the Legislature in the past. As I was about to say, I should like to see better men and stronger men, rather than weaker men, sent to the Legislature. I have faith in the people of Massachusetts. I believe they are capable of sending men to the Legislature who will not be anybody's "errand boy", but will represent the people properly and use their judgment for the welfare and good of all the people as the Constitution requires. And I should like to see more and more of that sort of work among the people, rather than trying to get at that result by laws which never will accomplish it.

It seems to me that this resolution if passed will fail to protect the minority, the individual, against the tyranny of a majority. Now, it has been intimated here that there is no tyranny of the majority; but it strikes me that the framers of our Constitution were just as much interested to guard against the tyranny of the majority as against the tyranny of the despot. It makes very little difference to the victim whether the tyranny comes from a majority or comes from one man; it galls him just the same. And all history teaches us that, intentionally or unintentionally, majorities often are terribly tyrannous.

Mr. BROWN of Brockton: I should be more than glad if the gentleman can show where there is any restriction on the people in the Constitution. Do not the restrictions always run against the officers

to whom they have intrusted power? I am wholly in error if the Constitution does not restrict the power which they have delegated, and not the power which they have retained.

Mr. WELLMAN: I am very glad to explain my views to the gentleman. As I look at the situation, the great bulk of our people are neither very wealthy nor are they members of great organizations; they are unorganized, and they act alone. Those are the people, it seems to me, in whose interest we particularly ought to counsel at the present time. The most powerful influences to-day in legislation, either to forward it or to prevent it, to my mind, are great organizations. I make no opposition to these organizations; I recognize their good qualities. They come for reform, they come for uplift; they are likely, apparently, to be more powerful. But every good thing has its limitations and its evils.

Mr. BENNETT of Saugus: In order to bring out more fully what the gentleman has in mind, I should like to have him give us one or two instances of the tyrannous majorities. I should like to have him go back a hundred years, if he wants to, and any time within a century give us one or two examples of tyrannous majorities.

Mr. WELLMAN: Well, Mr. Chairman, I know the gentleman has read history. I think the French Revolution would do for one. I should think there are plenty of instances in English history. I do not think it is necessary to take up the time of the Convention; I will furnish him with books privately, if he wishes to read them.

Mr. BENNETT: The gentleman makes a very positive statement about tyrannous majorities, — the severe things they do. I should like to have him give us, — I will not take up the time of the Convention by discussing the French Revolution, where I think there is chance for a difference of opinion, and I never found it so fully as when I went over there and saw the conditions resulting. But, Mr. Chairman, I should like to have him give us a couple of samples of the injury by tyrannous majorities in the United States.

Mr. WELLMAN: I do not know that I am prepared to do that, Mr. Chairman, at this moment. I have no doubt there are such instances, and I have no doubt that they can be found. I have not prepared myself to answer that question. But it is obvious.

Mr. BENNETT: I should like to ask the speaker whether we are not protected against tyrannous majorities in the United States by the Constitution?

Mr. WELLMAN: It seems to me that that is just the purpose of the Constitution; that was just what it was intended to prevent. I think, however, there were instances in the early history of this country which I am not now prepared to give in detail. It seems to me, as I was about to say, that these strong and powerful organizations, organized to carry forward one thing, filled with the idea that the reform, if it could only be carried out, would be of inestimable benefit to the people, are sure to forget the rights of individuals, — oftentimes without intention. We all know that once people get into their minds the idea that the accomplishment of that one thing will be of inestimable benefit, they forget everything else, so that perhaps they want to kill,— trample upon,— everybody who stands in their way. Now, it seems to me that there never was a time in the history of this country when we were more likely to see that happen. Our

present Constitution does something, at least, to prevent that happening; and this resolution if adopted opens the door to more of it than we have ever had.

One illustration which came to my hand not long since well illustrates what is likely to happen. A book was put into my hands written in the interest of a great reform, a reform in which we all are interested; and it depicted the way that reform was accomplished, according to the story. A very brilliant and able man organized his forces in the interest of that reform all over the country; he went to Washington as his headquarters, and he connected himself by telegraph and telephone with his great army all over the country, and arranged that whenever he desired they should come at his behest. When the bill in which he was interested arose in the Capitol in Washington he summoned thousands and thousands of his cohorts, and they marched on the Capitol from each of the four sides, and with him at their head they entered the Capitol and demanded that the law should be passed.

Now, is that the ideal way in which laws should be passed? Is it to be supposed that under those circumstances the majority would have any great consideration for the minority? And is it not true that if this initiative and referendum is enacted we shall open ourselves to what we call whirlwind campaigns? It seems to me very natural that if this law passes, and a man wants to make an amendment or pass a law, the shrewd thing for him to do will be to get his ten signers and go out and get signatures just as quietly as he can; when it comes up in the Legislature, not to appear there, and have no discussion; let it go through without any discussion, and then just before it comes up to the people make a whirlwind campaign, push it through by some magic, so that people never will have any opportunity for discussion. The liability of that occurring is so clear that we cannot fail to see it and we must not disregard it if we are to guard the interests of the people.

But it is said, Mr. Chairman, that remedies ought to be suggested for the evils that exist, for the unrest, for the Legislature, — which has not been perfect; we ought to do something in the way of recommendations. Well, now, many recommendations have been made; one has been suggested here to-day. And it should be noted that all the provisions, so far as I can see, of which so much has been made in regard to this resolution relating to giving information to the people, could be applied to the present law if it was so desired. There are many other provisions to help the people, but it does seem to me that there is something more fundamental than all that. We have a representative government to-day. Now, we say that it is not perfect; we find that it has done some things that it ought not to do. What is the remedy? On the whole, our Legislature in Massachusetts, and our representative government, has worked pretty well. That is admitted by the speakers on both sides. Is it best to throw it aside, or is it best to make it more representative? Is it better to make the representatives stronger and abler and more courageous men, or is it better to pass this resolution and make them weaker and take away their power? It seems to me the thing to do is to give them power, and then if they fail to use it rightly retire them to private life. But it does seem to me that fundamentally you get back to the people. The people have the power to-day to say who shall go into the Legislature.

The people have the power to elect better representatives. But they do not like to do their duty. It is a hard and humdrum duty, and they would much rather propose some brilliant law. It seems to me that what we want to do is to come right back to ourselves. The trouble with our representative government, if there is any trouble, is with the people; it is with us. We ought to send better men to the Legislature. When we do that we shall have the kind of government that our fathers intended, and which we all desire.

The real way to cure the ills to which this State is now subject, — and I do not believe that they are more serious than in other parts of the world, — is to get at the people themselves, who have the power.

I trust the people. I believe that they are capable of sending able and strong and courageous men to the Legislature who will resist all these importunities and all these improper influences to which they are subjected; and that the people ought to do that. It is their duty.

The fault I find with this resolution is that it tends to make people less responsive to their political duties. The fact is that we cannot raise the Legislature to a much higher standard than that which the people themselves have. An old book says that "Righteousness exalteth a Nation, but sin is a reproach to any people." We must get back to the personal righteousness of the individual voter, and ask him to do his full duty. Then all these evils, this unrest, and discontent, and the dark shadows of wrong, will flee away, and the sunlight of hope and life will fill the land. [Applause.]

Sanford Bates of Boston.

Mr. Sanford Bates of Boston: I had hoped to make a record for this committee by finishing my speech without anybody having to ask to have my time extended, and I still hope to do so. I would not attempt to speak on this subject, at all, Mr. Chairman, except for the fact that in 1914, and since that time, I have given this whole question considerable study. I was chairman of the committee on Constitutional Amendments during that year and drew what I think was the first favorable committee report in this State for an initiative and referendum bill. Now I want in a very few brief sentences, if I can, to give the impression to this Convention that this is a safe, proper measure for the people of Massachusetts to adopt. I have not the slightest sympathy with those people who are representing to us here, men of intelligence and experience, that Massachusetts is oppressing her working-men. I think we shall all agree when we look over the list of labor laws in Massachusetts that very few commonwealths, if any, have been more solicitous of the welfare of the toilers and of the women and children than our own. At the same time, Mr. Chairman, we are here discussing this as an initial proposition. And while it is fair, perhaps, to go into a philosophical discussion of government, and while it is fair to go into the question of whether there is unrest, is it not primarily true that we are discussing the formation of a new Constitution? And the question presents itself to us: Shall we adopt twentieth century machinery or shall we cling to old machinery?

Now while it may be true that the question whether that old machinery has worked well or not is a logical thing to discuss, I submit

that it also is proper that if this new machinery is better and gives reasonable promise of working better, then, having this before us as an initial proposition, we ought to adopt it, unrest or no unrest.

I am unwilling to admit for a moment that this is a revolutionary thing. I think it is the contrary. And I have no sympathy, either, with those opponents of this proposition who insist on looking on the dark side of the situation. I have heard the statement repeatedly made by the gentleman from Amherst (Mr. Churchill) and the gentleman from Lynn (Mr. Lummus) that these proposers *can* do certain arbitrary things and that the voters *can* do certain undesirable things. Well, Mr. Chairman, our judges can do certain arbitrary things, our legislatures *have the power* to do certain undesirable things; but the answer is, they do not, and the answer will be, so long as those general principles which govern and which control the passions and convictions of men exist, neither these ten men nor the 50,000 signers nor the people in the last analysis will do, — whether they can or have the power or not, — will do anything which it can be clearly shown to them is not in their own interest.

So I say, Mr. Chairman, instead of approaching this matter on the basis of a distrust of the various agencies which will conspire to put the thing in operation, we ought to approach it in a spirit of confidence; of confidence that when these ten men initiate a legislative scheme they are going to see that they have a perfect law; not assume that they are going to put up men of straw to favor a proposition on which they are asking votes, but they are going to put up the ten most influential, responsible men they can find as sponsors of this proposition.

And again, Mr. Chairman, it is not to be presumed that if the supporters of legislation under this plan really want to pass their bill, they are going to ask people to sign those petitions who have no interest in it and do not know what it is. Rather is it the contrary that they are going to ask their friends and sympathizers to sign their petition and to campaign for it afterwards. And so I hope that the members of this committee will approach the proposition in that spirit.

Now what is this initiative and referendum? We hear it discussed here on both sides with more or less heat, and it might be refreshing and comforting to some of us to hear what the judiciary have to say about the initiative and referendum. Now I am going to read to you, Mr. Chairman, the statements of the court which has considered this proposition, and after you have heard it said that this is going to subvert all our liberties and wipe out our Constitution, and so on, let me read to you these calm judicial opinions which were handed down by the court in Oregon:

> The initiative and referendum amendment does not abolish or destroy the republican form of government, or substitute another in its place —

Mr. Walker of Brookline: May I ask the gentleman from what decision he is reading?

Mr. Bates: I am reading from the case of 44 Oregon, 118.

Mr. Montague of Boston: I should like to ask the gentleman if, in view of the fact that the initiative and referendum and recall prevail in Oregon, he would expect an Oregon judge to render an opinion which was otherwise than favorable? [Applause.]

Mr. BATES: I am obliged to the gentleman for indicating to me that there is interest in this Convention as to what Oregon has done on this proposition, because I propose to ask him a little later on in the course of my argument whether or not he agrees with the decision of voters on certain referenda which have been submitted in Oregon, and I am going to prove to you, if I have the opportunity, that the people of Oregon have displayed extraordinary good sense, and went even so far as to agree with the gentleman who has last spoken, in their opinions in deciding on the referenda.

Mr. LUCE of Waltham: I should like to ask the gentleman if he thinks the people of Oregon displayed extraordinary good sense in rejecting one day of rest in seven?

Mr. BATES: I wish the gentleman would refer me to the particular bill which they had for a one day's rest in seven in the Oregon referenda, then he can ask me a little later on and I will discuss it. I have been over pretty carefully the referenda and I have not found it. It may be, however, that that is one of those bills which has been in the Legislature the last few years which has become almost a "hardy annual" and which has certain well-known objections which would prevent its being adopted. And if it is a bill like that, I think the people of Oregon have shown an equal amount of common-sense and perspicacity with the Legislature of Massachusetts, which repeatedly has done the same thing.

Mr. LUCE: My eye does not catch that particular measure as yet. I am not certain whether it was in Oregon, but I think it was. But my eye catches another one where I know his sympathies and mine will make it difficult for us to understand the action of Oregon. In 1916 a measure to repeal the Sunday closing law had a majority of 32,760. Does he think that was an illustration of good sense on the part of the people of Oregon? [Applause.]

Mr. BATES: I should like to call his attention to the fact that on referenda in Oregon the people of Oregon went even farther than that and even farther than the people of Massachusetts, I am afraid, would be willing to go, and passed a complete prohibition law. [Applause.]

Now, Mr. Chairman, I hope to discuss these referenda at a little later time. I want to read these reassuring words. Of course if the court of Oregon comes under the general indictment that all people of Oregon are outlaws from civilization, these words will have no effect. But a judicial tribunal, being called upon to pass upon the validity of these acts, made these remarks:

> The people have simply reserved to themselves a larger share of legislative power.

Then, in a later case in Oregon, in 1910,

> It seems inconceivable that a State, merely because it made available a system by which its citizens become a branch of their legislative department coördinate with their Legislature, loses caste as a republic.

I would say, Mr. Chairman, at the present time I agree with the provisions of the Walker resolution. I agree with the gentlemen who have spoken that the measure is not perfect and I think there are amendments at a later stage which ought to be adopted; but at this stage I think the vote ought to come on the broad general principle whether the measure ought to be adopted. There are certain amendments which we drew in 1914 which I think are a good proposition.

Of course it is obvious that the people at large cannot undertake the intricate, financial administration of the State, and if possible we ought to provide in this initiative measure that only broad questions of public policy should be left to the people. I think the resolution goes far along those lines. If it can be made to go any farther, so much the better.

Now an argument has been made with some force that this system of ours is a good one; and why should we change?

Well, Mr. Chairman, I have just been reading the life of John Marshall, who perhaps, to the mind of a lawyer at least, is one of the most distinguished figures in our national history, and I was astonished to read of the conditions which obtained about the time our Federal Constitution was being adopted. Why, it took the people in New York eight days to learn of the fact that Massachusetts had adopted the National Constitution. The roads were so bad that travel was almost impossible. There was no telegraph; there was no dissemination of the news through the newspapers. The conditions were absolutely different from what they are to-day; and with the ease with which people can become possessed to-day of the facts, with the ease with which they can communicate, and so on, and so on, it seems to me that an entirely different situation is presented. And so we have before us the question as to whether we shall bring our legislative system up to date.

Now all of these arguments, Mr. Chairman, the argument as to the collection of signatures, the argument as to the number of signers, the argument as to what measures shall be put on, — all these details finally simmer down to one single proposition, and all the objections which might be made by the honorable gentlemen who have spoken on this proposition can be traced to one proposition and that is this: That either through ignorance or through the large number of measures that may be submitted, in the last analysis and in the final chapter the people will decide wrongly; the people will decide contrary to their own interests. Otherwise, there is no argument on this proposition at all. If it could be demonstrated to us that the people of Massachusetts, whether they had five referenda or whether they had fifty every year, if the people could and would decide those properly and in their own interest, then none of us should have any fears, I submit, about the submission of the initiative and referendum amendment.

Mr. Montague of Boston: I desire to ask the gentleman if he thinks it would be wise to submit by referendum to the people a revision of the banking laws of Massachusetts or of the business corporation laws, the laws of descent of property or any of the other laws that are really big and cover a broad question.

Mr. Bates: Again that question is directed along the same line to which I have called attention. It is directed in order to accentuate the fear that the gentleman has that the people, when they receive that law for decision, are going to chase a will-o'-the-wisp, — are going to take the advice of false prophets and are not going to be able to decide properly.

Mr. Montague: I should like to ask the gentleman what proportion of people would be able to give any kind of an intelligent vote upon it without being advised?

Mr. BENNETT of Saugus: We have had the Federal Reserve law, the mortgage loan law and a great variety of the most important banking laws lately adopted in the United States; and I should like to ask the gentleman if it is not true that those laws have been coming around for years and have not been able to make any headway in the Senate and House of Representatives of the United States until the people have taken hold of them?

Mr. BATES: I have heard it said that the Postal Savings Bank law was originally introduced in Congress about 1857, and it is said that there were only four reasons why it did not pass, and those reasons were: The American Express Company, the Adams Express Company, the National Express Company and the Wells Fargo Express Company.

Mr. BALCH of Boston: The gentleman says that in the last analysis objections to this measure simmer down to this point, namely, that the opponents fear the people might not decide rightly on the questions placed before them. Does not the gentleman think, in view of the figures which undoubtedly he has studied, that there is still another danger, and that a more serious one, namely, the danger that when these questions are submitted to the people it will *not* be "the people" who decide them at all but only a very, very small percentage of the people, and that percentage picked out by reason of its being a faction which has a special axe to grind?

Mr. BATES: I agree absolutely with the gentleman from Cambridge (Mr. Hart) when he says that he has absolutely no concern for the man who is too busy or too indolent or too careless of his own welfare to go to the polls and vote. I have no sympathy with the argument that says that a "mere majority" of the voters will pass upon this amendment. The figures from Oregon show no case where less than seventy per cent of the total vote, of the average vote for individuals, was cast on questions for referenda. I do not think that he is willing to admit, or any man is willing to admit, that the average voter of Massachusetts is more indifferent or more unintelligent than the men of Oregon; and I think he will find that there will be a fair and proper expression of opinion, and if there is not, the people have nobody to blame but themselves. I trust that answers the gentleman's question. I cannot see how it affects my main statement, that this is the real question.

Now, I want in just a minute or two, Mr. Chairman, to take up the question of the referenda in Oregon, with two things in mind: First, as to what amount of interest was shown by the people; and, second, as to their intelligence in deciding those propositions.

Now it has been said and feared right along that the affirmative vote of the people always is feared; in other words, the people who have not been used to referenda assume that if a thing gets on the ballot the people are going to adopt it. That absolutely was not so in Oregon. The first year, 1910, there were nine referenda adopted and twenty-seven rejected. The second year there were eleven adopted and twenty-six rejected; the third year four were adopted and twenty-five rejected; and in the last year, 1916, six were adopted and five rejected. That shows that the people handle the subject intelligently, that they do not jump at the conclusion that simply because there was something on the ballot it was a good thing and they ought to vote

for it. Witness the fact that after they had established certain much needed reforms in Oregon they settled down into what probably is their normal state and in 1914 adopted only four out of twenty-nine referenda that were put on the ballot.

Now, I do not want to take the time, Mr. Chairman, to go through this list of referenda, but I do hope that those of you who are interested in the referenda will examine Bulletin No. 6 and read on pages 94 and following the result of those votes and each one ask himself honestly, as a member of a Legislature which sits here and hears these things discussed, would he decide those questions differently than the people of Oregon decided them?

Mr. BRYANT of Milton: I should like to ask the gentleman whether he thinks that he or any other member of this Convention is competent to say whether a particular measure should or should not have been adopted by the people of Oregon by reading the titles which are published in that pamphlet?

Mr. BATES: I was just about to call to the attention of the member, on page 53 of Bulletin No. 6, a statute of Oregon which provided that the Attorney-General should frame the title to go on the ballot.

Now something was said yesterday about a specious title, and in talking in private with one of the members of the committee he assured me that those titles mean nothing, — they are put on for purposes and they are put on to get the bill through. There is a statutory provision in Oregon that the Attorney-General shall frame the title, so apparently we are sure, Mr. Chairman, when we read those titles, that they mean what they say: "A Constitutional amendment to create separate districts for each State Senator and Representative"; is there a man living who could not sit down and decide that question for himself? And the people of Oregon voted No, against that proposition.

Picking out another one: "To provide for the creation of new towns and counties by vote in certain districts," — and the people rejected that.

Mr. LUCE: For fear the gentleman's eyesight may slip one entry there may I call his attention to the vote whereby the people rejected an eight-hour day for female workers?

Mr. BATES: Yes, Mr. Chairman, I was going to call the attention of the conservative members of this committee to that proposition. I was going to call their attention also to the fact of what seems to me an astonishingly intelligent decision that the people have arrived at. They have passed an eight-hour law for workers in public works; they have refused to pass the eight-hour law for general workers; they have refused to pass an eight-hour law for female workers. Thereby the people of Oregon have agreed exactly with the best decisions of our courts, who say that the State can regulate the hours of its own workers, but it cannot go into private industry and regulate the workers of industry in private establishments.

Mr. LUCE: Do I understand the gentleman to disapprove the action of the Massachusetts Legislature in throwing protection about the labor of women and of children?

Mr. BATES: I say, as I have always said, that Massachusetts in her labor laws is far ahead of any other State in the Union. I am simply trying to draw to the attention of the delegates now that the

people of Oregon are not crazy, hot-headed outlaws of civilization who cannot use their own judgment and cannot vote intelligently as they see it on the proposition. And I am saying also, to reassure some of the more conservative members of this body, that the initiative and referendum does not always work in favor of radicalism or the social revolution; and I am astonished that, trying as I am to reassure the conservative members, they should attack me and my statements in the way they have.

I note another instance, Mr. Chairman, where the people of Oregon have used unusual intelligence: The judiciary amendment to the Constitution authorizing the verdict of three-fourths of a jury in civil cases. I note that, and I am almost inclined to say that the people of Oregon showed even better judgment in that instance than the delegates in this Convention did, not long ago.

Mr. Parkman of Boston: What did they do?

Mr. Bates: They adopted it, by a majority of 5,139. And so I might go through this list, Mr. Chairman, but I do not want to take the time to do it. I simply want to ask the delegates, bearing in mind that this is of importance, if they wish to see how the people make use of this principle, to read the facts and figures which we have at hand, and also to consider the results of referenda in our own State.

Just a moment to answer the argument which the gentleman from Milton (Mr. Bryant) made, that the title might mislead people. That is a real objection, because I sat here once and saw this Legislature try to term a two platoon firemen's bill: "An Act to provide for the health and efficiency of the fire department." And I also sat in the Senate and saw the Senate call the repeal of the party enrolment act: "An Act to prevent the voters of one political party from voting at the primaries of another political party." So I know something about the speciousness of titles. But this resolution which we are discussing provides that the Secretary of the Commonwealth shall make the title and therefore any argument that the ten wilful men or ten straw men who are going to be put up are going to run something over on the people, absolutely loses its dependability, because that title on the ballot is to be made by the Secretary of the Commonwealth.

Debate was resumed Friday, September 7.

Mr. Luce of Waltham: The very interesting colloquy in which we were engaged yesterday afternoon may have given my friend from Boston (Mr. Sanford Bates) and the members of the Convention the impression that I was asking questions through hostility to his general position. Permit me to explain that they were asked with the impression that we had perhaps come near exhausting the discussion of the general principles involved in this measure, and that the Convention might welcome now some attention to the details of the proposition. Therefore I asked two or three questions and in one of them I made an error for which I would apologize, saying it was Oregon that had rejected the one day of rest in seven bill. My memory betrayed me. It was California in 1914 which had rejected that bill.

And now before the gentleman takes up the thread of his discussion I should like to inquire from him upon one further point. If I understood him correctly yesterday he declared that he believed in

the application of this measure to matters of public policy, and with that I am in so much sympathy that I recall with some gratification that ten years ago I stood on the floor of this chamber and championed the opportunity for the people to express their judgment on broad questions of public policy. [Applause.] And if in the ten years that have elapsed my friend, my very good friend, — and I say it in all seriousness, — from Brookline who has drafted this measure (Mr. Walker) has changed in any regard the position that he then took in opposition to me, I recall the fact with no suspicion that his views have changed but that somehow we must have differed in the matter of the application of views. And therefore, since I agree with my friend from Boston behind me (Mr. Sanford Bates) that if this measure is to prevail it ought to be restricted to broad questions of public policy, I desire to have him enlighten us, if he will, as to how that purpose is to be accomplished. I have been told, sir, — I cannot verify the statement; perhaps he may verify it for me, — that on a ballot 34½ inches long and 18¼ inches wide in the State of Oregon in 1912, 16,910 voters recorded their solemn approval on a proposed law requiring that the sheets on hotel beds should be at least 103 inches long and 81 inches wide. [Laughter.] I submit, sir, that is not a question of broad public policy [laughter], although it may be a question of the breadth of bed sheets, — not one of broad public policy. And inasmuch as he took up yesterday the class of measures submitted to the voters by the people of Oregon, I should like to have him tell us how he proposes that the measure before us shall preclude the citizens of Massachusetts from vexing their intellects with the problem as to whether hotel bed sheets shall be 103 inches long and 81 inches wide.

Mr. Bates: I have been industriously going over the list of referenda in 1912 to see if I could find out how that question was so effectually disguised by the time they made the title to the bill. It may possibly come under the bill to abolish capital punishment. It might come under a bill to prohibit the use of streets and public places for discussion without a permit from the mayor. I have an idea, however, Mr. Chairman, that the bill to which he refers is the bill which was rejected by a majority of seventy-five thousand to create the office of hotel inspector. I think it is a little bit unfair in the gentleman, although he does not intend to be so, I am sure, to present a typical case to this committee dressed up in those ridiculous terms the way he has done it. I can find no such referendum in the official pamphlet except the one to which I have referred, and I submit that that is a continued argument in behalf of the referendum if on a ridiculous proposition like that the people overwhelmingly disapproved of it. He might have some argument if the people had adopted a thing like that.

Mr. Luce: The gentleman and myself both want this measure changed, as I understand it, so that it will be confined to questions of public policy. Elihu Root has said, and wisely, — this is not his exact language, but the purport, — that there is no difficulty in agreeing on what we want to do; that the difficulty comes in determining how to do it. And I still hope that the gentleman from Boston will aid me in pointing out how this measure can be confined in the way that he and I desire.

Mr. BATES: One answer, Mr. Chairman, is that there is no need of confining it if in the last analysis on every referendum the people are right. If the people can handle the question correctly, then we can safely leave every question to them. I say that my own personal impression is that they ought to deal only with large, broad questions. I submit, Mr. Chairman, it is not fair to expect that little petty questions are going to be signed up by fifty thousand and twenty-five thousand people with all that trouble and expense when those little petty questions could be passed through a Legislature.

I want to anticipate the question which the gentleman from Boston is going to ask [Mr. Montague from Boston having risen]. I refer to the question he asked yesterday about the codification of the banking law, and I make the same answer to that.

Mr. MONTAGUE: That is not the question I had in mind. I was wondering, Mr. Chairman, if the gentleman's suggestion was correct and voters would not sign that kind of petition, how that sort of thing got on the Oregon ballot. It looks as if they did sign it in Oregon.

Mr. BATES: I say that certain matters of that kind in the first years of the application of the initiative and referendum may get on the ballot; but the history in Oregon is illuminating, showing that while a large number are on for the first years, in the last year there were only eleven as compared with thirty-seven in 1912. So that when the people get used to the working of the system they will of their own accord confine it to large questions of public policy.

Before my time expires I want to make a little correction in what I said yesterday. I mentioned the fact that there were four reasons why a certain law did not pass Congress and I referred to that law as the Postal Savings Bank law. I meant to say, Mr. Chairman, the Parcel Post. I have no doubt that the question of the gentleman from Boston about the banking system confused my mind so that I had those two measures mixed up. Of course that was a pertinent query which the gentleman made yesterday as to whether the people were competent to pass a codification law. I do not think they are. I think the people will take the advice of certain men whom they trust, and if those people tell them that the act is good they will vote for it, and if they get the impression from the comments that are made that a certain act is bad and vicious they will vote against it. But there is nothing in the history of this Legislature to indicate that they are any more competent to pass such laws than the people would be. I have only to refer to the gas and electric light codification which was put over by this Legislature a few years ago and in which I am told to-day by a member of the Board of Gas and Electric Light Commissioners there are no less than half a dozen, if not more, "jokers" which have been inserted. I submit that the people under the leadership of intelligent men could not do any worse than that.

I have practically completed my remarks, Mr. Chairman. There are one or two little matters to which I want to call attention. Argument was made of the possibility of the abuse of signatures. I think if you will read the Walker resolution and look at line 154, which says that the Legislature may provide for the proper identification and certification of signatures, you will find in there sufficient authority to

allow the Legislature to enact any legislation necessary and proper to prevent any abuse in the collection of signatures.

The statement was made also that it would prove easy for the ten proposers to force their own version of the law through the Legislature and allow them to refuse to accept amendments. Well, now, Mr. Chairman, I do not think the members will see that that has any force. The purpose of the proposers in initiating a measure is to get it passed, and when they want to get it passed they will want to get it passed in proper form. The very purpose of providing the later addition of signatures is to give the proponents an opportunity to accept an amended form which the Legislature might pass. Now, attributing to those proponents proper and good motives, which I think we must do, if they see the legislative act is better, all they have to do is to accept that legislative act and they have the act exactly as they want it. And I submit that that will be the result here.

Mr. MONTAGUE: I desire to ask the gentleman this question, which seems to me practical: If an absolutely bad proposition, such a proposition as was suggested by the gentleman from Brockton (Mr. Brown), was put up, how can you amend that sort of proposition to make it into a good one? Are not nine-tenths of the propositions which come before the Legislature, and which might be expected to come in no other way, simple questions that want to be knocked out? You cannot amend them to make them any good? Is not that so?

Mr. BATES: Well, Mr. Chairman, there are two answers to that. One is, if the proposition is discovered to be absolutely bad by the people's representatives sitting in a Legislature, and those people's representatives sitting in a Legislature cannot make their own constituents see that it is bad, why, then either the Legislature is wrong or the people are wrong. In other words, when that referendum finally goes to the people, they very easily can be made to see that that is a bad and a vicious measure, and I do not think there is one chance in a hundred that the people of Massachusetts will accept any such act as the gentleman has in mind. They have not done it in Oregon and I am not willing to admit that the people in Oregon are any more intelligent or any better qualified to pass on these matters than are the people of Massachusetts.

Just one more thought. The gentleman from Topsfield (Mr. Wellman) referred to the fact that we are here as trustees. To a certain extent we accept that trust; but if there is one cardinal principle in law, it is this: That where a person assumes to act as trustee under a declaration of trust it is his first duty to obey the mandates of the instrument that created him. Now, Mr. Chairman, we are here, if we are here at all, because we are sent here by the people to do a certain thing. Why was it that men of the prominence and ability of the president of Harvard University and Mr. Elder, an attorney who is known all over this country,— why was it that those men were refused election to this Convention and other men sent here? It was because those other men were sent here with certain definite instructions. They were sent here as trustees to do a certain thing. And so I say, following out the suggestion of the gentleman from Topsfield, if we are to act in accordance with the terms of our trust we ought to submit to the people an initiative

and referendum measure in some form or other, and later on we will do the best we can to amend it into the form desired, I think, equally with my friend from Waltham (Mr. Luce) and my friend from Brookline (Mr. Walker) and all the rest of us who really are sincerely trying to put a measure before the people which they want and which in the last analysis, with their own intelligent coöperation, will prove to be for their benefit. We ought to recommend the adoption of this resolution. [Applause.]

James A. Lowell of Newton.

Mr. Lowell of Newton: I have not any set speech on this question, but I hope the members will be interested enough to ask the questions which I very likely cannot answer but shall be very glad to try. I am going to speak of this thing from a rather different angle from most of the remarks I have heard. I think we should start in this way. I have not heard emphasis laid in this debate on the character of our institutions in Massachusetts. I will start by saying this: In 1904, which was my first year in the Legislature, I was in charge of a report from the committee on Constitutional Amendments, a report against the initiative and referendum, which report was successful, the required two-thirds majority in the House not being obtained. Since that time I have read many of the books, — I will not say all, because their number is legion; but I have read many of the books on this subject.

This initiative and referendum has been adopted in all States for one reason, and one reason only, namely, that the people got so tired of the corrupt methods of their Legislature that they said anything would be better than that. That is the reason it has been adopted. Everybody, all of the writers on this subject, — and there are many of them, — have said: "We do not think that the initiative and referendum will bring a perfect government, but we think it is the only thing to prevent the corruption of the Legislature."

Now in a minute I shall ask your attention to its effects in Oregon and in California on that one subject about the Legislature. But before I do that let us see what we have in Massachusetts, because we have in Massachusetts something absolutely different from anything in Oregon, in California, in South Dakota, in Colorado, in Missouri, in Ohio or anywhere else (except Maine) where this system has been adopted. We have this, Mr. Chairman: We have annual sessions; and personally I hope we shall continue to have them. We have this: We have hearings in committees.

Now, Mr. Chairman, it is not commonly known, or at any rate it has not been talked about here, that our system of committee hearings is different, and very much better developed, than in any other State in this Union. There is no place where the public has so easy a way of coming before the committees and bringing their evidence and their witnesses before them and through them of bringing to bear on the Legislature the popular opinion. One reason for it is that we, here in Boston, are very much nearer the great part of the population than, for instance, the legislators in Albany or in Columbus, Ohio, or in many of the other capitals Whatever the reason be, the fact is that

in no other State is there a system whereby such free and open debate and evidence and talk about this thing can be heard.

Now here is another matter: In New York, in Ohio, in almost every other State except the New England States and New Jersey, it is competent for the committee to smother a bill. The chairman of the committee can forget that there is such a bill; he can put it in his inside pocket and let it stay there. He does not have to report it back to the Legislature. Here, as we all know, every bill must be reported back to the Legislature. There is no such thing as killing a bill in committee. I mean by killing it, pigeon-holing it or throwing it in the waste paper basket or anything of that kind. So that the system here is entirely different from the system in other States. I make that point for this reason: A system which has worked fairly well, as I shall show, in Oregon may be entirely inappropriate for Massachusetts.

The debate here all along has been an ideal debate, if one may say so. There has been talk about the beauties of the I. and R.; there has been talk about the deformities of the I. and R. The truth is. Mr. Chairman, as I see it, the I. and R. is neither very beautiful nor very deformed, but it is a measure, a practical measure, which in certain States has worked well but is not suited to Massachusetts.

Now I shall try to develop that idea. In Oregon, as I understand it, for years they had the initiative. It was the first State in this country to adopt it, except South Dakota, which did not do anything with it. South Dakota in 1898 passed an initiative and referendum, or one or both of them, I do not know which. Oregon passed it in 1902, and that is the first State where it has been greatly used in which it was passed as long ago as that. California passed it in 1911.

Now those two States are the leading States where they have this thing, and I shall confine my remarks to them. It was passed, as I say, in both States, because of the abuses of the Legislature. In Oregon we are told that there are two sets of fishing corporations, the down-stream set and the up-stream set. The down-stream set wants to catch fish by the use of weirs, the up-stream set by the use of water wheels; and those two sets of corporations had been for years going before the Oregon Legislature and attempting to bribe them to pass laws to the exclusion one of the other. Well, now, they had a situation there which had become unbearable. Now, Mr. Chairman, if I had been in Oregon at that time, feeling as I do now about this measure, I should have voted for the initiative and referendum, because the result now in Oregon is much better than it was before. I can see that. I am against the initiative and referendum for Massachusetts, but I can see that. The result is much better; the Legislature is not corrupt in Oregon now. But what has been the effect on the Legislature itself? That is what we should consider here. What we should do here should be to get, if we can, a more responsive Legislature and one which will be more efficient.

I was in the House for three years, and it is not my experience, — and I ask you gentlemen here, many of you who have been in the House, to search your hearts and see whether your experience does not agree with mine. When I was in the Legislature the Legislature was not corrupt. There were instances of corruption, undoubtedly, some of which I knew about; perhaps there were others, of which I did

not know; but the Legislature itself was not wholly corrupt. So that we have not the situation where we should say: "This Legislature is unbearable; let us take anything rather than bear the ills we have."

Mr. WALKER of Brookline: The gentleman has asked to be interrupted and I think at this point a remark ought to be made, because he is referring to the Massachusetts Legislature. He is referring especially to the committees of the Massachusetts Legislature. As I said once before, I ran for Speaker of this House, the House of Representatives, two different times. I went through two Speakership campaigns. I was Speaker of this House for three years and I know that undue influence is attempted to be exercised and I believe that undue influence is exercised frequently in the election of a Speaker. And moreover I say that the Speaker in this House has the appointment of committees and the President of the Senate has the appointment of committees; and it is the desire of those who back the Speaker to influence his decision in the appointment of committees. [Applause.] And, Mr. Chairman, I will say that I know that there have been chairmen of committees sitting in this House and members of committees appointed by Speakers under such influence who ought not to be such chairmen. This is a matter of common knowledge to those who follow closely public affairs. [Applause.]

Mr. LOWELL: I supposed that was a question, though I did not quite catch it. But I will say that it seems to me that our system here of electing Speakers to which the gentleman refers is entirely a proper one, since the gentleman himself was elected Speaker. So that the undue influence which he says was tried in his case was not successful. [Laughter.]

Mr. BROWN of Brockton: I should like to ask the gentleman this question: Assuming that the initiative and referendum would purify the Legislature, in which case undoubtedly he would be in favor of it, will he proceed to demonstrate that the initiative and referendum will not have any influence in purifying or making better the legislative conditions?

Mr. LOWELL: I am glad the gentleman asked that question, because I am just coming to it. I say the initiative and referendum will purify the Legislature, and I am an initiative and referendum man to that extent. It has purified it in Oregon and in California. Do not let us blink the facts. Do not let us state that the initiative and referendum is no good anywhere, because it is not so. But what I say is this, Mr. Chairman: I say that in Oregon they have an honest Legislature but an absolutely inefficient one. That is what I say.

There have been three books written on Oregon, one by Hedges, one by Eaton and one by Barnett. They all say the same. Prof. Barnett's book has been quoted from here. It is the best because it is the most scholarly and the most impartial. They all say the Legislature of Oregon has got to such a pass that nobody cares anything about it. There is a public attitude there: "Why should we bother with the Legislature? We can do our own legislating by initiative and referendum."

Mr. BROWN: Right on that same point, as you have admitted that it would purify the Legislature and you have said that you are not going to vote for it, and if everybody follows you we shall not get it —

Will you suggest how may we purify the Legislature by any other process as simple as the initiative and referendum?

Mr. Lowell: I will. The way to purify the Legislature, in my judgment, is this, — and there are now matters pending before the committees on State Administration and Executive jointly, — the way to purify the Legislature is this, or rather, the way to render the Legislature competent and purer, is this: The trouble with our Legislature is not that so much money is spent in bribing people; the trouble is that people honestly make trades on legislation. They honestly make them and very often they innocently make them, but they trade local and private acts with general acts. Now the way to improve the Legislature is to provide that private and local acts shall be passed on first by some kind of a contrivance, — and I am not enough of a man to tell you what it shall be, but that is now in the hands of these committees, — some kind of a contrivance whereby in the first place private or local acts shall not come before the body, shall be referred perhaps to a committee of the body, perhaps to an outside commission, or something of the kind, and shall be adopted by the body only by perhaps a two-thirds vote. Something of that kind is the way to make our Legislature more efficient.

Now, Mr. Chairman, as I was saying, let us take California. California is a thousand times better under the initiative and referendum than it was before. Nobody can read the books or go out there, as I have gone, to see conditions without realizing that. A person who would say that the initiative and referendum has not done good work for California would be a blind person or one so partial that his opinion was worthless. It has made that State a thousand per cent better; there is no question about that. And why? What were the facts in California? Hiram Johnson, who is one of the biggest men in this country, in my opinion, has said that the Southern Pacific Railroad controlled California for thirty years; and I can repeat it here without calumny, because it is a well-known fact. The Southern Pacific Railroad no longer controls California. They have honest legislators, they have honest Governors, they have honest men in office. But the I. and R. did not do all that. Hiram Johnson himself did a great deal of it because he is a very able man.

Now, Mr. Chairman, I am saying here that the initiative and referendum does not make the Legislature a competent body, and I am quoting to you "Equity." No one will say that "Equity" is prejudiced against the initiative and referendum. In the July number of "Equity" a correspondent writing from California says:

> This year's session will be remembered chiefly from its inefficiency and lack of achievements. In the closing days there was the usual mad scramble to clear congested files. Bills were railroaded through by the wholesale without a pretense of thoughtful consideration, while almost as many more were ruthlessly slaughtered on sentimental appeals from members.
>
> This situation is the distinguishing characteristic of State law-making bodies throughout the Nation —

Twelve or twenty-two States, or whatever number it is, have the I. and R., but the legislatures, according to this writer, are just as bad as the others. [Reading]

> and should cause thoughtful citizens to look for some better system of law-making that will result in greater efficiency without sacrifice of real democracy.

That is what I say. That comes from a State which has the I. and R. Their Legislature is inefficient.

Now if we here think that our Legislature is corrupt, is rotten to the core, let us vote for the I. and R. and we shall do a good thing. But if you believe with me that the Legislature is not corrupt but that what we need is a more efficient Legislature, let us not vote for the I. and R. with the idea that we shall be successful in the result.

Mr. ANDERSON of Brookline: What the gentleman is saying is so exceedingly interesting and so pertinent and he is so fair in his statements as to the results in California and Oregon that I am moved to ask one question. Taking his own attitude as to the results of the I. and R. in those States, the gist of the question as to Massachusetts would seem to be: How bad are we? Now he says (what we will all agree to) that the Massachusetts Legislature is not *wholly* corrupt. Everybody knows that. I, never having been a member of the Legislature, am on record, I think, as saying more good things about it than any other member of this Convention; I have been criticized for doing so. But what I should like to get the gentleman's view on is: How bad are we? Does he or does he not concede the existence, not of corruption in large extent, — and I very carefully guarded myself in what I had to say about charging "corruption." Indeed I went so far as to say that I thought it was a very, very small percentage of the men of the Legislature that ever had been criminally, corruptly bought and sold. But does he deny that we have this "invisible government" which has financed men into this chamber so that they have become the employees of the interests that have financed them? In that connection I beg perhaps to say a word more than I ought to bring out some figures which I intended to bring out the other day, as to what that has cost us in this Commonwealth, not the cost to the Legislature —

Mr. LOWELL: I shall be glad to answer a question, but as the time cannot be extended I wish he would ask me a question rather than make a speech.

Mr. ANDERSON: If the time cannot be extended I shall not make the statement, but I do beg the gentleman's attention to the question as to whether there is or is not existing here the kind of power and control, not necessarily corrupt but more efficient because it is not corrupt, that I undertook to describe the other day.

Mr. LOWELL: If by invisible government the gentleman means that the government of Massachusetts by and large is owned by the New York, New Haven and Hartford Railroad, the Boston Elevated Railway Company, or any other corporation, as the government of California was owned for thirty years by the Southern Pacific Railroad, I say No. If by invisible government he means that undue influence sometimes has been used with certain parts of the Legislature to get votes, I say Yes, and that is just my proposition: If you believe that your Legislature is thoroughly corrupt so that you would rather not have any Legislature than have it, vote for the I. and R. If you believe that your Legislature is the best or one of the best in the country, and that it can be improved by methods different from the I. and R., do not vote for the I. and R., because it has been tried for fifteen years in Oregon, six years in California, and a number of years in many other States and has been found wanting.

Now, let us be practical men here. Do not let us talk way up in the air about one thing and way down about the other. Let us look at it; how has it worked? The answer is, it has not worked. There is a very able book on this subject on the side of the people who believe in the initiative and referendum. I found, somewhat to my amusement, that a good many of the gentlemen who have spoken on it have not read it, but it is the book called "Wilcox's Government by All the People," and that book is unanswerable from theory; it flows along as smoothly as a running river. You cannot answer the I. and R. in theory. The theory is all right. The trouble is that we now have facts enough to know that it does not work, — that is the fact, — if what we want is an efficient Legislature. It does work if we want to turn out an absolutely corrupt Legislature and get a government where the Legislature is not corrupt. The legislatures are not bad now in Oregon and California, probably for the reason that they are so inefficient and do so little and can do so little that they are not worth buying. That may be the reason. At any rate they are honest and absolutely inefficient.

Mr. BROWN: I want to ask the gentleman this question as a careful observer, as he is: Does he believe that in Massachusetts at this time able men have organized a vicious element, held the balance of power and have political power for sale and can deliver the goods?

Mr. LOWELL: I do not. Mr. Chairman, I have been thinking as to what I should do and I got advice from an unexpected quarter. I was reading on the 25th of July, the Boston Advertiser, which I do not often read, and it has this in it. I am sorry that it mentions the name of the gentleman by my side (Mr. Walker of Brookline), but it is not unparliamentary if I read it, I suppose. It is headed: "Not Worth the Powder." This is the Boston Advertiser. It does not represent in this case the opinion of Mr. Charles S. Bird, because he said it did not. It does represent the opinion of the Bird family or some one of them. It says:

NOT WORTH THE POWDER.

If the Walker amendment is the best initiative and referendum plan that has hopes of proving acceptable to the Constitutional Convention, its friends may well ask themselves if the game is worth the powder. To require forty-five thousand signatures and action by two Legislatures before the people are to have the right to consider an amendment to their Constitution, and twenty-five thousand signatures and a rejection by one Legislature before the people can pass on a bill, is to rob the initiative of all practical value so far as the mass of voters is concerned. Such an initiative would be more likely to be of service to the interests than to the people, and it would probably be of very little service for them. Far better might the Constitutional Convention spend its time on trying to frame a simplified Constitution under which we should have a compact legislative machinery, so geared as to be always under the public scrutiny and thus held to a close accountability.

Now, Mr. Chairman, that last phrase is just exactly what we ought to do, and the Boston Advertiser is quite right, it seems to me.

Mr. WALKER: I shall try to be brief, Mr. Chairman, but it is only fair to say that after that editorial was written I consulted Mr. Frank Bird and the editor who wrote that article, — and it was not Mr. Frank Bird, it was one of the men in his office. The writer told me, after I had explained the measure fully, that he stood for it, and he has since come out in an editorial for it.

Mr. Lowell: I am sorry that none of the Bird family was so sensible as I thought he was. [Laughter.] But, Mr. Chairman, this matter of which I now am speaking I consider of fully as much importance, if not more so, than the question of the Constitution. The constitutional side of it has occupied almost all our time here, but I consider this legislative side of it of more importance. We should consider carefully before voting on this initiative and referendum as applied to the making of laws, and I have suggested that we should govern ourselves by the way we govern ourselves in our everyday life on everything. We govern ourselves by what we find is the effect of certain things. Now if you grant, — and it seems to me to be the fact, — if you grant that what we want is a more efficient Legislature, if that is the trouble here in Massachusetts, and it seems to me to be so, let us try the experiment which I have suggested of taking local and private legislation out of the Legislature. Do not let us repeat here this experiment which has been tried for fifteen years in Oregon, six years in California and a number of years in other States and which has been found wanting —

Mr. Hale of Boston: I should like to ask the gentleman from Newton whether he is familiar with the statement made by Governor Adams of Colorado at a Governor's Council held in 1913 to the effect that the Colorado Legislature has been more efficient and more businesslike since the adoption of the initiative and referendum than it was before.

Mr. Lowell: I am not, but I will quote "Equity" about the last session of the Colorado Legislature, in which it says:

> The 1917 session of the Colorado Legislature accomplished little of real value to the people.

It may have been efficient, but it did not do anything. [Applause.]

William H. Sullivan of Boston.

Mr. William H. Sullivan of Boston: As the Convention has taken up some of my time I hope the members will be indulgent and sit until I have finished my half hour. I had a magnificent speech prepared for this assembly, because I also wanted to compete with Daniel Webster and Rufus Choate and Patrick Henry; but while waiting around two or three weeks to speak it has oozed away from me and now I am about to make some whimsical comments, — I hope they are whimsical; perhaps they are ungracious upon the arguments of the opponents of the I. and R.

The gentleman who has preceded me (Mr. Lowell) said that if the Legislature has been proven corrupt he is in favor of the I. and R. To enlighten him I shall read from the Boston Traveler, a great friend of the opponents of the I. and R., a little editorial on May 31, from which you can get a little idea of what was thought then of the Senate of 1917, which was adorned by the rhetorical professor from Amherst: "Just About the Average." You recall, — and I say this very disconnectedly, — the Professor said: "We (the Senators) are growing nearer the people." His solution of the unrest among the people was a suggestion that we elevate the people and make them nicer. And here is what the editorial of the Traveler, alias The Boston Herald, said about the Senate of 1917:

JUST ABOUT THE AVERAGE.

There are those in Massachusetts who are positive that the General Court of 1917 was worse than others of the present century. That, of course, is absurd.

Perhaps, — this is an interpolation, — they could not be any worse!

The General Court of 1917 was neither far below nor very much above the level of its modern predecessors. It did some mighty good things very well and it did some deplorably bad things in a manner superbly cool. The Senate continues to be the undertaking department of the law-making branch.

This from the friend of the opponents of the I. and R.:

Plain friends of the plain people united with ornamental friends of the astute corporations in killing objectionable and unobjectionable measures. Grafters with their hands out and statesmen with their chests out worked together for good and bad purposes, and the plain friends of the plain people, like the ornamental friends of the corporations, will have little or no trouble apparently in explaining things satisfactorily to the home folks.

And it is true, they have had no trouble because twenty-four of that same Senate, Republicans all, are coming back unopposed, having explained to the people, as the delegates here when they go home will explain to the plain people that they have opposed the I. and R., defending the grand old Constitution. [Applause.] It always is a safe thing to do, to defend the Constitution.

Mr. Leonard of Boston sought recognition.

Mr. SULLIVAN: I refuse to yield; I have but a short time. I cannot imagine any pertinent question. I am not going to talk about the fundamentals and I cannot conceive of any question which could be put to me that would help my discussion.

It is because of my service in the Legislature that I am in favor of the I. and R. I served there and I am serving here, and this is the same old kind of a body. Let us not parade around among our people with little halos. This aggregation is no better and no worse than the House of Representatives. Do not take your duties too seriously. The *Youngman* of the minority of the committee said: "Why, we, this body of experts, must be careful what we submit to the people, because if they get this I. and R. submitted to them they will pass it. We are so much better, we are the trustees, and we are the chosen, God's chosen people to rule over the plain people. We must be careful lest our dear people injure themselves with this I. and R." Oh, I wish I had about an hour and a half so I could . . . [Laughter].

Now let us see. Come with me to the Legislature and watch the people who follow the easiest way. I served in the Legislature; a man forty years of age when I aspired to office. I had lived forty years, twenty years a lawyer, traveled all over the world to educate myself to represent the plain people, and I went to the Legislature a lawyer with that standing, and was put on the Drainage committee. [Laughter and applause.] Why? Because, as that Speaker of the House said afterwards, I had been labeled "Dangerous." Dangerous to whom? To the interests who have fought me ever since. But I went the limit, and the next year, because there was a better presiding officer, I was given the most important committee. And then as now I sought (and with his commendation at the end of my service), to serve my Commonwealth. But who put me on that Drainage committee? The interests, so that I would be rendered less dangerous.

Now that is of no importance to you, but it shows the system in legislation. The opponents of the I. and R. are defending the Legislature and would have you think that the Senators and Representatives were carefully chosen from our best and ablest men; but they are not. I never pretended to say that there was any public demand for me. There never is a public demand for any of the members of the Legislature. They offer themselves, they advertise themselves, they push themselves, and all the voters can do is to select the best one of the candidates. You cannot compel a man who seems worth while to serve in the Legislature. You can choose only from the men who offer themselves for public office and many times you and I vote, — not for the best man to represent us, but for the least undesirable of the candidates. [Applause.] You have heard here that you have "free petition" in the Legislature. Ah, free petition, — how? If some representative endorses it for you; that is how. You, outside the Legislature, are jokes with your free petition. Unless some man in the Legislature, some member, will endorse your petition, you are a joke and you ought to know it by this time. I saw in my service one —

Mr. Montague of Boston sought recognition.

Mr. SULLIVAN: I refuse to yield. I cannot conceive of any question from the gentleman which would help this discussion. They sought to legislate one judge out on a petition with thirty signatures attached, — a man who had betrayed his people, as some of them do, and they could not get a hearing, because the whips of the Republican party came to each representative who had endorsed that petition and sought to have him withdraw it, and all withdrew; and I alone signed the petition, because I believed then and I believe now that every citizen of Massachusetts ought to be heard on his petition. And one petition offered by a sincere man, and endorsed by me in the performance, as I believed, of my duty to serve all this Commonwealth, wrought my political destruction the next year. It is a joke, your free petition.

Come with me again. Who are appointed on the best committees? Those who have served the Interests most faithfully. Many men, who began their legislative experience with high ideals have grown cynical and have said to me: "How long will you continue to cherish your ideals?" I replied: "Why, my self-respect is worth more than any honor they can give me here." One newspaper reporter, a young man, said to me: "I started out the same way as you are going. In three months I had learned the easiest way and I sought the easiest way." Your committees, what are they? A joke! They have told you about their lengthy hearings. There is not a bill before a committee that is given an hour. A man who has spent his whole life preparing some subject, brings it before the Legislature, and the committee members look at each other wisely and say: "We will give you half an hour to tell all you know." Free petition and fair committee hearings, — it is all a mockery.

Now, I say to you, I have served and I know. I am criticizing the old, the immortal, but the resilient Constitution, when I say your legislative system is a mockery. I say it can be improved by the initiative and referendum.

The gentleman from Worcester (Mr. Washburn) says the burden of proving the merits of the I. and R. is on the majority of the committee while he lauds the legislative practice and the legislative system. But he knows, if he knows anything about legislative procedure, that a majority report of a committee puts the burden upon the opponents, and in the Legislature a majority report always is supported by the regulars who seek advancement. I had a bill there. I made the best speech I ever made in my life because I did not know the Legislature then. I talked half an hour about a bill which provided that after the lapse of ten years no criminal record should be used against a man. The theory was that having served his sentence he ought to be immune from that record, especially if he had lived a good life for ten years. And the only man in that great galaxy of Republicans who supported me fearlessly outside the committee, — because the gentleman from Mansfield (Mr. Barnes), a devoted friend, had dissented, and he had a right to vote for the bill, — the only man who dared the Republican machine was the gentleman here who bears the same name as the presiding officer. And I heard the leader of the Republican party say: "You opposed the committee report;" and he replied: "I did, because I believe this to be a good bill." And the leader said: "When you are here longer you will understand that the way to advance your interests is to support all committee reports." Your Legislature, your wonderful, pure, glorious, holy Legislature!

And your committees! Why, so few of the members of the committees attend the hearings that it became a scandal in 1916 and the presiding officer was forced to go to the committee-rooms and find out how many and who were present to hear petitioners. There are fifteen on the committee and when a matter of importance comes up men who never heard a word of the evidence decide, and it is only a few of the very fearless ones who dare dissent from the majority report. I know your legislative service, and the men who enthuse most over it are the men who never served in the Legislature. I do not say they are corrupt; they take the easiest way; and the man who seeks the harder way never gets any newspaper comment, never gets anything but the satisfaction of securing the respect and the affectionate admiration of the men worth while. [Applause.]

The newspapers sought to know from me, — I do not know why, nor how I had achieved such prominence, — but on the eve of this Convention they sought an article from me as to how the Legislature could be improved, — because they conceded in their editorials that it ought to be improved. And I said: "The only theory I have about improving the Legislature is that the newspapers do public service, that they laud the man who goes there with high ideals and fights for those high ideals instead of making a statesman and a patriot out of the man who serves the interests. But that time never will come, because the newspapers are all controlled by the interests."

Now I have not started on the things I wanted to say. [Laughter.] Let us take this I. and R. The opponents of it defend the Legislature; they defend the judges, and you will see the secretary of the Bar Association, the ubiquitous Mr. Grinnell, sitting up there for months listening to the defence of the Legislature and the judges. I will say something about that when we come to discuss the appoint-

ment of judges for a term of years. They are protecting the judges, and the affable gentleman from Newton, the ex-congressman (Mr. Powers), says: "I believe in the people, I trust the people, — but not to elect the judges."'

Now if the opponents of the I. and R. frankly said: "We oppose this because the people are not sufficiently educated, we oppose this because we do not trust the people," they would not dare to go home and nobody here would believe or be influenced by them. I have listened to the most nauseating mess of stuff and bombast here and one delegate said he was influenced by the argument of the gentleman from Beverly (Mr. Loring). If I have time I will deal with the speech of the gentleman from Beverly, but I want to take all speeches in opposition chronologically; and the first opponent of the I. and R. was the learned and astute counsel for the New York, New Haven and Hartford Railroad Company, a man receiving $1,000 a day for his services to that railroad. And his speech was a disappointment. He was very technical. He sought to quibble and was confounded by the simple questions of men unlearned in the law until he was advised by his coadjutors not to yield to any more questions. He talked about the social compact and said that there was no unrest and spoke of the illiterate motormen, the ignorant laborer with the pick and shovel and so forth, who did not have time to read and who could not understand. The very next speaker, also an opponent of the I. and R., the professor from Amherst (Mr. Churchill), conceded there was unrest, conceded you could change the social compact and undid all that his predecessor had done. I listened with disappointment to the uproarious applause that greeted that flowery oration of the professor from Amherst, and as he manipulated his euphonious phrases and chose his pretty words I was reminded of the days of my youth when I used to watch the sleight-of-hand performer and of the old admonition: "Watch the professor!" [Laughter and applause.] And I watched the professor and I listened to the professor and I had my pencil poised for half an hour to make a note of some real thing the professor said. Yet the professor was warmly applauded by his enthusiastic admirers at recess. Had he stopped then he would have been an orator whom we could have compared with old Patrick Henry.

But he said something after recess and then I began to admire him. I was horribly disappointed in him before, because a man who could say so many beautiful things and had spent so much time, undoubtedly, composing that speech, — if he had only spent half that time finding a remedy for the conditions he admitted to exist he would have rendered much more efficient service to Massachusetts. But after recess he said very frankly he was not making an argument against the I. and R. or for it, and he very frankly conceded that there was a condition of social unrest and he very frankly said it ought to be changed; but he said: "The legislators are drawing closer to the people; they are getting better every day; we are getting more faithful." And later the gentleman from Boston (Mr. Horgan) called his attention to the fact that the Senate of 1917 had slipped through an appropriation for the Eastern Agricultural Exposition Company of an extra $50,000, and he got up there and very ingeniously explained that it was an oversight, — in this magnificent Legislature which is

so much better than the people, it was through an oversight that an extra $50,000 was slipped through.

Then, later the same eloquent professor, a lovable man, was asked by one of the representatives of the labor-unions why, if he was friendly to the interests of the people, he had not voted in the Senate for the forty-eight-hour law, to which he was pledged. He explained that he was a devoted friend of the people and was heartily in favor of the forty-eight-hour law, but that it was not drawn right; it was not drawn right! [Laughter.] And here the gentleman from Topsfield (Mr. Wellman), with elaborate and with unusual vehemence and most commendable eloquence, said the reason he is against the I. and R. and in favor of the legislative system is that it is necessary to have the Legislature intervene and supervise to get everything written right. Oh, it is fine! But here is the foundation of the whole argument: The grand old Constitution! Well, the grand old Constitution has served many purposes. It serves in the House of Representatives just as it serves here. And then when they seek to kill a bill at the request of the interests or those friendly to the interests, some majestic-looking lawyer, or some one who is not a lawyer, but majestic-looking enough to be a lawyer, rises up and says: "I am in favor of the people, I am in favor of this grand old law, but it is unconstitutional." And everybody friendly to the interests straightens up as he sees the dear old Constitution held up for admiration and listens, while the orator holds forth that glittering, glorious document, upholds it, praises it, sings hymns of joy over it, because it is a safe thing to do. And then he goes back to the people and says: "I was with you, but I could not go the limit because of the dear old Constitution, — I should have had to tear it to shreds. I sacrificed you rather than the Constitution."

Mr. Sullivan continued his argument Tuesday, September 11.

Mr. William H. Sullivan: In my hurried flight to the oratorical barrier the other day I overlooked reading a selection which was composed by one of the greatest political writers in this country, Mr. James C. White. He wrote it for the Boston Herald some few years ago. I read this because one of our esteemed friends, and the one who has preceded me, has said if there was any evidence that the Legislature was inimical to the public interest he would favor the initiative and referendum, and I am delighted to get this on the record for his delectation:

> The Republican State organization for the past twenty years has been run chiefly as a business adjunct of big business. The State offices have been sold in its anterooms to the highest bidder, and, even more to be regretted, it has also conducted a steady traffic in immunity for some interests and favorable laws for others. Public service corporations bought reservations from attack, insurance companies bought lenient legislation and the veto power on certain nominations, and the manufacturers bought jokers in the labor laws. There was no cash condition piled across the counter at the time, as in some of the cruder States, but inasmuch as at the beginning of each year these trafficking gentlemen representing big business contributed almost all the money used by the organization for its maintenance, they were in the position of men who, having paid in advance, were simply awaiting delivery.

That ought to set my distinguished predecessor to thinking, and see whether or not he is right in his position.

I was curious to know if the kindly comment I made Friday on the opponents of the initiative and referendum was understood by them, and when one of the warmest and bitterest opponents of the initiative and referendum confided to me somewhat timorously that I had made a great speech for the people but it was not one fit for the delegates to the Constitutional Convention, I felt then that I was going along the right road. In my hurried flight to-day I must overlook some kindly comment upon this solemn and serious and learned gentleman from Milton (Mr. Bryant) who, after weeks of deliberation and scrutiny of this initiative and referendum, has discovered that we might evade legislative interpretation of what is wholesome and reasonable taxation, and he objects to letting the people say what is reasonable and wholesome. I cannot comment even upon the elderly gentleman from Pittsfield (Mr. Hibbard), who received his instructions in 1779 and carried them with him and read them while he was picking cranberries on the Berkshire Hills. Nor can I read the records of Underhill, Kinney and Montague, legislative records which are very similar, but further reading may be unnecessary since one of them has been read. Nor can I dwell upon the inconsistency of the distinguished ex-Congressman from Newton (Mr. Powers), who, in a very eloquent and almost convincing argument here, told us that the Bill of Rights was almost perfect. And still we, who are members of the Bill of Rights Committee, can recall the day when in a more eloquent and almost, if possible, more convincing oration of half an hour, the time being specially assigned, he argued strenuously that we insert in the Bill of Rights, to make it better and more perfect, and at that time he criticized the Bill of Rights, — he besought us to insert the Golden Rule.

But I will hurry along now to what is conceded. I hurry along now to a graceless comment upon a kindly gentleman of the Plymouth Cordage Company (Mr. Loring), because it is conceded that his was the most forceful or convincing argument against the initiative and referendum. Unlike him, I have not unlimited time, and I cannot wander all around Plymouth for an hour and a half; but I may indulge in a few comments on what he said. He rose hesitatingly, as becomes a modest man in this atmosphere of greatness and oratorical competition, and said he would not have spoken only some one had attacked his dear old corporation. Then the delegates gathered around him open-mouthed, especially the opponents of the initiative and referendum. They listened to him as he described that leaderless Eden down there in Plymouth, and he pointed out the beautiful flowery walks, and the glorious ocean, where the employees could bathe without price. As he proceeded, and as some of the labor leaders asked him questions, then for the first time the opponents of the initiative and referendum realized that this gentleman was making a most profound argument. Nobody could see anything pertinent to the initiative and referendum in what he was saying but it was realized from the interpolations of the labor leaders that he must be making a great hit or doing something against labor.

He told about the conditions in his factory. He told that he was unable to understand the language of the people who worked there, said they were all foreigners, they could not speak his language, they

could not speak his language anyway because they were speaking in the language of labor which he never will be able to understand, and he told how when they asked for a raise in their pay he offered them more flowers and freer baths in the ocean. Then he told how instead of increasing their pay he offered them old age pensions and insurance, which would tend to bind them more closely to their servitude. When the gentleman from Boston, who made a most convincing speech for the initiative and referendum, interrupted to say that a manufacturer whom he knew thought it was more beneficial to the workmen to get higher wages and use their own money, even then the opponents of the initiative and referendum could not understand. All the time this kindly gentleman was concealing the fact that while the wages were going up more slowly than the high cost of living the surplus was increasing by leaps and bounds, and even he, who knows all about the flowers and the people whose language he cannot understand, even he does not know the minimum wage there, but he thinks it is $12, — $12, with all these flowers and free baths and millions more every year for the corporation. This kindly faced gentleman, this director of many corporations, this lawyer who never spoke in public before, could not understand the language of these poor people, these foreigners who worked cheaper than anybody else. Not he alone, but the corporations, these philanthropic corporations, cannot understand the language of labor, not if English had been spoken. When the workers ask for bread they are given flower gardens, when they ask for sustenance for their children they are given free baths in the ocean, which cost nothing, and then this director of corporations wonders why into this leaderless Eden comes the labor agitator, as the gentleman calls him, and tells these people of their rights.

Then the opponents of the initiative and referendum realized the dangers of the initiative, because in this initiative when the workers were taught their rights, they struck and received more wages; then for the first time the opponents of the initiative and referendum realized what the initiative really meant, it brought higher wages and greater happiness to the working-man. There was the danger of the initiative.

Having unlimited time, as I have said, the kindly orator took his adorers to Beverly, — Beverly, where years ago there was a legislative scandal about the separation of Beverly and Beverly Farms, and rumor hath it that the gentleman was right close to the Legislature when that division was pending. He took us to Beverly. He said in his kindly, childlike way: "I am now taking you to show you the referendum of my constituents." And so the opponents of the initiative and referendum followed him. He met an agriculturist who is exempt from the operation of the Workmen's Compensation Law and a privileged character, and the old farmer told him that he paid a representative to come up here and make his laws and he was perfectly satisfied, he did not want to bother with the laws; let this paid hireling make his laws, he would trust him. And then he said he thought it was his duty to confer with all his people, so he went to the other end of the town and consulted with two or three mechanics, and strange to say the mechanics said: "We want to make our own laws;" perhaps these mechanics were the illiterate mechanics or the

pick and shovel laborers whom the learned counsel for the New York, New Haven and Hartford Railroad (Mr. Choate) had described. The gentleman from Beverly did not take these constituents seriously. For a time his listeners were horrified by the thought that he was going to decide in favor of the three or four mechanics, but when he said that he was much more impressed by the intelligent farmer than he was by the three or four illiterate mechanics then again we saw the benefits of the referendum. If the referendum was taken seriously we realized that the three mechanics ought to overcome the one farmer, but he discriminated, as have all the opponents of the initiative and referendum, and he listened only to the intelligent members of his constituency, who knew just what they ought to have. The professor from the Worcester Polytechnic Institute (Mr. Washburn) and the others with open minds were almost convinced by this argument.

And then this skilled orator, this childlike director of corporations, like all accomplished orators, told a story which exposed all the horrors of the initiative and referendum. He said he had never had any political experience, perhaps not considering that legislative experience. He told of his experience in town-meeting when the moderator took the vote upon a proposition by asking those who opposed it to cross the street and vote "No." While he was crossing the street the question was reconsidered and, arrived there, he voted "No" when if he had known of the reconsideration he would have voted "Yes." This story illustrates the hasty, passionate action of the people so often described in this debate and the thought that this kindly gentleman from Beverly should be compelled to cross and recross the street within the two years allowed by this amendment was enough to appall his listeners and convinced every opponent of the initiative and referendum that the time limit of two years was too short for a consideration and discussion of matters of interest to the people.

Horace I. Bartlett of Newburyport.

Mr. BARTLETT of Newburyport: I regret the time limit. I should like to have heard more from the gentleman who from his position in the sewerage committee got so much knowledge of the under-world in the Legislature.

I should like to say something in reply to the gentlemen who expect to see an end of social unrest this side the grave, and something to the gentlemen who expect to see an absence of invisible government in any form of government and to those gentlemen here, who would find fault with any government, though it was led by the angel Gabriel and composed of angels. But I think that the most useful thing that I can do with my time is to speak of this measure as a remedy.

I came to this Convention from a district which I think is typical of the whole Commonwealth. It is composed of one ward of a city, three country towns, and the manufacturing town of Ipswich, with about 6,000 population. I saw no evidence of any demand for the initiative and referendum in that district. From the time I decided to run, and until this moment, but two of my constituents have spoken

to me on the subject at all. One of them is the gentleman from Newbury in the fourth division (Mr. Bailey), who is one of my constituents, and the other is a Democratic candidate for Congress, whose anxiety was as to whether this measure would be voted on here before the primary. I spoke to one intelligent and hard-headed farmer, who knows more about public matters than I do, and I asked him what he thought of the initiative and referendum. He said that he thought that we could get along "as much as a fortnight" without it. Now, there is the sentiment in favor of the initiative and referendum so far as I can see it in my district.

I had the good fortune to be one of those "broad men," whom the gentleman from Saugus (Mr. Bennett) said no one wanted to oppose. In the other district of Newburyport we had four candidates. There were 462 votes cast at the primaries. The labor candidate, who rode at the head of the procession on Labor Day, got 69.

There is all that I have seen. There is no demand for the initiative and referendum in our neck of the woods. I think that if gentlemen will look at the vote throughout the Commonwealth, and see what proportion of the vote was cast here and what was cast there, they will find that the little rally which was gotten up here in Boston and the metropolitan district was the only thing that brought about the election of any candidate for the initiative and referendum on the State ticket.

I came to the election and to the Convention entirely with an open mind on this matter and owing no allegiance to anybody under heaven. I had not any prejudice against it. I rather thought that it might be a good thing. I came in here and I went up to the committee. There were sparsely attended hearings. I heard there a learned professor from Harvard College tell about why he thought it was a good thing for the Commonwealth of Massachusetts, but he was of opinion it was not a good thing for the United States. I do not know why. I heard also the Hon. George Fred Williams tell about the glories of ancient Greece and pure democracy, and what great results came forth in science and art and great men from the Athenian democracy, and he thought that every good thing on earth apparently came from pure democracy. But there came to my mind as I sat there listening to him that that pure democracy put to death the greatest man they had produced. There came to my mind also the first instance of the initiative and referendum that I ever read about. It has been mentioned here. It was when Pilate referred to the people whether he should release the convicted murderer, Barabbas, or Him who was called the King of the Jews; and the people called for the release of Barabbas. I thought of how many instances there were in history of the fickleness of public opinion, and I thought of the old speech we used to recite in school:

> And me but yesterday they would have carried in triumph. To-day they cry in the streets the great treason of the Count of Mirabeau.

I recall many other instances in my own experience. I remember going into town-meeting when I was a boy, and I heard a man get up there and declare that he wished that heaven would let him live one year more that he might bring about the defeat of an old and

tried town official against whom there was great outcry, and when the year came round that man and all his companions were doing their very best for a week before the election to reëlect the old and tried official. I said: We don't want pure democracy. We don't want measures of government subject to the whim of the moment, to the passing majority, the prevalent majority, those who happen to be present and voting at any particular moment. I said I would look into this initiative and referendum for myself, and I wrote a letter to a gentleman in California, a member of the California Assembly, an intelligent man, of good education, who had to leave college to make his own way in the world, and asked him their experience in California. What lent his reply the most weight to me was the fact that he was a man of my own name and blood, that I would have as much confidence in as a man would have in his own father. I want to read this letter:

> I received your letter . . . There does not seem to be any literature in regard to the initiative and referendum.

In California in particular.

> I do not believe in the initiative and referendum myself, owing to the experience we have had with the matter in California. At every election we are confronted with the same matters upon the ballot, as is set forth —

in the article enclosed. That was a newspaper article setting forth many objections to the initiative and referendum which have been recited here.

> There is another disadvantage, . . . which I can best explain by giving an example.
>
> A few years ago a Torrens Title Act was placed upon the statutes by means of the initiative. This act contained several minor imperfections, which seem to render it unworkable. At least there is so much doubt in regard to it that very few, if any, of the banks will lend money upon land covered by a Torrens Title Certificate. Those imperfections in the law could be very easily corrected by amending the law but as the law was put upon the statute-books by the initiative, the Legislature has no power to amend it, and in order to make these simple amendments it would be necessary to circulate an initiative petition throughout the entire State and have the matter voted on, either at a special election or at the general election. Of course the Legislature cannot be given the power to amend initiative measures, for if they had this power the effect of the initiative would be nullified. When these matters are voted on at a general election, the people cannot or will not familiarize themselves with the measures.
>
> I enclose a pamphlet, which is sent to each registered voter.
>
> One of the measures, you will notice is a referendum on the direct primary law. . . . This law contains some 26,000 words, and is of a highly technical character. The voters of course are not going to read this law, and the majority of them would not understand it if they did read it.
>
> Mr. Young and myself had to set out our arguments in 500 words each. The result is that both of us indulge in glittering generalities, and the matter is not fairly presented to the people at all, and yet if you are going to have the initiative and referendum, I can think of no better plan of putting these matters before the people than the plan we have in this State.
>
> When these matters are voted on at the general election, the people are interested in the candidates for office and not in the abstract questions that are put before them for their decision. This is shown by the fact that the candidates receive many thousands of votes more than do these measures. When the matter is put before the voters at a special election . . . a great expense is imposed upon the State and there is no real expression of the people of the State upon these measures, for a very little more than twenty per cent of the registered vote is cast at such an election. The

people here have become so tired of voting on these questions and of special elections, that they now vote "no" indiscriminately.

At the special election of October 26th, 1915, as I remember it, there were fifteen measures on the ballot and all of them were defeated, — the good and the bad alike. Of the seven measures which were on the ballot at the general election of November 7th, 1916, only one, — the one in regard to the ineligibility to office, — as set out in the enclosed pamphlet, was adopted.

And that was a change of six words in a six line statute.

After receiving that letter I wrote this gentleman another, to ask him if this measure could not be made use of by the powers to whom we did not want to give the use of it, and he says:

You are correct in claiming that the initiative and referendum worked in favor of the "interests." When the Blue Sky Law was passed, it was held up for almost eighteen months by the referendum. The under-world even suspended the operation of the Red Light Abatement Act for a similar period of time.

Every single measure that has been put on the ballot by the initiative or referendum has been placed there by the hiring of people to obtain signatures at so much per name. There are a great many people in Los Angeles who do nothing else to earn a living but circulate petitions. The usual rate of pay is five cents per name. John P. Steele of this city maintains an office the year around, and has many men in his employ. He will enter into a contract with you to successfully circulate an initiative petition on any measure you may desire.

We also have the initiative and referendum in our city charter, and the result is that any measure which is offensive to the public utility corporations is held up in this manner.

By the time I received those letters I had somewhat of a settled opinion in respect to the initiative and referendum, and that was against it.

The history of the workings of the initiative and referendum in Oregon as we get it from the books, and from the people who write disinterestedly upon it, is to the same effect, that the people do not take any interest in it; the public will not interest itself in the measures which it has itself proposed. The great body of the people do not study, they follow others, and Professor Barnett says that the effect of that is that the various societies have ruled public opinion and the votes on these matters. "These various influences have been estimated to be of such importance as to have developed a system of representative government, in direct legislation." "Permanently organized bodies, like the bar association, granges, labor-unions, commercial clubs, literary associations, etc., publish recommendations to the voters." "A huge mass of 'resolutions' comes from these innumerable associations." "The truth is that the initiative and referendum has developed in Oregon into a representative system of law-making." "One is the duly elected responsible assembly, that meets for forty days in each biennium. The other is the non-elective, voluntary body of public advisers, each integral part of which works independently and has a standard of uncertain and varying proportions. The chief difference is that the one does its own voting and the other tells the people how to vote." Therefore the experience in Oregon is that you cannot get rid of representative government. Professor Barnett says further that it has got to this in Oregon as to constitutional matters, that you simply entitle a measure a constitutional amendment instead of a statute when you put in a petition, and that there is no Constitution in Oregon.

Another objection to the measure he says is that the authors of

measures are concealed. He gives us an instance of where a committee of farmers proposed an initiative petition about fares on railroads, and it turned out to be the railroad corporation in disguise seeking to forward the matter of the purchase of its railroad by the State. He says that there is trading under the initiative and referendum. He makes the same statement as to the impossibility of amending an act as was made by the California legislator.

One-fifth of the voters can defeat a measure which the other four-fifths favor, by putting in another measure which contains some provision objectionable to voters but other provisions similar to the one that they really want. "Either of them standing alone might well receive the vote of almost the entire four-fifths yet the voters are divided as to their ideas as to the better method and vote against the one they favor the less. This adverse vote with that of the one-fifth who are opposed to the project itself defeats both measures. We have thus the spectacle of legislation blocked by a small majority of adverse sentiment." The professor says that the sinister interests may take advantage of this.

He says that fraud in signatures prevails, and he gives us an instance of where thousands of signatures were forged and there was an investigation equal to that which the United States Attorney told us he made into "the other moneys." So that you cannot escape fraud under the initiative and referendum.

The number of signatures he says is of little significance. But you have to pay circulators anyway, whether you buy the signatures or not. I think that is a serious defect in this measure here, — that it does not prevent the buying and selling of signatures. There is one thing apparent, and that is that the persons who sign are in no way committed to the measure for which they sign. It does not follow at all because a person signs an initiative and referendum petition that he is in favor of the measure. If the gentlemen mean right about it they ought to put into this measure a provision that signatures should not be bought or sold. But whether they are bought or sold or not, whether there is buying and selling of signatures or not, it costs money to get signatures. It costs in Oregon five cents a name to get the signatures. In California $7,500 is the average cost of an initiative petition, I am told. I propose that instead of all these provisions about signatures we provide that petitioners pay a filing fee of five cents a name or ten cents a name, whatever it amounts to, and let the thing stand upon its own feet, and not put in a lot of signatures of men who may or may not be committed to the proposition.

Then there is the emergency clause. You have got to have in every initiative and referendum law an emergency clause that the Legislature in cases of emergency may pass legislation which shall not have the referendum. I came here interested in the question of whether we should continue to take the State census, and in looking that up I came across a "gem of purest ray serene" from Oregon in the way of an emergency act. They have there a constitutional provision that the State census shall be taken every ten years, and they have the machinery provided by statute for taking it. In the year 1915 the Legislature of Oregon repealed that statute providing for the taking of the census, without the referendum and as an emergency act "im-

mediately necessary for the preservation of the public peace," and it went. Under the emergency act the courts have decided that the Legislature is the sole judge of the emergency. Read the decisions, and you will see that they have got to so decide. They also have decided that no court can compel a Legislature, and that is good law anywhere. We see that went through in Oregon in spite of constitutional mandatory requirements that there should be a census taken every ten years, and in spite of the statute (repealed immediately as necessary for the public peace) no census was taken in the State of Oregon.

There are these difficulties of which I have spoken, but the principal trouble is that we do not get, by the initiative and referendum, an expression of the people. We get a vote of a percentage of the people, and the majority vote of that percentage, and from people who have a half knowledge about it. The experience in Oregon is that not one in a hundred reads these pamphlets, and of those who do read them a lot do not understand them, and of those who do understand them a lot do not vote. It is absurd to say that by the initiative and referendum we get an expression of the people. We do not. We get an expression of those who go there and vote, or what has been spoken of as the passing, prevalent majority. On matters which affect the Constitution particularly, it seems to me we ought to go very slowly before we undertake to amend it in that way. It is the device of Daniel Webster that we have in the present provisions as to amending the Constitution. He thought that if a constitutional amendment passed two Legislatures, elected at two different elections, and then passed the vote of the people who chose to go and vote upon it, we got as near the sentiment of the majority of the people, — and that is what we believe in, — as it was possible to get from people who labored under the same difficulties as they do now. We got an expression from the people's representatives in two legislatures, and we got a vote of the people besides. Of course it is very well in theory to say that these things are referred to a vote of the people, but they are not; they are referred to the vote of those who choose to vote upon them. As was said here, in California perhaps it is twenty per cent of the voters, and a majority of that twenty per cent decides. It is a condition and not a theory, and we must deal with these things as we find the conditions to be.

It was the admonition of Washington in his farewell address that the Constitution should exist "until changed by an explicit and authentic act of the *whole* people," and that until so changed it "is sacredly obligatory upon all." In the same address he says: "Toward the preservation of your government it is requisite that you resist with care the spirit of innovation upon its principles, however specious the pretence"; that "one method of assault may be to effect in the forms of the Constitution alterations which will impair the energy of the system and thus tend to undermine what cannot be directly overthrown." I submit that this measure does tend to impair the energy of the system and tends to undermine the Constitution, and I say to you, gentlemen, that the safe ground to go upon is to vote no, particularly in respect to this attack upon the Constitution.

I want to say something about the "big stick" proposition. Gentlemen say that this measure will not be used. Professor Barnett says

that is a fallacious hope. In Oregon it may be abandoned, perhaps, by everybody voting no, as they are doing in California. The United States Attorney said that this law would be like a big stick hanging over the Legislature. I hope that if this resolution should pass, — and, by the way, if we follow the principles of the measure it is not going to be submitted to the people, of course, until they have had two years consideration, — but if after such two years consideration such a measure should pass I submit we ought to have the big stick hung right up here, just as we hang the fish over the gallery.

Brooks Adams of Quincy.

Mr. ADAMS of Quincy: I received a day or so ago from Senator Lodge a speech of his on war prohibition which contains a sentence or two so perfectly expressing my own opinion that I shall take the liberty of reading them in order that they may serve as a text for what observations I have to make to-day. Mr. Lodge says:

> Mr. President, the one dominant desire in my heart, the one dominant wish that I have overmastering everything else, is to win this war. I am ready to subject everything to that, all my personal prejudices, everything I have of party feeling. I want to win this war. Don't let us forget an enthusiastic public sentiment, which we must have to win this war, more important even than money, more important than anything else.

I thoroughly believe that statement, Mr. Chairman. I think that the thing we have before us, which dominates everything else, is our need to win this war, but to do that we must have united opinion behind our government. Now I very much doubt whether our people are united behind our system of government. I doubt it for reasons which are connected not only with what I have heard in this chamber but with the history of the last ten years; and in order that I may be understood I must ask your permission to take a few moments to explain what I conceive to be the philosophy of our government.

In the first place, Mr. Chairman, I start from the premise which I believe to be incontrovertible, that God made men unequal, intellectually and physically unequal, and from that inequality has sprung, inevitably, competition. It is by competition that men are divided into classes, the strong dominating the weak and always accumulating wealth as their numbers decrease. That is the universal law, it is the law of nature, and we cannot prevent it; that is to say, we cannot prevent it completely. But this very law has created in men an instinct for so-called justice, — a yearning for equality. Hence, since the beginning of time, men have sought to moderate competition by codes of law, codes which long preceded that which Moses brought down from Sinai and some of which prevail in substance even to-day, the object always being to approach to equality by restraining the ferocity of competition.

Formulating the law as a code of justice has proved to be relatively easy. The difficulty has been in the application of the code and the difficulty in the application of the code has arisen from that very inequality in men of which I have just spoken. That inequality causes, as I have said, classes to arise. It matters not whether you call those classes a military aristocracy, or an autocracy, or a plutocracy. The inequality is the hardship. I conceive that we live

under a plutocracy, and a constantly narrowing plutocracy, and that is the cause of the present discontent. And the reason why we live under that narrowing plutocracy is largely because our laws are construed by lawyers. Everybody who is a lawyer knows that the lawyer like other men must live, and he can live only on his fees. Also fees are fees which are paid by those who have money. Therefore lawyers must be necessarily in large majority servants of the moneyed aristocracy. That is a law of nature, and we cannot help it. It has been so from all time, — from the time of Cicero downward it has been so.

Now you come to the working out of this mechanism and you see how it operates. It is not that lawyers are dishonest; it is that they are from their boyhood brought up in a certain school of thought, and that school varies according to the instincts of the people who employ them. You cannot have a better instance of this than in the speech which the learned gentleman from Southborough (Mr. Choate) made the other day. I do not wish to be unkind, therefore I pass over without comment the mangled mass of history which he left behind him in his search for premises by which to establish principles of law which to me are astounding. That is all that I can say. He wished to prove to us that those poor old Pilgrims who came over in the Mayflower, if you please, established an agreement among themselves which bound us, their descendants; or which was the predecessor of the agreement which is supposed to bind us, their successors, to maintain forever a system of written law which was to very much benefit his (the gentleman's) clients, and which could not be altered unless we had substantially unanimous consent. Well, that, as I understand it, is the substance of the gentleman's argument.

Mr. Chairman, he dwelt on the fact that we must have laws to protect the minority, as the minority always are attacked by a bloodthirsty majority, who seek their money. If, however, you come down to the absolute fact of the matter, the oppressor never has been the majority, except in very rare instances and during short spaces of time. The oppressor always has been an aristocracy, that is, a minority, and every effort for what we are pleased to-day to call freedom has been made by the majority against the minority. That is perfectly plain, perfectly obvious. It was so with the Romans; it is so with us. It was so in the Middle Ages. It was and is so always. It must be so, because nature sifts out from the mass those who are the most capable, and these get the wealth, and wealth means power. Wealth always means power, because wealth is nothing but stored force or stored energy, and gives supremacy in the hands of those who possess it exactly as effectively as a superior explosive might in the hands of whoever possessed that. That always has been so and must be so. Burke one day told the Duke of Portland, with whom he was corresponding during the French Revolution: Your grace, your power doesn't come from your title, your power comes because you are rich. That was true then and it is true now and must always be true. The more riches accumulate, the smaller the class that holds them grows, until you get to an aristocracy like our aristocracy, where you have perhaps a dozen men controlling the New York Clearing House, we will say, or something of that kind. No aristocracy could be narrower than ours. It is almost impossible to conceive it. Even

the English aristocracy, a century and a half ago where 150 families controlled the majority of parliament, was not so narrow. Ours is now practically narrower than that. When that minority wants a thing, do you suppose that they go through all this fol de rol about amending constitutions and the like? Not a bit of it. They do not think of such a thing. They can reach their end in a much more direct manner. Being men of the world, and having very capable lawyers in their employ, they simply reverse a constitutional decision or else they get a new one.

Now, gentlemen, to prove this I might begin at the beginning of our government and trace the course of events coming down through the Dred Scott decision, but I will confine myself just to one example of how this thing is practically done. I happen to have been through much this sort of job myself, so I know. And it is not a pleasant experience. This is extracted from a lecture which I once gave in a law school. My part of the little book is valueless, but still it is the best I have. I say in this lecture:

> Before 1876 the grain trade had centred in Chicago, and all the grain reaching the city had, necessarily, to go to elevators for distribution to carriers. The number of elevators was limited, and the number of owners of elevators so few as to make combination easy. There being a substantial monopoly of the transfer of grain, shippers complained of extortion. The Illinois Legislature established a tariff of charges for elevating grain. The owners resisted this tariff as being tantamount to confiscation, and forbidden by the Fourteenth Amendment. Chief Justice Waite, in an opinion which is historical, laid down the law very correctly, as it then existed: "To limit the rate of charge for services rendered in a public employment, or for the use of property in which the public has an interest, is only changing a regulation which existed before. It establishes no new principle in the law, but only gives a new effect to an old one. We know that this is a power which may be abused; but . . . for protection against abuses by legislatures the people must resort to the polls, not to the courts."

That was the law as it existed then. It was perfectly correctly laid down, nobody ever disputed that, as I understand it, but it was laid down, mind you, when the investment of capital in these monopolies was relatively very narrow. That was in Illinois, and the decision was affirmed repeatedly. Now, this was the progression.

> In the next ten or twelve years the social equilibrium shifted. In 1876 the investment in railways, in round numbers, amounted to $4,468,000,000; in 1885 it had risen to $7,775,000,000, in 1890 to $10,020,000,000; and this is what occurred.

Thereupon the State of Minnesota established a commission for fixing railway rates, and it did not establish at the same time any appeal to the courts. The consequence was this commission had full power, plenary power, to establish rates, and it established them as the agent of the Legislature, which of course was a popular assembly. A conflict was inevitable. The prize was too rich to abandon.

At length, in 1890, vested interests acquired the necessary energy, and the court, following the path of least resistance, took the final step. Between 1885 and 1890, railway investments rose, in round numbers, $2,250,000,000. Thereupon the bench, without more ado, took from popular assemblies the power to control the railway taxation which might be levied by the minority on the majority, by reversing *Munn* v. *Illinois*, although the abler part of the judges protested. Mr. Chairman, I have no hesitation in expressing the opinion that, to my mind, Mr. Justice Bradley was the ablest judge who sat

on our Supreme Bench during the last half of the last century, and this although I have much respect for Mr. Justice Gray, who, with Mr. Justice Lamar, united with Bradley in a dissent from this assumption of power.

The majority of the court held the statute of Minnesota unconstitutional, thus, in the twinkling of an eye, by an act of arbitrary and absolute power, giving to a contemptible numerical minority of this Nation, a minority so small as to be computable, probably, at a few hundred men at most, the power to levy the most searching and exhausting of taxes upon, in substance, the whole mass of their fellow-citizens.

Mr. Justice Bradley wrote the opinion for the minority, from which I quote a few lines, so strongly do they throw into relief the plutocratic despotism under which we live:

> I cannot agree to the decision of the court in this case. It practically overrules *Munn* v. *Illinois*. . . . The governing principle of those cases was that the regulation and settlement of the fares of railroads and other public accommodations is a legislative prerogative and not a judicial one.

That is the way, gentlemen, in which a Constitution is manipulated. I have lived under this system and I know. Constitutions are not molded usually by long approaches such as you and I are expected to make. They are shaped by judicial decisions, and this particular judicial decision was made with the ablest part of the Supreme Court dissenting. If that is not arbitrary taxation, and if that is not arbitrary taxation by a negligible minority, I do not know what is.

This business of arbitrary regulation went on, gentlemen, from bad to worse. It came to a climax, probably, after the case of *Smyth* v. *Ames*, decided in 169 U. S. in 1898, in which this whole system of arbitrary taxation by railroads fixing rates, entirely uncontrollable by the Legislature, culminated in this monstrosity. Two years after that decision in *Smyth* v. *Ames*, in which some rates of Nebraska were held bad, which threatened, or were supposed to threaten, the Chicago, Burlington and Quincy Railroad, the stock of the Chicago, Burlington and Quincy Railroad was taken by Mr. Hill in bonds at the rate of $200 a share, thus doubling the investment, the interest on which the people had to pay on every dollar which had ever been invested in the Chicago, Burlington and Quincy Railroad. If that is not arbitrary taxation, I do not know what is.

Now, Mr. Chairman, where in the name of wonder can you find an instance of arbitrary taxation more crucial than that? And it is said there is no discontent. Suppose a dozen gentlemen in New York arranged taxation rates under such a system as they pleased, and among other places they arranged it in California. Well, was there no discontent? Gentlemen, California was on the brink of civil war. Reflect on the wrath of the southern and western cities. The Republican party was crushed because of the discontent aroused by this arbitrary taxation. It is no use splitting straws about it; that is what happened; and Governor Johnson himself is in the Senate in Washington by 100,000 majority and Wilson is in the President's chair because of that discontent.

We have got to face this issue, gentlemen. We have got to come right down to it. That is what we are here for, as I understand it, if we do our duty, and if we do not want to do our duty we can go

home. For God's sake leave the matter here and go home. Leave to luck what is going to happen and take your chance. Probably some very disagreeable things may happen presently. But if you want to sustain vested interests at all costs, then let us wind up here and go home, and go home like men, and not fiddle and quibble about words. We can either make this country a democracy, and we can have equality before the law, or we can be plutocrats honestly and take our chances in the future. I do not care myself. I am an old man. I have got no interest in this thing. If anybody wants to cut my throat he is welcome to. But I tell you, gentlemen, there is danger of serious trouble.

Gentlemen, I hate to impose upon you so much of my own writings, but a good many years ago I happened to have to argue this question before a court, and I closed a brief which I filed in one of the cases in these words. I think I cannot do better than read them, because the sentence is more condensed in my writing than it would be if I spoke it.

In the year 1776 Louis XVI appointed Turgot as his Prime Minister. Now, Turgot was a very able man, a very able man indeed. As a young man, very early, when he was a student at the Sorbonne, he supported a thesis in which he maintained that well-timed reform alone averts a revolution. That was his early thesis. Forty years afterwards, or something like that, it was his fortune to be appointed Minister by Louis XVI. He had previously been made the Intendant in one of the southern provinces of France. There the misery of the people was so great that he had had to do something radical in reform of taxation. He fixed upon the corvée as being the most offensive tax which there was in all monarchical France, and that is saying a good deal. The corvée was the system by which the whole care and expense and repair of the highways was thrown on the peasants. Turgot first explained in the name of the king:

"The utility of roads destined to facilitate the transport of merchandise has been recognized in all times."

And he continued:

"These different motives suffice to make us prefer to the corvée, the gentler and the cheaper means of building roads for money payments [instead of by forced labor], but a motive more powerful and more decisive still decides us; it is the injustice inseparable from the use of corvées. . . .

"Men have been alarmed at the expense which the construction of roads by a tax in money would cause. . . .

"They have feared to impose this tax on the people always too burdened; and have preferred to demand from them gratuitous labor, . . . rather than money which they had not.

"Those who reason thus forget that the government should not demand from those who have only their hands, either the money which they have not, or the hands which are their only means of feeding themselves and their families."

So Turgot had the edict issued. And what happened? Immediately the conservative vested interests appealed to the Parliament of Paris, without whose sanction the edict could not be registered and could not become law, and thereupon it became the duty of the Parliament of Paris to give an opinion on the subject, exactly as our Supreme Court does. This is what the Parliament of Paris among other things said, and it is very interesting to us in this particular emergency, for this is the reasoning of lawyers, mind you, much like the reasoning of the gentleman from Southborough (Mr. Choate):

The first rule of justice is to preserve to every one what belongs to him: this rule consists, not only in preserving the rights of property, but still more in preserving those belonging to the person, which arise from the prerogative of birth and of position. From this rule of law and equity it follows that every system which, under an

appearance of humanity and beneficence, would tend to establish between men an equality of duties, and to destroy necessary distinctions, would soon lead to disorder (the inevitable result of equality), and would bring about the overturn of civil society.

That, gentlemen, was the answer of lawyers, of French lawyers, who do not differ from any other lawyers, to the demand for equality, equality of treatment, and that is, in essence, the same answer that the gentleman from Southborough (Mr. Choate) gave to us. My comment on that answer a dozen or twenty years ago I will read to you, for I do not know that I can state it any more plainly than I did then, and it will not take a moment. I must explain that every selfish interest in France broke out and Turgot was driven from office. Thereupon came the Revolution.

Every spoliation of the weak, every violation of what we Americans have been taught to call our common right, has been vindicated by the same argument, whether that argument has been advanced by the Chief Justice of England, in the case of Sir Edward Hales, by the Parliament of Paris in opposition to Turgot, or by the defendants and interveners in this cause. Those who have been privileged, have ever asserted their privilege to be a natural franchise, enjoyed by them as a gift from Providence, which it would be folly or impiety to impair. Nor have the possessors of these franchises hesitated to put their principles to the proof, and the catastrophes which have followed may well be pondered in view of the coalition of the interveners with the defendants to cause this country to pass under servitude to monopoly.

Charles I, having repudiated the trust imposed in him by Magna Carta, in defence of his divine right to tax arbitrarily, met those who believed men to be equal before the law, at Naseby and at Dunbar; afterwards he atoned for his acts upon the scaffold before Whitehall.

The Parliament of Great Britain, pretending to be absolute, took money from the American colonies for the selfish use of England, and not for the welfare of all. Thereupon the colonists sundered the British empire.

The whole generation of French priests and nobles who cast out Turgot for counseling that their natural franchises should be abrogated, perished in the Terror of Robespierre.

Before 1861 the aristocracy which ruled the south refused all compromise with the north because, as the Chief Justice of the United States explained, God had intended the black man to be a slave.

"They had," as Turgot said in his day peasants had, "for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race;" therefore the white man believed "that the negro might justly and lawfully be reduced to slavery for his benefit." *Dred Scott* v. *Sanford*, 19 How., 407.

Your Honors know how our people answered this decision, and the fate which befell the south.

Gentlemen, I do not say that that same fate will befall us, for history never repeats itself, but if we persist, if we persist in arbitrary methods, some very terrible catastrophe will occur.

Lastly, gentlemen, it becomes my duty to point out to you what we are up against, what it is which we are fighting in this war, and why I say that above all things we must prevail herein. But we can prevail only if we do justice, if we have a contented people, and I will tell you why.

In each century, for three hundred years, Germany has been overrun, conquered, and half of its population destroyed. I could go over the history of those three hundred years for you, but I lack time. Yet, gentlemen, it is a history of intense interest. Its interest cannot be exaggerated. I conceive that collective administration of a high order is the greatest effort of which the human mind is capable; and gradually, year by year, as they perished under their inability to meet their enemies, the Germans learned collective administration, until they

finally came to the catastrophe of Jena, when Napoleon overran, conquered and dismembered the country. It was under Napoleon's rule, when Germany was reduced to its last gasp, that the great reform took place of which modern Germany consists. It came about under Stein, as you all know. And what was the principle that Stein laid down? It was that all Germans should be equal before the law; that they all should do military service; that the prince and the peasant, the plutocrat and the beggar, should march together in the same regiment, should sleep under the same tent, should wear the same uniform and die the same death.

That I conceive to be democracy, gentlemen; and the first tinge of democracy we have had in this Nation since I was a boy has been the universal military service which has been forced upon us by Germany.

John Q. A. Brackett of Arlington.

Mr. Brackett of Arlington: I wish to make a slight contribution to this debate, not so much for the purpose of influencing or attempting to influence the action of others as to explain my own. In the campaign which preceded the election of delegates I repeatedly stated that I had not pledged myself and should not pledge myself as to my action upon this measure. Of course I knew in a general way what is meant by the initiative and referendum, but I never had given it that careful study which I felt I should give it if I was to be called upon to act upon the question of incorporating the proposition into the fundamental law of the State. I stated that my only promise in regard to the matter was that, if elected, I should go to the Convention with an open mind, determined to listen carefully and attentively to all that was said upon both sides of the question, and then to act upon it according to my convictions, arrived at after hearing the matter thoroughly discussed.

That promise, the only one I made in reference to this subject, I have faithfully kept. I have listened to all the speeches upon it, not missing a single one; and in speaking upon it to-day I speak not like a lawyer, representing one side of a case, but rather in imitation of a judge, — a pretty poor imitation, undoubtedly, — still in an attempted imitation of a judge, in giving his reasons for the conclusion at which he has arrived after carefully and impartially hearing and weighing the evidence and the arguments; and so speaking I am compelled to state that I cannot see my way clear to support this proposition.

I make this statement with a great deal of regret; for I believe, I know, — I will not say simply that I believe, — I know that the gentlemen favoring this proposition do so from the most disinterested, public-spirited and philanthropic motives. They think it will promote the social welfare of the people. As to that object I am entirely and enthusiastically in sympathy with them though not sharing in their confidence in the I. and R. as a means of attaining it. They think it will tend to allay the existing unrest, which is apparent to all. That is something of which I have thought much. I can see grave dangers ahead of us, grave dangers to the public peace, arising from it. The way to deal with it is not to attempt its suppression by the mailed fist, as the Kaiser would suppress it, but it is by remedying the conditions that have caused it.

Much has been done by the Legislature of Massachusetts, the body which has been the object of so much criticism here, toward relieving and remedying these conditions. Permit me to refer to a few of these measures, in answer to this criticism, in doing which I shall confine myself to those which have come within my own experience, with which I have had some little to do, to which I have attempted to contribute my "bit."

Just forty years ago, in January, 1877, I became for the first time a member of the House of Representatives. I was then young and ambitious, and one of my ambitions was to do something for the betterment of the working-men of Massachusetts. I will confess that my motives were not entirely altruistic, for I had an idea that the way, the best way, to win political distinction was by service of that kind to one's fellow-men, especially to those in the humbler walks of life. Twelve years before that time, under the Emancipation Proclamation of Abraham Lincoln, and the subsequent Thirteenth Amendment of the Constitution of the United States, the colored working-men of the south had been liberated; and it seemed to me that a work which naturally supplemented that grand achievement, and a work which would redound to the credit of all taking part in it, was that of emancipating the working-men of all sections and all colors, from some of the hardships by which they were oppressed, so that they might share in larger measure in the advantages and the privileges of human life.

I therefore, at the beginning of the session, went to my friend, Hon. John D. Long, then Speaker of the House, and asked him to place me upon the committee on Labor. I remember that he looked at me with some surprise at the request, for lawyers when they get into the Legislature usually prefer to serve on the committee on the Judiciary; but he granted my request. Not only that, but he made me House chairman of the committee, and I want to call attention to one or two things which that committee did, and which the Legislature ratified.

We reported, for instance, a bill, — and I think it was the first bill of the kind, — for factory inspection, providing for safeguarding the operatives in factories, that machinery should be guarded, that fire-escapes should be provided, that the doors should open outwardly, so as to facilitate escape in case of fire or panic. It also provided that for any violation of that law the employer should be subjected to severe penalties; also that employers should be liable for damages to employees caused by such violation, and provided for the appointment of special officers to enforce the law.

But there was another measure, to which I often have alluded, and which I believe was of greater importance. That was the law authorizing the establishment of Loan and Building Associations, or, as they are now called, Coöperative Banks. The committee reported that bill, and it was enacted, and has been of immeasurable benefit to the working-men of Massachusetts. Thousands of them, through the aid of these institutions, have been enabled to get out of the crowded and ill-conditioned tenement-houses of the city and into comfortable homes of their own in the suburbs. There are now 183 of these institutions in the State, having a membership of over 236,000 persons, and having assets of over $13,000,000. They have become one of the social

and economic forces of the Commonwealth. They are united in a State organization called the Massachusetts Coöperative Bank League, the president of which is my esteemed friend, the gentleman from Fitchburg (Mr. Walsh), the youngest of the living ex-Governors of the Commonwealth.

My interest in measures of this kind has not been lost; and when this Convention assembled I asked, — as I had asked Speaker Long forty years before, — I asked the President of the Convention to place me upon the committee on Social Welfare. I did not know exactly what the functions of that committee were to be, but from its name I judged its work would relate to the subject in which I was especially interested. I do not make these allusions for the purpose of self-advertising, but in order to show that my past performances have been consistent with my present professions, to show that I do not oppose this measure from any natural prejudice against new ideas. I never have belonged to that class of conservatives of whom Sidney Smith said that they never look at the new moon out of respect for that ancient institution, the old moon. My feelings on the contrary always have responded to those eloquent words of Lowell:

> New occasions teach new duties,
> Time makes ancient good uncouth;
> They must upward still and onward
> Who would keep abreast of truth.

I have faith in the Legislature of Massachusetts. I have faith that when reformers introduce in the Legislature a progressive measure they will attain their object finally through its action. It may not come at once. Great reforms never are victorious at the outset. But if they persist, as every reformer should, they will win at last. I remember a song that we used to sing in my boyhood in the little red school-house among the hills of New Hampshire where I received my early education. Do not be disturbed, — I am not going to sing it, for I am not melodious, — but two of the lines are these:

> If at first you don't succeed,
> Try, try, try again.

That is an injunction which every reformer should heed. He should have the spirit of Paul Jones, who, when the British commander in the naval battle ordered him to surrender, replied: "I haven't yet begun to fight."

The history of coöperative bank law, to which I have alluded, is instructive upon this point. The leading petitioner for it was the late Hon. Josiah Quincy, the second of the three mayors of Boston bearing that honored name. He also had been President of our State Senate, chairman of the Harbor Commission, and had held other important public trusts. Some men, after holding important positions like these, are wont in their old age to repose upon their laurels and to abstain from any active participation in public affairs. Mr. Quincy represented a different type of public man, and devoted the autumn of his life to the work of helping the working-men of his city and State to become home owners. With others whom he interested, a group of young men who recognized him as their leader, he petitioned the Legislature in 1875, and again in 1876, for a law authorizing these institutions. Each time the petitioners had "leave to withdraw;"

but, undaunted by these reverses, they petitioned again in 1877, the year to which I have alluded. In the meantime they had taken measures to interest the people in the subject. They had communicated with men in different parts of the State, had caused articles to appear in the press, and in that and other ways had built up a public opinion which finally caused the enactment of the law. They not only did this but they took pains to impress upon the Legislature the fact that there was such a public opinion. Day after day petitions would come in, in aid. When a petition came from Worcester, for instance, they would go to a representative from Worcester, tell him there was a petition from some of his constituents and ask him to present it, which, of course, he readily did; and so in the case of a petition from any other city or town. In this way members from these different cities and towns became interested in the subject. Again, they did not introduce these petitions all at one time but distributed them over a large number of days, so that each day the speaker would announce, for example, that "Mr. Jones of Fall River presents the petition of Thomas Brown and two hundred other citizens of Fall River in aid of the petition of Josiah Quincy and others for a law authorizing the establishment of loan and building associations." In that way, hearing so many of these petitions read every day, the members of the Legislature began to sit up and take notice. Finally, the bill went through without a word being said in debate upon it.

A gentleman from Lynn, a leading and very influential member of the House, notified me that he was going to oppose the bill, after the committee had reported it. He said he would allow it to go to a third reading without opposition but would make a fight on the question of its being engrossed. At that time the calendar was full. Day after day I came to the House with my mind loaded with a speech that I intended to make, but the matter would not be reached. I remember the day when finally it was reached. The Speaker read the title. The gentleman from Lynn and I sat upon opposite sides of the chamber. I looked across to him, expecting him to commence his attack. He looked across to me, expecting me to commence my advocacy of the bill. But I had learned then that if you wanted to get a bill through, the best way was not to start a debate upon it, but to wait until it was attacked and then reply to the attack. While we sat there staring at each other, the Speaker said: "The question is on passing the bill to be engrossed; those in favor will say aye, those opposed will say no." There came from the House a stentorian "aye", and a very faint "no;" and the speaker announced: "The bill is passed to be engrossed, and will be sent to the Senate for concurrence in its engrossment."

This is a matter of history, showing how, by creating a public opinion, and by taking efficient means for impressing the fact upon the Legislature that there was such a public opinion, a meritorious measure which had been repeatedly rejected finally succeeded; and I believe the result will be the same with other reformatory measures.

There is another matter I wish to mention. We hear a good deal said about the use of money in influencing legislation. Undoubtedly that is the fact; it cannot be denied. I deplore the domination of the dollar in public affairs as much as anybody can; but, my friends,

that domination is not exercised upon the Legislature alone, it also is exercised upon the people at the polls. I do not see how the initiative and the referendum is going to stop that. In this connection permit me to read a brief extract from this pamphlet, entitled "The Initiative and Referendum, Massachusetts Plan," issued by the Union for a Progressive Constitution. It says:

> No legislative body is free from the secret influence of the agents of private interests. "For wheresoever the carcase is, there will the eagles be gathered together." The eagles always gather about a legislative body. They not only hover about legislative halls, but are active as well in legislative districts, at primaries and elections. An independent legislator of ability is frequently defeated through their activity, for the very reason that he acts independently in the public interest and refuses to be subservient to the influence of invisible government.

Now, Mr. Chairman, if these "eagles" can go into the legislative districts and influence the actions of voters in defeating legislators who have acted contrary to their wishes, would they not do just the same in defeating measures which have been passed through the operation of the initiative? I cannot see that there is any safeguard against that under the initiative. They will go into the legislative districts, and, by the means which they now use in influencing men to vote against a member of the Legislature who has not acted in accordance with their wishes, will induce them to vote against a measure which is not in accord with their interests.

It has been stated in the debate that in Oregon a majority of initiative measures which have been submitted to the people have been defeated, this being cited as evidence that the people are very careful in considering these measures. But how do we know but what the agents of invisible government, — "eagles," as they are called in this pamphlet, — have used their influence with the people of Oregon to defeat good measures?

It is one of the mistakes, I think, which the friends of this proposition make, that they think the initiative is going to be used entirely to promote good legislation. But the representatives of "invisible government" are likely to take advantage of it. They have, for example, a bill which they wish to have passed. They get together in one of these offices on State Street of which we have heard; they employ one of these astute lawyers, of whom we also have heard, to draw a bill, — a bill which ostensibly will be for the benefit of the public but which is really in the interest of some scheme by which the promoters seek to enrich themselves at the expense of the rest of the people. The bill is artfully drawn. Talleyrand said that the object of language was not to reveal, but to conceal thought. So a crafty drafter of a bill may so draft it as to conceal its real object. They then send out their paid agents to secure the requisite twenty thousand or twenty-five thousand signers to the petition. Then it is submitted to the people and the people are induced by the influences referred to to enact it.

Furthermore, the referendum contains a provision which is prejudicial to progressive legislation. It provides that a measure shall not take effect for sixty days unless it is an emergency measure, and that to make it an emergency measure two-thirds of each branch of the Legislature must vote for a preamble stating that it is important to the public welfare. That is, one more than one-third of the members

of either branch of the Legislature, or in other words, thirty-four per cent of them, can prevent a measure which has passed from taking effect for sixty days, by voting against the preamble to make it an emergency measure. Then within that sixty days, if they can get fifteen thousand persons to sign a petition for a referendum, they can then present it, and the measure is suspended until after the next State election. It also provides that such a petition must be filed at least thirty days before the election and that if it is not so filed, then the question must go over until the next election thereafter.

That is, by waiting until 29 days before a State election, and then filing a petition for a referendum, a law will be suspended until thirty days, — not after the next election, — but after the next election but one. That is, it will be in the power of these men to postpone the taking effect of a good law, a law which may be of great importance to the people. They can hold that law up for over a year by means of this provision of the referendum.

Allusion has been made to the unreliability of petitions as indicating public opinion, or even as indicating the opinion of those who sign them. It is very easy to get people to sign petitions. Here is an incident illustrating this. It may be an old story to many of you, but it seems to me pertinent to this discussion. Some years ago the colored people of a western city complained that their children were discriminated against in the public schools. They got up a petition to the Legislature for an act to prevent such discrimination. At first they proposed that the petition should be signed only by the parents of children who had been discriminated against, but afterwards it occurred to them that, as they were unknown and uninfluential persons, it would help their cause if they got some influential white men also to sign the petition. They therefore presented it to a number of white politicians of both parties. These gentlemen, justly sympathizing with the cause, not stopping to read the petition, signed it. When it was presented to the Legislature these white gentlemen were somewhat chagrined when they found that the petition they had signed began as follows: "We, the undersigned, parents of colored children, respectfully represent," etc. [Laughter.] The petition as it read would imply that all the signers were the parents of colored children, likewise in reading a petition for any legislative act one would infer that all its signers were interested in it, while as a matter of fact a majority of them might not care a, — a dime, — [laughter] about the law petitioned for and even might not know what the petition contained.

Speaking of petitions, reference has been made in this debate to the action of John Quincy Adams, the grandfather of the last speaker, in behalf of the right of petition. The service of Mr. Adams in that regard was one of the grandest works of his illustrious career. I always have had a great reverence for that eminent statesman, not only because of the name he bore, although that name is of considerable interest to me; not only because he was one of the only two Presidents whom Massachusetts has furnished to the Republic; but because, after holding that high office, in his old age he returned to the lower House of Congress and there became the champion of the right of petition, with especial reference to the anti-slavery cause; and by his service to that cause won a more glorious renown than when repre-

senting his country at foreign courts or serving in the Senate, the Cabinet or the Presidential chair, and became known as "the old man eloquent."

But what was the right of petition which Mr. Adams vindicated? It was the right of the people to petition a representative government, the Congress of the United States, against slavery. He saw, in his wisdom, that if these petitions were received by Congress it would contribute powerfully toward creating a public sentiment which eventually would destroy the slave system, and the representatives of the slave oligarchy also saw this. It was dangerous to the system to have it discussed, and therefore they sought to suppress such petitions.

I believe, Mr. Chairman, in government by the people. What was the government of the people, by the people, and for the people, to which Lincoln alluded in the immortal speech at Gettysburg? It was the same kind of government which we have to-day, which we had then, — government by a body representing the people; government of the Nation by a Congress elected by the people of the Nation; government of the State by a Legislature elected by the people of the State. At this time, when the people who are longing for liberty in other lands are looking to Massachusetts for guidance, are we going to tell them that the form of government to which they aspire, a government elected by themselves, has proved a failure here?

I believe in direct government by the people wherever it is practicable. It is practicable in the town-meeting, because there all the people who are to act get together, they hear measures discussed, they can amend them as they choose and then vote upon them. It is practicable in the election of United States Senators; and here, if you will permit me again to make a personal allusion, when the question of ratifying the amendment to the United States Constitution providing for the direct election of senators was before the Legislature, I was interviewed by the Boston Globe, and stated in that interview that I was very strongly in favor of the amendment. Not only that, but many years before, in the year 1890, I was present as the official representative of the Commonwealth at a club dinner in Boston on Lincoln's birthday, February 12, 1890. In my remarks on that occasion, referring to the historic debate between Lincoln and Douglas in 1858, and to the fact that while Lincoln received a plurality of upwards of four thousand of the votes of the people of Illinois, Douglas was elected, because the legislative districts were so arranged that a minority of the people chose a majority of the legislators, I said that this was a miscarriage of justice and that it should be remedied, and that the remedy was to provide that Senators should be elected directly by the people. The people of Illinois all knew who Abraham Lincoln was, and who Stephen A. Douglas was. They knew which of them represented their principles, and it would have been a simple matter for them each by himself to cast his ballot for the candidate of his choice. But the enactment of laws is not so simple a matter. Lawmakers cannot act separately but must act together in a body. [Applause.]

Albert H. Washburn of Middleborough.

Mr. WASHBURN of Middleborough: This debate has taken a wide range. During its somewhat devious and uncertain windings I have listened with more or less profit to a review of the world's history, from Plato to Daniel Webster. At this late stage, when the committee has given such unmistakable evidences of being debate weary I should not trespass upon its attention were I not convinced that I share the views of a section of this body that has not been heard, so far at least, at any length. I mean by this that in my opinion there are a very considerable number of delegates in this Convention who accept the principle of the I. and R. as a reserve power only of last resort, but who frankly are not enamored with some of the features of the pending measure.

I have no time to enter upon a discussion of the wisdom or unwisdom of the I. and R., as big and basic as that question is. That it is debatable I fully recognize. I want, however, in the brief time allotted to me, to answer briefly, if I can, some of the arguments which have been advanced against the abstract principle itself.

In the first place, I think we too often have overlooked in this debate the force of some of the precedents of our early Massachusetts history. The gentleman from Boston in the second division (Mr. William S. Kinney) some days ago built up his argument around the contention that the I. and R. is absolutely inconsistent with our frame of government. That statement I cannot permit to pass unchallenged. Why, sir, we were told by the gentleman from Waltham (Mr. Luce) that they had the referendum in the Colony of Rhode Island as early as 1654, and in the Colony of Plymouth, I think he said, as early as 1640. We do not need the high authority of the President of Harvard University, although we have that authority, for the assertion that the modern referendum first appears in America in the submission of State Constitutions to the people for their ratification. He might have added that the first instance is to be found right here in Massachusetts, in 1780. New Hampshire presently followed suit. In fact, it may fairly be said to have been a New England idea, because it was not adopted outside of New England until it was adopted by the State of New York in 1821. It will not do, therefore, to say that the constitutional referendum, at least, is inconsistent with our form of government.

Speculation always is more or less unprofitable, but I think I am entirely safe in hazarding the opinion that if the constitutional referendum were a new thing, if our precedents were in favor of the proclamation of constitutions by conventions, following the practice of so many States in the early stages of our national history, and following, too, the examples of certain other States in the not remote past, we should be told now, in the face of such a proposal as we now have before us, that it would be dangerous and revolutionary to adopt it.

I think, too, it is not to be denied that the framers of our form of government recognized the right of the people themselves to propose amendments, at least in the work of framing our organic law. I cannot construe otherwise this language of the Convention, addressed to

the people of 1780. It is not unfamiliar to us, it is very brief, and I will read it:

> It is your interest to revise it —

referring to the work of submission —

> . . . with the greatest care and circumspection, and it is your undoubted right, either to propose such alterations and amendments as you shall judge proper, or to give it your sanction in its present form, or totally to reject it.

Of course, sir, all this happened before the adoption of the Constitution. It in no way touches the theory of the social compact, advanced by the gentleman from Southborough (Mr. Choate). I, for one, cannot accept that theory. The logic of it seems to me to lead to the conclusion that the whole people having covenanted with each citizen, and each citizen with the whole people, in 1780, the Constitution thereafter became unalterable except in accordance with its express provisions. The gentleman from Southborough told us that there was only one way of amending the Constitution between 1780 and 1820, and that was by a Convention, and that after 1820 there were only two ways. In other words, as he expressly conceded, the Convention of 1820 was quite within the scope of its power in proposing the ninth article of amendment. If, now, the Convention of 1820 could suggest a new form of amending the Constitution, and nobody seriously disputes this nowadays, why may not the Convention of 1917, if it sees fit, — it is a mere question of expediency, it seems to me, — propose a form of constitutional initiative for submission to the people? I have heard no answer, sir, to that inquiry as yet, — no clear answer, — except that formulated by the gentleman from Newton (Mr. Powers) who told us that the people in 1780 and again in 1820 imposed certain restrictions upon themselves; and that Macaulay in his dire predictions of the disaster that was to overtake American democracy, did not recognize the capacity of that democracy to impose restraints upon itself.

That is wholly true. That is a truth to keep constantly in mind. But what I want to know is, why may not the people now impose restrictions upon themselves in connection with the constitutional initiative, just as they imposed upon the Legislature, and upon themselves as well, certain restrictions in 1780 and again in 1820?

The gentleman from New Bedford (Mr. Mitchell) told us the other day, just to illustrate, that the State of Oklahoma requires fifteen per cent of the qualified voters for the submission of a constitutional amendment, that no amendment may be adopted unless it has received a majority of all the voters voting at an election, and, — I think I am right about this, — that no amendment may be proposed oftener than once in three years. Can anybody say that the people of that State have not imposed a proper restriction upon themselves with respect to this particular part of their organic law?

Sir, there are those who have maintained, and I think with some show of authority, that there is at least a partial recognition of the initiative in the Constitution itself. I refer to the nineteenth article of the Bill of Rights. Professor Haynes of Worcester, the author of our admirable pamphlet on the I. and R., which states facts and not conclusions, in addressing, some years ago, the American Political

Science Association made this assertion. It is rather striking; I want to read it:

> From a reading of Article XIX of the Bill of Rights, and from a study of the early instructions, there can be no doubt that it was the intent of the framers of our Massachusetts Constitution to assert the right of instruction; that such instructions were frequently given and with the expectation that they would be considered binding; and that this act of instructing was not thought inconsistent with the system of representative government, nor derogatory to the dignity and independence of a representative in such a degree as to prevent men of eminence and capacity from accepting an election to the General Court.

I think, therefore, we have fairly established that the framers of our government recognized to its fullest extent the principle of the constitutional referendum, that they likewise recognized the principle of the initiative, in the work of adopting the Constitution, at least; and that to a partial and limited degree they recognized the principle of the initiative in the Constitution itself. But in doing this they did not of course intend to weaken or impair the system of representative government. That was the very corner-stone of the structure they were erecting with such infinite pains and rare foresight.

I, for one, do not want to substitute direct government for representative government. Conceding that representative government has sometimes been misrepresentative, that the Legislature may sometimes misrepresent, I am interested only in the creation of a reserve power which will enable the people in the last resort to express their deliberate will.

Sir, the gentleman from Milton (Mr. Bryant) told us a few days ago that the I. and R. was nothing but a club suspended over the legislative branch of the government. Well, what is our entire framework of government, with its elaborate system of checks and balances, but a series of clubs more or less visible? James Bryce and Goldwin Smith, more than forty years ago recognized a decline of popular confidence in legislatures. What I want to say in closing is this, — for I notice that the chairman's gavel is about to warn me that my time is up: That in framing a twentieth century Constitution to meet the needs of our modern complicated life we shall make, it seems to me, a grave mistake if we overlook or ignore these self-evident facts.

William J. Bullock of New Bedford.

Mr. Bullock of New Bedford: I do not suppose that any speech at this time will change any vote in this committee, but there have been a few suggestions made here relative to reasons why we should and should not pass this resolution upon which I want to comment in the few minutes which are assigned to me.

One of the speakers opposed to the initiative and referendum has said that he believed the great unrest among the populace was confined entirely to the aliens. I want to say that the city which I have the honor to represent in this body, in part, contains as large a percentage of aliens as any city in this Commonwealth. My observation has been that they are the most contented people in our entire population, because their conditions here are so much better than those of the country from which they came. While it may be true that we

do not permit them to have the same degree of liberty along certain lines which they have had in continental Europe, it also is true that they do conform to our laws and customs to a large extent. It is well for us to remember that the alien of to-day is but the citizen of to-morrow, and that in these troublesome times, when democracy is hanging in the balance in this world, that the sons of the aliens of yesterday are the men who are shouldering the guns and marching away to-day in defence of that democracy. [Applause.]

When I look over the list of those who have been drafted in my own city in defence of democracy's policies, I am amazed to find the absence of those good old New England names. Ninety-eight per cent are the names of aliens, or descendants from aliens. Therefore I think that it is only safe to say that to-day the descendants of the aliens are the defenders of democracy.

My friend in the fourth division (Mr. Barnes of Mansfield) referred to the legislatures of the past. I think that legislators need no defence at my hands. I have had the privilege and honor of serving in this hall and in the hall across the corridor for a period of ten years, and, endeavoring always to honestly represent my constituency, I trust that never in that time have I misrepresented it. He referred to manufactured distrust. Now, it is a fact that in many instances there has been manufactured distrust, but it is a fact also that in many instances that distrust has been manufactured by the members themselves, and, notably, I will call your attention to one instance. For a number of years the working women and the working minors of this Commonwealth pleaded for a law which would prohibit over-time work on their part. Many of us, who believed that they were right, endeavored to give them that law. One man, who was the Governor of this Commonwealth in 1905, and one of the best Governors that this Commonwealth ever had, was defeated because he did not believe with them and vetoed their bill. Again, in 1906, that bill was introduced in the Legislature, passed the House and came to the Senate, and was going along seemingly to its third reading, when suddenly the Senators began to desert the chamber, until those who were in favor of it found themselves in a hopeless minority. On March 23, 1906, we found that, while it was necessary that we should stay there and make that fight to the end, we ultimately would be defeated. And how were we defeated? We were defeated, not by the change of votes of any of the Senators present, but by the desertion of their posts of duty by those people who supposedly had been friends of that proposition; and, as it subsequently developed, some of those men had fake telegrams sent to themselves in order to absent themselves from that chamber, and that bill was defeated.

I contend that that distrust was manufactured by the members themselves.

It is true also that in many instances the House and the Senate have reversed their vote over night. And how are people led to look upon such propositions as that? They are led to believe that they cannot trust those members who will reverse themselves over night. I do not contend that improper influences were at work among those men. I know in what manner it is aimed to bring about a change of vote of that character. I recall distinctly in this chamber once when an exception was being made, or tried to be made, to the general law

of this Commonwealth in favor of one certain organization. I was surprised to find one of the most influential men in my home city deeply interested in having that exemption made. When I asked him how he was interested in it, or how he became interested, he said he was requested by a very close and influential friend in Boston to ask me to vote that way, and if I valued his friendship I would comply with that request. Now, while that may not be improper influence, at the same time many men yield to that influence, and it places the stigma of distrust by the people upon them. I know that in many instances in this hall and in the Senate chamber measures are reversed on just such propositions as that, and other methods similar to that. That, to my mind, is not manufactured distrust, except that it is manufactured by the members themselves.

Does any man in this chamber believe that it is impossible to trust the people to pass upon a proposition, when he is trusting them to pass upon his qualifications as a member of this body or of the legislative body of this Commonwealth? As I look over the members of this Convention it seems to me the judgment of the people has been exercised wisely and well in the selection of their delegates to revise their Constitution. I for one am not willing to say that the people who have acted so wisely and so well are not to be trusted with the fundamental principles of government for themselves. I believe that every one in this body, whether or not he is a supporter of the initiative and referendum, would be willing to go before the people and honestly undertake to explain his views relative to any proposition, as to whether it affected their welfare favorably or unfavorably; and I believe the people would give to them calm, deliberate attention, and would endeavor also to ascertain every point of view in relation to that question and vote intelligently upon the same.

Francis P. Garland of Somerville.

Mr. GARLAND of Somerville: In the very limited time at my disposal I wish to call the attention of the delegates to an argument which has been advanced in the minority report, and again by the distinguished delegate from Southborough (Mr. Choate) to the effect that the majority resolution is wrong in principle because it breaks the social compact. The argument reduced to its lowest terms, as I get it, is substantially this: The Constitution of 1780 is a social compact; whatever breaks the social compact is wrong in principle; the initiative and referendum breaks the social compact; therefore it is wrong in principle.

That argument I conceive contains two fallacies. The first fallacy is that the Constitution of 1780 is a social compact; the second fallacy is that, if we admit it to be a social compact, the majority resolution breaks the compact.

The year 1780 was not the first time that men set forth the doctrine that society is founded upon a social compact. Twenty-five centuries ago the Sophists taught in the market-places of Athens that back in the dim and distant ages of prehistoric time the ancestors of our race assembled in a vast plain and proceeded by compact and agreement to institute government and law. That theory had no foundation in fact, in human experience, in history. It passed in re-

view before the wise mind of the great Stagirite philosopher. Aristotle rejected it, and first taught the true theory of government and law. Aristotle taught the doctrine that man is by nature a political animal; that for his safety, his welfare, and his convenience, he finds it of advantage to live in communities with other men; and because of the fact that men live in communities government and law become necessary to regulate their intercourse with each other.

For nearly two thousand years after the time of Aristotle this theory of the social compact lay dead. It was revived by the writers on international law in the sixteenth and seventeenth centuries, and was developed particularly by Locke in England and by Rousseau in France; and it was the doctrine as enunciated by Locke and Rousseau that we find written into the preamble of our Massachusetts Constitution by John Adams and Theophilus Parsons. This theory was examined very carefully in the Convention of 1853 by the committee on Bill of Rights; and before I state what the conclusion of that committee was I want to read to you the names of the men who composed it.

The chairman of the committee was Charles Sumner. His associates were Joel Parker of Cambridge, a distinguished jurist; Benjamin F. Hallett of Boston, a distinguished lawyer; George S. Hillard of Boston, one of the most brilliant members of the Convention of 1853; Charles Allen of Worcester, a lawyer, member of the Senate, Congress, judge of the court of Common Pleas, appointed to the Supreme Judicial Court of Massachusetts, an honor which he declined, — a distinguished jurist; John Chipman Gray of Boston, Asahel Huntington of Salem, Julius Rockwell, Richard H. Dana of Cambridge, Luther V. Bell, Henry Williams, Marcy Laban, and Anson Burlingame of Cambridge, of international reputation.

And what was the result of the consideration of the doctrine of the social compact by these distinguished gentlemen? Richard H. Dana wrote it in his diary, after the Convention of 1853, in these words:

> In our committee (Bill of Rights) we resolved not to attempt to rewrite the instrument, and only to make necessary changes. We discussed the principle of the "Social Compact" which is set forth in it, and we found not one man who believed in it. . . . It is a mere fiction, which served its turn against tyranny, but cannot stand examination.

The distinguished lawyer from Southborough has told us that that was merely a rhetorical expression by Mr. Dana, but I say it was the deliberate expression of the unanimous judgment of thirteen of the ablest and wisest men who ever sat in a deliberative assembly in Massachusetts; and from the time when the Convention of 1853 buried that theory among the discards of political and philosophical rubbish it never has been seriously advanced by anybody until it found its way into the minority report, to justify the argument that the initiative and referendum is wrong in principle because it breaks the social compact.

But if we assume that the Constitution of 1780 is a social compact, the conclusion of the minority does not follow, because it is a compact which reserves in the seventh article of the Bill of Rights express authority to revise the Constitution, — an express right to alter the main Constitution. I never have heard outside of this chamber the claim made that the exercise of a right reserved by a contract itself constitutes a breach of contract, and that right has been recognized

forty-four times in the forty-four amendments made to the Constitution of Massachusetts.

The question then comes whether or not the people now want to exercise the right of altering their Constitution by adopting the initiative and referendum. It has been said here that there is no public demand for it, no public opinion back of it. Is that true? I cannot speak with the same authority for other parts of the Commonwealth that I can for the city of Somerville, a part of which I have the honor to represent in this Convention, but last November this question was submitted to the people of Somerville, and over seven thousand people voted in favor of it, fifteen hundred voted against it, four thousand blanks were cast, and one thousand of the people did not vote. So we had a majority of fifty-six per cent of those who voted, and an actual majority of the total registered vote of the city of Somerville. The city of Somerville is a conservative city, and frequently has been called "The Banner Republican City of Massachusetts." The people of Somerville demand, and demand in no uncertain terms, the adoption of the initiative and referendum. [Applause.]

But we have been told here by one of my colleagues from Somerville that public opinion is the last thing that delegates in this Convention ought to consider. Is that true? The answer to that undemocratic proposition, if it needs any answer, is found in a sentence of six words from a great American statesman: "Our government rests in public opinion." That was written by Abraham Lincoln in 1856. If we believe that Lincoln's doctrine is sound, if we believe that the people of Massachusetts demand it, then it is our duty to submit the question to the people of Massachusetts.

But we are not confined to the vote of our constituents last fall. It has been admitted by the minority here that the popular branch of the General Court represents all the people of the Commonwealth. If that is true, then it is interesting and instructive to consider what the House of Representatives has done since 1901 on this question. With the exception of the year 1908 they have voted, by a majority increasing until in 1913 it is almost two to one, in favor of the initiative and referendum. What inference can any honest, candid man draw from that? Only the inference that the people of Massachusetts have demanded the initiative and referendum by popular vote, and by action of their representatives assembled here on Beacon Hill. We must face the issue squarely and we cannot be helped, Mr. Chairman, by contemplation and discussion of those idealized forms of representative democracy which we find nowhere to-day except in the treatises of college professors and the imaginations of idealists. [Applause.]

Asa P. French of Randolph.

Mr. French of Randolph: The hours of this debate are drawing to a close, and, as it seems to me, the destinies of the Commonwealth are trembling in the balance. Over and over again in the course of this discussion there have come back to my memory the fine lines of the great Greek dramatist of many centuries ago:

This is true Liberty, when freeborn men,
Having to advise the public, may speak free;
Which he who can and will, deserves high praise;
Who neither can nor will may hold his peace;
What can be juster in a State than this?

I am one of those, Mr. Chairman, who do *not* wish to see Massachusetts sit at the feet of Oklahoma to study Statecraft, nor fall into line in the procession of States behind Montana, North Dakota, South Dakota, Nevada, Nebraska, Arizona and Utah. Nor do I believe that every man who goeth up and down in the earth, and to and fro in constitutional conventions, crying "In the name of the people," is the people's real friend. On the contrary, it has been my experience that he is the man who in his heart wishes to amend that fine apothegm, "*Vox populi, vox Dei*," to "*Vox populi, vox mei*" — the voice of the people is the voice of me.

The longer I live, the more amazed I am to find men who are to all appearances equally honest, equally intelligent, equally public spirited and patriotic, differing fundamentally upon some great public measure which, if enacted into law, will affect them both in the same degree, and the consequences of which are, or ought to be, appreciated by one as well as the other. I am reluctant to assume that there are delegates in this Convention however few who are advocating and will vote for this measure merely because they believe that it will retrieve their shattered political fortunes or advance their selfish, personal interests; that there are others, still, who will vote for it because they are afraid to vote against it; that there are others, still, whose influence is felt here, who, realizing that this measure if adopted will deliver all the power of government into the hands of the majority, and that this will be a long stride toward ochlocracy, aspire to become the leaders of the mob. I am convinced, however, that as we all must recognize, there are those, and not a few, of perfectly honest intent and free and open mind, who come here with the sole purpose of doing what they have been sent here to do, namely, to add, if it be possible, to the protection which the present Constitution gives to every man in the Commonwealth, the individual, the few and the many; men who firmly believe that there are evils in the Commonwealth which this measure, if enacted into law, would very largely, if not wholly, eradicate.

It is to the latter only that logical argument against the proposed radical change can be hopefully addressed.

I represent, as you all do, a mixed constituency, — the rich and the poor, the employer and the employee, the farmer and the artisan, the Catholic, the Protestant and the Jew, the intelligent and the unintelligent, those whose education and experience fit them readily to distinguish good laws from bad laws, and those whose misfortune it is that they are possessed of no such intelligence. It is perfectly clear, is it not, that with respect to such a constituency it is our individual and collective duty, in the performance of the task now before us, to see to it that each one is protected in his fundamental rights against the invasion of those rights by any or all of the others, and to see to it also that no change with respect to these rights is either actually or potentially given to one sect over another, to one class over another, to one race over another.

This country and this Commonwealth have nothing, Mr. Chairman, of which to boast, unless the dogma that all men are born free and equal in the eyes of the law is here constantly maintained and reasserted. Several attempts have been made in the course of these debates to state briefly, in the form of an axiom, our duty as members of this Convention. I conceive it to be this: That if there be any combination of words which will secure to the people of this Commonwealth a greater measure of protection to life, liberty and property than that which is insured to them by the present Constitution, it should be formulated by this Convention and submitted to the people for their sanction.

I believe, however, with many others, in and out of this body, that the burden is clearly upon those suggesting alterations in our existing organic law to demonstrate to us and to their constituents that such changes are indispensable to our future welfare and happiness as citizens of a sovereign State. For it cannot be denied, and is not denied, so far as I know, by any honest man who is not an ingrate, that there are few, if any, popular governments upon the face of the earth which have performed their functions in all respects as satisfactorily as ours. Every proposal of change should be weighed in the balance of the rule as I have stated it, and if found wanting, should be instantly rejected. If such change would clearly strip from the individual and the few that essential protection which they now possess, it should be put aside without a moment's hesitation by every true lover of Massachusetts, and by every one to whom her long-tried and long-cherished institutions are dear.

Massachusetts is now a representative democracy; but it is more than that. It is a democracy in which every citizen, however humble, and however devoid of influence, is protected by a written Constitution in the exercise of his fundamental rights and in the enjoyment of his life, liberty, property and reputation. Under it he cannot be disturbed by a mere majority vote in the free exercise of his religion; under it property cannot be taken away from him without adequate compensation and except for public use; nor can he be deprived under it of life or liberty without due process of law, under safeguards which afford him the highest degree of protection compatible with the general welfare. Under it, Mr. Chairman, he and you and I, can raise our hands effectively against the majority, and say to it: "Thus far shalt thou go and no farther."

Such protection is to be found only in a system of government which, to use the expression of John Adams, "embodies an equilibrium between the one, the few and the many, for the purpose of executing equal laws by common consent for the general interest." In other words, it is a democracy in which a *majority* of the voters of the Commonwealth do *not* rule, and were not intended to rule, — emphatically not with respect to those propositions of fundamental constitutional law by which rights sacred to all are safeguarded against the injustice or the fury or the momentary passion of the multitude.

That such passions have not been aroused frequently in modern times, I think you will agree with me, is wholly immaterial. They lie latent, at least, and who knows how soon, in the chaotic and combustible state of the world to-day, they may blaze into a conflagration?

A system of government is absolutely impotent and worthless unless it protects the individual in his fundamental rights to life, liberty and property, and unless it protects the minority against the invasion of those rights by the majority. This is what the Constitution of Massachusetts has insured to its citizens for more than a century. This priceless protection, the advocates of the Initiative are seeking to destroy, and to destroy in order to guard against the alleged corruption and incompetency of the men whom local majorities choose to represent them, in order effectively to put to sleep alleged popular unrest, or discontent created by existing social and economic conditions.

I earnestly submit that if it were as plain as the rule of three, that the initiative and referendum could accomplish either of these ends, nevertheless it should be unhesitatingly rejected by every true lover of Massachusetts. It is *not* true that this measure makes a change merely in the *form* of government. It is a fundamental change in the *principle* of government, and that principle which more than any other insures its stability and entitles it to respect and confidence.

The proposition upon which the opponents of this measure stand is *not*, I need hardly say, that the people have no right to change their form of government. That would be absurd and akin to blasphemy. It is that a majority of the people have *not* the right to change the fundamental law without the previous deliberate consent of the representatives of *all* the people, either in a Legislature or in a Constitutional Convention; and, further, that a majority have *not* the right to usurp the control of legislation generally, and to exclude the minority from any effective participation therein. If they do, this ceases to be a government by the people, a free democracy, and becomes a government by the majority, which is a form of tyranny.

Under the initiative and referendum, a mere plebiscite, that is to say, an expression of the will of a bare and shifting majority of those actually voting, may become a fundamental law of the Commonwealth without any obstacle whatever, except delay, and may completely and tyrannically deprive the minority, and each individual citizen of adequate protection to life, liberty and property.

Under our present system of government the power of a majority of the citizens of the Commonwealth, voting at large, is limited to the election of State officers and United States Senators, and the right, already referred to, of sanctioning or rejecting changes in the Constitution previously discussed and recommended by the representatives of all the people. The initiative and referendum would give them absolute power over the destinies of the minority, and transform Massachusetts from a democracy to a polyarchy.

There are three kinds of tyranny exercised in the world: The tyranny of the one, of the few and of the many, — the autocracy, the oligarchy, and the polyarchy. There is, on the other hand, only one kind of real liberty, and that is the liberty of the one, the few and the many, and no State is fit to hold its head high among the nations of the earth in which that liberty is not insured to the greatest possible extent. It is so insured in Massachusetts, to-day. If this resolution is sanctioned it will be cast away, and, in all probability, forever. Our government will become one of men and not of laws, and Massachusetts will cease to be what she now is, a Commonwealth in

which the highest degree of liberty vouchsafed to men in civilized society can be attained.

The advocates of the measure charge, without convincing proof, that the Legislature now and then is improperly unresponsive to the will of the people. What they clearly mean, however, is that it does not always express the wishes of a majority of the voters. Sir, I dare assert that the Legislature is not the agent of the majority any more than of the minority and that it never ought to be responsive to the will of the majority of the people merely because it is a majority. It is derelict in its duty if it is so. It should be so only when that will seems to it, after an exchange of views and careful consideration, to be fairly in the best interests of *all* the people.

It is conceded, Mr. Chairman, that the initiative and referendum will hand us over to the mercies of a bare voting majority, — perhaps less than half the citizens of the Commonwealth. Can you reflect upon that situation for yourselves, and your children and your children's children, with equanimity, when you stop to consider of what elements that majority may be composed? Not of what it is composed to-day, but of what it may be composed within a few years or within a generation. Even if we could be assured for all time that it would be made up of the honest, liberal-minded, unselfish, law-abiding, and industrious citizens of the Commonwealth, who think kindly of their fellow-men and do not covet their possessions nor envy their deserved prosperity, it still would be unsafe in principle. But suppose, — and this is no wild supposition, — suppose that in, and as a result of, the chaos in the world to-day, or for any other reason operating in the near or the remote future, that majority should be composed of all those elements which are a menace to the peace and security of society as it is at present constituted, — the convict of yesterday or to-morrow, the anarchist, the socialist, the depraved, the degraded of all descriptions, the malcontents, the newly made citizens by whom the institutions of Massachusetts are not understood and to whom they have not become endeared, — who will deny that such a combination is possible, and even natural, and who wishes to entrust himself and those who are dear to him, and the interests of the community which he deems vital, to the mercy of such a majority?

I am opposed to this amendment, —

First. Because I believe that if incorporated into the Constitution it will destroy the essential fundamental principle peculiar to our system of government, — the only one to which we can point with pride; the only one which makes us a free Commonwealth; the only one which is worth living under or dying for.

Second. Because it emphasizes the chief weakness and consequently the greatest danger inherent in a democracy, namely, that the voting power of the criminal, the imbecile, the socialist, the anarchist, the man who scarcely can read and write, and who has been only a few years in the land, is precisely equal to that of the honest, law-abiding, intelligent, high-minded citizen, — to that, for example, of the President of the United States, or the president of Harvard University.

Third. Because it will merely change the location of the sore upon the body politic to a place where it will be more difficult to heal it. That has been the admitted experience in Oregon, as Professor Barnett writes, and in other States. It is idle to suppose that financial

and other baleful influences in legislation will ever cease to exist, and, in my judgment, this measure will merely change its field, perhaps for one which is even more fertile for the seed of corruption.

Fourth. Because there is no considerable or spontaneous demand for the measure; because the movement for it was instituted by one man, not a citizen of Massachusetts, and not an exponent, I believe, of Massachusetts ideals; and because it is advocated mainly by those who believe that the change, if effected, will conduce to their personal advantage and will serve as an instrument for the attainment of their personal ambitions.

Fifth. Because it is based upon the dogma, long since rejected by every decent, law-abiding citizen, that might is right, and assumes that the majority, albeit a narrow majority, shifting from day to day and from year to year, is the only possessor of rights which are entitled to respect and protection. Because it substitutes for the doctrine that "All men are born free and equal," the doctrine that "A majority, — whether it be a benevolent or malevolent majority is of no consequence, — shall rule."

The political terms which are contrasted in this debate are the "*people*" and "*a majority of the people*"; the people, that is to say, the *whole* people, and a bare voting majority of the electorate at large, shifting from day to day and from year to year.

It is an attempt on behalf of the majority of the people to acquire power which they do not now possess, namely, the power to control all legislation, whether organic or statutory, and to put them in a position, which they do not now occupy, of dictating the rights which the minority shall henceforth be permitted to enjoy.

It is indisputable that no State in which the control of the making and enforcement of the laws is vested either in the individual, in a few individuals, or in a majority of its citizens, is a free State, or in any sense enjoys the blessings of liberty.

If, sir, you would transform this Commonwealth from a State founded upon the principle that all men are created free and equal to one founded upon the principle that "might is right," support the initiative and referendum.

If you would assert that in Massachusetts the individual and the minority have no longer any rights which cannot be wrested from them by the majority at its pleasure, then cast your vote for this measure.

If you would announce to the world that Massachusetts is about to fall out of the ranks of the original States, which are the best governed States on the face of the earth, and to discard the principle upon which her and their liberty was founded, that each individual, however humble, may lift his hand, as he may at this moment, and say to the majority, however large and however powerful: "You cannot infringe upon my fundamental rights," then let us submit this measure to the people.

Finally, if you wish humbly to confess to the world that Massachusetts, once known as "the Cradle of Liberty," profoundly disappointed and disgusted by the weakness and corruption inherent in the system of government established by her founders and under which she has lived in peace and prosperity unparalleled in the history of the world to the present day, and, humbly confessing the superior wisdom of

the people of Utah, Oklahoma, Arizona and the rest, desires henceforth to abandon all those principles of freedom for which our fathers have suffered and fought and died, and to become a government not by the people but of the majority, — not of laws but of men, — then proclaim that there shall be no more right within our borders except the right of number, whether the number are the worst or the best element in the population, and substitute for the vital principle of the present Constitution the principles of the Walker initiative and referendum. [Applause.]

Roland D. Sawyer of Ware.

Mr. SAWYER of Ware: To these lawyers who are trained to think exactly and speak concisely, this ten minute limit upon debate works no hardship; but to a preacher whose chief trouble is once a week to spread a ten minute thought over thirty minutes, to condense a thirty minute address into ten is an experience new and terrifying; in fact so terrifying that I shall not attempt to develop certain arguments for the initiative and referendum that I intended, but rather shall take my time to seek to answer some arguments that have been made on this floor in this debate against the adoption of the I. and R. And, Mr. Chairman, I want to say to begin with that these objections which have been made to the I. and R., the objections of the gentleman who has just taken his seat among them, are all of them theoretical, are all of them bugbears which are hatched up in their own minds. In one of the States which have adopted the I. and R. have any of these terrible things come to pass? In little Switzerland, which has had the I. and R. since 1892 for constitutional amendments and since 1898 for laws, none of these troubles has come to pass. No less authority than James Bryce says that Switzerland is the best governed democracy in the world.

We would have some faith, possibly, in some of the opposition to the I. and R. if we did not realize that this same opposition centered in this State for ten years against the passage of the public opinion bill, — not a very terrifying measure. But they opposed it, Mr. Chairman, because they did not want the people of this State to have any opportunity to express themselves. Is it not the same fundamental opposition which is brought against the I. and R. at the present time?

Now, Mr. Chairman, they say that there is a great bulk of conservative people in this State who are against the adoption of this measure, who do not believe in the referendum and who do not trust the referendum. Has that been so when these conservative people have assumed the reins of public office? Why, Mr. Chairman, a few years ago when Governor Wolcott was Governor, certainly a conservative man, and they brought up the proposition of once more restoring the street railway tracks upon Tremont Street and they brought a bill in here and it seemed likely to pass, did that man distrust the referendum? He refused to sign the measure unless that measure carried with it a referendum to the people of this city who should be affected.

Take Governor Winthrop Murray Crane, another conservative man. When he was Governor here and when the great subways were built

they wanted to take them away from the people and give them to the corporations. He refused to sign the bill and threatened to veto such a bill if it were passed if it did not carry the provision of a referendum to the people. These conservative people who say they are against the I. and R. when they come face to face with the problems of legislation find their theoretical objections disappear and they thrust back upon the people themselves the decision of public questions.

Now, Mr. Chairman, it always has been objected to that the adoption of this measure will destroy representative government. When they make that objection they act upon the assumption that we already have representative government. Now I am not going to say that we do not have it; I believe that we do have it. I am not going to attack the Legislature, either the House or the Senate. I frankly admit that I think that has been overdrawn. In the majority of cases we have a just representative government on Beacon Hill. The great bulk of the three thousand measures that come before us each year are decided upon their merits. But, Mr. Chairman, there are sometimes extraordinary cases that come before us and they are not decided upon their merits. Then is the time that we need the I. and R.

When, Mr. Chairman, perhaps the New York Central wants to get hold of the Boston and Albany Railroad, or the New York, New Haven and Hartford Railroad wants to get hold of the Boston and Maine Railroad, — then is the time that we need the I. and R., that the people may curb this situation. So, not as a protection *ordinarily* but as a protection in the *extraordinary* instances, do we need the I. and R.

Now I am not willing, Mr. Chairman, to admit that the efficiency of representative government in our Legislature has not been impaired. But it has not been impaired entirely from the sources that have been stated in this debate. The menace to representative government is not so much the men who come down from the western part of the State, men from the farm who do not know, or the representatives who take bribes, — there is very little if anything of that sort, — but representative government has been impaired because there are too many lawyers in the Legislature each year. De Tocqueville, when he made his visit to this country and studied our democratic institutions, prophesied that that very thing would come to pass.

> The more [he says] we reflect upon all that occurs in the United States, the more shall we be persuaded that the lawyers, as a body, form the most powerful, if not the only, counterpoise to the democratic element. In that country, we easily perceive how the legal profession is qualified by its attributes, and even by its faults, to neutralize the vices inherent in popular government. When the American people are intoxicated by passion, or carried away by the impetuosity of their ideas, they are checked and stopped by the almost invisible influence of their legal counsellors. These secretly oppose their aristocratic propensities to the Nation's democratic instincts, their superstitious attachment to what is old to its love of novelty, their narrow views to its immense designs, and their habitual procrastination to its ardent impatience. (Vol. 1, pp. 355–6.)

There is misrepresentation in our representative body. It is because the representative body is not representative of all classes, and we reach all classes only when we give the people the veto power over its action. Why, Mr. Chairman, the Governor has the veto power over the Legislature and the courts have the veto power over the

Legislature, why not give the people the veto power over the Legislature when there shall come those extraordinary instances when the Legislature fails to represent the people?

It has been objected that the people will not know and will not pass intelligently upon the things brought before them. Mr. Chairman, do you realize, and do we realize, the great bulk of public information that will be set in motion when a thing is referred to the people? All over this State the best men will be discussing it *pro* and *con*. The ablest writers will be writing their editorials *pro* and *con*. Printed pages by the hundreds will be sent to the voters. There will be no lack of opportunity for the voters to know and their intelligence will be secured.

It has been objected that we shall have a minority-adopted Constitution under the I. and R. if it is applied to constitutional amendments. It has been said that there will be a poorly attended election and a minority will adopt the constitutional amendment. Mr. Chairman, I wonder how many of us have read this document on the initiative and referendum published by the commission appointed to compile information. If you will turn to pages 84 to 87 of that document (Bulletin No. 6) you will find that every single one of the amendments to the proposed Constitution that has been adopted by the people since 1820 and prior to 1915 has been adopted by a minority. In only one instance, Mr. Chairman, has a majority voted upon these constitutional questions, and that was in 1896, when the people rejected the woman suffrage amendment. In some of the instances the adoption of these amendments has been by a startlingly small per cent. Here are six which were adopted by fourteen per cent of the votes cast for Governor. Here are two adopted by three per cent of the votes cast for Governor. Here are two adopted by sixteen per cent of the votes cast for Governor and a group adopted by twenty-eight per cent of the votes cast for Governor. Why, our Constitution at the present time is a minority-accepted Constitution. But we are not suffering. The situation was that had there been any menace in the other amendments the people would have defeated them. It was because they were harmless that they went in that way, and that situation will prevail. The argument for this is to be seen also that in the last four years the referenda on these matters have had a larger percentage of votes, so that last year the referendum on the New Year's holiday had 80.9 per cent of the total vote. So we may say it is safe for us to adopt this proposition.

Louis E. Flye of Holbrook.

Mr. Flye of Holbrook: I have come to believe in a plan for the initiative and referendum because ever since I have been old enough to have any convictions with respect to matters political I always have believed that the Massachusetts Declaration of Rights sets forth the right theories of the right kind of government. During my service in the Legislature I gradually acquired the idea that the forefathers had laid down the right theories of government and that we had been negligent, — we of this and past generations, — in failing to adopt processes of government to carry those theories into full force and effect and in failing to devise ways and means to provide for a

modern adaptation of those theories. Gradually I was forced to the conviction that we had lagged in the procession, that we had failed to keep our governmental processes abreast of our fundamental beliefs and that we had failed to provide just the right kind of political machinery to meet the new needs and the changed conditions brought about by a century and a third of advancement and achievement in science, in education, in industry, in invention, in transportation and in the general way of living. And so, Mr. Chairman, the fact that our fundamental theories of government have become so clearly dependent for their very vitalization and for their execution upon some such machinery as that provided for by the initiative and referendum is the reason for the great, overwhelming popular demand for the submission and for the adoption of this resolution under discussion.

I know it has been set forth by the minority of the committee and on this floor this afternoon that there is no sufficient evidence of popular demand for the initiative and referendum. The student, however, who makes careful analysis of the facts in this particular finds that the necessity for the initiative and referendum has been agitated in Massachusetts for nearly twenty years and that during that time it has been endorsed by nearly every labor-union in the State and has been advocated in the platforms of one of the two great political parties during the whole of that time. In four out of five of the last State elections the Governor elected advocated the initiative and referendum in his campaign before the voters of the Commonwealth. In the legislatures in nine out of the past ten years the initiative and referendum has been supported by substantial majorities. And in forty-two very conservative districts, as you know, the initiative and referendum has been endorsed by voting majorities ranging from two to one to six to one. Any one who is familiar with political statistics will be willing to say upon an analysis of the votes in these particular districts that if all of the people of the State had been voting upon this question the majority in favor of the initiative and referendum would have been at least three to one.

It is impossible to deny the significance of such a vote as this. To deny the significance of such a vote is deliberately to shut your eyes and to close your ears in the face of a popular demand ascertained by the fairest of means and made manifest in the clearest and most definite of terms. How, Mr. Chairman, how are you going to determine what is the popular opinion, — what is the opinion of the people at large with respect to the adoption of the initiative and referendum? The people already have expressed their approval through the party platforms; they have expressed their approval through the conventions; they have expressed their approval through the election of men who have advocated the I. and R. In these many districts, in every district, in fact wherever the question has been submitted for their approval, they have endorsed it by overwhelming majorities, and in nine out of ten of the past legislatures they have given it a substantial majority.

Finally, Mr. Chairman, I submit that they have shown their approval of the I. and R. by electing to this very Convention a substantial majority of men who before their election had professed their intention to support a measure making provisions for the I. and R.

I am familiar, Mr. Chairman, with the fact that these ideas have been expressed many times on the floor of this Convention, but I sub-

mit that these facts are worthy of repetition; for unless we have the effrontery to deny that this is a representative assembly gathered here for the purpose of ascertaining the popular will and carrying out the manifest popular will, unless we have the effrontery to make that denial, then these facts constitute the all important, yes, the controlling argument in support of a speedy submission of this provision of the initiative and referendum.

Now, Mr. Chairman, it ought to be brought home that public opinion in favor of the initiative and referendum has been in the making for the past fifteen years. Year after year men have gone from this very chamber in which we sit, carrying back to their constituents the conviction that there has existed here an invisible government holding back reform, retarding progress, securing immunities for some and special privileges for others; and year after year men have carried back to their constituents from this chamber the gradually developing idea that the only way of killing off those sinister influences, the only way of meeting those evils, the only way of making unprofitable the traffic in immunities and privileges, was to invent a piece of political machinery whereby the people of their own right, at their own discretion and in their own time, may compel the enactment of needed laws and take an effective appeal from legislative wrongs. [Applause.]

Ralph S. Bauer of Lynn.

Mr. BAUER of Lynn: I will endeavor in these few moments allotted to me to tear aside the veil of pretense and show the members of this Convention that the real factors that were responsible for the great desire on the part of the people of this Commonwealth for the initiative and referendum are the same factors that are present among us opposing that desire. It is the corruption and the immoral political efforts of the public service corporations for years in this Commonwealth that has made the people determine in their own minds that they should support some corrective for this.

No one who has watched the workings of the Legislature nor one who has watched the systems applied there by the public service corporations can fail to see the pregnant and secret and immoral political influences that have been wielded for years by those special privileges. It is a protest against the immoral political conduct by those privileges, and it is as a corrective for these abuses, that the people of this Commonwealth have asked for the initiative and referendum. And it is because the forces who oppose the initiative and referendum know in their own hearts that if the matter is submitted to the people, the people will adopt it, that they are opposing it here on the floor of this Convention.

I was much amused the other day when the gentleman in the fourth division (Mr. Underhill of Somerville) stated that there was very little need for an initiative and a referendum now because many of the practices of which the public service corporations have been guilty have been removed from the Legislature and now have been relocated with our State commissions. I trust that the gentleman in the fourth division was conscious of what happened in this Legislature during its past session, when the Boston Elevated Railway Company in the

last weeks of the session tried to drive through a bill that would nullify the twenty-five year contract they made with this Commonwealth, guaranteeing all their patrons a five cent fare. I trust he will remember that the Bay State Street Railway Company tried to drive through in the dying throes of the last Legislature a bill that would guarantee to them a straight six cent fare from 89 cities and towns in this Commonwealth. And I refer him to the constant attendance of "legislative-fixit" lawyers representing the public service corporations before the committee on Taxation and the committee on Street Railways all last winter, and ask him if he thinks those influences have been removed from the Legislature.

I have no patience with a delegate who can cry "Shame! shame!" from one end of this Convention, and "Wolf! wolf!" from the other end of the Convention hall, and then build up straw men to fire at, because he has no other argument, in the belief that he is convincing any one in this Convention that the I. and R. is going to bring disaster upon us.

The other day I was looking over the reports of the Secretary of the Commonwealth's office of the legislative agents who have appeared before the Legislature during the past five years, representing our special public service privileges and representing them for remuneration, and I was astounded, Mr. Chairman, to find that forty-seven of those legislative lobbying "fixit" lawyers were present as delegates in this Convention. I was looking over the "other expenses" of the New York, New Haven and Hartford Railroad as referred to by Mr. Anderson of Brookline the other day, and I found that among those "other expenses" lawyers who received silent retainers from the New Haven Railroad, were seven who are now present in this Convention as delegates. And I was looking over the "yellow dog" pay-roll of the Bay State Street Railway Company sworn to by the treasurer of the Bay State Street Railway Company before a tribunal that was arbitrating the wages of employees of that company, and I found nine men on that "yellow dog" pay-roll who are present here as delegates to the Convention. And I want to go on record, Mr. Chairman, and say that the boldness of the public service corporations in influencing legislation in any Legislature in any year in this Commonwealth has never been equal to the boldness of those same corporations in trying to pull their wishes through in this Convention.

We have heard much about the Union for a Progressive Constitution and its endeavor to pledge delegates for the initiative and referendum, but we have heard very little about the other organization that had for its purpose a publication and propaganda for the defeat of those candidates who believed in the initiative and referendum. And I personally underwent some of the sting of that propaganda and know whereof I speak. They operated under the name of the Committee on Publicity for the Constitutional Convention. They had a fund, contributed between March 26 and May 18, 1917, of $36,910, — $27,450 of that fund being contributed by directors of public service corporations and public utility corporations in this Commonwealth. These are the factors, Mr. Chairman, that are afraid the initiative and referendum will permit "unwholesome" laws to be adopted by the Legislature. These are the factors that are so solicitous for the rights of the minority and the rights of the individual citizen.

What they really mean is the might of the minority and the might of the individual citizen.

I have picked at random some of the largest contributors to this fund and I am going to read them so that the delegates may know what the outside influences in this drive against the I. and R. really are.

We find $1,000 contributed by Robert Winsor of Kidder, Peabody & Co., director and real controller of the Boston Elevated Railway Company, director of the Boston Consolidated Gas Company, trustee of the Massachusetts Gas Companies.

We find $1,500 contributed by William A. Gaston, president of the National Shawmut Bank, the bank of deposit of the largest local public service corporations.

We find $1,000 contributed by Charles G. Bancroft, president of the International Trust Company.

We find $500 contributed by Frederick E. Snow, director of the Boston Consolidated Gas Company, trustee of the Massachusetts Gas Companies, director of the New England Gas and Coke Company; who drew up the plan for the consolidation of the street railway companies into what is now the Bay State Street Railway Company, also the Massachusetts Electrics.

We find $1,000 contributed by Henry N. Sweet of Hornblower & Weeks, bankers and brokers of public service securities.

We find $1,000 contributed by Edwin Farnham Greene, director of the National Shawmut Bank.

$1,000 by Frank E. Peabody of Kidder, Peabody & Co., director of the Boston Elevated Railway Company.

$1,000 by Frank W. Remick of the firm of Kidder, Peabody & Co., trustees of the Boston Suburban Electric Companies, director of the Middlesex and Boston Street Railway Company.

$1,000 contributed by Frank E. Webster of the firm of Kidder, Peabody & Co.

$1,000 contributed by Charles S. Sergeant, president and director of the Boston and Albany Railroad, vice-president of the Boston Elevated Railway Company.

$1,000 by William Endicott of the firm of Kidder, Peabody & Co., director of the Boston and Albany Railroad, director of the Newtonville and Watertown Street Railway Company.

$1,000 by Philip Stockton, president of the Old Colony Trust Company, director of the American Telephone and Telegraph Company, Haverhill Gas Company, Fall River Gas Company, New England Power Company.

$1,000 each by Galen L. Stone and Charles Hayden of Hayden, Stone & Co., directors of the Boston Elevated Railway Company and of the Boston and Worcester Street Railway Company.

$500 by J. A. Downs of Hayden, Stone & Co.

$1,000 by Edwin F. Atkins, director of the West End Street Railway Company.

And so it goes right down the list, amounting to $22,500, contributed by directors and trustees of these public service corporations.

Allocating them by corporations, we find that $8,350 has been contributed by Boston Elevated Railway Company directors; $4,000 contributed by trustees of the Massachusetts Gas Companies; $5,000

contributed by members of the firm of Kidder, Peabody & Co., operators of the Boston Elevated Railway Company; $4,000 contributed by directors of the National Shawmut Bank; $4,100 contributed by directors of the American Telephone and Telegraph Company; $2,000 contributed by directors of the Massachusetts Electrics, showing that directors of these public service corporations contributed $27,450 out of a total of $36,910, — a fund used for the purpose of defeating the initiative and referendum candidates for this Convention.

Francis N. Balch of Boston.

Mr. Balch of Boston: Throughout the whole of this long debate I have been patiently watching and waiting for a certain change of tone. In the early days of the debate the leading proponents on both sides opened up for us most ably the general proposition, *pro* and *con*. From that time on, throughout the middle period of our debates, it appeared to me that we heard chiefly from extremists and enthusiasts on the two sides. We heard on the one side from gentlemen for whom the letters "I and R" spell Infamy and Revolution. We heard on the other side from gentlemen who believe that the sacred text of the "Massachusetts Plan" sprang in full-fledged perfection from the brains of its originators and that any modification thereof is necessarily a "joker." I have been waiting and watching for the appearance of the middle-of-the-road men, — that group of men with whom the final decision, both in this Convention and amongst the people, if the measure is submitted to the people, will rest. I have been waiting to hear from those men who do their own thinking, endeavor to keep their balance, and do not perform messenger service for any of the influences, — yes, the sinister influences, — on either side of this case. And that change has come about. We have been hearing more and more constructive suggestions; more and more such debating as Mr. Lowell and Mr. Bates on opposite sides have furnished us has cut right down to the question actually before us; to possible specific improvements of this measure; possible specific dangers of it. But unfortunately, as I believe, just as we are reaching this fruitful stage of debate it is to be cut short.

I told my constituents in seeking election to this Convention that I came to study the question, to consider it, — but with a prepossession in favor of a sane and reasonably safe-guarded referendum measure. I have studied, I have considered, I have listened and I have learned. I am still in favor, and more strongly than I was in the beginning, of a sane and reasonably safe-guarded referendum measure; but I never shall vote for the measure now before us in its present form because of my belief that it cannot possibly be brought within that definition.

I know of my own knowledge that there are legislative abuses. I also know of my own knowledge that they have been grossly exaggerated in some of the arguments presented to this Convention. I know, and we all know, that there is discontent in this Commonwealth, — for which I thank God. Discontent is divine; content is spiritual death. I believe that a sane referendum measure would help to reform those abuses in the Legislature and would help to translate that divine discontent into still more divine progress.

Those are the two reasons why I am in favor of a referendum measure.

I now wish to point out to you three specific points which are the chief difficulties that prevent my being able to stand for the measure as it now exists. In taking up each of these points I shall try, — urged thereto by the question which my brother Anderson has so fairly put to every speaker who has made a destructive criticism as to "what he proposed to do about it," — urged by this customary question, I say, I shall try, for each of these objections, to offer a constructive suggestion.

I take up my first point. My first point applies only to the initiative. It is not an objection applying to the referendum. It is that under the initiative system we shall lose the advantages of *deliberative government.*

Much has been said of *representative* government and the effect on it of these proposed governmental innovations. Very little has been said of *deliberative* government. Now the real *point* to my mind is, — the real virtue of the present system is, — its *deliberative* character; and that is precisely what we are going to lose. Gentlemen, it came as a shock to me, I wonder if it will come as a shock to any of you, to realize that if the present resolution should be adopted we should be giving to any single self-constituted individual or corporation in this whole Commonwealth, any crank, any fanatic, any bigot, any corrupter or trickster, precisely the same powers that the people have given to this entire Convention. That is literally true, as I understand it, with one exception. This one man or corporation, to whom this vast power is to be given, must be able to raise $2,000 with which to buy an initiative petition. Subject to that sole proviso he is to have singly, in his one hand, precisely the same powers that this whole body has; for, gentlemen, any one can frame any measure he chooses, as absurdly as he wishes, as one-sidedly as he wishes, as fanatically as he wishes, as trickily as he wishes, and hire nine men to sign a petition with him and force the people to act on that measure and on no other; and that is all we can do. That is all we can do, sir.

Now, sir, I have been impressed with two facts by my experience in this Convention. In the first place, I have been impressed with the vast virtue that resides in locking up together a number of men who do not agree and making them fight it out. I have been impressed with the way in which reasonably intelligent and sane men who believe in the beginning that they are hopelessly far apart may come together if you can only let them talk sufficiently face to face across a table. Sir, I have been serving on a committee which has had before it a long technical job in trying to draft a reform measure for State administration. Not only day after day but week after week, some of the best informed and wisest minds in this Convention have made their drafts of this measure only to find on reconsideration that further errors and oversights had crept in. And that has happened not half a dozen times but the occasions would have to be measured by dozens. I ask, how is this constructive work ever to be accomplished if one single fanatic, bigot or crank is to be permitted, solely and singly, to frame the measure in any way he pleases? I tell you, gentlemen, before we lose that which is the chief advantage of our jury system; before we lose the advantage that every lawyer

is aware of in getting a compromise by locking the opponents up together and letting them thresh out their differences; before we lose the chance of political opponents reaching an agreement by sitting down and talking like men across the table, — before, in short, we forego *compulsory deliberation* in drafting our laws, we should consider very carefully.

It is no answer to say: "The people have sense, we must trust them." Very true, the people have sense and I am willing to trust their sense; but the people have nothing to do with this proposal. You are proposing to trust, not the people, but to trust that there is no such thing as a fanatic, or a bigot, or a fool, or a crank in this Commonwealth who has got $2,000 to spend in buying an initiative petition. That is what you have got to trust. And that I cannot trust.

And as an illustration I ask you to consider, gentlemen, what would have happened on our anti-sectarian or anti-public aid resolution under the proposed initiative system? You know what did happen in this Convention. You know that by the hammering out process we finally brought to birth a measure which I believe was statesmanlike, which represented a fair compromise. But what would have happened under that system you are proposing? The most extreme fanatics on both sides would inevitably have forced the people to pass on the narrowest and most bitter form of legislation on both sides of those subjects. Is that what you want to create as our Massachusetts system?

I must hurry along although I had more I wished to say on that subject.

I now endeavor to treat the constructive side of this difficulty, — but of all my objections, this is by far the most difficult to treat on the constructive side. I do not think it can be treated satisfactorily and fully except by cutting out the initiative feature. And yet it has occurred to me that there might be at least certain palliatives, even if there were no cures, for this most dubious measure that you propose to add to our legislative system: For instance, at least, and as a minimum requirement, that the form of the legislation to be initiated as well as its title should be approved by the Attorney-General or some other responsible public official. You could at least require that the proponents of a measure should work out the form in consultation with the Attorney-General or some other official. I leave it to wiser and more ingenious heads than mine to say whether or not it is possible to work out a method whereby the ten putative framers of a measure for an initiative petition should be forced to confer for a certain number of hours with ten picked opponents of it. I do not know whether that is practical or wholly chimerical. Very likely it is wholly chimerical. If it is wholly chimerical, if both those suggestions are wholly chimerical, then I have nothing better to suggest; and if nothing better is forthcoming, then I for one shall feel obliged on that single point alone, very definitely and with no possible doubt in my own mind, to vote against an initiative measure. But I believe myself that something can be worked out.

My second point is much narrower, much more susceptible to corrective treatment. My second point is the "boughten" petition. Forty thousand signatures at a nickel apiece come to $2,000.

"Boughten" signatures usually are so defective that to be safe one must have at least fifty per cent excess. On the other hand, of course, any measure that has any merit will get a considerable number of signatures gratis, so that I conclude between those opposing factors that $2,000 will not be very far from the cost of a petition and that anybody who can raise $2,000 will be able to get one. It may be he will have difficulty for a very absurd petition in getting them for a nickel apiece; he might have to raise the price to a dime. In that case he would have no difficulty in getting all the signatures he wanted. In that case he would require $4,000. Gentlemen, have you considered how you like putting your legislative system up at auction? We have been accused of being a plutocracy. Possibly there has been some truth in the charge. At all events, we have tried to avoid the appearance of it; we have tried to preserve the appearance of democracy. But here, I confess, is a proposition which appears absolutely cynically to recognize that legislation is for sale. How would you like it if the same thing were done in a little clearer form, a little less disguised? Suppose we said flatly that anybody who wanted to pay in $2,000 could introduce any law that he wanted in the Legislature but nobody else could; would you like that? I think not. This feature of the proposed resolution does not meet the approval of its framers themselves. Even with those enthusiasts who have felt so committed to the "Massachusetts Plan" that they opposed any alteration whatever, it has gone against the grain. It is with real disgust that they have had to swallow this feature of the mercenary petition.

Yet this trouble is susceptible of an easy cure. Judge Lummus has pointed out the way. Let your men, instead of being *bought* to sign, go to their town hall or their polling-places and register. It has been said by Mr. Walker on the floor of this Convention and in private conversation that "it is impossible," that "they will not do it." Mr. Walker has said that "nothing short of a revolution" could induce four per cent of the voters of the Commonwealth to go to their town halls and sign petitions. Think of that! On the one hand, a revolution, when the people as one man rise in their rage and topple over their government; and on the other hand, four per cent of the registered voters going a quarter of a mile to their town halls and writing their names! Is this last equivalent to that first? Does it amount to a revolution? Is it true that only revolutionary measures could attain that result of inducing four per cent of the registered voters to visit their polling-places? I say no; if you cannot get four per cent of the voters to do that much, — or three per cent, I do not care which it is, — if you cannot get three or four per cent of the voters to do that much you have no right to bother the whole people to go to the trouble of dealing with the question, because if you cannot get that per cent to do that much there is no real popular demand for it.

So much for that point. Time presses. I come to my third. My third point is, the way in which the present measure leaves any subject-matter whatever, that anybody chooses, to be put up to the people who are thus to become, as it were, the editors of a "Notes and Queries" column. Any curiosity seeker under this system can force them to try to answer any question, no matter how technical, no matter how dry and uninteresting. I believe, gentlemen, that the

effect of that would be in practice that the people would become so tired of their editorship that shortly they would close down the column and refuse to answer any more inquiries! And worse than the curiosity, — or notoriety, — seekers will be the corrupting corporation and the privilege-seeker which may puzzle the people with any technical question it wishes if it is willing to take a chance on spending $2,000 for what it may get out of it.

On this subject I wish to tell you what my eyes have seen and my ears have heard. A few years ago I was traveling through Florida and came to one of those little somewhat pretentious cities which have a metropolitan aspect while at the same time they really are extremely small. In the evening, going out for a walk in the public square of the place, we found two wagons, each containing a band, one a string band, which our Southern friends call "Sweet music," and the other a brass band. These wagons were covered with placards which led my friend and myself to study what it was about. We discovered that the situation was as follows: The city had built itself a city landing in the small river nearby and was about to issue bonds to pay for it. Two rival banking houses wished to underwrite this issue. One of the banking houses found that the serial bond system would suit its private interests; the other found that the sinking fund method would suit it. As you all know, the sinking fund versus the serial bond question is a very technical and somewhat blind problem in expert finance. The rival banks, through the initiative, had procured the matter to be sent to referendum and the people were about to vote on it, and the string band represented the serial system and the brass band was champion for the sinking fund system. It was universally thought that the serial bond system would win, because the voters, especially the colored voters, preferred the "sweet music" to brass music!

Now, gentlemen, in that case was it the "voice of the people" that was to answer the question? It seemed to me it came very much nearer being the voice of the "sweet music" band!

I do not wish to be understood to exaggerate. I know we should not see such absurdities in this Commonwealth. I am aware that the sense of humor and the sense of balance in our voters never would permit such fooleries in this Commonwealth. But what I mean to say is this: If you set the people to trying to answer technical financial, or technical electrical, or technical economic questions, you cannot expect satisfactory results.

But it is said this will not happen in practice though it might in theory. To come right down to actual things why will not one of the first questions to go to the voters on referendum be whether we shall have "Bitulithic" or "Topeka No. 2" paving on our State highways; or asbestos shingles or quarter-inch asphalt shingles on our roofs, complicated by the fact that nobody yet knows whether quarter-inch asphalt shingles can be made, as I understand it?

I tell you, the "voice of the people," if it is not literally the voice of God, is at least as near to it as you can get in a democracy, because it is the source of ultimate authority. But it is no easy matter to *get* the voice of the people. It is like trying to get some sleeping giant to speak. Not easily are they roused to clear speech. If you go to them with a question that is close to their hearts you can

rely on their answering it, because it is near their hearts and they will settle it. If you go to them asking them a technical question, or a petty question, you will not get the voice of the people. You will get the voice of a small percentage, and that percentage will be a section picked out because it has an axe to grind. It will be a section picked out because it has a selfish interest, and it therefore votes on it while the rest of the people do not vote on it. Is the voice of that small and selfish percentage entitled to the deference we all justly pay to the real voice of the people? Is its decision likely to be the wisest for the whole community? Does it constitute ultimate authority? I answer unhesitatingly, — No!

I must hurry along. A second answer may be made to the objection I now raise. This answer was made by Senator Bates, — "Trust the people." Gentlemen, I do trust the people. I trust the people to have sense, to have hard Yankee common-sense enough to know that they are not and cannot be experts on everything. I trust them to have sense enough to know that it would be a sheer economic waste even *if they could* be made experts on everything, for it could be done only by sacrificing their proper businesses. I know for one that I have not got knowledge enough or experience enough to answer the questions that would be put to me under this system except after study for a length of time which I could not afford to give; and it is my opinion that there is not a man in this Convention with brains enough and wide enough range of knowledge to answer the questions that would be put to him under this system without more study than he could afford to give to them. Of course you or I could answer, — the mass of the voters could answer, — after giving the necessary study, after giving the weeks necessary to sort out and weigh conflicting technical evidence, after hearing long arguments *pro* and *con*, — yes, then we could answer it. But are the people going to do that? No, gentlemen, I trust them to have too much sense to do it; and they *have* it!

The next answer made is that the Legislature is just as bad as the people in this matter of not studying technical questions and weighing evidence. That is partly true. The Legislature itself as a whole does not hear first hand all the arguments on the technical questions it has to decide. It works through a committee system. But it is said: "But the whole committee does not hear the evidence." Well, even that is true, unfortunately. It ought not to be true, but it is true. But what is true is that somewhere in the last analysis under the legislative committee system even in the worst cases some little group, perhaps only a bare majority of the committee, does hear the actual evidence and thresh it out and sort it out and weigh it and go into the technical questions, and that little group reports for the committee. That little group is a group of trustees. It feels its trusteeship. And if there is a suspicion in the Legislature that it has been false to its trust, then the Legislature goes behind it. Otherwise, if the Legislature is satisfied it has done its duty and is reporting conscientiously and after due investigation, then the Legislature backs it up, at least so far as its decisions on matters of technical fact go.

I must try to state the remedy that I have endeavored to work out for this. This difficulty, too, is a very puzzling one to deal with. Here is the best that I have been able to do. If it can be made

practicable, if it is practicable, then it meets the objection pretty well and does something to meet my other two objections as well.

Let us provide for the election of a special body. I hate to call it a commission, but I suppose it must be called so. I know that that alone is enough to damn it in the eyes of many of the members of the Convention. Nevertheless, let us try it. Let us elect them for a long term, or possibly even for good behavior up to a compulsory retiring age. Let this body consist of perhaps fifteen men. Let them be elected on the district system. I dislike the district system of election, because it leads to log-rolling in legislative matters, but in this matter there can be no log-rolling and after all the district system is the best and surest system we know and are familiar with, for insuring that the different sections of the public mind do get reflected.

Now let all measures offered for referendum be submitted to this body of men and let the measures, if they are to go to referendum, be certified by two-thirds or three-quarters of this body in something the following form. I ask your attention to the details of this. I have tried to think of the language of it so as to cover the situation as well as I can.

"We certify on our honor" — I say "on our honor"; I do not want to ask oaths of men of the calibre I should hope would go on such a body as that, for it would be the highest honor in the Commonwealth to be elected to it — "we certify on our honor that we have personally examined into the matter fully and carefully, and without regard to our own personal, political, racial, religious or economic opinions or affiliations we express our opinion as follows:

1. The measure as proposed contains no self-contradictory or inconsistent provisions.
2. The measure contains nothing contradictory of or inconsistent with existing law which does not clearly appear on its face.

You will all see what that is meant to meet; I do not need to expound that.

3. The measure is as clearly and briefly expressed as is reasonably practicable.
4. The measure touches only one subject-matter, or on subject-matters so related as not fairly to require separation.

You will all see what that point is meant to meet. You will all have seen even by your experience in this Convention how without such a safeguard the people's supposed power may be reduced to a nullity by tying up different measures together, — unlike measures.

5. The measure is not misleading in its phraseology or title.
6. The measure and its title are expressed so as not to give undue advantage either to the negative or the affirmative.
7. The measure touches a matter which has been publicly discussed either in the press or elsewhere to such an extent or for such a time that any vote upon it, in our opinion, is likely to be reasonably well-informed.

I have a minute or two left in which I can speak of that. I have no faith whatever in the pamphlet system of informing the voters. Those pamphlets by the hundreds and thousands, yes, the hundreds *of* thousands, will go straight to the waste paper basket. I know it, because I have spent thousands of dollars of other people's money in issuing pamphlets to voters, and that is where they go. Nor was it because I wrote the pamphlets, for I did not. Entertaining and

clever men wrote them, and still they went there. And yet people must have these things expounded to them in some way, or their votes will be nonsensical. I think it is absolutely necessary to find some way of insuring that only measures which have been publicly ventilated go to the electorate.

8. [This is a difficult one.] The measure touches a matter of such large and general public interest as, in our opinion, renders it reasonably probable that not less than two-thirds of the registered voters will act upon it.

9. [and last] The measure contains nothing which requires a special technical education as distinguished from a good general education for its understanding, and contains nothing which requires the sifting of bulky or conflicting evidence of technical facts for its decision.

[Applause.]

Frederick L. Anderson of Newton.

Mr. ANDERSON of Newton: In this debate there has been a great deal of praise of representative government, — perhaps none too much. This has raised the question in my mind, however: How far does representative government really represent? When our Massachusetts people began to spread from those first few local centers, the town-meeting sort of democracy was no longer feasible, and the representative system naturally came in. It is not an ideal plan, as I shall soon show, but it was the best which could be devised, and still must serve as the basis of our governmental system. That, however, does not mean that it never can be supplemented or improved.

While the districts were small and everybody knew all his neighbors, the representative system worked fairly well, but now with larger districts with great populations, it begins to show defects. For instance I have lived in Newton for seventeen years. Although I have been much interested in State affairs, and have tried to do my duty as a citizen by voting at every election, I assure you that in all these years I never found confronting me on the ballot as first term candidates for the Legislature the names of any persons whom I personally knew. Of only a very few of them had I even heard before the canvass began. My only means of information were the circulars sent about by interested parties, a few slight newspaper comments and the remarks of friends, made for the most part in comparative ignorance or from prejudice. Practically I have had no way of knowing what these candidates really thought on the important issues, whether they were the errand boys of the interests, or whether they were independent and wise. Nothing has been more hopeless than my attempt to get my views and my attitude represented in the Legislature by my markings on the ballot. My annual voting has been a chance shot in the dark My representatives on Beacon Hill certainly at the best only happen to represent me. There is no chance for a clear issue, for a mandate, for the consummation of the voter's will.

We have been told that these representatives are our trustees who, in their superior wisdom and virtue, will do what is best for us. If representatives here were the noblest and wisest men in their communities this theory would be endurable, but it would not be democracy. As it is, our legislators represent only the average intelligence and the average virtue of their communities, and the doctrine of trusteeship becomes not even endurable. We want no trustees here

but men whose views are fully known by the voters who sympathize with their desires, and who will vote the will of the people, so far as it can be obtained before the election.

If the people cannot now express their will by the election of legislators, and we have shown that they usually cannot, why should they not in cases of need express their will directly by voting on measures? It is much simpler to vote on a measure than for a candidate. A measure has no personal equation, no party affiliation, presents a single issue, in most cases it is what it purports to be, and is, if adopted, a mandate. You at least have it before you, and can read and reread it at your leisure if you will. I am far more willing to trust the people with measures than with men.

One of the most significant sentences of the minority report is that the people are more interested in men than in measures. This is unfortunately more or less true. Politics in this State are at a low ebb, when the fortunes of McCall, Cushing, Mansfield, Weeks and Walsh are of more importance to the voters than the vital issues, which press for solution on our Commonwealth. And right here I find one of the great advantages of the initiative and referendum. It will recall the minds of the voters from men to measures, it will tend to make our government one "of laws and not of men" as the Bill of Rights insists it should be. It will quicken the flagging political interest of our citizenship, if real questions, vitally affecting our political and social life, are *forced* into the foreground of attention. The worst foe of democracy after all is not the Kaiser, but our own apathy, ignorance and selfishness. The greatest traitor to democracy is the man who has no time to devote to the State and no interest in its welfare. To my mind, such a selfish ingrate is beneath contempt, and has no rights which men who at least take the pains to vote are bound in the smallest degree to respect. Anything is better for democracy than the selfish lack of interest which allows it to stagnate and corrupt. All hail a measure that will make the voters wake up and think, and go to the polls, if only in self-defence! It is needless to add that there are certain powerful forces in this State whose advantage lies in keeping the voters asleep, and carelessly ignorant of what sometimes goes on in this chamber.

But passing from this particular point to the more general subject, the whole thing seems to me to simmer down to the question: Shall the majority really rule? My answer is this: Majority rule may be dangerous, but minority rule is much more so. Or, to put it more concretely, shall one-third of the people, through their legislators, have the chance to block the will of the majority forever? I say: "No". Or, I will put the fundamental question thus: Do we distrust the Legislature more than the people? I reply with some hesitation, but I reply "yes." As I have no political future and do not wish any, I may speak with a frankness which would not be prudent in some other delegates. I say plainly that I distrust both the Legislature and the people, but the Legislature more. Men are still sinful and fallible. Democracy on a large scale, as a government for mighty nations, is only in its infancy after all. It is now passing through a fiery trial, whose issue no man can foresee. I believe in it with all my heart, but I am at the same time most painfully aware of its imperfections and dangers. Let us not hide them from ourselves with professions of a

reverence for the past, which all rightly feel. Let us not like the ostrich put our heads in the sand and dream that all is well. But, facing realities squarely, with our faces to the future, let us now and in the coming years go on to the difficult task of perfecting our democracy, of making it at the same time more democratic and more efficient and just. My colleague from Newton (Mr. Lowell), whose fairness I greatly admire, said Friday that this measure would surely give us a pure Legislature, though a mediocre one. For the sake of all that is good, if it will purify the Legislature, let us adopt it, and then at this very Convention pass also the measures which my colleague hopes will make the Legislature efficient.

During my canvass I consistently replied to all inquiries that I favored the principle of the initiative and referendum, but believed that it should be so safeguarded as to make it a strictly emergency measure, yet not so stringently safeguarded as to make it useless or well-nigh useless, when the emergency arose. With such sentiments I of course was barred from a place on the conservative ticket, and I refused to go on the initiative and referendum ticket on the ground that the Walker proposition was too loose to be safe. So I was on neither ticket, and occupied the perilous position of a real independent. The Walker resolution recently has been considerably tightened up and improved, this debate has strengthened it in my mind and as an expression of my hearty approval of its principle, I shall take pleasure in voting for it in the Committee of the Whole. [Applause.] It seems to me, however, that it should be made still more conservative before being submitted to the people, and I consequently now give notice that I shall offer three amendments in the Convention stage, which, I wish to say emphatically, I regard as of most serious importance.

One provides that the constitutional provision establishing the initiative and referendum shall not itself be subject to an initiative petition.

The second provides that if the General Court in either House in both years rejects a constitutional initiative petition by a two-thirds vote, the amendment shall not be submitted to the people.

The third provides that the additional ten thousand and five thousand signatures in question shall be obtained *after* the rejection of the amendment or the law by the Legislature. [Applause.]

Telesphore Leboeuf of Webster.

Mr. Leboeuf of Webster: I presume that any member rising at this stage of the proceedings, unless he is specially qualified to hold the attention of the members, owes the Convention an apology. I shall trespass on your time but for a few minutes of the time left for the session of the Committee of the Whole. I have risen from a sense of duty at this particular time to make a reply to certain statements made by the gentleman from Lowell (Mr. Charbonneau) who spoke but recently against the I. and R. In the course of his discussion he made the statement that it was given under the present system to the poorest workman in any factory to draft any bill, and that if he could not take it to the Legislature he might mail it there and the committee would take care of it and the Legislature would pass upon it whether it was worth while or not.

I fail to see, in the event of the passage of the measure which is now before the Convention, in what sense, in what particular, this system will be in any way changed or affected. The workman to whom my friend from Lowell has referred will have exactly the same privilege, will have exactly the same right to offer his bill, to draft it if he has confidence in it, and to send it to the State House and have the Legislature pass upon it in exactly the same way as he has at the present time, but he has the additional right, that in the event of the refusal of the Legislature to consider his bill and to enact it into a law, of appealing to his fellow-citizens for a final decision. That is the added right, as I understand it, which he has. I assume that if the measure is unsound, if it possesses certain potential dangers, the members of the Legislature who voted against this measure will see to it as a part of their duty that the people are informed of the potential dangers which that measure contains. And furthermore, it is a part of their duty, and not only that but a greater guarantee. Is it not the most natural human impulse for men to explain their position?

My friend has stated also in his remarks that while it would be fairly easy for people with some means to circulate the petitions, — and I believe this has been repeated this afternoon, — it would be almost prohibitive for people of little or no means to do it. But I maintain that if the measure is a safe one, if it has the quality of public interest, organizations will be found to raise the funds and circulate the petitions; but if it is a measure which is a menace to the Commonwealth, if it be for the benefit of the few at the expense of the many, if it will do harm to the many for the benefit of the few, I maintain that it ought to die a violent and sudden death.

The gentleman has stated also in the course of his remarks that there was little or no social unrest at the present time. This has been dwelt upon so much this afternoon that I shall not keep you at this hour on this question. But I want to say this, that the gentleman did not deny that there was social unrest. Of course we realize at this present hour that the expression of this unrest, of this dissatisfaction, is silent. When the country has called upon its people to coöperate with the government, has called upon the people to get to their tasks and do their work, the people have responded and they are not active in expressing dissent, because is it not true that expressions of personal ambition seem small, seem paltry, in the face of the gigantic task which is before our government at the present time? I maintain that when the people have responded at the present time to the call of their country, when they are giving themselves to their task, this should not be taken as an argument against these very people; that the patriotic impulse of the people should not be taken against them to deny them more direct means of a share in the government.

Gentlemen, I want to thank you for the opportunity for these few brief remarks. I have risen simply from a sense of duty because I felt that I was called upon, having many things in common with the gentleman from Lowell, to make these few brief remarks, and I wish to thank you.

John F. Myron of Boston.

Mr. Myron of Boston: When this question arose in the Committee of the Whole and as debate progressed I did not have any intention of taking part in the discussion. After listening to the eloquent, oratorical and instructive speeches of the able and learned gentlemen who make up this Convention I was fully convinced that anything which I might say would not aid any of the delegates in coming to a conclusion as to how they ought to vote upon this proposition. But after reconsidering the matter I thought it was my duty to arise at this time and say a few words on the proposition which is now before the committee, and I thought I would be neglecting my duty if I did not express my views and observations at this time.

When I was a candidate for delegate to this Convention I went throughout my district, both before the primary and before the election, and told my constituents that I was in favor of the principle of the initiative and referendum. I told them that in my opinion it was a good thing, but I also expressly stated that there could be a bad initiative and referendum bill as well as a good one. After looking over thoroughly and scrutinizing the so-called Walker resolution, after reading it and re-reading it, and after listening to the arguments advanced by those opposed to the measure, I finally have come to the conclusion that the so-called Walker resolution contains everything that is essential for the protection of the people and their property and that it contains nothing which is destructive or derogatory to the principles of democratic government. If there was anything in that measure, or if I thought there was anything in that measure which was injurious to the people or to this form of government under which we are living, I would and could vote against it conscientiously; for the people who sent me here placed a trust in me and they allowed me the discretion of voting in favor of or against any proposition that came up here according to my judgment. I have confidence in the loyalty and in the intelligence and in the honesty of the people of my district when I cast a vote upon any measure which is before this committee.

The people of Massachusetts, — and I base this opinion upon my associating with and coming in contact with them, — want the initiative and referendum. If I am mistaken or deceived in that opinion I am doing nothing more or less here than allowing the people to manifest their approval or disapproval of this measure when it is submitted to them. I would not be so audacious or so bold as to prevent the people of Massachusetts from manifesting or recording their approval or disapproval upon any measure which is about to become a law.

It seems to me that there are two principal objections raised to this so-called initiative and referendum. The first one is that the people of Massachusetts do not want to be inconvenienced or burdened with passing the laws of the State. The second is that the people have not the time or the opportunity to find out about the different bills which would be submitted to them, and if they had the time and opportunity that they would not utilize it in studying the questions. As to the first, Mr. Chairman, I should say that the initiative and referendum

does not intend to substitute the people for the law-making body of the Commonwealth, that it simply gives them a means by which they can compel the Legislature to pass laws for their benefit or for their advantage, and by which they can repeal and abrogate laws which are against the people's interest.

As to the second point, as to whether or not the people have opportunity to study questions and whether or not they would utilize the time to study the political questions which arise from time to time, I should say that I always have found the people ambitious and ready to study questions, political, social and otherwise. I think that the people would be only too glad and anxious to read over the pamphlets which contain the *pro* and *con* on the different measures which come up for submission and for proposals or laws to be put upon the statute-books of this State. Is there a delegate who can say that every man who voted for him for the office of delegate to this Convention knew him personally, was informed as to his ability, his character or his capacity to represent the people? I think there is not one man here who could make that statement. On the contrary, the people voted for him through friendship, they voted for him because somebody else told them to, or probably because of literature which they read which was sent out by the candidate or somebody else in his behalf. Gentlemen, is there a man in this Convention who would say that he was here because of the unwise choice of the people whom he represents? Yet any man who raises objections to this measure because of the fact that the people will not have first-hand information on the questions that are submitted to them, that they will not take the time to study those questions, that they will not understand those questions, will have to admit that proposition. It seems to me that this initiative and referendum is going to bring about better conditions or improve conditions here in Massachusetts. Unquestionably the conditions in Massachusetts are better, to my mind, than those of any other State in the Union. I am not one of those who think that because the people of Oregon have passed upon one or two unwise pieces of legislation the people of Massachusetts will follow suit and do just the same thing. I believe in the integrity, I believe in the intelligence and the ambition of the people of Massachusetts, and I think that under the I. and R. the people of this State will have a voice in their government and will have laws passed for their benefit and the welfare of the whole State.

Robert P. Clapp of Lexington.

Mr. Clapp of Lexington: Some years ago, in the town where I live, the town of Lexington, I was asked to deliver a Memorial Day address. As the occasion approached I called upon the Commander of the Post for the purpose of inquiring how long a speech was expected from me. I asked the question, but I could get no answer. The Commander was a shrewd, hard-headed sort of Yankee and was not accustomed to giving away information before he was obliged to. Seeing that I could get no response from him I said: "Well, George, how would half an hour do?" He scratched his head a moment and said: "Half an hour? H'm! Perhaps that's all right, but still a fellow can say a good deal in fifteen minutes if he knows how." [Laughter.]

Now, gentlemen, I am not conceited enough to believe that I have learned that lesson. I think that, if I do not look out, I may offend against it as much as have some of my predecessors in this debate; but I will come as close to the spirit of the rule as I can.

I hold in my hand a typewritten speech. I have been over it in private; I know just how long it takes. I could read it to you slowly, deliberately, in about twenty to twenty-five minutes, and you would find it one of the most comprehensive speeches that has been made in the whole Convention. It treats the subject adequately, fairly, impartially, and shows you why, under all the circumstances, I have become constrained to vote against the initiative and referendum. But the time is so short that I think I will imitate the example of old Father Taylor, who used to preach to the sailors, as you know, down at the North End. He sometimes would get well started in a long-drawn out sentence, well balanced for a certain time, but finally he would get all tangled up, and he would say: "Well, boys, I've lost my nominative case, but I'm bound for glory!" Now, then, I am going to discard this manuscript [throwing the manuscript on the floor] and sail on for glory. I shall not attempt to cover more than one or two points that are contained in that manuscript.

I want to say first, by the way, that I came to this Convention wholly unpledged upon the I. and R. or upon any other measure. I simply promised that I would give this subject the most careful consideration of which I was capable and that after listening to the debates in the Convention I would come to an honest judgment and vote accordingly. There is more matter of that kind in that manuscript which was intended for my constituents, but I shall try in some other way than through the publication of it in the records of this Convention to get that part of the subject before them.

Now there are three points that I shall develop briefly. I am sorry that I have not the time to develop about four times that number. The three points are these:

First, the extent to which we have invisible government, and how we should deal with it.

Second, the point made against us by our opponents, — of whom I see one right before me in this division (Mr. Coleman of Boston), — that we distrust the people. This they say is the real basis of our opposition to this measure.

And, *thirdly*, I shall touch briefly upon the point that the initiative and referendum is, as I see it, a method not of government by popular opinion but of government by factions and parties.

Now as to the matter of invisible government. My friend from Brookline who sits in this division (Mr. Anderson) described what he means by invisible government. As I understand it, it is the secret, covert influence of the corporations, especially of the public service corporations.

Now, Mr. Chairman and gentlemen, I say, in the first place, that while there is some truth in the charge, yet he is picturing a condition which existed rather fifteen or twenty or more years ago than one which flourishes with any considerable vigor to-day. I think the proof of that assertion of mine is the fact that any one who knows about these things knows that it is harder and harder to get measures through the Legislature in favor of corporations. I appeal to any

fair-minded man in this Convention and ask him if to-day organized labor may not much more easily get remedial legislation in its behalf than may the so-called interests or corporations get something for themselves. It has been increasingly difficult for corporate interests to protect themselves against undue taxation and other restrictive measures. And so it seems to me that the difficulty with this particular feature, — or this particular weakness, as they call it, — of representative government may not be a defect in the machinery, after all. It may be that the trouble lies with the people. Intelligent and enlightened criticism in the last two decades has done much toward putting an end to this invisible government. But if it is not yet fully exterminated, then I say the fault lies with the people themselves. You cannot get any magical machinery of government that will be automatic in its operation; you have got to have a pure and clear motive force behind it. And I say that unless and until the people shall devote themselves so persistently and so studiously to the study of public affairs as to elect honest and capable men to the Legislature, you will find more or less difficulty, and more or less complaint with the laws that are passed. Accordingly, I think that instead of some constructive or new piece of machinery being required, it may be that all that we need is to stimulate still further a sound public spirit; that the appeal which is necessary may be an appeal to the preachers of righteousness rather than to the makers of laws.

My friend from Brookline (Mr. Anderson) said that invisible government is still in operation, and by that he means that the agents of the corporations, with money in their pockets, go out into the country districts even before the election and participate in the selection of candidates for the Legislature. Those agents finance the campaign expenses of those men, lend them money and what not, and in that subtle way put them under obligations; so that after the members are elected and take their seats, being only human men, they are insensibly in the control of the corporate influence; they lose their independence.

Now I cannot close my eyes to the fact, gentlemen, that in so far as that thing is going on to-day it is done through the application of a principle of referendum very like that which is embodied in the proposed resolution. I refer to the primary election law. The theory of that was that through its operation the will of the people would find expression. But how is it in practice? Four men out of every five with whom I converse on the subject admit that it is a failure and say that it ought to be repealed. But the point I am making is that in some way or other, if my friend's contention be true, the interests avail themselves of that principle of referendum and in that way control to a certain extent votes in the Legislature. If, then, the corporate interests, — if these agents of invisible government, — are able through the manipulation of the primary law (which to my mind is quite analogous to that of the referendum) to control legislative action, why may they not just as easily, under the adoption of this referendum, still find some means to further their own interests in opposition to the interests of the people? I shall hope to show before I get through that it is going to be a comparatively easy matter for a group of special interests or some organization under the leadership

of ten men, by doing intensive work and spending money, to get adopted the legislation that they want.

Secondly, the theory of the initiative and referendum is so alluring, — the theory that it enables people to pass good laws and repeal bad ones, which they say the Legislature will not do, — that theory is so alluring that the gentlemen on the other side accuse their opponents, accuse us, of distrusting the people. And along with that charge of distrusting the people they grow eloquent in their praise of the virtues of the common people. The delegate at large who belongs in the fourth division but is now sitting in front of me (Mr. Coleman), speaking out of his wide experience in the Ford Hall forum, where the humblest of citizens show great interest in economic and political discussions, has greatly praised the qualities which that type of people exhibit; and the learned gentleman from Cambridge (Mr. Hart) in closing his address the other day spoke of the common-sense and intelligence and honesty of the simplest of citizens and said that their votes could be trusted just as well as those of anybody else. The implication which these men to whom I have referred meant that their language should carry is, that the opponents of this measure distrust the *common people*, — the laboring men, — and that we are afraid that they will band together and destroy the rights of property. Now, gentlemen, that is not my view. Labor is patriotic. Labor is intelligent also.

But, Mr. Chairman and fellow-delegates, in a sense, — in a sense, — I do distrust the people. Now do not misunderstand me. When speaking of the willingness as well as the capacity of the people to take the time and make the effort necessary to discharge intelligently the duty of voting, — when speaking of that, then I do distrust the people. If I were to attempt to apportion that distrust I would attribute the larger part of it, I think, to those whom we commonly call better educated and well-to-do, and so on. But what I mean is that it is in fact impossible to get the people as a whole to take such an interest in these matters that they will vote. It is hard enough at best, any of you will say, for men to go to polls and vote intelligently upon the election of many of the minor State officers; hence the agitation for the "Short Ballot." Now how much more difficult it is for one to do so when, in the polling-booth, he finds himself confronted with a ballot containing all these questions, concerning many of which he never has heard before! I appeal to you, — I ask you, — is there any one in this Convention who has not found himself in that predicament? Oh, but my friends on the other side say, if a man does not vote, that is his own fault. He has plenty of opportunity to inform himself, and under this plan there will be a pamphlet issued giving the arguments for and against the referred measure; and if he does not take the necessary time for studying the information it is his own fault; he cannot complain.

I want to lay emphasis on this point, for our friends on the other side refer to it as a conclusive answer to what perhaps is the most commonly heard argument against the initiative and referendum, — the argument that only a comparatively small number of people vote on these questions, and that therefore what we get is not the real deliberate conviction and sentiment of the people. To my mind that point is not an answer to the argument. True it is that the man who

stays at home or does not vote has no personal right to complain; no individual right of his has been infringed. But, gentlemen, — and this is the point of importance, — those of us who do vote in the election have a right to complain of the system and to say that it ought not to be introduced; for I say, gentlemen, that when as a fact we find from experience that the votes upon the questions which the ballot nowadays is coming to bear do not represent that which we are really after, namely, the sober second thought and deliberate conviction of the people, — when we find that, we have a right to ask the delegates of this Convention not to impose that system upon us. As makers of the Constitution we should, for the reasons which I have suggested, refrain from putting into effect this imperfect, this ill-working scheme of government.

Now just one thing more and I am done. As I intimated awhile ago, this method of legislating which is proposed in the initiative and referendum seems to me one which may result not in government by popular opinion, for I have shown how you are not as a practical matter going to get that; it is going to result in government by groups and by factions.

I was greatly impressed by the frank admissions which were made by the gentleman from Brookline (Mr. Walker), the author of this measure, the other day in answer to questions which I put to him. He said that the so-called additional signatures which are necessary to make effective the initiative petition after the Legislature has refused to act may be signatures gathered along with all the original signatures; that they are not additional in the sense that they are obtained after the Legislature has declined to act and in the light of that knowledge, but that they may be obtained "any old time", — before the Legislature acts or after, or partly before and partly after. Then he said also that those additional signatures, so called, might be kept in a pigeonhole or in the coat pocket of the initiators until after they found out what the Legislature was going to do, so that they, the initiators, might determine for themselves when they saw what kind of a law the Legislature was going to put through in response to the initiative petition, whether it would be an acceptable law. He said at first they would hold those additional signatures so that if the law proposed by the Legislature was not acceptable to the *signers*, then the signatures might be handed in to the Legislature, with the result that the proposed law would have to be submitted to the people. But on being questioned he admitted what he meant by satisfactory to the "signers" was satisfactory to the *initiators*. Well, gentlemen, as I picture that sort of thing it startles me. Here you have a group of ten men responsible to nobody, men who have initiated some law of their own accord or at the request of some special group or interest with which they are associated. You see men in that position negotiating with the Legislature over the question whether the law which the Legislature wants to pass is or is not sufficiently near that which these self-constituted petitioners have initiated. Is that likely to lead to an improvement in representative government? Is that likely to make government any more responsible? As I think it over and view the picture which those admissions to which I have referred bring to my mind in legislative halls, — as I do that, — I am led to ask what the initials "I. and R." really

stand for? And the question comes to my mind whether on the whole, considering this proposal and the way in which it is likely to operate, — whether on the whole those initials, I. and R., do not stand for Irresponsible and Reactionary government?

Gentlemen, I thank you. [Applause.]

George P. Webster of Haverhill.

Mr. WEBSTER of Haverhill: It is with some measure of reluctance, sir, that I rise to prolong a debate which I imagine already has lasted long enough to weary everybody and everything here, with the possible exception of that uncomplaining monitor above us which, in the rich phrase of Tennyson, "beats out the little lives of men," but which perhaps never has been subjected to a more severe test of endurance than in measuring the apparently interminable procession of this argument. Sir, through all the discussion of this measure, as of all measures long prolonged, runs the thought of amelioration of social and economic inequality, and that has been plenteously alluded to here. We have heard much about the equality of opportunity in this country, — that any poor boy may aspire to wealth and fame if he has character and ability; and of course without the possession of those such a reward never can come. But, sir, I want to consider that phase for a moment with you, and as sometimes an important truth may best be conveyed in a parable, I invite you to join me in a little flight of fancy.

Imagine ourselves seated upon the magic carpet of the Arabian Nights, and sit tight, for we are going to fly fast and far, both in space and time. [A pause.] There! Now we are in old Spain, in the year 1494 or 1495, let us say. And imagine me as a mentor of youth, a pedagogue or a Sunday-school superintendent or something of that sort, and I am addressing my class. And I say: "Boys, this is a land of glorious opportunity. There is nothing legitimate to which you may not properly aspire if you will only do as I tell you. Why, you are all old enough to remember that discredited old vagrant Cristobal Colon" (which, as you all know, is the Spanish version of Christopher Columbus) — "that discredited old vagrant Cristobal Colon who used to go pottering up the street with a roll of charts under his arm, and how all the standpatters of that day, some of our best church-members and heaviest taxpayers, used to point him out to their country relatives when they had them in town, showing them the sights, and say: 'See that man over there? Well, that is Cristobal Colon. He is nutty; well, you know, he has got a wild, crazy idea that the world is round. He is awfully funny; I should like to call him over and give you an opportunity to hear him talk, but I wouldn't want people to see us talking with him.' And you remember, boys, he used to go up and lobby around the palace till our good King Ferdinand got so out of patience with him that he gave orders that the 'old map peddler' was not to be admitted to the palace again. Then our dear Queen Isabella took pity on him and she went and pawned all her personal jewelry with an Israelite, all her rings and brooches and bracelets and necklaces, and then with the proceeds of that pawn-ticket in her own fair hands she went to Cristobal Colon and said: 'In hoc[k] signo vinces!'"

(And here, Mr. Chairman, let me interpolate an aside just in confidence between you and me — *entre nous*, as our French friends would say. It is my personal recollection and belief that there was a jeweled garter included in the collection of jewelry, but being a man of exceptional modesty I purposely refrained from mentioning it.)

"And you know, boys, all our conservative citizens said that our dear Queen had done an unwise thing in giving so much money to a man like Cristobal Colon; that he would not make good use of it, he would fritter it away, and she had much better have deposited it with some bank or trust company. But Cristobal Colon took the money and what did he do with it? Why, he went out and bought three old scows, the Pinta, the Nina and the Santa Claus, which were in such horrible shape that the underwriters would not give them a cent of insurance even for the coastwise trade; and in them he went across and discovered a new world.

"Now, boys, you will see that if you will only work hard and study hard, be honest and tell the truth, wipe your noses occasionally, when you grow up you can every one of you go out and discover a new continent." [Applause.]

Well, now, Mr. Chairman, I submit that it would be just as sensible to give such an assurance to youth in that day as it would to tell every poor boy in our industrial society to-day that he has got a chance to be a millionaire. Why, Mr. Chairman, in every regiment there must be a thousand privates to every colonel. Would it be sense to go to those privates, every one of them, and say: "Why, there is no reason why every one of you cannot be a colonel"? Compare the thing; it cannot be done. In a State where you must have a thousand operatives to every man in the manager's office, it is absurd to say to every boy that there is equality of opportunity; visionary, ridiculous!

A great deal has been said about the right of individual petition. Oh, I have heard that so frequently in the Legislature! They say: "Why, we have the greatest power of initiative in Massachusetts that the world can show. Anybody can come down here and introduce a bill." Yes, that is true; no matter how foolish it is he will find some member of the Legislature equally foolish who will indorse it and put it in. It is just as easy to get a bill introduced in this Legislature of ours in Massachusetts as it is to drop a dime down a well, — and just about as profitable in a great majority of cases. Easy enough to get it there; it is another thing to get it out with any favorable action, no matter how meritorious it is. What kind of sense would a man show in piling up sheaves and bales of bills of lading of goods that he never expects to receive?

James F. Aylward of Cambridge.

Mr. Aylward of Cambridge: This self-imposed limitation of ten minutes has the advantage of compelling one to follow a rule of an old professor of mine who at one time said that a speaker should have three things in mind: To have something to say, to say it, and sit down. The rule, as I have indicated, compels the latter. A great many speeches have been made in this Convention which violated the last provision of this rule.

I have been very much entertained by many speeches on both sides of this case, but I have been particularly amused at the statement that there is no public demand for this measure. I venture to assert, Mr. Chairman, that in the election held for this Convention by far the principal idea in the minds of the voters for which they were working was the passage of this initiative and referendum. For twenty-five years it has been agitated in this State. Twenty years ago I first helped to agitate it myself. After the splendid and lucid explanation of the measure by the gentleman from Brookline (Mr. Walker) who was followed by his colleague from Brookline (Mr. Whipple), who among other things said that the rodents came back to the cheese, I agreed and with others I laughed long and loud. But the gentleman from Amherst (Mr. Churchill) said that the fact of that laughter made him profoundly sick. I laughed because I considered it a hit, a very palpable hit, and the sickness of the gentleman from Amherst was not, I think, on his part, the "falling sickness." No, it indicated the falling sickness of you and me and the rest of the voters in this Commonwealth.

There have been many statements made here regarding the responsiveness of the Legislature. Some have stated that the Legislature was reasonably responsive and others have stated that they would vote for this legislation regardless of whether the Legislature was responsive or not. Mr. Chairman, the reason that the people of this Commonwealth want this measure is because the Legislature is not responsive. It does not make any difference to me whether only twenty per cent are corrupt or whether only ten per cent or fifteen per cent; the Legislature is not responsive. And that has been evidenced by statements here that are uncontradicted. As a matter of fact there have been constantly men in the Legislature who are professional legislators, who have no visible means of support but who come back to the Legislature year after year, supported by interests inimical to the people of Massachusetts. If the number of these has lessened in the last few years it has happened because those interests are bankrupt, and had they not used a great deal of their means to prostitute the Legislature of this Commonwealth, they would not now be bankrupt. I conceive no sufficient reason, no sufficient other reason, for the people desiring this measure but the fact that the Legislature is not responsive.

Besides the insidious influence of various interests of this Commonwealth, the dominant party frequently goes against the wishes of the people of the Commonwealth. I can cite a concrete instance in which I was vitally interested as a citizen of the city of Cambridge. At the State election of 1915 the city of Cambridge adopted a form of charter which had been passed by the Legislature. Four different forms of charter had been passed by the previous Legislature after a commission, sitting two or three years, had considered that question. The city of Cambridge adopted one of those forms and among other things that form, which is now in operation in the city of Cambridge, provided that all heads of departments should serve their terms out; and that form of charter was adopted on referendum by the citizens of the city of Cambridge. Within one week of the coming-in of the Legislature, within one week of the inauguration of a mayor of the city of Cambridge, a bill was introduced into the Legislature by the

mayor and supported actively by a Senator from the city of Cambridge who is now a candidate for a fourth term, wiping out absolutely, immediately, every head of a department in the city of Cambridge. And notwithstanding strenuous opposition by citizens of Cambridge, the House of Representatives, by an overwhelming vote, engineered and backed by the Speaker of the House at that time, passed that bill and refused a referendum to the city of Cambridge. It went to the Senate. In the Senate the leader of that body, a Republican, begged them not to pass it, that the measure was illegal. Notwithstanding his protest the party whip was cracked. I make this allegation, not because the Republican party happened to be the party in power then, but because the same act would be committed whatever party was in control at the time. Notwithstanding his protest the Senate passed it through. The Governor referred it to the Attorney-General, sent it back to the Legislature for correction and it was prevented from becoming a law only because of the rule that permitted no reconsideration if there was any objection. One person objected.

Edward A. MacMaster of Bridgewater.

Mr. MacMaster of Bridgewater: I rise in support of the report of the majority on this proposition. It is not my intention at this time, with the brief period at my disposal, to enter into an argument on the merits of this measure. I feel disposed, however, to give voice to a few sentiments which I hold on the merits of this proposition, and though the hour is late I shall trespass upon your attention for a brief time for that purpose.

I recall the argument of the gentleman from western Massachusetts, a man for whose opinion I have the utmost respect and whom, since I have become acquainted with him in this Convention, I hold in the most kindly regard. I refer to the gentleman from Pittsfield (Mr. Hibbard), who represents in part the historic county of Berkshire. I remember that he said that in his part of the State he could find no evidence of a public demand for the I. and R. I recall also the remarks of my brother at the bar from Newburyport (Mr. Bartlett), who said that in his part of the State he could find no evidence of a public demand for the I. and R. Mr. Chairman, I too have the honor to represent in part an historic county. It may be that I represent in part that county inadequately and unworthily; but I would be false to the interests of my constituents unless I gave voice here to the opinion which I believe to be held in Plymouth County and particularly in the Eighth Plymouth District, if I failed to say that I think there is a public demand for the I. and R. in Plymouth County and that there is a public demand for the I. and R. in the Eighth Plymouth District.

My associations and affiliations in life have been along conservative and I trust along constructive lines. Usually I do not favor the ideas advanced by organized labor. My friends among my constituents who believe in the principles advanced by organized labor usually have felt called upon to oppose me in my somewhat brief political career. They have felt, perhaps justly, that because of certain corporate affiliations I was not the one to represent their political interests. With those views I find no fault. But, Mr. Chairman, here I believe

we have a fundamental proposition and one in which I feel I can fairly represent the interests of my district. It is not my intention to enter into this matter in further detail. I fancy that the man who rises to his feet at this time in the Convention can acquire a greater distinction by being brief than he can by anything which he may say. I want to leave the question right here.

I am going to support this measure because I have an abiding faith in the sense of fairness and justice and right of the people of this Commonwealth. As a believer in property and in the rights of property, I have no fear of the consequences. I do not fear the danger of this proposition and I feel that any measure which can increase the responsibility of the people and bring the government closer to the people is worthy of the support of every good citizen. [Applause.]

Michael A. Sullivan of Lawrence.

Mr. Sullivan of Lawrence: If, in the discussion of a public question or any disputed matter, only arguments that are proper and fair and truthful are used, I deem that the right solution is more likely to be reached; and I think that he performs a service who points out any false argument used in behalf of a measure. For that reason I rise to defend the reputation of one of the most distinguished members of this Convention. I wish also to say that I disagree with him in regard to the measure now under discussion, which I hope will be adopted by the Convention. I take this step because, although the attack upon the member has not been discussed upon this floor, it is well known to every delegate to this Convention.

To-day one of the newspapers of Boston, under a heading stating that it "offers $25 for the best cartoon of Lummus and Dellinger," states that those two men violated their public faith by their action in this Convention, and that "Both pledged themselves without reservation, unless it was mental, to the initiative and the referendum."

I am not acquainted with the course of the gentleman from Wakefield (Mr. Dellinger) who is referred to in that editorial, but long before the delegates to this Convention were elected I was thoroughly familiar with the attitude, both on the public platform, in the public press and in correspondence, of the delegate from Lynn (Mr. Lummus). For that reason, I wish voluntarily to point out some facts which are perhaps not so well known to other members of this Convention as they are to me.

The letter on account of which criticism is made is from the delegate to this Convention (Mr. Lummus) to Michael J. Tracey, secretary of the Lynn Branch of the Union for a Progressive Constitution. It is dated Lynn, April 26, and reads as follows:

Dear Sir: — In reply to your recent and very courteous letter, asking for a statement of my views upon the initiative and referendum, I would say that I am in favor of those measures, embodying as they do the principle of popular government.

If you have followed my public addresses, made to various gatherings of citizens in the district, you must have seen that I have constantly and consistently affirmed my belief in an initiative and referendum plan, carefully drawn for the purpose of realizing the settled purposes and convictions of the whole people.

Yours truly,

Henry T. Lummus.

It seems to me that the mere reading of that letter would convince any one who sought to be fair that the writer of it did not pledge himself without any reservation except a mental reservation to the initiative and referendum. The letter refers to the public speeches and the writings of the candidate. I am not going to read them in full, because I could not do so in the time allowed me, but I shall read sufficient to make clear to any fair-minded man the injustice of the attack made upon the gentleman from Lynn. I venture to say that no delegate to this Convention was at greater pains to make his position clear to his constituents than that very delegate. As far back as January of this year, in a letter to the secretary of the Union for a Progressive Constitution, which was published in the papers in Lynn, he used this language:

So important an office as that of delegate to the Constitutional Convention is no place for the ready and reckless preëlection promiser. I have too much faith in the voters to think that they will select their delegates according to campaign promises upon one problem only out of many important ones to come before the Convention. I am wholly against a packed Convention, however eminent and altruistic the packers.

And later on in the same letter:

If the voters of my district have enough confidence in my industry, my foresight and my fairness to elect me, I shall be glad to go to the Convention; but I have no ambition to go there as an automaton, wound up and set to follow the self-appointed leaders of any movement, however attractive a name that movement may bear.

Some time later, on March 26, 1917, there was published in all the papers of Lynn a letter from the candidate (Mr. Lummus) to the same person who was addressed in the letter that was quoted in the newspaper this morning. At that time he wrote:

Whether I should vote for the insertion of an initiative plan into our Constitution would depend wholly upon my best judgment as to the practicability of the particular plan upon which after study and discussion I might be called upon to vote. But upon all these questions, and upon many others that will come before the Convention, my point is that the delegates will learn much from the study that they ought to put in between the election and the holding of the Convention, and from the debates in the Convention itself. There has been no adequate public discussion of these matters. Some battle-cries and catch phrases have been bandied about, but there has been little serious argument. The hundred different plans, some sensible and some absurd, that may pass under the name of the initiative and referendum make it impossible to obtain a sound and thoughtful public judgment until the report of the Constitutional Convention focuses public attention upon specific propositions. Under these circumstances the pledging of delegates in advance seems to me not only an absurdity but a public evil.

But it may be said that that was only the early position of the candidate, and that when he wrote the letter, which was dated April 26, 1917, he had changed his mind and said unqualifiedly that he would support the initiative and the referendum in any form. I want to call your attention to the following language in that letter which I already have read:

If you have followed my public addresses, made to various gatherings of citizens in the district, you must have seen that I have constantly and consistently affirmed my belief in an initiative and referendum plan, carefully drawn for the purpose of realizing the settled purposes and convictions of the whole people.

So that in that letter the candidate, now the delegate, pointed out that he merely was expressing the attitude that he always had expressed, and he referred to his public speeches to show that he advocated an initiative and referendum which was very carefully guarded,

— much more guarded than was necessary, as it seemed to me, and as I pointed out to him in many conversations which we have had on the matter.

But that is not all. On the very day that this letter was published in the Lynn papers there appeared also a report of an address delivered the night before by the writer of the letter. In that address made the same day that he wrote to Mr. Tracey, the gentleman from Lynn spoke as follows:

> I believe in a carefully drawn initiative plan that will be an added safeguard to popular rule and an added incentive to the Legislature to do justice. But the plan must be drawn wisely and carefully. The first essential of rational popular action by way of the initiative is that the mass of the people should have a deep conviction on the particular matter to be acted upon and a strong desire to vote upon it directly. Such a conviction and desire are not proved by a few thousand signatures secured by paid canvassers employed by some party or faction.

Another speech was made by the gentleman from Lynn on the evening that this letter appeared, in which very similar language was used and which anybody who wants the truth may peruse by reading any of the Lynn papers of Saturday, April 28, 1917. I submit that these letters and addresses from which I have read amply prove that the delegate who has been so viciously attacked is maintaining here only the position which he has maintained consistently and publicly since he first became a candidate for delegate.

Mr. Chairman, it was my intention to say a few words in support of the measure before the Convention. If I have not an opportunity to do so, I believe that I have done a greater service by calling the attention of the Convention to the facts which I have recited than if I merely imposed my own views on the Convention at this late time.

I brought with me to the Convention to-day a ballot which I believe is the same ballot which was exhibited by the gentleman from Newton (Mr. Powers) when he said some days ago that this was the kind of ballot we were going to have in Massachusetts if the initiative and referendum were adopted, — the California ballot of 1914. I am sorry that he did not point out why we were going to reach that result, what there was about the ballot for which the initiative and referendum should be held responsible, and what harm would result if we had such a ballot. I am sorry that he did not point out that exactly half this ballot is taken up with the names of candidates and has nothing whatever to do with measures proposed by the initiative and referendum. I am sorry that he did not point out also that the other half of the ballot consists of forty-eight different propositions, some legislative and some constitutional, to be voted upon by the people, and that more than one-half of those, — twenty-seven, to be exact, — were proposed by the Legislature and not by initiative, and that twenty-one were proposed by means of the initiative. So that for only a small fraction of this ballot can the initiative and referendum be held responsible.

I intended to point out in detail that, even though the ballot was somewhat unwieldy, the people of California used excellent judgment, and to call attention to some other matters.

I see, however, that the Chairman is again getting ready to announce that my time has expired.

Let me in conclusion remind you that under our present Constitution the people render the final decision on constitutional amendments, and all experience indicates that we may safely trust them in the future under the proposed system. [Applause.]

Joseph J. Murley of Boston.

Mr. MURLEY of Boston: It would be an utter impossibility for me or for any other gentleman in this great Convention to speak on such a great question as the initiative and referendum and do the subject justice in the small time now allotted to me. However, as I understand there are many gentlemen in this Convention who have a sincere desire to speak upon this subject, who will have no opportunity to do so, I feel myself privileged in having this chance to express my opinion in favor of this resolution.

To be as brief as possible, I am in favor of this resolution because it places the power of legislation more directly in the hands of, in the control of, in the keeping of, the sovereign people of the great Commonwealth of Massachusetts.

A few weeks ago I had the pleasure, in common with the other members of this Convention, of listening to the learned and distinguished professor from Amherst in the third division (Mr. Churchill) when he delivered his beautiful and interesting oration. I noticed that throughout his remarks he used the word "hopeless." He said he thought his task was a hopeless one, that the result of his words would be hopeless. In fact I drew the inference that he felt that the cause for which he fought so valiantly was a hopeless cause. So it seems to me that the motto or the watchword of the opponents of the initiative and referendum should be the word "Hopeless." Now in strong contrast to that is the spirit of enthusiasm and hope shown by the advocates of the initiative and referendum. And that reminds me of a story. One night over in Paris before the Fourth of July three American students were sitting in their rooms in the Latin quarter. Their names were Hale, Walker and Whipple. They decided to have a banquet and show the inhabitants of the great French capital how the Americans celebrate the great and glorious Fourth of July. So they went forth through the Latin quarter, gathered together all the students they could find and held the banquet. And as is customary on such occasions, after the banquet was over the after-dinner speaking commenced. Hale, the first of the trio, said: "Here is my toast to America: Here's to America, bounded on the north by Canada, on the south by Mexico and the Gulf thereof, on the east by the Atlantic and on the west by the Pacific Ocean." Then he sat down. Then Whipple stood up and he said: "Here is my toast to America: Here's to America, bounded on the north by the North Pole, on the south by the South Pole, on the east by Japan and China, and on the west by China and Japan." And then Walker stood up, and he was full of American spirits (laughter), and he said: "I have listened to the toasts of my fellow-countrymen, but it seems to me that they circumscribe America in too narrow a space. Here is my toast to America, the land of the free and the home of the brave: Here's to America, bounded on the north by the aurora borealis, bounded on the south by the precession of the equinoxes, bounded on the east by the rising of the sun and

bounded on the west, — bounded on the west — bounded on the west — hang it, gentlemen, — by the day of judgment!" [Laughter.]

So I sincerely trust that the initiative and referendum, which is said to have had its birth in Switzerland and which has been accepted and adopted by twenty-one of our American States, will continue to be accepted and adopted not only by every State in our great Union but by every civilized land on the face of the earth, and I feel that once adopted it will be in operation at the day of judgment.

Now, Mr. Chairman, I have listened attentively to the arguments here for the past three or four weeks. I have not much time, but there are two arguments that I should like to attempt to answer. First, the opponents of this measure have said that it would destroy constitutional rights by a "mere majority." Now let us consider that proposition. Is it not true under our present system, after a constitutional amendment has taken its proper course through both branches of the Legislature, that it is sent to the people for their decision, and is not their decision final? And how is that decision given? Why, by a mere majority. The only difference between that method and the method proposed by the initiative and referendum is that the latter is the better, the safer system for the people, because they have the right to initiate the legislation. So I say that in both cases the final answer is given by the people by a "mere majority." And I, for one, believe in government by majority, — and if I am not mistaken, most of the inhabitants of the great Commonwealth at the present time believe that they live in a land and in a Commonwealth where the majority rules.

The second proposition advanced by the opponents of this measure was that it would not stop the interests from secretly influencing legislation. Is not that argument an admission that under the present system the interests do influence legislation? Of course it is. Well, the only answer to that is: Let us change the system. You and I, every member of this Convention from what he has heard here and from what he knows from his own experience, easily can understand how it is possible for the interests to control a small body, say like the State Senate. We can understand how, by corrupt methods, they may induce a legislator to betray his trust. But pray tell me by what secret influence could the interests force a great intelligent constituency, such as the voters of this great State to betray themselves and their children? What argument could they introduce that would force an intelligent people to vote against themselves? None. And the interests know that, and that is the main reason why the interests are opposed to this measure.

I say, pass this resolution and you will destroy forever the power of the lobby in the great Commonwealth of Massachusetts. Pass this resolution, and you will have better and cleaner legislation in this great State. In the words of our martyr President, Abraham Lincoln, we will have a democracy in fact, and truly, in this old Bay State it will be a government of the people, by the people and for the people. [Applause.]

Charles Stoeber of Adams.

Mr. STOEBER of Adams: There is just one point in this great question about which I want to speak, and I may as well admit at the very beginning that I came here pledged to support the initiative and referendum. I did not commit myself to that pledge, however, until I had been convinced that the I. and R. would give to the people of Massachusetts a better system of legislation than we have at the present time. I have listened attentively to the arguments *pro* and *con*, and among the mass of arguments submitted by the opponents of the initiative and referendum there is one which, it seems to me, has persistently reared its head above all the others, and that is the argument that the people really do not want it, that there is no public demand for it. If that is true, then why are the opponents of the I. and R. so afraid to let the people themselves decide whether or not they want it? If these opponents are friends of democracy and government by the people, as they claim, how can they consistently propose to deny the people the right to make their own laws?

The gentleman from Pittsfield in the fourth division (Mr. Hibbard) stated yesterday that he could find no popular demand for the initiative and referendum in the Berkshire Hills. Such a statement astonished me very much, and judging from a newspaper clipping from one of the Springfield papers which I have before me, I was not the only one who was astonished at the statement made. It seems that the whole of Berkshire County is as much astonished as I am at that statement. I want to say that I, too, come from the Berkshire Hills and have lived there all my life, with the exception of a few years of my earliest boyhood. I come from that part of the Berkshires in which the manufacture of textile goods is the chief industry, that part of the Berkshires where men, women and children get up in the early hours of the morning and go to their toil in the cotton mills, working hard all day under conditions that call for the greatest endurance, ability and patience. And I can assure you, Mr. Chairman, that among these people there is a great, a persistent and it seems to me a just demand for such a law as the initiative and referendum.

Now how do I know this? Why am I so positive in making that statement? I know it because I have associated with them all my life, because I have worked with them and because I am proud to say that I am one of them. I began life as a cotton mill operative at the age of twelve years and have worked at that trade uninterruptedly up to the time that I came here to take my seat in this Convention. And when the people in the Third Berkshire District sent me here as a member of this Convention they knew I was one of them, they knew that I never saw the inside of a college, they knew that I never would make any great speeches in this chamber, they knew that I never could hope to equal even the humblest of those who have spoken before me; but they sent me here because they had confidence in me, because they knew that I stood for a principle and that no power upon earth could corrupt that principle. It was to these people that I gave my pledge to support the initiative and referendum.

During my campaign my candidacy was supported and endorsed by every labor-union in my district, and I was called upon to address

not only the members of the labor organization, but also the members of many organizations outside of organized labor. And I can assure you, gentlemen, that in every case the members of these organizations, comprising the largest part of the population in the Berkshire Hills, stood as one man in favor of the initiative and referendum. [Applause.]

Not in every case, I admit, did they understand the full intent of such an amendment to our Constitution; and it was my privilege, in an humble way, to enlighten them upon this matter as far as my limited knowledge and ability would permit.

The initiative and referendum has been pictured to us as something that would destroy representative government, as something that would bring disaster and confusion upon the Commonwealth of Massachusetts. But those who so skilfully and cleverly have drawn that picture, it has seemed to me, have failed to bring evidence to show that other States which have adopted the initiative and referendum, have been visited by any such calamity or have not been benefited by its adoption. It has been admitted that the adoption of the initiative and referendum in Oregon and California has had a tendency to bring about a purification of legislative bodies. It certainly is hard to see why the same result cannot be attained in Massachusetts.

As a parallel to the argument that there is no popular demand for the initiative and referendum, one of its opponents the other day allowed himself to make the remark that even if there is a demand for it we never should vote to submit it to the people; that we should constitute or look upon ourselves as guardians of the people, and should presume to know better than they what they want or do not want. That argument, it seems to me, is along the same line as that made by the monarchial rulers of nations in Europe, with the possible difference that these rulers usually tell us that they have derived their degree of guardianship from a Divine Providence. It is a question of whether the people shall govern or be governed. There has been some talk on the floor of this Convention of an inalienable right of American citizens, and about equality of life, liberty and the pursuit of happiness. We have been congratulating ourselves upon the fact that equal opportunity is one of the blessings bestowed upon us in this fair Commonwealth and the United States in general. It requires an astonishing degree of optimism, however, to read the figures of corporations and individual incomes, on the one hand, and to note on the other the estimate made by the United States Health Bureau last summer, that something between five and six millions of American families out of a total of twenty millions were living in poverty. Behind uncontrolled power to make laws, monopolies and special privileges are created, fostered and maintained, — monopolies and privileges that undermine the very foundation of equality in life, liberty and the pursuit of happiness.

The fear has been expressed that the people may make mistakes under the initiative and referendum. Perhaps they will, but they will not make them very often, and they will not make any that cannot be rectified. Mistakes are made under the present system. I am convinced that if the people get the initiative and referendum they will use it in a manner that will be a credit and a benefit to them and to the grand old Commonwealth of Massachusetts.

John L. Kilbon of Springfield.

Mr. KILBON of Springfield: There is some sense of absurdity in my mind as I rise to speak, because the thing which I proposed to do was this, — to give to any possible waverers on this question such help as they might get from an account of the mental process through which I have arrived at the conclusion that on the whole I ought to support the proposition which is before us.

It has been a process, — a real process. I accepted election, — I sought election; I may as well be perfectly frank, — to this Convention, without any opinions as to the I. and R. The only questions that were asked of me, if there were any, were of a very different fashion. I came here without any pledge in my own mind or my voice. I was interested in the proposition as a far-away thing. I knew that there were constituencies in Massachusetts that had expressed their opinion that such a plan ought to be adopted, and I was ready to see if, in my judgment, it ought to be. That was all. I went to work. I am going to continue my frankness and tell you that until my election was practically settled I never had read the Constitution of Massachusetts. I had, of course, the knowledge of the fairly well-informed citizen as to what the Constitution of Massachusetts involved in the way of a frame of government and in the way of the great principles of human rights; but as to the phraseology and form of the Constitution I was ignorant.

The first thing I did, after I found I was coming into the Convention, was to sit down and read that Constitution carefully, and I was very much impressed in that reading, Mr. Chairman, with the reiterated emphasis in the Bill of Rights on the supremacy of the people. Of course I believe in the supremacy of the people, but I was interested to know that the fathers not only believed in it, but thought it was necessary to say it, and to say it over and over again, as they did.

> The people of this Commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent State.
>
> All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive or judicial, are their substitutes and agents, and are at all times accountable to them.
>
> Government is instituted for the common good. . . . Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity, and happiness require it.

The people are interested, then, in maintaining their own rights, and the question came now on the wisdom of this particular method. I began to reason. I read the literature that came *pro* and *con*, and I found myself still wavering. By and by we came to this debate, and the debate opened, first with an exposition and then with a protest. In that protest we were informed that the compact in the cabin of the Mayflower was adopted in order that the rights of the minorities might be safeguarded. Unfortunately for the effect of that argument upon my mind, I happened, within a very few weeks, to have read William Bradford's account of the origin of the compact in the cabin of the Mayflower; and although I am very ready to believe,

as I have been told repeatedly, that the gentleman from Southborough (Mr. Choate) is one of the most acute and brilliant and able men on the floor of this Convention, I am very sure that William Bradford knew more about the compact in the cabin of the Mayflower than the gentleman from Southborough knows. This is what William Bradford said:

> I shall a little return backe and begine with a combination made by them before they came ashore, being ye first foundation of their governmente in this place; occasioned partly by ye discontented and mutinous speeches that some of the strangers amongst them had let fall from them in the ship — That when they came a shore they would use their own libertie; for none had power to comand them, the patente they had being for Va and not for N E. which belonged to another gov't with which the Virginia Company had nothing to do. And partly that such an acte by them done (this their condition considered) might be as firme as any patent, and in some respects more sure.

And this is what the compact says:

> We . . . do covenant & combine ourselves together into a civic body politick, for our better ordering & preservation . . . and by virtue hereof to enact, constitute and frame such just and equal laws, ordinances, acts, constitutions and offices from time to time, as shall be thought most meet and convenient for the general good of the Colony, unto which we promise all due submission & obedience.

If those people had anything more in their minds than the establishment of the authority of the majority over a possibly recalcitrant minority, I am unable to understand the language of William Bradford. [Applause.]

Then this debate went on. There has been a great deal said on both sides that made me want to vote on the other. Two gentlemen from Boston have risen, one after the other, to tell us that if we put into the Constitution the constitutional initiative we practically are putting in the recall of judicial decisions; because, they say, a judge declaring certain laws to be unconstitutional is by and by face to face with the fact that the people have voted to amend the Constitution so that those laws shall be constitutional, and that is the recall of judicial decisions.

Well, Mr. Chairman, if that is the recall of judicial decisions, the Commonwealth of Massachusetts has been engaged for the last half dozen years in recalling judicial decisions, for the last four amendments to our Constitution have arisen just exactly that way.

I found myself coming to the conviction that since the case is represented by such arguments as this, we are hearing, in opposition to the initiative and referendum, not an argument, but a shriek. It seems to me that we have a parallel to the traditional school for young ladies, in the presence of a mouse running across the floor.

Yet on the other hand, Mr. Chairman, I must admit that that fear is not altogether ungrounded. There are things which are to be feared. There was the gentleman from New Bedford (Mr. Harriman), for instance, the gentleman whose genial bearing and kindly smile and brotherly manner make you believe that he is a true man, ready to meet all of us on the plane of the same friendly manhood, who rose up and told us that the whole population of Massachusetts is divided into two antagonistic classes. My friend in front of me (Mr. Whittier) asks where he comes in; and I want to know, too. I do not come into any such classification as that, and the men I know are not so classified. My business in life is to protest against that kind

of classification, and to do everything I can to minimize it. I am afraid, as the gentlemen say they are afraid, — I shall speak it frankly as I hear it in the corridors, but as people have not cared to speak it on the floor of the Convention, — I am afraid of the labor-unions. I am not afraid of them because I think their objects are bad, I am not afraid of them because I think the men are bad, I am not afraid of them because I think the things they have done have been bad. I am afraid of them simply because they are organizations; and in every organization, and especially in an organization which finds itself in constant conflict, there is always a temptation to fail to remember that the men outside the organization belong to the same great brotherhood. So I am afraid. But I am more afraid, Mr. Chairman, of shutting up the powder, and I want to open the door. I wish there were time for me to speak just of that more elaborately, but I must not, — I cannot. There is this point only. The powder, if it ignites, will do the least harm if it ignites with the greatest number of openings. If a man knows what he is up against when he fails in a measure he is less bitterly discontented than if he feels that some secret or misunderstood obstacle came in his way. For that reason, as a measure of safety, not as a measure of perfect safety but as a measure of relative safety, it is my conviction that in all duty and honor and love for the Commonwealth I ought to vote substantially for this proposition. [Applause.]

The debate was resumed Wednesday, September 12.

Robert Luce of Waltham.

Mr. Luce of Waltham: Permit me to explain to the committee that before the vote was taken in the matter of the hours to-day, the gentleman from Fitchburg (Mr. Walsh), who will follow me, and myself, agreed to divide the time this morning between us, which would not have consumed the hour and a half that the order contemplated. It is quite possible that the gentleman from Fitchburg may not completely finish what he has to say when, at one o'clock, under the standing order, the Convention must rise. I ask for him the courtesy of a few minutes' indulgence after one o'clock if he should not finish.

Mr. Chairman, it was with some reluctance that I consented to take this part in the debate, by reason of the fact that I hold a position, occupied also, I am sure, by some other members of the Convention, midway the extremes that have been presented to you; and it was with a distinct understanding that I might make this perfectly clear, that I agreed this morning to present the arguments which appeal to some of us who would walk in the middle of the road. In so doing, I shall call your attention to the fact that the discussion has reached the point where we are now to frame our decisions on a resolution, and not on a principle; that the question before us is a document, and that the details of this document deserve careful consideration.

I am quite aware that in taking this position I expose myself to peril; I am aware that in being neither Guelf nor Ghibelline I run a risk of the hostility of both sides, and I recall the fate of poor Mercutio, who in his dying moments exclaimed: "A plague o' both your houses." Though I should meet the fate of Mercutio, yet this morning must I face both Capulets and Montagues, and point out, if I

may, the errors into which I think they both have fallen, and return your attention to the problem before you.

Gentlemen on each side have wandered into the Elysian Fields of philosophy and those abstract realms of political science where the mind loses itself in mazes, leading me to recall that when somebody boasted he understood the whole of the *Contrat Social*, Rousseau said that man was wiser than he himself. When gentlemen have talked about a Social Contract, a compact, I am of the belief that they have erred. I agreed with you, sir, now sitting in the chair (Mr. Wellman), when you said we are trustees. You were right. And I agree with the gentleman from Boston (Mr. Hale) who repeatedly has said we are agents. He is right. We are here in the dual capacity of trustees and agents for the people. But lest I be tempted myself to follow these adventurers in remote paths, let me return to the immediate question.

First, however, let me say one word in the matter of individual duty. For nearly a year influences outside of this chamber appear to have resorted to every device conceivable that might make it impossible for a self-respecting man to vote for this measure [applause], and only yesterday the climax of a campaign of vituperation, of abuse, of coercion, of libel, of slander, was capped when motives were imputed to two members of this Convention which you and I know were absolutely false. [Applause.]

In spite of the fact that all these attempts have been made to swerve me from the path of rectitude, in spite of the fact that every influence possible has been aroused to stir every fiber of my being into revolt against such tactics, I propose, sir, to try to forget the innuendoes, the libel and the slander, and to approach this question as one sworn to look only to the welfare of the people of the Commonwealth, and if that course should lead me to vote for this measure, improved, corrected and safeguarded, then I shall try to forget the possibility that somebody might be so unfair as to think my action a yielding in even the slightest degree to this cruel manifestation of the very worst phases of political influence. [Applause.]

But, now, sir, what are the questions before us? There are three, and the first of these, — I shall treat them in the reverse order from the way they appear in the document, — the first of these I would ask you to consider with me is the proposition that when a law has passed the Legislature it may be delayed by the action of the people. Second is the proposition that the voters may initiate a law; and the third is that they may initiate a constitutional amendment.

Sir, I trust I may in some measure justify my appearance on this occasion by saying that for more than twenty years I have been collecting data on the subject and acquainting myself with it. In looking through those data I find I have preserved a leaf from the New York "Nation" of September 13, 1894, containing an article of five columns, written by one of our ablest authorities on political science, who honors this Convention by his presence and who at the time had visited the country of Switzerland in order that, with his own eyes, on the spot, with lack of prejudice, and with the complete judgment which we expect from a professor of Harvard College, he might ascertain the actual workings of this system. I therefore look to him as a high authority, one whom I am sure we may all trust, when he is

writing on the spot, from personal contact with and information of the actual operations of the scheme. I find that the gentleman from Cambridge (Mr. Hart) addressed his letter from Berne, the capital of Switzerland, and said:

> These two ingenious applications of pure democracy to large communities are urged upon Americans because so successful in Switzerland.

Mark you the following words; they so exactly portray my own thoughts that I would not alter a line or syllable:

> There has long lain in my mind a suspicion of a device which assumes to relieve men from the results of their failure to choose representatives who really represent them, and this incredulity has not been removed by staying in Switzerland and looking into the practical working of the much lauded system.

I shall have occasion further, before I finish, to quote him as an authority. At the moment I call your attention to the suspicion which was in his mind, and is in mine, of a device which assumes to relieve men from the results of their failure to choose representatives who really represent them. I, sir, share in this suspicion.

Sharing the suspicion that the gentleman entertained while on the spot, I, too, doubt somewhat the expediency of delaying legislation by the referendum. Nevertheless I can see gains to accrue from it, and on the whole I am inclined, in balancing considerations, to vote for such a proposition, and I do this in spite of the fact that I was born and always have lived a man by temperament a radical. If, sir, I vote for that measure, that part of the measure, it will be because, as the years have passed, I have come to realize the safeguards necessary for legislation, and come to understand that where fifteen years ago in this chamber no conservative proposition would have instantly met my approval, to-day I am not so averse to accepting a proposition which everywhere has prevented hasty action. For it is the case, judging from the experience of others in this matter, that this proposition does more to delay action than the initiative may do to hasten it. I call this particularly to the attention of those radical gentlemen within my hearing who have thought the contrary might happen. I would remind them of what was said by Sir Henry Maine, — the great authority on ancient law:

> It is indisputable that the greatest part of mankind have never shown a particle of desire to improve their civic conditions since the moment when external completeness was first given to them by their embodiment in some permanent record.

We all know that the great mass of mankind desire to be let alone, that they desire conservatism, and therefore this measure, this part of the measure, tending to prevent action, would appeal to the great mass of the people.

Do you doubt it? I will give you an instance from Switzerland, since the time when my friend watched with his eyes how the system worked, for it was only a few years ago that, in the cantonment of Geneva, when the Great Council, by a large vote, had passed an old age pension law, within three months the people annulled that law, and in only one precinct out of fifty-two was a majority given for it. Therefore, sir, it is quite fair for us to say, we who are in the middle of the road, that in view of the dangers which this part of the measure may guard us against, and its possible benefits, we may not seriously object to it.

But now come to the second proposition, that we shall permit the people to initiate legislation, that we shall replace the discussions of the Legislature by the discussions of the people. Would you have my argument, sir? Look around you. Why are we here? What are we doing? Every man of you is a living argument against this proposition. You have now, with the utmost patience, listened for many days to able speeches, many of them exceptionally able, all worth your consideration. Why have you listened? You have listened because from the very earliest days of government, men have known it is by debate, by discussion, by argument, by the conflict of minds, that we come to a wise conclusion. Go with me to Rome, go with me to the very heart of Rome, to the very heart of what was the ancient world, and tell me why the Roman Forum was the center of the universe. Tell me why, of all spots on the globe, it has the greatest interest to all travelers, to all students. Because the arch of Septimius Severus looks down upon the spot where Cicero spoke, where he defied his enemies, where he hurled invectives against Catiline, and where men threshed out the great laws that have been the foundation of the jurisprudence of more than half the civilized world.

> The very dust we tread stirs as with life,
> And not a breath but from the ground sends up
> Something of human grandeur.

And this was because the men of Rome had learned that great government, that good government, is to be found through debate, through discussion and through argument.

It is ingrained in the very spirit of the Anglo-Saxon that no question shall ever be adjudged without hearing both sides. That is what we are here for. Alternately now, day after day, we have listened to both sides, and so we hope to reach the wise conclusion. Earlier we had considered with the greatest care what is known as the anti-aid amendment, and we had worked over it and we had polished it. I have taken the trouble to count the number of changes made in that amendment after it came from the hands of the committee. If I mistake not, the gentleman from Newton in the third division (Mr. Anderson) came here with an amendment he thought perfect. That is my own experience. When I have written an amendment, I think it is perfect. And then the gentleman from Boston (Mr. Edwin U. Curtis) came here with an amendment he thought perfect, and then my good friend from old ward 8 in Boston (Mr. Lomasney) came here with an amendment he thought perfect. Under the initiative plan any one of those three drafts might have gone before the people without a word of change. The three authors got together and their minds began rubbing against each other and they began knocking off the rough spots, and they began making concessions and making compromise. Compromise, — Mr. Chairman, the compromise that Burke said was the foundation of every human benefit and enjoyment, and every prudent act, — compromise was what they secured. After studying the matter in committee for days and weeks, at last they said: "Here is something that is perfect. Every line, every word, every punctuation mark there is right." Then we went to work and we made changes. The gentleman from Beverly (Mr. Loring) put his brain upon the matter, and he recommended changes, and the committee itself made changes afterward, until there were thirty-one changes made in that

proposition before you were ready to submit it to the people. Is it conceivable that under any process imaginable the preparation of a bill or an amendment by a self-appointed and self-constituted committee, that will not hear both sides but only indulge its own fond imaginings, its own dreams, — is it possible that any such committee can prepare the best and wisest measure?

Had I it in hand I would take up for you the California Statutes of 1915, and I would read you there section 41 of Article XIV of the Constitution as it stands to-day, in which forty words are repeated; forty words actually are repeated, with a note after, saying it was impossible to amend and strike out the superfluous words. A typewriter's error, perchance, and yet illustrating why it is that any measure prepared after such fashion, incapable of amendment, loses all the benefits that men have secured by developing legislative institutions through hundreds and hundreds of years. So, sir, unless this proposal somehow is changed to permit discussion by opposite sides, to permit debate, amendment, correction, — I maintain that it is not safe to substitute such rash and dangerous procedure for that which we have developed by these years and years of practice and experiment. [Applause.]

Let me recall a personal experience. I came here with two perfect measures, two perfect amendments. I knew they could not be improved. I took one before the committee on the General Court and I listened to their arguments and I came out with the conclusion it was unwise to press that measure. I took the other before the committee on State Administration, and not a man of that committee saw fit to approve it. Then I begged here, — and you were kind enough to grant the indulgence, — I begged that it go back for further consideration. And what has since happened? The gentleman from Boston in this division (Mr. Quincy) and myself have now been engaged for several weeks in trying to perfect that amendment. I write a draft and send it to him, he improves it and sends it back to me, I improve it and send it to him, he improves it and sends it back to me, and so it has gone back and forth ever since you referred the matter, until at last we have a measure that, now my conceit has been somewhat diminished, I hope approaches the right thing. Next the committee will take hold of it, and then you will take hold of it, and the gentleman from Beverly will take hold of it, and then at last, perhaps, we can do good service to the Commonwealth by laying before it the right remedy.

There is, too, the opportunity in a legislative body to choose between alternate propositions. There are generally two ways of doing a thing, sometimes twenty ways of doing a thing. Shall you give the people no opportunity of saying which is the best way to do the thing?

Much has been said here as to the method of submission, a great deal about the matter of signatures. I impeach this measure because in these, as in so many other particulars, it has not taken advantage of the experience of other States. I do not share the hesitation of some gentlemen to resort to smaller communities for examples. I would go anywhere in the wide world to learn. My friends of the committee seem not to have gone beyond the borders of a few printed books telling about the early operations of the initiative and referen-

dum. My criticism is that they have brought to you none of the benefits of experience, they have not studied what recently has happened in the western States, they have not given you anything better than there exists. Just let me show you as to this matter of signatures. I want to read into the record the testimony of men who ought to know what they are talking about. For example, I would read what was said by Governor Byrne of South Dakota to the Governors' Conference of 1913, where he told of two instances when, for purely commercial purposes, frankly and openly expressed, without attempting to hide them, interested people, paying ten cents each for signers, used the referendum for the definite purpose of suspending a salutary law for two years, not expecting to defeat it in the end. In another instance the daily papers for some weeks at a time contained advertisements saying a certain law was to be initiated, and calling for agents to circulate petitions at ten cents a signature.

I would read to you the testimony of Governor Ammons of Colorado, who told the same conference that he would sound a note of warning. My friend from Brookline never could have heard of that note of warning, else he would not have presented this measure in its present form. Governor Ammons said:

> Be sure of all things you do, to provide penalties for the securing of names to petitions for pay, because with that feature we have had a great deal of trouble.

And notice what he further says:

> We had thirty-four measures that went to the people two years ago for their vote. Sixty-five per cent of all the signatures for the submission of all these were secured in the city of Denver, between the Union Depot and Stock Street, about six squares away, and between 14th and 20th streets in consecutive order. We had pages and pages right along together that were apparently forgeries.

With the experience of other States before us, how is it possible for a man here to invite the creation of the profession of signature seekers that has developed in these western States? Remedy that matter, profit by what others have done, and perchance we may come nearer to an agreement.

Another point. This measure makes absolutely no provision for excluding trivial topics from the consideration of the voters. Make it so that it will refer to broad questions of public policy, and you come to ground I have occupied ever since, ten years ago, my friend from Brookline and myself argued the public opinion bill on this floor. Make it refer to broad questions of public policy, and then we get on the same ground. Why permit such a ballot as this from California that is on our desks, bearing all these trivial questions with which even the attention of the Legislature itself ought not to be concerned? The measure undergoing the revision I have described and in which I am taking so warm a personal interest, attempts to take trivial things out of the Legislature. This measure puts the trivial things before the people. Will you invite that opportunity? Will you invite a ballot like this of California? Will you ask the people to consider measures of this sort, or will you attempt the compromise Burke commended, by letting us come together at least to the extent of agreeing that we will not perplex and harass the people with questions other than those of broad public policy? In California forty-eight questions at one time! Will you invite that opportunity? Will you not profit by the experience of other States, and at

least restrict the difficulties you will put in the face of the voters at each election? Will you not consider, at least, the question of taking administrative and technical details away from the voters?

I have here a document that was sent to the voters of California in 1914, and in it I find a land title law, an initiative act for the certification of land titles, that takes, — oh, I do not know; I have got up to ten or twelve pages, and I have not time to finish counting the number of pages of fine type that the certification-of-land-title law took when put before the people of California. Next is a bill for the Los Angeles State Building bonds. Is that a fit matter to put before the people? Next, University of California Building Bond Act, an administrative detail that ought never to have been in any Legislature, and in no country in the world outside of the United States would be for one moment considered by a legislative body. And yet you propose to ask the people; by appealing from knowledge, scant as it is, to absolute ignorance, you hope to get a wiser decision.

The resolution before us eliminates only local bills from the scope of the initiative. Why not eliminate private and special bills? Special legislation! The curse of all legislatures. Special legislation! The source of nine-tenths of the log-rolling and graft and corruption. Special legislation! The very root and core of all our troubles. Throw this to the people, and you put it within the power of every special interest in the State with unlimited means at its command, to seduce, to harass, to cajole, to betray, to perplex the people into granting privileges that could not be secured from a legislative body.

Sir, in all this debate, in all the discussions of the Legislature, one important fact has been overlooked: It is the easiest thing in the world to kill a bill in the Legislature, and it is the most difficult thing in the world to secure legislation. All your corruption has been in the killing of bills. I cannot believe that the ex-Governor before me (Mr. Walsh), that the ex-Governor who presides over our deliberations (Mr. John L. Bates), that the one in the third division (Mr. Brackett), that any ex-Governor or the Governor of this Commonwealth would for one moment admit that in all the years of our lifetime there has been put upon the statute-books of Massachusetts one measure the passage of which was secured by graft or corruption. The graft is in the matters that are killed. But, sir, you now invite the self-seekers who cannot get their legislation through the General Court to turn to the people whom they may wheedle or deceive into granting the privileges that our representatives never would permit.

I have time to refer but incidentally to the measures that become law through the blind wording of titles or to catchy provisions, as illustrated by a case in Oregon, where, in order to secure the passage of the single tax, there was hitched to the front of it, like a locomotive to the front of a freight train, a proposal that there should be no more poll or head taxes. The important part of them had been abolished for years, but nevertheless that proposal hauled the heavy freight through and put into the Constitution of Oregon the single-tax proposition that the people had previously rejected.

Then there are the possibilities of combining two or more matters in the same bill. With all his experience of the iniquities of log-rolling, my friend from Brookline (Mr. Walker) has put in here not a word to prevent log-rolling, to prevent the people of Berkshire from

tying up with the people from Hampden or Essex, swapping votes, and thus securing the enactment of unrelated measures at the same time. Why, in one Oregon measure there were thirty-two distinct subjects, thirty-two opportunities to swap votes. If he will consent to amend his proposition so that every measure shall be but a single, concrete proposition, again we may come nearer together. There are almost two score States that to-day in their constitutions forbid their legislatures putting two propositions into the same bill, yet he has not provided even in this revolutionary measure the restriction that nearly forty States have believed necessary to put upon their legislative bodies.

Now, sir, what will the people do? You tell me that I distrust the people. I do not distrust the people, but I know that the mob spirit has been such in all ages as to show that men in the mass do not act as they do singly. Self-interest is the chief motive of human action. It will be the chief motive here, as in the Legislature and in all the activities of life, and it will have greater opportunity here. W. E. Rappard, a Swiss, speaking to the National Municipal League in 1911 said:

> The popular vote in Switzerland has time and again shown that the people are interested in the immediate practical benefits to be derived from a law more than in the intrinsic excellence of its basic principle.

Out in Oregon, the Rogue River, a stream with fine trout fishing, was closed to all commercial enterprises, by the people, with absolute disregard of a quarter of a million dollars of investment legitimately made. You, in the Legislature, never would have thought for one instant of thus treading upon private and individual rights. The people, sir, — the people are merciless. A Legislature can exercise charity, can dispense justice, but the people have no ethical conception when voting in the mass; the people, sir, by all records, show that they have only the common welfare in view, and never private rights.

Judge what may happen here by what actually happened in Switzerland. In 1882 the people of that country rejected by 254,000 to 68,000 the law on epidemics, because vaccination was compulsory. After that was taken out, the law was passed. I agree with Napoleon Bonaparte that the first duty of a Prince is doubtless to do that which the people want; but that which a people want is hardly ever that which it says.

As to the results, I would point out that under this system nobody is responsible. The gentlemen in this body are responsible for what they do. I notice not a man who does not arise with solemnity and deliberation, and take care to know what his vote means. Is there one of you who would not have desired to evade some of the questions on which we have voted? There are many here who perchance would like to evade the vote on this question. In the polling-booth you are but one of hundreds of thousands. You know your vote has very slight chance of influence. Here is responsibility with all its penalties. Tell me what may come, what advantage is to come, from such a change as this from responsibility to irresponsibility.

Turn to the testimony in this matter of actual results, of my friend from Cambridge (Mr. Hart), who reported not what he wanted, not

what he thought, not what he hoped, not what he dreamed, but what he saw. When he was at Berne he saw this:

> The experience of Switzerland seems to show: That the Swiss voters are not deeply interested in the referendum; that the referendum is as likely to kill good as bad measures; that the initiative is more likely to suggest bad measures than good.

I do not appeal from Philip drunk to Philip sober, but I do appeal from Philip dreaming to Philip awake. [Applause.]

That my friend from Fitchburg (Mr. Walsh) may have all the time he desires, I shall address myself but briefly to what after all is the foremost question. I frankly say, after balancing the good and the bad, I will vote for a statutory initiative that is properly safeguarded. This one is not properly safeguarded; it does not profit by the experience of other States; it does not mark progress; it is not right, and I shall not vote for it; but if it is changed so that it is right, then will I vote for it. But, sir, under no consideration shall I vote for a measure that will throw over to the masses of this Commonwealth the opportunity to change almost in an instant the fundamental law.

I remember what Montesquieu said:

> The motion of the people is always either too remiss or too violent. Sometimes with a hundred thousand arms they overturn all before them; and sometimes with a hundred thousand feet they creep like insects.

And I have read history somewhat. I remember after the battle of Arginusæ, when the triumphant Athenean generals came home from the great fight where they had destroyed seventy Spartan ships and more than ten thousand Spartans, I remember how the crafty demagogues appealed to the people of Athens, attacking them because of the false charge that they had left sailors to drown. Euryptolemus and others arose and pointed out the laws, and the people said: "The laws? We made the laws. Why may we not disregard the laws?"

I come down to later times and I look at the history of our own Massachusetts. You say there is time enough for deliberation, but, sir, have you read how the witchcraft delusion in Massachusetts extended over nearly a score of years before the final book burning at Harvard College put an end to it? Go read the story of that madness and then tell me, if you will, that men always recover speedily from their fits of frenzy and prejudice. Go to Switzerland and find there how, upon the vote of the people, there was enacted the law about the method of slaughtering cattle, aimed at the Jews, a law the General Assembly had rejected by a large vote, but that the people, by three to two, put on the statute-books. Come down to times in our own history more recent than those of witchcraft, and read how John Adams said that in 1794 a mob of ten thousand men were raging through the streets of Philadelphia, anxious to pull George Washington from the presidential chair because he would not make war with France. And then come down to to-day. Do you think the people are still unmoved by passion or prejudice? Read the story of East St. Louis. Aye, take home to yourself with remorse the recent happening within a quarter of a mile of this place, where men of Boston, intelligent, educated men, prevented free speech by the use of mob violence. [Applause.]

Aye, sir, but you tell me there will be no mobs, no hasty action. Let me recall to you that in 1856 there passed twice through the

Massachusetts Legislature, — and it was defeated only by a narrow margin in the second Legislature, — a proposition under which no alien could vote in Massachusetts until he had been here twenty-one years. And do your recollections furnish no opportunity for you to infer from the A. P. A. movement and from other movements what might happen if you too much let down the bars against these methods of constitutional change? And if you would have still further results, look around you, not in this hall, but in the columns of the daily press. Do you not, with anxious interest, almost with bated breath, scan the editions of the paper as the news changes from hour to hour, to know whether Kerensky or Korniloff is ruling in Russia? Do you not know that by reason of the lack there of constitutional strength, by reason of the lack of the protection of constitutional restraints, the fate of the world hangs in the balance? Read what goes on under your very eyes, tell me if you will open the flood-gates to every whim of passion and prejudice.

Sir, I believe with Nicholas Murray Butler, in the great speech he made to us, when he said we are all substantially now agreed that in the matter of constitutional amendment there should be reasonably safeguarded opportunity for change. I am ready, if proposal for such opportunity presents itself, to vote for it. I believe there ought to be an easier method of amending the Constitution. But, sir, I would not, for the sake of repairing the edifice, tear it down. The prediction is frequently made that if this measure is enacted, within ten or twenty years there no longer will be a Constitution in Massachusetts. In some western States the Constitution has practically disappeared. These changes forecast the turning of our own Constitution into a statute-book. Because I believe the Constitution is still to be venerated, therefore I pray you not to invite its destruction.

Watch the great river carrying to and fro on its bosom the commerce of the world. Watch the floods that from time to time come down between its banks. You build embankments. You build levees. You build walls, breakwaters, everything to control the current. If perchance it be true you have put on too many stones, if you have choked that current, if you have made it more difficult than is necessary for the ships to come and go, or if you have so pent up your State that you cannot with unhampered energies enter the great world competition that we now approach, then remove some of the walls, take down a few of the stones, but do not, by throwing all to the ground, invite that periodical disaster which in all times has come when mighty rivers have been uncontrolled, and to all peoples who have not restrained themselves against their own mad passions. [Applause.]

David I. Walsh of Fitchburg.

Mr. Walsh of Fitchburg: I do not know that I can add anything of value to the very able arguments which have been presented in this chamber in favor of the initiative and referendum constitutional amendment. At most I merely can reiterate some of the many arguments that have been urged in support of the proposed change in the organic law of this Commonwealth expressed in the amendment now under consideration. Let what I have to say, therefore, be in the

nature of a summing up of what already has been argued by those who have preceded me.

That there is no other question before this Convention more important, no man can seriously doubt. The initiative and referendum has been an issue in political campaigns in this Commonwealth for nearly a quarter of a century, and yet no political party in Massachusetts has ever declared against it. It was one of the questions which led to the disintegration and defeat of one of the great political parties in 1912. It has been under consideration before the Legislature of this State since 1902. It was the one predominating issue before the people at large in the election of delegates to this Convention. Its course through this Convention is watched by more people in Massachusetts than any other subject before us. The sentiment of the people upon this amendment has been taken in various sections of the Commonwealth in recent elections through the so-called "Public Opinion Bill." In one campaign in this Commonwealth two political parties favoring the initiative and referendum polled over three-fourths of all the votes cast in that election. Whenever, wherever and however the test has been made, the people's verdict always has been the same, — in favor of the initiative and referendum. [Applause.] No question, before a submission of it was made to the people, has ever had a better test of the public opinion of this State. That the people of Massachusetts want this reform by a very substantial majority, every delegate who has been a student of political questions in this Commonwealth must know at heart to be a fact.

A vote against this proposition upon which the people have set their hearts with an intensity and enthusiasm rarely manifested by them is in effect saying to those who elected you: "I decide that you shall not have this reform, and my decision is final. I refuse to permit a decision by my fellow-citizens upon this question," — the one constitutional question that was an issue in the bringing about of this Convention, the one constitutional question which has been passed upon favorably by every constituency in Massachusetts which has had an opportunity to consider it, the one constitutional amendment which has been debated and indorsed by majority votes in more legislatures than any other. If democracy means one thing, it means that the people have a right to have what they want, when they want it, and how they want it. [Applause.]

It is my firm belief that there will be no other disappointment, that there will be no remorse over the fate of any other political question so great as that which will follow if this Convention withholds from the voters of Massachusetts the opportunity of voting upon an amendment such as is now before this Convention.

Let the political leaders of all parties take notice. This reform is so sincerely and extensively hoped for by the people of this State that it surely will come in the end. If you defeat it now, it will appear again and again to harass, embarrass and defeat you until you finally submit it to a popular vote. Once the desire for a great reform takes root in the hearts of the people, you never can eradicate the agitation for that reform. The eruption may subside for a time, the flames may die down and all seem peaceful and secure, but in an unexpected moment the volcano will break forth with more force and fury than ever, for this is the irrepressible conflict between democracy and oligarchy.

But even if our public servants (by an oversight become our masters) always had ruled wisely and well, the spirit of '76 and of the New England town-meeting is not yet extinct. The people of Massachusetts still cherish the right to rule themselves, and never will be content to be ruled absolutely by an elective aristocracy without some check, however efficient and however benevolent that rule may appear to be.

We have argued to you, therefore, in favor of this measure on the ground that the people desire it. Let us now consider some of the reasons why the people demand this reform and the source and the nature of the opposition. It is well known that there are two theories of representative government. The aristocratic theory is that the people are not capable of judging questions for themselves, and therefore must delegate a chosen few to do their thinking. This theory is dangerous. It is found among that type of citizens who delight in declaring that they are not demagogues and do not intend to be governed by the clamor of the "unthinking multitude."

The democratic theory of representative government is that the people can and do think for themselves, and that they select their representatives to give expression to their thoughts and wishes. It is based upon the firm conviction that a public official has no right to defeat the wishes of those who elect him, if he knows their wishes. Those who believe in the democratic form of representative government have faith in the people. To-day they realize a serious danger in representative government, namely, that it is at times possible for it to become a government of uncontrolled delegates. To strengthen and support the system, we propose a remedy against this danger, based on belief, not only in the people's right of self-government, but in their capacity for self-government, and we seek through the initiative and referendum, to control the acts of our public officials for one purpose, and one purpose only, — to add an additional protection to the means now guaranteed by the Constitution of protecting our inalienable rights and of safeguarding our welfare. [Applause.]

There are men, — and you and I know them, — who, though proclaiming their belief in democracy, really are believers in autocracy. There are men within the knowledge of all of us who believe in a government of the few, of the college bred class only, of those only who have been successful in the commercial world, or those only who have been fortunate enough to have been born in an environment of ease and luxury. All such, of course, are against this reform, for they at heart do not believe in the people. To this class of men no argument on the initiative and referendum can be addressed with any confidence of success. Consciously or unconsciously, they are recreant to the principles upon which this republic was founded.

Our arguments therefore must be directed to that large class of thoughtful, patriotic men who think they believe in democracy, but whose trust in the people's capacity and reasonableness is bounded by certain restrictions and qualifications. In the last analysis this class of men are also really opposed to the initiative and referendum because they believe that their fellow-citizens have not the capacity to determine wisely and dispassionately the kind of government that is best for themselves and their fellow-countrymen.

Let us examine a few of their objections. They say the initiative

and referendum is an abandonment of our system of representative government. We answer it is a reform of the system, not an abandonment of it. [Applause.]

They say the adoption of this amendment will injure the personnel of our State legislatures and will rob them of their sense of responsibility and result in less satisfactory service. We answer that when the acts of any agent are subject to close scrutiny by an appellate body, the result is not inferior, but better service from the agent. Are the justices of the Superior Court of Massachusetts less efficient, less dignified, less just, because they know that there is an appeal from their decision in every issue which comes before them, to the supreme law-interpreting authority of the Commonwealth, — the Supreme Judicial Court?

They say this amendment is an expression of distrust by the people of their public servants. We answer that no agent in the private affairs of life so interprets the reserved power of his principal to overrule him.

They say that the basis of stability in our government is the inability of the people to hastily, or through passion or sudden prejudice, tamper with or change the Constitution. We answer that a deliberate vote of the people, taken after more than two years of consideration and public discussion, cannot be called hasty or passionate decision.

They say it will lessen respect for the authority of the law. We answer that it will increase it, for how can you expect respect for authority to result from a system which permits a group of men, a handful of political leaders, to delay or prevent year after year the passage of laws which may bring a further share of happiness and prosperity to millions of people, or, as frequently happens, may deny them a remedy against some injustice?

They say that the supreme law-making body is the Legislature. We assert the supreme law-making body in a democracy is the people. [Applause.]

What is the real attitude of you who hesitate about placing this power in the hands of the people? You admit (for no man in this Convention has attempted to take the right away) that the people have the capacity to use the initiative and referendum in electing Presidents, Governors, national and State legislators, city and town officials; that they have been for 140 years capable of accepting or rejecting, sanely and patriotically, every fundamental change in the Constitution which a group of temporary legislators have submitted to them from time to time for their judgment.

You admit that they have the capacity to pass upon these very amendments to the Constitution upon which you are here deliberating, for you know they never can be embodied in the organic law of this State, however meritorious you and I may consider each of them, unless a majority of the voters of this State approve of them.

You admit that they have the capacity of passing upon State wide statutory questions which are submitted to them from time to time, often grudgingly and reluctantly, by various legislatures; also the capacity to pass upon the kind of immediate local form of government under which they shall live, for it is to-day the practice in Massachusetts to submit every change in the local municipal government to the people.

You admit that they have the capacity in every town in this Commonwealth to appropriate money, determine the amount to be appropriated, when and where and how it shall be spent.

Yet you say that four millions of people in Massachusetts, even when fifty thousand voters petition for it, shall not have the right to determine for themselves any provision of law. In effect you take the position that the agents of the people alone shall say what questions shall be referred to the people for their judgment, and you refuse to stand with us who demand that the principal as well as the agent shall have the right, when necessity requires it, to pass upon the very important questions of government; for as far as the referendum is concerned, this amendment merely seeks to give the people the right, independent of any favor or privilege conceded by their public servants, to pass upon public questions. [Applause.]

Again, when the people ask this power as a right and not a favor, you answer it should not be granted, because 137 years ago the people who then lived in Massachusetts created a General Court, and what they intended for a representative form of government, without any provision for changing the Constitution at all, and because the people who lived in 1820 decided that they did not want their Constitution changed without requiring a two-thirds vote of the House of Representatives and a majority vote of the Senate, two years in succession, before any constitutional question could be submitted to them or their descendants.

What is the General Court? The agent of the people. Who created it? The people. There is nothing so sacred or infallible in this institution that its powers cannot be modified by the people who created it. It was created as a convenience by the people to serve, not to rule them, to assist them in protecting and preserving their inalienable rights, not to prevent them from using them. Let us not forget that our form of representative government, or government through delegates, was determined largely by conditions which existed at the time the Constitution was framed, and which do not exist to the same extent to-day. Considerations of distance, time, the absence of publicity, the limited means of travel and communication that the colonists enjoyed, alone led to the transfer of the power to make laws from the whole body politic to delegates or representatives. Electorates were small, issues were few, men available for public office were limited in number, the General Court was closer to the people, for it was more than twice as large as it is to-day, and it was comparatively easy for the people to express their judgment on public questions through the choice of representatives or delegates.

What a contrast between the conditions that surrounded representative government at and before the Constitution was adopted and those of the present hour! To-day it is impossible, under our present form of government by irresponsible or uncontrolled delegates, to know what the majority of the citizens desire, or what their judgment may be on any great public question. The only means of obtaining the sentiment of the electorate to-day is by the indirect and imperfect way of electing candidates for public office who are nominated on party platforms, and who may declare themselves in favor of certain political principles. The issues in political campaigns are almost always so numerous that it is difficult, in fact impossible, to tell just what the

judgment of the majority on any particular issue may be. Many other factors than a candidate's political principles are involved in the election of our public officials. Regardless of what political principles a man may stand for, he may be and often is elected or defeated because he or his opponent is personally the more popular, because of his or his opponent's religious convictions, because of racial prejudice for or against him or his opponent, because of his wealth or his absence of wealth, because of his education or profession or standing in the community, or because of his party label. In the last presidential election, for illustration, what political principles did the people declare for? Was the verdict of November last an approval of the Underwood tariff? Did it record the people's approval of the currency law, or was it an approval of the President's peace program? Was it an approval of the way the Mexican problem was managed by the Administration, or was it an approval of the 8-hour railroad law? I put these questions to you to demonstrate that it is practically impossible, under so-called representative government as it exists to-day in this State and Nation, to know what the majority desire or what their judgment may be on any great public question.

There is, however, a way, and one way only, of knowing unmistakably the wishes of the majority of our fellow-citizens, and that way is the submission to them for their judgment of a single straightforward question, without any entangling issues. This is exactly what the initiative and referendum amendment before you proposes to do. [Applause.]

I come now to the question: What has caused the demand for this reform? What is the reason the people ask for this amendment to the organic law of the State? Let us try to find it. Mr. Root says it is based upon distrust by the people of their legislatures. I say it is not only that, but it is also based on a jealous desire upon the part of the people to protect themselves against the improper exercise of power by their public officials; it is an effort to eliminate those influences, and to limit and curb the power of public officials who may be susceptible to the agencies working against the people in their own government. [Applause.]

Let us digress for a moment and consider some of the great reforms that have been achieved during the last twenty years, and consider their causes and their reasons, as well as the wisdom of the people in adopting them.

For a century there was an open public ballot that permitted knowledge of one's vote; for over one hundred years political party leaders, through political conventions, nominated the candidates of all parties for public office; for one hundred and thirty-five years legislatures in the several States elected our United States Senators; unlimited amounts of money were used in nominating and electing men for public office without publicity or legal restraint.

Yet in our own day we have seen the people put an end to intimidation and improper influences at the ballot-box with the requirement by law of the secret Australian ballot, crush under their feet the political convention system of nominating candidates for public office, place check after check upon the use of money in elections, and boldly revoke the provision of the national Constitution which compelled the election of United States Senators by their State legislators. [Applause.]

The reasons that led to the adoption of these great reforms are illuminating. They are of the same nature as those which are behind our present demand. Every one of these reforms was demanded chiefly on the ground that representative government was weakening, that influences were at work dangerous to the public welfare which tended to lead public servants away from undivided responsibility to the people. The demand for them was based upon a distrust by the people of their public servants. The voters were beginning to see that representative government was breaking down under the pressure of great combinations of business interests with financial resources as powerful as the government itself, which were able to seek, and in fact did seek, from the government privileges and favors, — sometimes a franchise over-capitalized for the enrichment of the few, sometimes special exemptions from their just share of taxation burdens, sometimes special corporation charters which would enable them, under the cloak of legal sanction, to do acts which would be considered of questionable honesty in ordinary business dealings.

They found these forces at work in political conventions, nominating their friends for public office and giving liberally of campaign contributions to elect them. They even saw the leaders and beneficiaries of these great combinations of wealth influencing and in some cases corrupting State legislatures in order that their advocates might hold seats in the United States Senate to check and restrain the demands of the people for reforms.

Without a bullet being fired, without a drop of blood being shed, the people, after long and bitter political contests, have adopted one by one the changes necessary to correct these evils.

And of what nature was the long and bitter opposition to these reforms? First by calling names. It is not very long ago since those who spoke for these now generally accepted reforms were called demagogues, socialists, anarchists, inciters of the masses against the classes and so on. We have reason to be thankful that the progress of this movement for the initiative and referendum has passed this stage of opposition.

Secondly, by creating the impression that to change the existing order of the election machinery or to attempt to disturb the Constitution was to do something touched with impiety, with irreverence for the Constitution. By preaching the sacredness of the Constitution, they took refuge behind the form of the institutions which their forefathers founded, always using care to disguise the fact that, great as was the foresight and the wisdom of the men who founded our great Constitution, they did not know and could not have the wisdom and foresight to anticipate and appreciate every evil influence, every dangerous institution which would seriously weaken and impair the usefulness of some of the forms and methods which were suitable for their day, but which changing conditions made weak and tottering.

A tremendous victory has been achieved by and for the individual voter. After a terrific battle and struggle, the individual has triumphed over those who said the open ballot was safer than the secret ballot, that the political boss could choose his candidates better than he, that legislatures could name United States Senators with more wisdom than he; and now the same men, or men with the same political point of view, stand here refusing to the individual the right

of petition to compel the submission of any proposition upon which he wishes to vote, and seek to deny him the opportunity to sit in judgment upon the action of his own public servants, — the legislators. It has been a fight for free public service; it has been a demand for uncontrolled public servants; it has been a demand to make the public servant appreciate he has no other master than the people.

Great as has been the progress made, the greatest of all evils remains. The people might be expected to tolerate with patience the boss named, the controlled public servant; but how long must they be compelled to bite their lips and remain silent and have no voice in revoking laws fastened upon them by misguided, controlled, partizan bound or corrupt servants? [Applause.]

I defy you to point out to me any manner in which the people can revoke a law which their agents have imposed upon them, and which they do not themselves desire. You well know that there is lacking in our present system of representative government the instrument necessary to instantly call to account legislators who refuse to realize that their constituents are really their masters. In almost every other walk in life the principal can repudiate the acts of the agent when he has gone outside of the scope of his authority and has been false to his trust. There is not a society you can name in which you cannot make a direct appeal to the judgment of the majority of its members in any great emergency, except this society called a government.

Fellow-delegates, do not misunderstand what a vote against this measure means. You say, when you oppose the referendum: "Mr. Voter, you shall not have the right to nullify laws passed by your agents." You say, when you oppose the initiative: "Mr. Voter, you shall not have the right to inaugurate a law which your agents refuse you."

It is argued that whatever may be said in favor of the use of the initiative and referendum in statutory or legislative matters, nothing convincing can be said in favor of the initiative and referendum constitutional amendment, which includes constitutional questions. What do the men really mean who argue in this fashion? They seek again to limit the power of the people.

There can be no limit to the power of the people in a democracy. Constitutions are not made to limit the power of the people. Constitutions exist primarily for the purpose of limiting the power of the servants of the people. [Applause.] Constitutions define the purpose and set up the framework of government. While the Constitution defines and limits the power of our public servants, it should not be used to limit the power of the people themselves to change, alter or revoke the powers that they, in their Constitution, have bestowed upon various branches of the government.

You who favor a statutory initiative, but oppose a constitutional one, would permit the people to go through the farcical procedure of enacting a working-men's compensation law, and if the Supreme Judicial Court declared it unconstitutional, would permit a minority of thirty-three per cent in the Legislature to prevent them from obtaining the constitutional amendment they desire.

You would permit them to pass a legislative act establishing State wide prohibition or abolishing capital punishment because they are statutory questions, but you would not permit them to initiate a law

which would permit them to change the term of office of their Governor from one year to two years.

You would permit them to abolish the regulation of public service corporations because it is statutory, but you would not permit them to abolish the taking of a census every ten years. [Laughter and applause.]

In a word, you say that since the people have delegated certain powers to their deputies in the legislative branch of the government, they shall have no means of enlarging or diminishing the powers of their agents unless their agents themselves choose to give it to them; just as sound reasoning as to say that the principal who gives his agent power of attorney to act for him cannot reserve to himself any power.

What harm has been done? What have the people of Massachusetts lost by surrendering to representative government their inalienable right to make and to mend their Constitution and laws? It is in substance the question which the Tories of '75 asked of our own forefathers. But I would suggest an answer.

I yield to no man in my love for Massachusetts. [Applause.] I recognize, as you all do, the glorious part she has written into the pages of history that record the progress of the human race. Where is there a roll of honor in any part of the world that is excelled by the names of her illustrious jurists, devoted executives, brave soldiers, able statesmen, high-minded legislators that encircle the dome of this chamber? But my love for Massachusetts is not so narrow that I cannot see mistakes; my affection for her is not such as to make me indifferent to her future opportunities for progress and development; my high estimate of her system of government has not blinded me to the forces threatening the body politic, — forces which seek to serve, not Massachusetts, but selfish ends and purposes. I refuse, sir, charged with this grave responsibility, to sit here and say: "There are no enemies or dangerous influences at work in the body politic, hostile and unfriendly to free democratic institutions." I decline to choose the attitude of those who take the position that the best kind of service that can be rendered here is that which consists of praising and eulogizing her past, and who stand adamantine against every movement to permit Massachusetts to shake off the barnacles that make more difficult her progress. In our examination of the body politic, if we find the germs of a cancerous growth, do we love her less if we call the surgeon and ask that the foreign or poisonous substance be removed?

I will go so far as to say with you that there is no better form of law-making than representative government, if you can keep away the selfish and sinister influences that you insist must be kept away from the law-interpreting bodies, — your juries and your courts. [Applause.] Representative government does good work when it is free. When great questions present themselves where there is no powerful, influential, selfish force at work, representative government usually gives satisfaction, but you and I know, time and time again, in the great contests in the halls of legislation between the people and private organized combinations of men and capital, the people have been defeated.

You ask me for specific cases. Then come with me into the office of one of the delegates to this Convention, — the Tax Commissioner's

office. You will agree with me that if there is any fundamental law more than any other that should be just and fair, and impartially administered, it is the law which divides the burdens and levies the cost of government upon the people. What do the records show? Five billions of dollars in the hands and possession of a few thousand people year after year have been untaxed, and the possessors of this wealth, by their control of and influence with the legislatures of this State, have forced millions of their fellow-citizens to bear a greater portion of the burdens of government than the law prescribed. [Applause.]

Notwithstanding the fact that disinterested public servants, having no concern but the public weal, have pointed out this inequality and injustice, it has gone on decade after decade. The wealthy beneficiaries of this system, with the assistance of the General Court, have stubbornly refused to pay any tax until a system of taxation was established which permitted a man who chooses to invest his money in stocks and bonds to bear less of the burdens of government than the possessors of an equal amount of wealth invested in other kinds of property.

The inability of public authorities to enforce the tax laws of this Commonwealth, or to enact laws to strengthen the powers of the administrative officers, has resulted in compelling for years the small taxpayer to pay the taxes of those of great wealth and of those in comfortable financial circumstances because the latter class, though they were a very small minority, were influential and powerful enough to control the Legislature. Have you any doubt whose opinion has had the most weight and influence year after year in the legislatures of this Commonwealth, the disinterested public servants charged with establishing an equitable taxation system, or those who profited and saved money and increased their wealth by refusing to pay their just share of the expenses of government?

When the Legislature last year undertook to frame a new tax law permitting discriminative rates, these few men of wealth had the power in your Legislature for the first time in Massachusetts to close the tax books and refuse you the right to know what your fellow-citizens who happen to have investments in stocks and bonds paid in taxes. You can find out what the farmer pays on his real estate, his horses, his wagons, his farming implements, and all his other assets, but when you attempt to find out what the capitalist pays, the tax books are closed, the door is shut in your face, for the law makes it impossible for you to find out how much tax is paid by a single citizen who has made a return upon stocks and bonds in this Commonwealth. More than that, though the assessors tabulate what the farmer possesses, his cows, his hogs, his horses, his wagons, when it comes to the stock and bond holder there is no tabulation of his stocks and bonds; all he is required to do under our law is to put down the total amount of his income, and he need tell no one from what sources that income is derived. I can understand, and I approve of keeping the records from which income is derived private, but I cannot understand why such records are not required or why the total income tax paid by every person in Massachusetts is not public information so that all may know the contributions of each toward the support of our institutions and of our government. [Applause.]

If you want further evidence that there are forces and influences antagonistic to efficient and honest majority-rule government, ask the gentlemen, some of them delegates to this Convention, Republicans in politics, who to their lasting honor were leaders in the fight in the Legislature for our Workmen's Compensation Law, what part the insurance lobby had in foisting upon that bill, when before the Senate, the amendment in the interest of foreign insurance companies which has so seriously lessened the efficiency of the system and increased its cost, and which the repeated appeals of organized labor, of disinterested public men of all parties, have been powerless to remedy to this date.

Do you recall the history of that legislation, — the Senate first asking an opinion of the Supreme Judicial Court as to its constitutionality, hoping it would be declared unconstitutional; then, failing in that, inserting the insurance provision demanded by the private insurance companies, the House being finally forced to accept this amendment against its judgment lest the whole measure should fail?

Do you remember the position of Massachusetts on the United States Income Tax Amendment, the amendment that has made possible the financing of our present great war without financial disaster and business stagnation? When submitted by Congress to the States, Massachusetts actually rejected it. Then, after three-fourths of the States had ratified the amendment, when her ratification was of no value, she attempted to record herself in favor of the amendment. When it was useless to continue longer the control of the Legislature, the money class allowed our servants to vote as they honestly believed.

Ask the commissions of the Commonwealth, men whom your duly elected executives have named, and whose duty it is to recommend from time to time such laws as may be necessary to safeguard and protect your rights against the natural selfishness of public service corporations, what their experience has been with the General Court. If they tell you what they have told their superiors, they will say to you that when they faced committees of the Legislature to plead for you, they have found there, sitting in judgment, men whom they had good reason to believe desired primarily the protection and safeguarding of certain corporations' selfish interests, and that they frequently have met with scant courtesy, treated indeed at times as if they were intruders, because they dared to suggest some improvement in the manner of controlling public service corporations. The law of public service regulation in this State is from beginning to end one of compromise. No regulation by law made solely in the public interest has ever been possible. The lobby has been too powerful to permit uniform regulation to this day. Examine the history of our statutes and see how the public regulating officers have had to modify their demands in order to get any laws passed.

Why are our towns and cities in these times, when the production and distribution of almost every article of consumption has fallen under the control of grasping private monopolies, unable to break the monopolies or to reduce their exactions to reasonable limits by competing with them in supplying their citizens with the necessities of civilized life? Because a branch of our Legislature, ruled by a corporation-controlled group of Senators, has been able to kill, year after

year, without a roll-call, a constitutional amendment passed almost unanimously by a more public-spirited House of Representatives.

Why has it been necessary to struggle for fifty years for a 10-hour law, then for a 9-hour law, and then for an 8-hour law, until a whole generation of mothers and children have been enfeebled by excessive and premature toil? Go into the enlisting and the exemption board offices, you who have stood for the protection of industry above every other consideration, and see what the long delay in the passage of child labor laws, of laws limiting the hours of labor of women and children, of workmen's compensation law, etc., has done. When we cried out for laws of a humanitarian character, for social justice for the working-man, for the abolition of child labor, for the prevention of injured working-men becoming a burden to the women and children of this Commonwealth, you answered our plea with the charge: "It cannot be done; industry cannot bear the burden; we cannot make dividends; we won't be able to make profits." We answered you by pointing out that the women and children who toiled long hours in sweat shops and factories, and the female children sent to work in the early years of life, would one day be the future mothers of the Commonwealth of whom would be born the future soldiers, and we pleaded with you to place a value upon a strong and vigorous and healthy race of human beings for the State, as well as a value upon the profits of industry for the individual. And now one of the results, — the appalling record of rejections because of physical incapacity.

Have you, who see nothing to censure in representative government, forgotten the speech delivered in the other end of this building only a few years ago by the very conservative Republican Senator from Newton, who, when a measure providing that a few medical appliances be placed in the factories of the State in order that they be equipped with the comforts of first aid in emergencies, finding that this bill, reported favorably by his committee, had been summarily rejected, stood upon the floor of the Senate and delivered the following speech:

> As a member for five years of the other branch of the Legislature I frequently heard this chamber referred to as the "graveyard." I could not quite understand it being so often called a "graveyard." My few weeks here have taught me better. I do understand. I understand how such a bill as this was killed without giving it any consideration, without giving its proponents a chance to give their reasons for favoring it.
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> It often happens, as it probably did in this case, that word is passed around here: "Don't discuss the matter, — let it come to a vote, and then vote no, and vote it strong."

Have you forgotten the challenge made on the floor of this chamber by the brother of the distinguished delegate from Worcester, when he charged that seven of the eleven members of the committee on Insurance dealing with certain corporation questions were in the employ of the very corporations whose laws and regulations were to be considered by this legislative committee?

Even to this day another public service corporation has been able to prevent inquiry into the reasonableness of its rates and the quality of its service, notwithstanding the request for action by the Legislature from Governors and commissions charged with the duty of regulating them.

Will you let pass with merely a knowing smile the statement made on the floor of this Convention by the former Speaker of the House

of Representatives as to the character and nature of the influences exerted in Massachusetts to name Speakers of the House and Presidents of the Senate?

Are you satisfied that only the conscience of Speakers and Presidents has had a part in the naming of committees of your General Court? Have you not heard from the lips of honest representatives that the power to name recess committees has deprived individual legislators of their independence and given the presiding officers the power to shape legislation as they choose?

The methods used by the selfish influences that have been at work in our legislatures have not always been venal by any means. They want results, and they have not hesitated to divert the minds of the honest legislators from the real issue in public questions by an appeal to cheap and petty partizanship. Too infrequently have the people heard their legislators ask the question: "Is it best for Massachusetts?" Too often have they heard: "What's best for our political advantage?"

In a word, the people have lost confidence in their system of representative government due to the influences of the lobby, the surrender of their rights to private monopolies, the irresponsiveness of their servants due to the gerrymandered district system, log-rolling methods and narrow and despicable partizanship.

Shall I go on? Time will not permit. The record is a long one. It is unpleasant to speak of this aspect of our government. I would much prefer to speak in praise of individual patriotic members of the Legislature, or of the many individual acts of public benefit passed by our legislatures, but duty compels me to say what I have.

Finally, let me ask you, if you still doubt our assertion that there are influences at work detrimental to efficient and honest representative government, why have great corporations thought it worth while to pay fabulous retainers to professional lobbyists to exert their local influence to elect their men to the House and Senate, and who a few years ago even dared to place upon their pay-roll the representatives of the press, who were given the privilege of the legislative chambers for the purpose of informing the public about the action of their public servants? All these are matters of public record. All these things have transpired before our very eyes in our own day.

Before I end this argument let me refer briefly to the attacks made upon organized labor by delegates opposing the initiative and referendum in this Convention, for it has been quite a common occurrence during this debate to refer in words of joint condemnation to the arrogance of, and improper use of, power by organized labor and organized capital.

I have watched for years the tremendous struggle between these two great forces, and, though organized labor has made its mistakes and seemed at times, to those who did not look beneath the surface, to be making its demands inopportunely and tyranically, yet I cannot remain silent and let these criticisms pass unchallenged by those of us who are associated with neither class and merely desire to see justice prevail.

The greatest and most far-reaching intellectual, economic and social progress made in any generation since the establishment of our government has been recorded in our time and day. The broadening of the

opportunities of the working people and their families by liberal laws for education; the safeguarding of the health and the protection of the life of millions of working-men, women and children by legislation providing for proper sanitary conditions, prevention of accidents, lessening the hours of labor and the abolition of child labor; and the improved standard of living among the laboring classes by labor's demand for a fair share of the profits that it has been earning for organized capital, have been achieved primarily and chiefly through the influence, indomitable perseverance and steadfast devotion to the cause of humanity of organized labor. [Applause.]

It has been a long struggle to raise the laboring man and his family to the position of independence and dignity which they occupy in America to-day, and I charge you to name a single so-called labor law upon the statute-books of this Commonwealth which not only has been promoted and accomplished through the efforts of organized labor, but which to-day no one in this Convention would think of repealing, for they all have resulted, though at times undoubtedly burdensome to capital, in proving a blessing and benefit to society.

If a choice must be made between coöperating with the apparently selfish forces of organized labor or organized capital, then I, for one, choose to place my influence with that organization which deals, not with the expansion of fortunes, but with the expansion of the intellectual and moral forces of human society. [Applause.] In the struggle to determine who shall receive the largest share of profits, — capital or labor, — I have no hesitancy in standing with a man-developing organization rather than with a money-making machine.

With all their limitations, let us not forget that in labor organizations men unite for the protection of their own labor, which, being necessary to their existence, is a part of their very life; while the members of organized capital necessarily seek to control the product of others. In a word, organized capital deals with dead matter, with dollars, while organized labor deals with life, with health and human welfare.

So long as laboring organizations continue to demand the right of a laboring man or woman to have and to enjoy the comforts of home life by short hours of labor; so long as they demand the right of the laboring man or woman to prepare themselves to discharge the duties of citizenship by providing education for themselves and their children, such organizations are a blessing and not a menace to the State.

Fellow-delegates: The enemies of democracy are powerful. In Europe the greed and aggression of the aristocratic class are the enemies of democracy. In America the greed and aggression of the privilege seeking class are the enemies of democracy. The greed and aggression and selfish ambition of the rulers of the German people have led to this great world war. The greed and aggression and selfishness of the enemies of democracy in America have led to this great peaceful movement to make secure and safe our democratic institutions. Corrupt, unscrupulous and indifferent public officials are unfortunately the greatest barriers to the progress and safety of democracy in America. The millions of innocent investors are, and the millions of consumers of the products of legalized stock corporations have been, and will be for years to come, the victims of representative government that has betrayed the people. The all too frequent ex-

posure in our day of the unstable financial structures, legalized and privileged by our legislatures, of transportation and public service corporations, bear testimony of the triumph of these selfish forces and have made popular representative government become too frequently privilege controlled government.

Let us open our eyes. We have been sent here not to keep them closed. Let us see what has been going on during the sixty-odd years that have passed since our predecessors met here to revise our Constitution. Where has our machinery broken down? How has it become less effective? What modern conditions and forces are at work to impair its usefulness? Scanning back over the years that have passed, the one great danger that looms up higher and more threateningly than any other to the security and progress of our institutions is that to-day it is possible for private associations of men and capital to become stronger than public associations, and that combinations of men and money may be stronger than the government itself. In a word, your enemy and my enemy in our government to-day is not individual human selfishness, but organized human selfishness. The public servant might be expected to stand up unflinchingly against the power of individual selfishness, but human nature is almost too frail for the individual public servant to withstand always in great crises the pressure, the power and the influence of great organizations, financial, political and social, of human selfishness. Blind indeed is he who refuses to see that the enemies of democracy actually have entered through the portals of the people's temple and are enthroned in the sanctuary of their liberties. When we cry out against this condition your answer is: "Elect better public servants." Our reply is: "We not only shall eject from the temple the 'money changers,' but the people demand the power to repair the damage they have done." [Applause.]

Adopt this amendment, for it gives force and life and expression to these great phrases: "A government derives its just power from the consent of the governed," and "Absolute acquiescence in the decision of the majority is the vital principle of a republic."

In a word, the issue is: Shall the public officials control the people, or shall the people control the public officials?

We meet in this historic hall in the most momentous year in the history of our republic. We have sent the young manhood of our country from homes, loved ones and promising careers, knowing that they are to be denied the time and means of preparing themselves during the most valuable years of their lives for the enjoyment of the happiness and the prosperity of promising future life and old age. Across the sea they go, into foreign lands, among people who do not speak their language, facing bravely danger to limb and life. For what? That democracy may live, that the people may rule, to end forever among civilized nations the power of rulers to fasten upon the people, without consulting them, a government of tyranny and oppression. As they are fighting our battles and the battle to free mankind the world over, from indomitable, tyrannical Kaisers, Emperors and public officials, let us not here in this chamber question the capacity and the right of these young men, and the fathers and mothers who bore them, and their associates and successors in the colleges, workshops and factories and fields of Massachusetts, to a

larger and fuller democracy than heretofore they have enjoyed. When they return with the flag of our country, stained, torn and shattered, waving triumphant however, let us say to them: "Sons of Massachusetts, while you have been fighting in the trenches of Europe for democracy abroad, we have been trying to make democracy more secure at home under the peaceful methods characteristic of the American Republic. Lay down the sword that you have used so bravely and successfully, and take in your hands the pen, — the weapon of peace and progress, — for we have added to your dignity, your influence and your power as American citizens by making it impossible for your rulers or public officials to oppress or burden you with any injustice, however slight; hereafter, you are to enjoy and possess the power to revoke and correct the acts of indifferent, negligent, ignorant or corrupt officials. We have elevated you to a new position. We have given you more power and a higher title in the civic life of the State. We have indeed made you a sovereign. We have given you additional proof that the title 'American Citizen' is more powerful, more influential, more honorable than that of Kaiser or Emperor, whom you have dethroned." [Applause.]

Herbert Parker of Lancaster.

Mr. PARKER of Lancaster: It would be vain for me to attempt to conceal the anxious solicitude with which I approach the discharge of a duty assigned to me as participant in this debate, but, sir, I take it to be both fortunate circumstance and fortunate augury for my cause that the first simple, earnest words which I offer in support of my faith have their beginning while yet our hearts are aflame, our emotions throbbing, thrilling, in response to that passionate moving appeal of my honored friend from Fitchburg (Mr. Walsh), as he pictured to you the common service in which we are here all engaged in the name, for the welfare, for the honor of our own Commonwealth.

Sir, we are engaged here in deliberating upon no passing ephemeral episode in the affairs of our Commonwealth. Not for ourselves alone, nor wholly in venerating respect for the fathers who have given us our heritage, are we here deliberating. For ourselves, indeed, but more for our children and those who are to be born of our children we are taking counsel together to-day. And, sir, if I have gained no new inspiration in the service of my State from my labors here, at least to my joy and inspiration I have learned from conference with my colleagues, from the anxious, careful, rapt attention that they have given to the varying phases of this debate as it has proceeded, that we are all animated by one common, exalted purpose and inspiration. Though, sir, we may radically, implacably differ with each other upon the measures of our government which shall be translated into our service in her cause, all of us, — all of us, — seek only that we may voice here those sentiments, bring here that service of heart and of thought and hand that means filial devotion to the Commonwealth, and all reverently to lay this tribute of our service upon the knees of the State herself. It is in the light and through the inspiration of the thought of this purpose which has brought us here, that I dare go forward, not, gentlemen of the Convention, in any hope that I may lay before you any new and striking suggestion with reference to this

problem which so long has engaged our attention, but I do entertain the hope that in the few words that I shall submit for the consideration of this committee the real question at issue, the real problem before us, may appear revealed in the even light as of the noon day, and that we shall not have our vision obscured by a distorted perspective, as when the shadows lengthen in the evening when the day has passed. We speak to a vital living question in the faith and hope of the new day. Yet, sir, I have thought that at times as this debate has proceeded it has been led into the twilight of gloom and the melancholy of despair, not into contemplation of the lustrous conditions of the present or of the splendid promise of the future, but into the darkness of evils, some of which, all too well we know exist, but most of which I venture to say have been magnified and exaggerated, to the end, — I will not say that it was wilfully done, — but to the inevitable end that we shall finally make deliverance of the great question committed to our charge here, either in fear, or apprehension, rather, than in the light of reason and with real recognition of conditions as they are.

Sir, the proposition which now is about to pass through the gates of our deliberations is a measure affecting, changing, and as many of us believe, destroying some of the essential, vital, protective elements of our fundamental laws. Sir, I invoke nothing of the vernacular of the courts, or the phrase of the rhetorician when I insist that upon an issue like this the burden of proof is upon those who propose it, which means only, translated into the language with which we are familiar for the guidance of our own thought, in reaching our own conclusions or determining our activities, that our reason must first be satisfied by the establishment of the predicates upon which the proposition rests, and then those who have satisfied our reason in this regard must convince us by sound arguments that, if we adopt this new experiment, we shall be assured of safety at least, if not benefit, under its operation. We cannot accept mere promises with which a more or less confident prophet attempts to foretell its results. The human mind, — and I shall not discuss metaphysics except for a moment, — the human mind is so constituted that if it still be alive and alert it instantly responds to the alluring temptations of any new and speculative inquiry. In reflecting upon this new venture in political experiment, so enticingly submitted to us here, we may listen to the appealing optimism of new prophets, but let us not, reserved, responsible, as we must be, ignore or disregard the restraining fears that must accompany these too confident promises.

Sir, as I understand the primary proposition and assumption that the advocates of this measure present to us, and through us to the people of the Commonwealth, it is that the conditions of the Commonwealth to-day are so desperate, the evils that have corrupted the administration of our governmental affairs, or the deterioration of the moral fibre of the citizens themselves, so menacing, that some new and drastic remedy must be provided in our organic law as a vital necessity. We are solemnly admonished that unless we adopt this measure of relief, embodied in this radical change in our scheme of government, we must expect that popular discontent will find expression in violence that may overwhelm and destroy the State itself.

It is contended that conditions have developed which gravely imperil the State. That, to avert this imminent danger, we must at once reconstruct, revitalize the heritage of government that our fathers gave to us. In order to establish this predicate of evil conditions and evil circumstance, which the necessities of the proponents' cause require, its advocates here yield to the compelling temptation to exaggerate and magnify these evils, for unless they exist the predicate and the presumption upon which this resolution rests fails, and the cause fails with it. Sir, I venture to make this confident, fundamental statement of the proposition as I shall attempt to argue it. Apparently, these prophets of a new republic have forgotten, but we will not forget, that for nearly 150 years this Commonwealth has lived under a system of constitutional government, which has suffered throughout that period no essential change. Her citizens have cherished and defended the principles which it declares, holding them to be the sure safeguards of their liberties, the immovable foundations upon which the welfare of the Commonwealth has been upbuilt. Prosperity and unexampled happiness have been the lot of her people. This scheme of government, still surviving in its primitive and original vigor and virtue through successive generations of men, has been praised and extolled by philosophers, historians and students of political science, and, until this present feverish outburst of criticism, universally blessed by its beneficiaries, the people of Massachusetts. The Constitution itself, the liberal, humane, statutory enactments developed under its safe guidance and restraints, have been cause and coincident of the constant advance of our State and people, along every avenue of enlightenment, to the attainment of moral, educational, civic and industrial conditions, which, I dare assert, have made Massachusetts leader and example to her sister States. There are inherent frailties in all humanity, and in every agency of its creation, but these conditions afford no warrant for the exaggerated false assumption that our citizenship is degenerate, or that, because of this, our constitutional scheme of government has broken down, and our institutions of government, founded upon it, have collapsed. Yet such is the declared assumption of the proponents of this measure, and upon it rests the alleged occasion or necessity for the abandonment of those principles of government which have been vital parts of the existence of the State.

I turn for a moment, in retrospection, to note the course of the current of debate which for so many days has flowed past or through our minds. Here and there I have thought, as is the habit of the waters, that the stream has babbled a little among small stones and in shallow places. Again, sir, as it flowed onward, it has presented the phenomena of the cataracts themselves, when the mighty waters rush to the sea, and spellbound we have listened as the torrent passed. Again, all too seldom, all to infrequently, we have seen the stiller reaches where the waters flowed deepest, yet with resistless impulse, and during those brief moments we were permitted to see, as upon the rivers which give beauty to Massachusetts and lend energy to her every industry, some reflections which the waters picture as they pass. So, there have come into our vision mighty enterprises, displaying our industrial prosperity, and our thrift. There are the churches that testify to the faith and piety of our people. There are exhibited all

the splendors of a great Commonwealth, the dwelling-place of a happy and prosperous people. These are the scenes exhibited to me, mirrored upon the surface of our thoughts.

But, sir, if we are to consider a new Commonwealth builded upon new ideals, born of strange faiths, our vision passes to wider waters, and our eyes rest no longer upon scenes familiar to us. Our horizon reveals no headlands we ever have seen before. There is no landfall that we have known opening into any harbor where we have been wont to find safe anchorage.

For a moment indulge me, gentlemen of the Convention, while, at the hazard of being thought a deluded optimist, I seek to bring this question which has perplexed us back from the gloom in which, for so large a part of the presentation of this cause, it has been submerged and obscured. And, sir, as I turn at this moment to review and analyze certain of the typical discourses that have been offered in support of this measure I shall do so making no critical comment upon the authors or the character of the authors of these impressive and often brilliant arguments. And if, sir, for a moment I divert myself in a somewhat humorous, but I hope never flippant, comment upon some of these arguments it shall not be, gentlemen, because I fail of a becoming recognition of the dignity, the importance, the gravity of the great questions we are here discussing. Nor ever, sir, shall I permit any word to fall from my lips in this discussion save as it may serve a serious purpose. Certain types of arguments will illustrate what I am attempting to demonstrate, that the debate too often has been submerged in an obscuring and fictitious gloom that the evils of which so many of us complain, — for always there is occasion to complain of evils, — have been almost absurdly exaggerated.

And, sir, as I refer to my honorable colleagues whose arguments I shall briefly discuss, I find myself embarrassed through unfamiliarity with the procedure in forums like this. I am bewildered by that curious orientation of parliamentary conventionality that compels me to attempt to geographically locate my honorable colleagues, as within one or another division of this chamber; I know, and this whole assemblage knows, that it were idle and vain to suppose that any one of them could be confined in any such pent up Utica. [Laughter and applause.] Sir, these avenues by which we reverently approach the throne of your authority can no more bound the searching, inquiring, far-traveling minds of my honorable friends, than can the meridians of longitude or the parallels of latitude, or the varying colors in the child's book of geography bound their fame as within one State or another State or within any mundane territory. Nor is this an idle jest. I merely would explain, Mr. Chairman, that, from time to time, in the ardor of my intimate acquaintance with some of my many colleagues here assembled, I may forget to localize them by reference to the seats here assigned to them. I have difficulty, also, in recognizing some of them through the melancholy shadows into which they have retired. I do not see, in the tragic gloom with which my friends have surrounded themselves, those amiable and cheerful gentlemen in whose company I have known many happy days, but when their obsession shall pass away I know they will be happy with me again in a Commonwealth which, after all, affords to us a very happy and desirable dwelling-place.

And again, Mr. Chairman, I am embarrassed in this circumambulation of discourse by which I am compelled to refer to my colleagues, because, sir, there is one thrice happy community in this Commonwealth which has sent three illustrious Homeric champions to this Trojan war of our debate. None can doubt that I refer to that community which still preserves the primitive virtues of the Massachusetts town-meeting, and still chooses her best citizens for her most honorable service. Of course I have in mind that democratic aristocracy, the town of Brookline.

There is one sent here from that proud province whom I shall designate, for the purposes of my identification, as the Achilles of the Achæan allies, my honorable friend, whose parliamentary location is in the remoter portions of the fourth division. You will recognize him, my colleagues, when you recall that the Nestor of Brockton rose to complain that this Achilles was too long sulking in his tent. [Laughter and applause.] And then, sir, he came, eager, valiant, and defiant, to restore the shattered legions of the Greeks, and, before many moments, with rapt and terrified gaze, like Priam from the walls of Troy, I observed him dragging the dead body of a phantom Hector around the walls of the citadel. [Laughter.] Sir, I never have known my honorable friend before to pose as favorite foster-child of the tragic muse. When he spoke the shades of midnight fell upon this chamber. We groped to find hand of friend to sustain us in those dread moments of terror, lighted only by the occasional flashes of the lightning of my friend's elaborate ironies and sarcasm. Oh, come back! Come back, my honorable, once cheerful friend, from the obsession into which you have retired. Lay aside that unfamiliar garb of mourning, and speak to us as we all have known you to speak, with the vigor of a candid man, proclaiming the faith that you truly have in our institutions and in the future of the State.

But, so versatile are the many gifts of this advocate of a decadent cause that he did mitigate the terrors of his address, and happy we were when we were freed from the sombre darkness into which he had plunged us when, with all the magic art of the fairy godmother in the story of Cinderella, with his wand he fashioned a chariot of cheese, and set to it a squealing company of mice to draw the vehicle of his fervid oratory. [Laughter and applause.]

Come back, oh, my friend, to dwell with us in the confidence that the Commonwealth still shelters the homes of a prosperous and happy people. Linger no longer as in that melancholy company of the New Zealander whom Macaulay has pictured to us seated upon the broken arches of London Bridge, contemplating the fallen ruins of a once great metropolis. Remember that the storied Thames still flows to the sea, where, with shotted guns, our guardian fleets, with the gray cruisers of our ancient motherland, still keep their ceaseless vigil, that the laws of justice, of civilization, and the mandates of the Almighty, may hold the ocean pathways. The arch still spans the flood where the river of our faith flows by the meadows of our American Runnymede, and there the Concord yeoman, vigilant guardian of our liberties, a sleepless sentinel on the sacred fields where our freedom had its birth, bids us keep inviolate the heritage our fathers won for us, and, by their own deed of trust, inscribed in the Constitution of our Commonwealth, committed to our perpetual charge and care.

But, sir, I should do myself an injustice, in marshalling the heroes of our new Iliad, if I omitted to lay the tribute of my humble praise at the tent door of another of these allied Argives. There is one of them, compelling in his leadership, composing the discordant counsel of his followers, like Agamemnon, King of men. His name gives added prestige to the resolution which reflects his learning, his wide experience, his high purpose to bring aid to the people, and there is none even among his most ardent followers who more willingly pays this unneeded but willing tribute to his character and his service. But, sir, even he was oppressed by that gloom which seemed to be the mantle under which this attack upon the ancient institutions of the Commonwealth has been made. I recall a passing episode of our debate only that I may hope that my honorable friend, oppressed by his melancholy contemplation of the conditions of the State, may find a moment's diversion, and I shall not have spoken in vain, if I shall win the tribute of his smile.

I have not been familiar, gentlemen of the Convention, with the coöperative system of argument which I have found to be much in vogue here, which, so far as I can analyze its purposes or its results, is to project, under the guise of a seemingly innocuous question, a deadly and effective argument against the speaker who by right had the floor. The method often has resulted in sarcastic badinage between the speaker who had the right to the floor and the gentleman who was insidiously trying to get it away from him. My good friend, the honorable delegate from Brookline (Mr. Walker), experienced warrior in this method of warfare, for a moment forgot, in that perilous interchange of persiflage with my honorable friend, the delegate from Worcester (Mr. Washburn), the experience of his former happy days in the hunting-field, when, in his pink coat, he rode to hounds with the gentry. [Laughter.] That was a fatal jest of yours, my honorable friend, when you made your sarcastic reply to my friend from Worcester and suggested that his inquiry was intended to distract your thoughts, to beguile your hearers, as when the huntsman draws the fragrant remains of a red herring across the pathway of the hounds. [Laughter.] Do you not remember, sir, that such device is used only to divert the pack from the scent of that most furtive creature, the fox? Sir, I resent the analogy that you yourself suggested. I will not permit the majestic course of your argument in presentation of your case to suffer so ignominious a comparison. [Laughter.]

But I have accomplished my present purpose, gentlemen, if I have made you feel that we may soften the asperities of our grave discussion by digressions in lighter vein. I have sought to dispel something of the funereal atmosphere in which the presentation of this alleged hope of the people had plunged us for all these dreary days.

There is another type of argument to which I would call your attention, and I speak of it with some hesitation, as displaying some of the munitions stored in the arsenal of the strategists who are so sadly conducting a cause in which they assert the faith and hope of the people is centered. As the procession has passed, I have heard from its conductors no inspiring or cheering note. The flowers of oratory which have adorned the solemn pageant have been the asphodels, plucked in Stygian meadows, and tuberoses, which lend their melan-

choly tribute to the ceremonies of the grave. One of the tearful lamentations with which we have been, I will not say enlivened, but brought to a becoming recognition of the alleged moribund state of the Commonwealth, by reason of the decadent virtue of our legislators, was offered in the argument to which I refer only as being typical of my honorable and stalwart friend, — again, I wander through the geography of this hall and count the sections, — in the fourth division, the delegate from Boston (Mr. William H. Sullivan). None could have listened indifferent to his censorious denunciation of the Legislature of which he was part. The purpose of such argument, if it can be so characterized, was patent to all of us. Sir, if you sufficiently depreciate the associates against whom you propose to project your own dominant and conspicuous virtue by way of contrast, — the more you disparage your associates the more distinguished your own excellence appears. [Applause.] And, sir, none can have failed to observe that shrinking, hesitant modesty of my honorable friend in the fourth division when with every paragraph in which he denounced the vice or iniquity of his associates, he autobiographically proclaimed his own virtue. [Laughter.]

Why, sir, if for no other reason than to afford my honorable friend that political asset, leave the Legislature as text for his diatribes but unharmed by his aspersions. Otherwise I know not where he would arrive in his next political ambition.

I speak thus not by way of challenging the honesty of my honorable friend or doubting the fidelity or integrity of his own services to the Commonwealth, but I cite the argument as typical of the methods by which we might be diverted from serious contemplation of the great problem before us.

I turn to graver thought, and without jest or without suggestion of any levity that might for the moment light your own more serious thoughts, I speak of the argument that most impressed me as the cause proceeded, falling from the lips of one who, happily for me, sits near me and is constantly part of my happiest associations here. His views are radically different from my own upon this problem that we are now considering. But, in his presentation of this great cause in which he has enlisted not only his mind but his heart and his soul, I saw in him, sir, the leader of a new crusade, battling for that which is a vital part of his faith. And I heard his clarion call, the trumpet-call of the warrior to his soldiers: "Come on! Follow to the assault that we may retake the Holy City." For such is my honorable friend's high purpose. But the phrase of his own rallying cry is, I fear, too easily translated in the rough vernacular of the soldier and the camp-follower into the hope that with the retaking of the shrine of the Holy City, there will be possession of its treasure chests, and with the taking of the citadel, there may be a distribution of its wealth among the victors. [Applause.] His is the spirit of the Knights of the Arthurian legend. With them, he might find worthy companions in his rescue of the victims of tyrannic oppression. Under such leadership, for such cause, I, sir, would gladly be most willing if humblest, of his followers, but I fear that mingling in our ranks there would be those who sought gain rather than glory.

Let me tell my chivalrous friend that if he leads his eager legions

to the victory he seeks, he may need even my aid to protect the treasure chambers of the rescued city from those whom he has led through its gates.

May I engage your attention for another moment while my again compelling imagination recalls me to Homeric scenes? My honorable friend, now within the range of my vision and in the second division, — he, too, is of the Ægean allies from Brookline, — Ulysses, he should be named, he of the winged words and of the wise counsel. He it is, who, by the wax of adroit, appealing and alluring discourse, has sealed the ears of his mariners that they may not hear the crash of the waves on the rocks of the Scylla of the initiative, or the roar of the surf as it breaks upon the distant Charybdis of the referendum. [Laughter.]

Now this friend of mine in real life, when he has laid aside the necessary dramatic accessories of his cause, is one of the most amiable, one of the most enlivening, and we all know one of the most stimulating of companions. But he has seen fit here to assume the gloomy robes of the tragic company of which he is part. Perhaps there were no more tense moments in our deliberations, when every man of us was more enthralled, than while my friend, with his extraordinary powers of narration, with an exquisite elaboration of every incident of his sombre theme, like that of Stevenson himself, told us of the episodes which had come within his observation, enshrouding them in a morbid melancholy that Edgar Poe could scarce conceive, — more dreary than any picture that Doré ever painted, was his delineation of the imaginary decadence of our Commonwealth. I had thought that I had come to these deliberations to consider real things in the light of day, to consider and reflect upon the activities of normal men and of normal Massachusetts citizens. But, sir, my friend, like the chief operator in a clinic in morbid anatomy, stood in the center of this arena, the smell of the antiseptics was in our nostrils, as he proceeded not to advise us of some remedy for some passing ill in the body politic but to perform an autopsy, sparing us no aspect of its repulsive detail. [Laughter and applause.] And my friend did himself an injustice. He really is one of the most charitable and kindly men, who loves his fellow-men, even if he knows their frailties, but skilled beyond all other men that I have ever known in the fascinating but cruel use of the merciless instruments by which vivisection of suffering souls of humanity is performed; censor he was, and not as he really is, the charitable judge of his fellows. And why did we listen? Why did we listen, every one of us? It was because we all seek the mental excitement of new sensations. We seek relief from the dull monotony of familiar experience. We love the thrills of lurid melodrama. We listen eagerly to the story of a scandal, or of some perversity or iniquity, the more interested and absorbed if the story be of a neighbor, and, if real life affords no such entertainment, we go to the theatre to find it. We are perfectly indifferent to the commonplace story of everyday virtues with which we are familiar. And so, my friend, pursuant to a clever plan of rhetorical strategy, and to engage our attention, — and I do not charge that he intended to deceive any of us, — had almost persuaded us that the normal condition of Massachusetts citizenship is of perversity, of iniquity, of betrayal of trusts, tainted with all kinds of moral abominations; but

I assert that he distorted the perspective of our thought, and diverted our attention from the real purpose of our efforts here. We are not here to legislate for neurasthenics, nor to plan our system of government upon the assumption that the type of our Massachusetts citizen is that displayed in the criminal courts. We are to make our laws for the benefit and protection of the virtuous people of the Commonwealth, who do give character to its citizenship. [Applause.]

I had hoped, — oh, how I had hoped! — that light would break upon the countenances of some of these gentlemen who offer us the promise of a new dispensation to the people of Massachusetts when blessed by the coming of that beneficent day of the initiative and referendum. But never were sorrier prophets for hopeful cause than these gentlemen who are its sponsors.

I had hoped, — loving the Commonwealth as my honorable friend from Fitchburg (Mr. Walsh) loves it, and in the light of whose splendid and exalted thought my simple words find new impulse, — I had hoped, O my friends, children of Massachusetts, inheritors of the gifts of the fathers, charged with their transmission to the children whom we love and who are to be the parents of the future citizens of Massachusetts, that some historian, philosopher, poet, publicist, of our company here, even though an advocate of the initiative and referendum, would at some time say something that was more than perfunctory tribute to the fathers, utter some word of reverent gratitude for what we have and what we are. True, sir, some of our historians, lingering momentarily in the glorious past of Massachusetts, did make casual mention of the patriot fathers, but, oh! how careful, how careful they were to make it plain that they were pronouncing funeral orations and declaring that the great fathers were dead. Did they fear that if living and here present in this Convention inevitable contrasts would be drawn, embarrassing to the new advocates of this new thought? Well they might find consolation in the assurance that the fathers were dead! [Applause.]

One word more, — and I pray you, gentlemen, do not think that I am indulging in this seeming levity from any disrespect to this cause. I am rejoiced that I have seen again the smiles of returning hope upon the faces of my colleagues so long draped with the weeds of mourning while this alleged popular cause was having its funereal presentation.

Once, in my early practice, a solemn doctor, — I should have said the most solemn doctor I ever saw, before I saw the doctors of the initiative and referendum [laughter], — was on the witness stand, and I said: "Will you describe the condition of the patient?" Pausing, in order that the full significance of his words might be appreciated, he answered: "Sir, from the moment I took charge of that patient, I realized the case was hopeless." [Laughter.] In that amiable, guileless, but depressing manner, our friends have attempted to present to us here a living issue, — a promise. They have set the bow in the heavens, but have draped its highest peak in crape.

Now, Mr. Chairman and gentlemen of the Convention, you may say that I have spoken idly and to the waste of your time. But let me say again, that my words will not be wholly in vain if those of you who are patient enough to hear me will go hence, or continue your deliberations here, with some hope for the Commonwealth, and

not in the contemplation of its decadence. You may think I have beguiled you with mere fancies of the imagination. At least they have been intended to dispel the figments of imagination of a more sombre tint.

Let us see, then, what the real conditions are. First, I know that you will not forget the manifest, imperishable, impressive evidences of what the Commonwealth is. Builded upon a people's will embodied in their scheme of government, — a scheme of government vital and virile enough to bring a great people out of the agony of revolution into their freedom; a scheme of government strong, rigid, and yet progressive enough to hold the souls of men together in support of their institutions through every great crisis through which the Commonwealth has passed. And we are asked to change it. We are told that discontent exists, as if discontent established the predicate of evil conditions for the relief of which this remedy must be adopted. It suffices to say, gentlemen, — let us not waste a moment upon that predicate, — that if there be not discontent, unrest, ceaseless, implacable inquiry in the souls of men, they shall have ceased to be human. And when there is no unrest and no discontent, we are but fallen into the first stages of that process that portends physical and moral death. Aye, but they say, there is distrust. That leads us to inquire: Is it a distrust, born of the formulated system of our government, created in the mind, and framed by the hands of free men? If there be distrust, I ask you, my colleagues, citizens of this Commonwealth, which we know and of which we are part, whether we shall best work to the abatement of a distrust or to the abatement of an evil by first exaggerating or magnifying it? What is the occasion for the distrust, if it exists? Is it traceable to any fundamental laws made by the people against which the people reasonably protest? If there be distrust, deep as my honorable friend, the delegate from Brookline has declared, — if, as suggested, bad faith, betrayal of honor, treachery and falsehood are the normal characteristics of our citizens to-day, no such remedy as is here offered will cure it.

Upon what does distrust live? It lives by reason of some condition that is oppressive and to which a protesting but helpless people are bound and subject. Of what, my friends who advocate this measure, do you contend that these restraints are made? By what tyrants do you assert that they were forged and fixed not merely on the limbs but upon the souls of men? Whence came these mandates against which you are continuously discharging the artillery of your denunciations? Of what Commonwealth are you speaking? The mandates which held our fathers and which hold us to-day with respect to our government were framed in a paternal faith and love for their children, in the glorious faith of a free republic. Those are the bonds against which this violent protest is made. I hold to them. They are not alien bonds. They are bonds that the fathers themselves left to us. I agree, — I agree, that free men are not born into any formal compact of government. I agree that no such bondage shadows the cradle of child born within the borders of our Commonwealth. There is no compact under my construction of the scheme of government under which we live that we cannot change. But that change must be wrought and be disclosed by deliberate procedure that shall reveal the informed, responsible will of the people. [Applause.]

John W. Cummings of Fall River.

Mr. CUMMINGS of Fall River: The gentleman from Lancaster has entertained the Convention; with rare rhetorical skill he has told us a charming story; and he has led us a long way from the subject of our deliberations. I had hoped that it would please my good brother before he finished, to place before the Convention something that would aid us, that would serve his colleagues to answer the most serious question that has been proposed in a Constitutional Convention in this Commonwealth. We know that his logic is as convincing as his speech is persuasive, and I could say of him, and I do so with pleasure, as DeQuincey said of a great Italian scholar, that "He is not the least among accurate logicians because he happens to be the most elegant." But he has not attempted to apply his logic to this debate.

Now, I conceive it to be my duty, as chairman of the committee, not to indulge in ridicule, nor to exhort, nor to mislead you with false and fanciful claims of the value of the initiative and referendum, but to make a plain, orderly, frank statement of the case that came before the committee, and tell you what induced me, with other men who came with an open mind, slowly and hesitatingly, but in the end with entire satisfaction, to adopt the Walker resolution.

Let me say at the outset that if I believed in the prophecies that were made by some of the radical and enthusiastic friends of the initiative and referendum, I should have opposed it. If I believed, as a distinguished citizen of this Commonwealth said, that it would destroy representative government, I should have rejected it. Another ardent supporter of the initiative and referendum has said: "Let us get our head in the tent and we will soon get our body in; we will destroy this form of government." If I had believed that result to be probable, I should have opposed it. And yet, in spite of these prophecies, in spite of that promise, in spite of the false advocacy of false friends who were giving assurances of direful things that could not happen and should not happen, I found myself in the end obliged to accept the principle of the initiative and referendum.

It is said that the meetings of the committee were sparsely attended. That is true in a way and in a way it is not. The discussion often was academic; political science was being reëxamined to determine if this new principle could be safely adopted. It was not a subject where the vaudeville performer was going to have his place. We had no room for him. But on the other hand we had the representatives of great organizations coming before us day after day declaring that their organizations solemnly had pledged themselves to support this proposition. The American Federation of Labor, all the Brotherhoods of Railroad Men, the Typographical Union, the representatives of a hundred thousand or more citizens, came before our committee and asked to be recorded in favor of this amendment. It became evident that the strength of the friendship for this proposition was in the labor organizations. There was no general appeal. Occasionally a scholar in politics, a student in politics, a man who was examining the present unsatisfactory conditions with a view to ascertaining what, if any, relief could be afforded, came in and suggested the initiative and referendum as a remedy and told us how it worked

elsewhere. But the great army of supporters came from the labor organizations. "Why," I asked, "has labor such distrust of the Legislature? What particular and special reasons has it for complaint that distinguishes it from all the other associations of the Commonwealth, all the other societies, that brings it here urging this change, this addition to, this corrective of representative government?" And I shall tell you what the reasons seem to be and where the distrust began.

Nearly eighty years ago, Massachusetts was called upon through its highest court to decide an important question, the right of an injured workman to recover compensation when he was injured, not through his own fault, but through the fault of some one of his fellow-servants. The injured man was badly injured. He sued his employer to recover damages for his injuries, and the court said: It is true you were careful, it is true you were faithful, it is true you did not contribute to the injury; but it also is true you were injured through the neglect of a man who was your fellow-servant and you cannot recover. This was the decision in *Farwell* v. *Boston and Worcester Railroad Corporation.* The court has held, too, that in the performance of labor, men assumed risks oftentimes that were not readily ascertainable. And for nearly three generations, workmen had to bear the burden of that law, — not legislative enactment; law that was declared by the court to be part of the common law. It never had been declared the law by the Legislature, but it was declared the law by the court; and for nearly fifty years that dreadful rule which excluded and denied injured men any hope of compensation was enforced against them.

In the meantime, other States, other countries, had made provision to correct that law.

Not only was it true with reference to the doctrine of fellow-servants, but if the workman was killed in the performance of his labor, honestly, earnestly, carefully performing it, and was killed through the negligence of his employer, — no longer a question of the negligence of a fellow-servant, — his family could not recover compensation for his death. For years and years that was the case. Again, if he happened to linger consciously and some of those dependents who missed him so sadly when he was gone, asked for help, they were told that the burden was upon them not only to show that he was injured through the neglect of his master, but that he was injured without fault of his own. And when the widow came and said: "I am ready to show it. My husband said, when he knew he was dying, speaking without malice in his heart, not like the man who dies in a street brawl and denounces his adversary or denounces somebody whom he thinks is his adversary, — but a workman, speaking with all the solemnity that surrounds death: 'This accident happened while I was using all the care that I could and doing the work in the ordinary way:'" And she said: "I am prepared to prove by this dying declaration that my husband was in the exercise of due care." And the answer to her again was: "Well, we cannot receive the evidence. It is hearsay. We could receive it if it was a case involving the trial of a man for murder; we could receive it if it was a case involving the relation of a man to a family; we could receive it if it related to the duty of a town to build a road or a bridge; but when it relates to death from negligence of the employer, we must reject it." And we

rejected it for seventy years before we finally adopted a reasonable rule.

Mr. Chairman, what do you think of the patience of working-men from that Farwell decision up to 1887, when the first Employers' Liability Act was passed? The gentleman from Lancaster spoke of the despair that comes into the hearts of men. Would you not think that it was almost cause for despair, that working-men for years and years were obliged to bear this dreadful burden without compensation, without hope, without any expectation of being relieved?

The other day some praise was given to Massachusetts because of her preëminence in legislation for the benefit of working-men. Why, Mr. Chairman, England had adopted Lord Campbell's Act providing compensation in case of death for workmen many years before Massachusetts did. England provided an Employers' Liability Act years before we thought of dealing with the subject. Even Prussia established a Workmen's Compensation Act before Massachusetts awoke to the fact that she was losing the power of her working-men and making no provision for compensation.

What was happening during all this time? One, possibly two important things. First, the working-men began to distrust the Legislature. They did not distrust the courts; they seemed to take it for granted that they should accept the law as they found it, but they wondered why in all that long period no attempt was made to relieve them. We, by our indifference to their complaints against these laws, were gradually but surely preparing their minds so that they would become, as they did, many of them, ready victims to a social gospel that was intended to destroy all governments.

The immigration to Massachusetts steadily increased. It was largely a non-English-speaking immigration; it was an immigration from countries that did not understand our laws. The first attempt at grouping by these emigrants was in their local fraternal beneficial societies. They claimed, and claimed very early, that the burdens under which they were working were wrong and oppressive, and they turned to see what the English-speaking operative, their fellow-workman, had accomplished. They found he had appealed to the Legislature and his appeal was in vain; nothing had come of it. Every step on the road he was fought by that other partner in the common enterprise of production, — capital; foolishly fought, blindly fought, and he had accomplished nothing. And thousands of working-men, turned away from the Legislature, learned to distrust it, and they became the prey of these organizations that respect no society but look for the destruction of all.

Something has been said, Mr. Chairman, about the usefulness of unrest, about the stagnation which is indicated when there is no unrest. What do you say of the unrest that was caused by these disregarded, unheeded, uncorrected conditions? Further, what do you say of the unrest of the stockholders of the New York, New Haven and Hartford Railroad Company, of the Boston and Maine Railroad, of other corporations that need not be named, who found themselves practically penniless when they supposed that their fortunes were secure? Does any one claim that the unrest in the hearts of these people is a good sign? These stockholders are not members of labor organizations; many of them are widows, some of them are guardians

of children, some of them are trustees. They ask themselves this question: "What was the matter with the Legislature that it could neither prevent nor punish the wrecking of these great corporations?" And they get no answer. That discontent, that distrust, Mr. Chairman, bodes no good to Massachusetts unless you find some relief. [Applause.]

Let us go a step further and see if the Legislature has been efficient. No one will deny that during this long period of which I have spoken, it was inefficient. But come to a later period. In 1892 a man, a weaver in Fall River, struck with other weavers for higher wages. Immediately after the strike began, his employer blacklisted him. That means that his employer went to his associate manufacturers and said: "This man Worthington is a striker; don't give him work," and a lawyer, who is now an associate Justice of the Superior Court, brought a bill in equity to have that employer enjoined from blacklisting the workman. It was so obviously a grievous wrong that it is hard to believe to-day that relief was refused. But the court refused to relieve that man and gave this reason: That the right which he had to labor, — I am speaking of the case of *Worthington* v. *Waring*, 157 Mass. 421, — the right which he had to labor was a personal right and was not property, and that equity could not take cognizance of it and could not grant relief because there was no invasion of a property right. And he had to be content. Less than a year ago, the same question as to whether or not that right is a property right or a personal right, was before the court in the case of *Bogni* v. *Perotti*, 224 Mass. 152, and the court reversed the ruling of *Worthington* v. *Waring* and held that it was a property right and again refused labor aid. Whether the right to labor was or was not a property right, the Legislature could have given the court in equity power to grant relief. But the Legislature did nothing. Do you wonder that labor distrusted the Legislature?

Let us take another instance. A bill was passed in 1891 that forbade the imposition of fines upon weavers. The bill was declared unconstitutional, — it was held to be an unconstitutional limitation upon the right of contract, upon the freedom of contract. Several attempts were made following this decision to prevent the fines. In 1911, following the decisions of the courts in other States, and especially the United States Supreme Court, an act was passed which provided that "No employer shall impose a fine upon an employee engaged at weaving." That bill was construed by our court, as referring solely to an arbitrary fine, which was not the thing to be corrected at all. It was intended to forbid fines absolutely, to prevent the imposition of fines, even though there was an agreement to permit them. And thus again when labor came looking for relief the Legislature failed to pass an adequate enforceable law.

Mr. Chairman, these are some of the events, some of the incidents that led labor to distrust the Legislature; not to distrust it simply because of corruption, but to distrust it because it was inefficient, because steadily it had neglected the rights of working-men. In the meantime labor had organized and the labor organizations steadily were growing stronger and stronger. Any one who was asked to name the most powerful political organization in this State to-day would name that social, fraternal, economic organization which is not

ostensibly political but is in fact very much political, — the labor organization. Any one who watches the progress of these organizations, the success of their agitation, of their strikes, of their demands, of their threats, will see that steadily, surely, undoubtedly they are coming to be our masters.

Let us see whether or not that is true. Last year a great railroad strike was threatened. The Railroad Brotherhoods told the President of the United States that unless the railroads were compelled to accede to their demands they would strike and starve this country into submission. It is almost inconceivable if the facts were not written, — if they were not indisputable, they certainly would be disputed, — that that threat succeeded. That threat obliged the President to oblige Congress, as far as he might, to give the relief that was asked, to save this country from starvation and from the distress that was threatened.

Within a few days, a strike on another railroad here, the Boston and Maine Railroad, was made at a time when the line was needed for the transportation of munitions of war; and again immediately sixty-two per cent of the demands is given and thirty-seven per cent is to be arbitrated. Do you realize what a formidable organization you are dealing with? Do you realize that while you have driven out of the chamber of legislation, out of the temple, the money-changers, the shadow of a new force is on the threshold, the shadow of a force that will control the Legislature unless you provide another tribunal? You who seek to secure what we speak of as vested rights may regret, if you let this opportunity pass without giving to yourselves the right to go to the people. [Applause.]

I came into this Convention, as I said, with an open mind, without bias, without prejudice against the initiative and referendum. If I was conscious of any prejudice it was in favor of representative government. I believe, and I assume to state facts that will induce you to believe, that representative government can be secured safely by the adoption of the initiative and referendum. I am not bold enough to predict that representative government will fail if this measure is rejected. I have in mind the vicissitudes, the perils, the dangers through which representative government has passed. I see them as Parliament was dissolved by Cromwell when he walked in with his troopers and told the Parliament to disperse. I see them when for two years he refused to let England have a Parliament, and again when he summoned his own particular adherents, one hundred and forty in number, to make laws for the realm. Later, too, in the seventeenth century when the Parliament was corrupt, so corrupt that the wonder was that parliamentary government could be maintained, the representative principle in the government still survived. It survived violence, it survived corruption, it survived fraud, it survived neglect. I recall how our country was distressed and how we wondered whether or not we were looking at the last of representative government when in 1872 we had the investigation of the Crédit Mobilier, when it seemed as if Congress had been saturated with the poison of graft and of greed, when we were looking at the same time at the mere specter of representative government in the South at the time of the reconstruction, and men began to ask themselves: "Is this the end of representative government?" Through all the dangers

of those dark days of doubt and distrust, representative government passed safely. But now it is clear that there must be some relief found for the Legislature from the strain that is imposed upon it by present economic conditions, especially those arising from the conflict of capital and labor. The Legislature to-day has to deal with questions that were not in the minds of the men who adopted the Constitution. Political liberty, the safeguarding of life, of liberty, of property as they understood it, but not much about the rights of labor, not anything in the Constitution about them, — those were the things which they had before them. New problems have arisen which have shown the weakness of our legislative system. You must find relief. It is not profitable to try to entertain this Convention by ridiculing the men who take this situation seriously. With the facts before you, which one of you is willing to smile at those uncorrected evils which labor endured for nearly fifty years?

The gentleman from Somerville (Mr. Underhill), speaking the other day about the situation in which we find ourselves, said: "What is to become of the stenographers and the clerks and others," whom he mentioned, "who are being slowly, steadily, surely ground between capital and labor?" That is his question. That is the picture drawn by a man who is opposed to the initiative and referendum. I think it is a pertinent question and I think that as certain as that condition exists, it is certain that it exists under a legislative system that cannot and does not make any pretense to be able to correct it.

Where are you going for relief? To whom will you turn? Your Legislature has not helped you; your Legislature cannot. We have this constant conflict; we are powerless to end it, and neither capital nor labor will permit the Legislature to end it. Where, then, will you turn for relief? You have none offered to you. It is true that you have the suggestion of the gentleman from Amherst (Mr. Churchill) who rendered this Convention a distinct service when, without pretending to make an argument, he made a statement that induced us to reëxamine this question, and urged us to arouse the people to take more interest in the selection of their representatives, and trust the Legislature a little longer.

Mr. Chairman, there have been many objections made to the adoption of the principle of the initiative and referendum. The first one was that it was not in the power of the people to change their Constitution in this way, because of the social compact entered into at the time of the adoption of the Constitution; I think that objection has been abandoned.

The next is the claim that the adoption of the initiative and referendum will destroy representative government. Well, let us examine that objection.

This morning the eloquent gentleman from Waltham (Mr. Luce), who spoke so glowingly in defence of principles to which I subscribe, — to which I am glad to subscribe, — tried to arouse our fears that if this resolution should be adopted the people would be corrupted; that the power that could corrupt the Legislature could corrupt the people. Ah, Mr. Chairman, perhaps that is true, but I do not believe it, for as you cannot indict all the people, an entire Nation, I believe you cannot corrupt all the people. [Applause.] It is idle and beside the question to bandy reproaches as they have been bandied in this Con-

vention, one side claiming that the other distrusts the people. The real truth of the matter is, Mr. Chairman, the people have decided to trust themselves. [Applause.]

Will the Legislature resist and remain firm against the threats and demands of labor if some remedy is not given within the next few years? Will the Legislature resist the corrupting influence of capital? Between these two forces, the Legislature is subjected to a strain that it may be unable to bear. The popular branch of the Legislature is coming under the control of organized labor, the other branch is said to be under the control of capital. Another tribunal is needed. The people, therefore, have determined to become wholly independent of their agents and servants and to recognize in themselves, in the public conscience, a tribunal to which they may appeal from the judgment of a weakening, waning, failing Legislature.

It has been a common cry for years that a persistent corrupt lobby was weakening the integrity of the Legislature and that against it honest men were hardly able to hold their own. What did the Legislature do, — really do, — to abolish the lobby? Nothing. Provision was made for registration of legislative agents, but not the effectual provision that England made. England was threatened within the last seventy years by great dangers to her parliamentary system. In 1840, she was threatened by a lobby such as we have had up to 1917, and she passed her Private Bills Act, and it has been said that the result of that act was that it destroyed the lobby. What did it do? It made it imperative that every private bill, — and under private bills were included a vast mass of legislation that we consider public, — that every private bill should be referred to a committee that was judicial in its functions. It was made up of the chairman of the Ways and Means committee and three other men appointed by the Speaker, and there the case was judicially tried, and in seventy years there has been no real scandal in the House of Commons or the House of Lords growing out of the passage of private bills. We refused to take heed of it. By the passage of this Act, England's parliamentary system recovered from the corrupt practices of which Macaulay wrote in reviewing the life of the Earl of Chatham.

Again, when parliamentary government was threatened something was done. We are trying to do something. The opponents of this measure do not want to do anything. They want to leave the matter just as it is in the hope that "a people", — to use the language of a minority of the committee, — think of it! Think of this description of your electorate: "A people unorganized, uninterested, and apathetic" may be trusted some day, somehow, somewhere, to remedy this evil. You must give some medicine to the sick, and the Massachusetts Legislature has been sick for a long time and needs correction.

Again, England found herself hampered in the middle seventies. For thirty years the Chartists and their successors failed in their effort to abolish the rotten boroughs, and the dual system of representation became so oppressive that representative government was threatened, and the English Parliament found relief by granting universal suffrage. England did something.

In the early part of this century, the parliamentary system again was threatened. The veto power of the Lords was holding up legislation that was needed for the safety and peace of the empire; and

the House of Commons, obliged to assert its authority, did something to save representative government by taking the veto power away from the Lords. Shall we do anything to help this situation, or shall we leave it just as we found it? Whenever representative government has emerged safely from conflict and from danger, it has been because the thing was done that should be done to give relief.

The gentleman from Fitchburg (Mr. Lowe) asked a question some few weeks ago, which I had almost forgotten. The debate has run so long that many things that happened in the beginning will be forgotten by every one but the scribes. He asked this question: "What effect will this amendment have upon the industries of this Commonwealth?" And we are bound to answer that question if we can.

Of course, so far as it is a matter of prophecy, so far as it lies in the future, no man can say definitely and surely what the results will be. But may I venture to suggest some of them?

To-day organized labor, as I understand it, refuses and continues to refuse, and will refuse to arbitrate its differences so long as the Legislature makes the provision for arbitration, so long as the Legislature makes the laws that regulate the operations of labor. But ask yourselves this question: Can organized labor or any other political force in this State or any other State refuse to arbitrate on laws made by the people? [Applause.]

The beginning of the way that will lead to peace lies in the direction in which this resolution tends. Will it make better manufacturers, more skilful men, more scientific, better merchants? No. But it will do one thing, I hope, — it will prevent the happening of those protracted strikes that represent the greatest waste in labor. It will be impossible, — after men seriously set their minds to find a way to reconcile capital and labor, — it will be impossible to have protracted strikes. The people will initiate legislation, if the Legislature does not, that will protect them.

In the next place, let me say to the gentleman from Fitchburg that the working-man of Massachusetts has as fair a conception of his State and his condition as the rest of us. He knows that this is an industrial State. It does not rely and cannot rely upon its agricultural richness to save it. It cannot rely upon its commercial prosperity to save it. Its life is distinctly industrial. In one industrial line, the one with which I am most familiar, there is invested probably a half billion dollars. Do not have the fear that if this measure passes, the people will initiate legislation to pull down the house over their own heads. You may have shorter hours and you will profit by them; you will benefit by them. Massachusetts, if she leads the way in shorter hours for women and children, will hold and bring to her borders the best labor that is available for her industries. And in that connection, let me remind the gentleman from Somerville (Mr. Underhill), who spoke about the lead that Massachusetts had over the other States in this matter, that Massachusetts is the eighteenth in the line, that there are seventeen States in this Union, including the great commonwealths of New York, of California and of Michigan, many of the most powerful States in the Union, that have labor laws regulating the hours for labor of women and children far in advance of those of Massachusetts. They will not attempt to destroy, as I say, the things that they need for their own sustenance.

And now, as my time is about up, I want to say a word or two about the objection that has been made to petitions, — that the petition may be signed by irresponsible persons, that the signatures may be bought, that they may be secured by false pretenses. Well, sir, if you will read the objections that were made from Calhoun's day to Buchanan's, when the anti-slavery petitions were offered, you will find that they are quite like the ones that were made here. Some one has said that a republican State almost postulates the right of petition, for it is the only means that the people have of communicating with their government. You have no reason, then, to fear that the right of petition will be abused any more than you had reason to fear for years and years that it would be abused under the first article of amendment to the Federal Constitution. The Federal Constitution was hardly adopted when the ten amendments that we speak of as the Bill of Rights were offered, and the first one provided the right of the people to petition, — that is the way, to petition, — for a redress of grievances. And in all the years that that amendment has stood in the Constitution, we of the north at least never have felt that the right of petition was abused.

I therefore ask you to consider the right of petition as the best means of presenting questions to the people.

Mr. Chairman, it has been said that the proposed legislation would not be debated, would not be discussed. Stop and consider a moment the circumstances under which the new petitions will come before the Legislature. Twenty thousand or forty thousand citizens of Massachusetts sign petitions and send them in to their representatives and ask them to adopt the amendment or enact the legislation proposed. What is your estimate of your Legislature? Will it refuse to consider them? Will it refuse to discuss them? Or will it carefully, deliberately and honestly consider and discuss them? If the first is true, the Legislature that will act in that way should lose the confidence of the people. But the Walker resolution provides adequate means for the discussion and the consideration of these laws and amendments by the people.

What is the thing that is done by the Legislature? Webster tied us up pretty hard. No one to-day would think of reënacting the ninth amendment in which he provided that we must have the assent of two-thirds of the House and one-half of the Senate two years in succession. Even the opponents of the initiative to-day are willing to have that changed. The Legislature does not adopt an amendment to the Constitution. At the best, it recommends it to the people after two years. It advises, so to speak. The reference of a proposed amendment to the Legislature is the preliminary to getting the advice, the counsel of that body. Submission by the Legislature is advice to adopt the amendment. What does the Walker measure propose? It proposes the submission in the same way, and it proposes also to take the advice of the Legislature from year to year upon the proposed laws that the people themselves have initiated, and to let the Legislature advise the people to adopt or to reject those laws. It is the advice in both cases which is sought. The people will respect the advice of an honest, efficient Legislature. [Applause.]

Albert E. Pillsbury of Wellesley.

On Wednesday, November 21, Mr. Pillsbury of Wellesley spoke in Convention, the question being on passing the resolution to be engrossed.

Mr. PILLSBURY: I move the amendment which appears in the calendar under my name, and I have some general comment to make upon the resolution. The prospect of an early throttling of the debate compels me to make it now, and a decent regard for the Convention will lead me to make it as briefly as may be.

I have refrained until this time from entering the debate upon the initiative and referendum, as I had promised myself to hear all that could be said in its favor before finally settling my own opinion, — the only promise I ever made in connection with this Convention, — and as all discussion of the general proposition, under the very peculiar conditions which we found when we came here, has seemed to me idle if not impolitic. The situation invited another and different treatment of it. The friends of the measure have openly boasted, before the Convention met and ever since, that a majority of the delegates came here pledged to its support. If this is true, and there are indications that it may be, the Convention was disqualified in the outset to properly or impartially deal with it at all, and every argument against it was bound to fall upon the deaf ears of a pledged, — for politeness only I will not say a packed, — Convention. In this situation, probably without precedent in the history of such assemblies, it would have been a logical and rational course for those who came here with open minds to say to the pledged majority: "This Convention is called for discussion and comparison of views and impartial action in the light of such discussion, and for no other purpose. If you are proposing to use it as a mere phonographic record of pledged votes for a preconceived scheme, of which all the terms have been settled beforehand by agreement among yourselves, we will have no part in that performance. Take your cut-and-dried scheme to the people, with all its imperfections on its head, your work and not the work of the Convention, and let them vote it down, as they ought to and will."

This would have saved some months' time, and I think it would have made, in the end, the proper disposition of the scheme. The Convention has taken another and perhaps a wiser course, but on the way some sincere opponents of the scheme have been misled, as I think, into a compromising attitude for which there is no occasion in any popular demand for it of which there is any evidence. A loud noise does not prove anything. A very few can make it. It is time we were reminded that this Convention is a sounding-board, on which all the radical and socialistic sentiment of the State is caught and reflected and multiplied. It is louder here than it is or ever was anywhere else. The conditions out of which the Convention arose were not likely to produce such an impartial deliberative body as a Constitutional Convention ought to be, and they did not. The Convention is more a political than a deliberative body. The principal contests here are contests between opposing political forces. In this case, it is between the believers in constitutional representative government on the one hand and socialistic democracy on the other. I do not expect to

impress our socialistic friends with my own views of this measure, especially at this stage, but there is a group of delegates here who evidently do not feel committed to this resolution in all its parts and are still open to conviction, and, while my appeal is especially to them, I think it may also be wholesome to remind the Convention of a few highly pertinent facts which ought to control our action but seem to have been overlooked or forgotten in the debate.

And first, the only reason that could justify our adoption of this scheme in any form does not, in fact, exist. The debate very early departed from the question which lies at the threshold of the whole subject, and ought to be brought back to it. Do WE NEED THE INITIATIVE AND REFERENDUM IN MASSACHUSETTS? This is the first question and really is the only question. Unless we need it here, we are not concerned with its general merits or character, or how it has worked elsewhere, or is likely to work here, or with any minor questions of form or detail. It is said to be needed here because the Legislature is so unrepresentative and irresponsive to public sentiment that the people cannot get the laws they want. This is loudly asserted, but it is not true and has never been true within recent memory. The few sporadic cases referred to in the debate, in which the Legislature has refused to accept particular measures, so far from proving that it is not under popular control, prove nothing whatever, and the argument sought to be drawn from them would be ridiculous if it were not a serious matter. For every one of these a dozen could be cited of exactly the opposite character, of laws passed under pressure of a faction commanding a large body of votes, in its own interest and directly inconsistent with the public interests. There is no ground for believing in a single one of the cases referred to in debate that the defeated measure was wanted by a majority of the people, or was defeated by any special interest or sinister influence. They are waved before the Convention by men who assume that when the Legislature refuses to accept a pet measure of their own it is defying the will of the people, a process of reasoning that is common enough but it ought not to control this Convention.

The case against the Legislature has been grossly misstated, and the Convention correspondingly deceived if it believes what has been said. Statements have been made in the debate which are a slander alike upon the Legislature and the Commonwealth, statements which if made by outsiders would be resented as slanderous by the very men who make them. They do not believe them, and have furnished the proof that they do not, by appealing to us, in support of other measures, to trust the Legislature, almost in the same breath while they declare, in support of this measure, that it cannot be trusted.

The pretense upon which the whole case for the initiative and referendum stands, that Massachusetts needs it because the Legislature is so obstructive of the popular will that it can no longer be trusted with the making of the laws, is a fictitious and false pretense. This is a question of fact, upon which some of us have personal knowledge. It is significant that the most lurid pictures of Legislative delinquency are drawn by men who never saw the Legislature from the inside and wholly lack the personal knowledge and experience which probably would have cured their delusion. To those of us who know

that body it has been highly edifying to hear its sins expounded by distinguished gentlemen who have only what may be called a speaking or speech-making acquaintance with it. I cannot be suspected of exploiting myself in saying that I probably have had the Massachusetts Legislature under closer observation, for a longer period of time and from more diverse points of view, as a member of each branch, in the chair of the most stigmatized branch, as the legal adviser of the Legislature and the Executive, and as counsel before its committees at every session since my official relations with it terminated, than any other member of the Convention. I have been and am a critic of that body, but it is not true that it is controlled by corporate or moneyed interests, or is irresponsive to the popular will. Such an assertion would be absurd upon its face unless we assume that it is permanently corrupt. If you believe that, why do you not say so? You do not say so because you do not believe it; nobody pretends to believe it. The exact contrary of what has been asserted here is the truth. If there are members under corporate influence, and occasional grafters, — and probably there are some of each class, — they are heavily outnumbered by men who wish to know only what will command the most favor at the polls. There is no room for doubt that if a majority or anything like a majority of the people want the initiative and referendum, the Legislature would have found it out and would have been first in the race to it. The fact that the Legislature has refused to accept it is the most conclusive evidence in existence at this moment that there is no general popular demand for it.

So far from being difficult to secure popular legislation in Massachusetts, it is far too easy, and this is the vice of our legislation. The conclusive proof of this is found in the Blue Books, and it is highly significant that the friends of this measure have cunningly "sidestepped" the only evidence that could prove their case or disprove it. Take the Blue Books, say of the last five years, — here is one of them, of nearly 1,800 pages, one year's product of a refractory and reluctant Legislature, — and you will find these bulky volumes swollen with laws of a popular character, many of them so petty and inconsequential that only a handful of people or less can have any interest in them. And while I have not had time to make the analysis of these volumes which ought to have been given the Convention, I am so familiar with their general character that I challenge the friends of this measure to produce out of them a single important Act which bears the mark of the so-called "interests", or, if capable of that suspicion, is inconsistent with an honest legislative or popular judgment of what the public welfare requires.

The outcry against the Legislature is directly traceable to three sources: First, and principally, to what is called "organized labor", — for many years past the most potent force in the Legislature, far greater than the combined force of all the corporations if you could combine them, but never to be satisfied with anything less than complete domination of it; second, to a group of men holding extreme views of public service regulation with which the Legislature has not always kept pace, though their influence is seen to-day in the prostration and virtual bankruptcy of our whole system of railroad and street railway transportation; and third, to the propagandists of the initia-

tive and referendum themselves, consisting principally of the other two classes, with a group of doctrinaires and some other good men whose motives I have no desire to question, among whom belongs my friend from Brookline (Mr. Walker), who stands first, perhaps, among the putative fathers of the proposed scheme (laughter and applause), — though I do not recall that in three times taking the Speaker's chair he ever told the Legislature that it is not fit to be trusted to make the laws, and I infer that the revelation did not come even to him until he had turned his back upon that body and his face toward wider fields of public usefulness of which the people hold the key. [Laughter and applause.]

This Convention is here for the single reason that the Legislature has refused to accept the initiative and referendum itself. Except for this, and for the determination of half a dozen men, — I might almost say of one man, — that this new political machine shall be set up in Massachusetts whether we need it or not and whether the people want it or not, this Convention never would have been assembled. If we assume that every man who voted for the Convention wants the initiative and referendum, — an extravagant assumption since it is known that other interests joined in the call for it, — they were but a third of those who voted at the election, and much less than a third of the qualified voters. There is no means of knowing how many of them were led to vote for it by inflammatory but unproved and unprovable charges against the Legislature, and every such charge is a charge against the electoral body which it is now proposed to substitute for both Legislature and Governor. If the Legislature is not what it ought to be, it is the fault of the people who choose it. The absurdity of committing the work of direct legislation to an electorate too ignorant or indifferent to take care of the selection of their own local representatives must be apparent even to the friends of the scheme, but this does not disturb them. They are not committing legislation to the people. They are committing it to themselves, who will run the machine.

My eloquent friend from Fitchburg (Mr. Walsh), whose place it seems to be, as the most accomplished performer on the I. and R. trumpet, to sound the final rally, said the other day that the opposition rests on distrust of a *majority* of the people. When or where have you ever proposed to commit the making of the Constitution and the laws to a majority of the people? You have fought the number down to the lowest fraction you could get, — to the fraction which you think you may be able to control. You know as well as I do that a popular initiative or referendum calling for the votes of the majority would not be worth to you the paper it is written on. I admit the right of the majority to control the government, and it is because I do not believe that a faction ought to control it, and because I know that no sound or enduring governmental policy can stand on anything less than the concurring sense of the majority, that I object to your scheme. Representative government develops the deliberate sense of the majority, the only basis of a just government, so far as it can be developed. Your scheme excludes it and establishes minority government, — that is what it is and what it is intended to be, — government by the most active and clamorous faction, a little

socialistic oligarchy, controlled by half a dozen men, or women as it may be, for which the name of democracy is nothing but a false and criminal alias. The best answer my eloquent friend could make to the learned Justice from Fall River (Mr. Morton) was that it will do no harm to try the experiment. What a reason to address to grown men for a radical and subversive change in our system of government, — and yet he could have said no more. There is no better reason.

The form of this resolution, which I shall not take time to discuss, is reason enough for its rejection. It follows and outruns the worst examples of the wildest west, by injecting into the Constitution a long and complicated piece of legislation which ought not to be there in any view of the subject, — as my esteemed friend from Brockton (Mr. Brown), who favors the principle, has seen and declared in one of his inspired intervals. [Laughter.] The initiative and referendum can be put there, and should be if at all, in less than half a dozen lines of authority to the Legislature to enact it. I have submitted such a form, so that the Convention may at least have the opportunity, and it is the only form in which it should ever find entry into the Constitution. The minor vagaries of the scheme as disclosed in the draft before us I cannot stop to mention. They are new every morning and fresh every evening. Every day's debate has added other difficulties, perplexities or absurdities in its form and operation to those that went before, opening an endless vista of controversy, litigation and judicial decision and a more fertile field for machine politics than we ever have known or dreamed of. As might be expected from a scheme devoted to the great principle that any man who is bound to have a particular law shall have it unless everybody else turns out to see that he does not get it, a substantial part of our time and strength will be absorbed in trying to protect ourselves against the professional operators of the machine. We shall lose the breathing-space now afforded by the recess of our perennial Legislature and be submerged in politics and law-making over our heads and all the year round. The new printing bills, to feed the waste basket, would pay the whole cost of our present electoral system, but this is the least of its faults. I do not believe the people of Massachusetts have any desire to take on this new and highly unprofitable industry.

Perhaps the crowning folly of the scheme, proposed as a remedy for an inefficient Legislature, is that its first effect will be to emasculate the Legislature and make it a mere collection of puppets sitting *in terrorem* under shadow of the initiative and referendum. It would cure an unfit Legislature by making it more unfit. All legislative responsibility or sense of responsibility will be shifted to the new seat of judgment, the people, who cannot be held responsible for anything. Government by discussion and consideration will give way to government by clamor. Yet there is consistency even in this. An efficient Legislature is not wanted, but one that can be dominated and controlled by the machine, and that we shall have if we adopt this resolution and the people are so misguided as to ratify it.

I regard the substitution of the fantastic scheme of constitutional amendment in joint convention, proposed by my friend from Beverly (Mr. Loring), — I say this with great regret for I appreciate the sincerity of his motives, — as the most unfortunate lapse we have

made [applause], especially as it was done by men who must have surrendered their convictions to a weak apprehension that something worse might happen. It was done, I suppose, in a spirit of compromise. It is not a compromise, but a concession to our fears and to the friends of the I. and R., who were on the verge of defeat of the constitutional initiative and caught at it, as of course they would, like a drowning man at a plank. In several particulars it is openly more objectionable than the original scheme, and it completely surrenders the substance of the representative principle to the shadow of a legislative check upon popular action. The supposed legislative check, its only claim to the favor of those who do not wish to see the Constitution exposed to amendment upon impulse, passion or prejudice, is a fiction, a delusion, and it would be a snare if it could catch anybody who has eyes to see. You will always find a fourth and more of the Legislature ready and eager to support any populistic scheme. Indeed I understand that the organ of the I. and R. party declares that the substitute is better for them than the original, as it will be easier to get a fourth of the Legislature than to get the 25,000 additional signatures which the original required. The separate identity and responsibility of the two branches, which were put into the Constitution for good reasons, stronger to-day than they were then, are swamped and submerged in a joint convention, to say nothing of the individual responsibility of weak or shifty members, who will have a new cover to hide in. The joint convention is denied the right of free discussion and amendment which it must have to be worth anything. One-fourth can *approve* any proposal, but not less than three-fourths can *improve* it.

Without going further into details, it opens the way to amendment of the Constitution by a fourth of the Legislature and any majority of the people voting upon it, however insignificant in number, if equal to 30 per cent of those who vote at the election, which is enough to condemn it. This is minority government, pure and simple. It cannot pretend even to represent a majority of the people. You may say that a minority of the voters have been doing it under the IXth amendment, but a majority of two Legislatures was back of them, while here there is nothing back of them but a rump of the Legislature, and that is allowed to be there only because everybody knows that it never will stand in the way. And perhaps the worst aspect of this substituted scheme is that, being here, some of us feel compelled to vote for it, against our convictions, from fear that the lost ground cannot be regained and the whole scheme of constitutional amendment by initiative be defeated. I sincerely hope that it is not too late for this, and I appeal to delegates who may favor some form but not an extreme form of the I. and R. to join in striking out this most dangerous feature of the resolution, so that the Constitution may be kept free from its operation.

There is yet no assurance that any of the amendments restricting the constitutional initiative will finally remain, and so long as constitutional amendment by popular initiative is a possibility there is no security for the constitutional safeguards in the future. I think we of the opposition have been proceeding here upon some assumptions which cannot safely be made. It is not certain that we can depend

upon any restrictive amendments, whatever they may finally turn out to be, and I advise my friends not to depend upon them. Without going far into this, it is a fundamental principle of constitutional government that the people cannot bind their successors. Our Constitution is not a contract. It is an ordinance of the people, who make it and can unmake it. We cannot put anything into the Constitution this year that may not be taken out next year or the year after. Do not forget that the resolution expressly annuls the present method of amendment, as its friends mean to steer all amendment of the Constitution into the popular initiative channel if they can. The "legislative substitute" scheme in the resolution is no check upon the popular initiative but is a mere option, which may be disregarded. As for the really restrictive amendments as they now stand, to take the most important of them for illustration, they declare that the people shall never attack religion, or the courts or judges, or certain personal rights, or the restrictive clauses themselves, by the popular initiative; in other words, that they shall never make these particular amendments of the Constitution unless by some other method of procedure. How can the people of to-day bind the people of the future never to make these amendments except in a particular way, any more than we can bind them never to make such amendments at all, which confessedly we cannot do? This is a difficult question. If the scheme passes and is ratified there will at least be ground for the claim that all parts of the Constitution must be equally within reach of the popular initiative.

We are openly told by some of the less discreet friends of the scheme, what we should have known without being told, that the Constitution and the judges will be the first objects of attack if this weapon is put into their hands. That they cling to the constitutional initiative, and will not allow it to be touched, is proof enough that they mean to use it if they can get it. In the face of the facts, and of the proclamation, how can any lawyer who has defended on this floor the independence of the judges as vital to our security, reconcile himself to support this feature of the scheme in any form? We cannot rely upon the Federal Constitution for our security in the States. That is beyond our control; and the purpose, openly proclaimed, is to force the initiative and referendum upon the States until the combined influence of the socialistic States can force it upon the Nation and emasculate the Federal Constitution with the rest. The only safe course is in rejecting the whole scheme of constitutional amendment by popular initiative. If the wedge is entered, it will eventually split the constitutional safeguards in pieces.

"Will you not trust the people?" This has been the capital of every demagogue from Cleon of Athens down to this day and hour. I would trust the "sober second thought" of the people when they are not deceived or misled, but this we shall not have. I would trust the people if the demagogues would let them alone. I would not trust them when they are lied to, as they are and will be, and believe what they are told because it is their interest to believe it, though it may be the plainest falsehood or folly. The cry of trusting the people need not be branded as hypocrisy. It needs no label. It is hypocrisy open and undisguised. There is not a man among the loudest advocates

of this scheme who, under popular attack, would trust his life, his liberty, his character or his property to the unbridled edict of the people at the polls if he could avoid it. We are no less willing to trust the people than you are. I think so well of them as to believe that they cannot be permanently fooled by flattery or beguiled by false promises; but, as Abraham Lincoln out of his wisdom said, you can fool them all for a time. I will trust them to elect a better Legislature, if they are made to understand the need of it. If you think there is need of it, why do you not tell them so and help them do it? That remedy is always in their hands, and it calls for no change in the Constitution, or if it does we will make it, with one accord. Do you think they are unfit even to do that? And if you rate them so low as this, do you still pretend to believe that they are equal to the making of the Constitution and the laws? You cannot escape the consequences of your own logic, and it does not lead to your conclusion.

The most important fact involved in the whole discussion has hardly been noticed here. Massachusetts is an industrial State, as it must always remain, and its people are an industrial people. Almost a third of them are still alien but on the way to the franchise. We know how far industrial workers are under the influence, not to say the control, of their leaders, who preach to them the gospel that labor and capital are natural enemies, that they are the victims of corporate greed and the Legislature under its control. The people of Massachusetts depend for their prosperity, and a majority of them for their existence, upon our manufacturing industries, substantially all of which are, and now have to be, under corporate form for the reason, if for no other, that in the modern industrial world great business enterprises, to be effective and successful, must stand upon adequate capital. The people do not always understand, some popular leaders do not appear to know, that a corporation is nothing but a body of persons who have put their means together to do what no one of them could do alone, that they comprise vastly more people of small than of large means, and, in view of the extent to which savings banks are holders of corporate securities, may be said to include every savings bank depositor, on whom indirectly falls every blow struck at the corporation in which his savings are invested. And I diverge a moment to say, as this too seems to be needed, that the popular bogey, a corporation lawyer, is one whose principal business is to tell the corporations what they must do to comply with the network of restrictive laws now woven about them, and defend them against predatory and destructive attacks of which the legislatures are made, so far as they can be, the instruments. There is no State in the Union, with the possible exception of our neighbor Rhode Island, where the experiment of the initiative and referendum involves so much risk to institutions absolutely vital to the public welfare, or where it is capable of so much public mischief, as the Commonwealth of Massachusetts. There never has been a time in our history when it would have been so unsafe as it is to-day to add a new risk of this character to the unavoidable burdens and hazards which our industries now have to carry, and the very last man to want it, the last man who can afford to take the risks of it, is the industrial working-man whose daily bread is at stake.

The most significant word in favor of the scheme that has been

uttered on this floor came from my friend from Fall River at the head of the committee (Mr. Cummings), when he said that sooner or later we may need it to protect ourselves against the tyranny of organized labor. To that, my answer is that we will take it for this purpose when we must, but I commend it to our organized labor friends as food for serious thought, lest their own weapon may be turned by a stronger hand against them. I appeal to them, in the friendliest spirit, for I think they, too, are deceived and misled, to consider whether they can afford to array their special interests against the public interests and try out the issue with the people; to consider whether it is not a mistake to come into this Convention, alone out of all our three and a half millions, demanding special rights and privileges for themselves and backing the demand by covert threats; whether it is not a mistake to terrorize the people and the Congress by the menace of famine, or enforce the demands of labor by holding up the activities of the government toward the successful prosecution of the war. There is a better way than this, — a better way is already proposed to this Convention, — and a better way must be found and taken if free government is to continue.

My friend from Quincy (Mr. Adams), who supports the I. and R., has appealed to the Convention for more efficiency in our State government, and we need it; but where can he find efficiency in the I. and R.? He is an accomplished student of these problems, and he must know that *in*efficiency is always and everywhere a part of the price that has to be paid for popular government, and the more popular it is made the more inefficient it becomes. He says that the only business of the American people until it is done is to win this war, and though a man of peace I am now compelled to agree with him. Does he think that a radical extension of popular power is likely to favor that object, or that this is a fortunate time to undertake the recasting of our Constitution which ought not to have been precipitated upon us under such conditions? The combination among the various elements supporting this scheme is an unnatural alliance. No friend of efficiency in government belongs in it, and no man belongs in it who wishes to promote efficiency in the conduct of the war.

I think the subject calls for a wider view, and a longer view into the future, than the debate in general has taken. The initiative and referendum is either a passing political craze which will have its day and disappear, like know-nothingism and populism, the greenback and free silver, or it is the beginning of the end of representative government. If it is the former, its adoption here will do nothing but discredit Massachusetts as betrayed into a departure from her accustomed good sense and political sagacity. If it is the latter, it is the first step toward supplanting our present system of representative government by unrestrained democracy. It is not merely a new piece of machinery for representative government. It is a new method of government, and two systems so repugnant to each other cannot permanently stand together.

The scheme is yet in the experimental stage. It has never been tried under conditions bearing any resemblance to ours in Massachusetts. Under our conditions, it is a wholly untried experiment. Unrestrained democracy has destroyed every State in the history of

the world that ever tried to stand upon it, and no form of democracy ever gave promise of permanent survival until the people found out that they cannot trust themselves without the restraints of the representative system.

If there are those who believe that the republican experiment is finally established, they are mistaken. Every student of history knows, and every man of common intelligence can see, that the difficulty of maintaining free institutions must increase with congestion of population and the increasing complexity of social and economic conditions. Our government has never been secure, and, even when threatened by armed rebellion, it never was more insecure than it is to-day. We are approaching, if we have not reached, our time of trial. One crucial fact lies at the center of this whole subject, — that every form of government stands and can stand only upon the security of property rights. A free government which does not protect them must and will give way to some form of absolutism. The ultimate effect if not the object of the initiative and referendum, say what you will, is to enable a majority at the polls to appropriate the property of those who have it to the use of those who want it. With this weapon in their hands they can do that, or they can do anything. It commands all the rest. To put the unrestrained control of property rights into the hands of the majority, taken as they come, is too much for human nature. If the average man is told that he can have what he wants by voting it he will vote it, be the consequences what they may.

We have been for years in the throes of a world-wide socialistic agitation which aims to unsettle and ultimately to break down the security of property, on the way to the universal equality which can be reached only by pulling down the prudent and industrious to the level of the thriftless and improvident. We are now in the convulsions of a world war, under which all political conditions are in ferment and upheaval. Even as we speak, events of sinister significance are occurring day by day, not only in Europe but here at home, in our own country. We cannot forecast the conditions that may confront us when this war is over, or before it is over. It has unavoidably entangled us in the new peril of militarism, which this is neither the time nor place to discuss. If the social order is changing, as it may be, we should at least know more about the trend and character of the change before we undertake to readjust our Constitution to it. I make no predictions, and do not mean to magnify any apprehensions, but let no member of this Convention deceive himself with the idea that we can adopt this scheme, if it is anything more than a passing political folly, and keep the substance of representative government or the safeguards of personal right on which we have grown to depend. Upon one thing we must all agree, — that it is not the part of wisdom to try unnecessary experiments, even under the most favorable conditions, upon our political institutions. The present is not the time, nor Massachusetts the place, for such an experiment as this. [Applause.]

James Logan of Worcester.

Mr. James Logan of Worcester addressed the Convention, November 21, on the general features of the proposed initiative and referendum system, and as his speech had no bearing on the amendments under consideration, it is printed with the other speeches on the merits of the proposition.

Mr. LOGAN of Worcester: This Convention is dealing with the machinery of government, but no machinery ever yet conceived by the mind of man will run itself. It must be operated by human beings, and those of us whose life work has been connected with industry know that poor machinery with good help often will produce better results than the best machinery ever made with poor help.

When the fathers framed the immortal document that we are seeking to amend they said in Article XXX of the Bill of Rights that the Government, as organized, was organized "to the end it may be a government of laws and not of men." And yet, Mr. President, with constitutions, charters and laws it is not the written documents but the way men work under them that gives us good or bad government. It is, after all, a question of men.

In our country when ills develop we say: "Let us enact another law or amend our Constitution or charter," — unmindful of the fact that making new or amending old laws, constitutions or charters does not cure the disease. We must go deeper than that. There must be created not a law but a *spirit* that will *right* the *wrong*, so that man-made laws are of secondary importance.

Let me repeat, we can amend the Constitution or make and adopt a new one, but doing that will not give us that for which we are striving. There must be created a larger sense of civic duty, a larger sense of personal responsibility for the common good, a larger willingness to render *unselfish* service in a world of need; and if we could get this larger vision, this old Constitution which has served the Commonwealth so many years could serve us still, even without a change.

True democracy is not the machinery of government, but a recognition of mutual rights and mutual obligations and an intelligent public opinion which finds expression at the caucus and at the polls.

The destiny of this Nation, of this Commonwealth, of every city and town in the land is in the care and keeping, not of the men who vote at the caucus and election, but in the hands of the men who do not vote, who neglect their duty, who recognize no personal obligation for the manifold blessings that have come to them by the service, the suffering and the sacrifices of those whose work made possible the conditions under which have been handed down to them the blessings they enjoy.

There is hardly a piece of good legislation which could not be carried through or a bad piece of legislation that could not be defeated by the men who do not express their will at the polls, who feel no responsibility for the kind of legislation we have, whether good or bad, or, what is more important, what kind of men are elected to translate that legislation into service (for that is what government is) so long as they are not conscious that it touches their pockets or disturbs the even tenor of their selfish ways.

In 1916, for city and town elections 657,878 male voters were regis-

tered but only 481,683 went to the polls to vote. Approximately 27 per cent of the registered voters, or, to be exact, 176,195, were not interested in the government of their cities and towns, and to this percentage must be added that large number, approximately over 125,000 more, who were not interested enough even to register. Practically 40 per cent of the voters showed no interest in the election. In my own city of Worcester, at the municipal election in 1916, 27,997 voters were registered, but only 22,919 voted; 5,078 voters, approximately 18 per cent of the registered voters, did not care who were elected officers of the municipality, did not care who expended the money raised by taxation or what kind of men transacted the city business; and this takes no account of those who were not interested enough to register.

These citizens appear to assume that good government can be secured and maintained without any effort on their part and without sacrifice, — but they are eternally wrong. *If we want good government we must first vote for good government.* No step of progress ever yet has been made that has not been paid for by some one, and paid for with blood.

At patriotic gatherings men will applaud every reference to the sacrifices made by the fathers in securing our independence and to the sons of '61 for maintaining the integrity of the Union, but the moment some people are asked to sacrifice anything *themselves* for the public good, they are either too busy, too lazy, too indifferent, too selfish, too fond of their own ease and comfort, or too fond of the almighty dollar to even entertain the proposition and give it one serious thought.

It is claimed that special interests control legislation, and no doubt they have; and it is claimed that the initiative and referendum is the instrument by which the control will be taken from the special interests. It may take the control from one class of special interests, but my fear is that it will pass the control to other classes of special interests led on by the "vociferous few," who, to my mind, are equally dangerous for the larger interests of the Commonwealth.

Special interests have controlled legislation in the past because men like those in this Convention have allowed them to control, yes, have helped them to control, either as principals or as paid agents or attorneys for the special interests; and many men who talk loudest about special interests are here at the State House at every session of the Legislature with the special interests which they represent.

After hearings are held the men who attended the hearings, having made their appeals for, or protests against, the proposed legislation, have gone about their own business. Ah, yes, but when they went home they left that other man on the job, and the rules of his union allow him to work all his waking hours. He creates an atmosphere that the servants of the people breathe quite unconsciously until they think as he wants them to think, as he is paid to make them think. It is like a man breathing sewer gas; he may be entirely unconscious of it until his whole system has become thoroughly poisoned, just as the minds of the German people have been poisoned.

Under those conditions is it any wonder that the special interests get legislation to their liking? The high-handed methods of some of the public service corporations have earned for them the distrust and enmity of the people. Too often they have been a law unto themselves, and the gentleman from Brookline (Mr. Anderson) in his de-

scription did not overdraw the picture. In the past they have been in control in this State House.

When men speak of special interests most people have in mind only the public service corporations, and to my mind they have been the worst offenders. I hold no brief for them, for during four rather strenuous years as mayor of my city I went up against some of them, and I can see now in memory the smiling faces of some of the smooth, suave, artistic gentlemen who came before legislative commissions and committees to plead their causes, smooth artists who could cut your throat with a feather and you never would know it had been cut, until you wanted to spit. [Laughter.]

Many men have felt that the Legislature has not been responsive, in some directions, to meet the changing industrial conditions, and that is true; but in the main, Massachusetts has led the country, not in freak legislation, but in sane legislation for her industrial workers.

By way of illustration may I refer to just one law which has been referred to a number of times, — the Workmen's Compensation Act. It is not perfect, but it is well on the road to be as nearly perfect as most of the work of man.

To reduce the loss from fires in the mills insured by mutual companies everything is done that the inspector demands should be done in order that fires may be prevented, with the result that fire losses in certain risks have been reduced to a minimum. The same common-sense methods are producing the same results in the saving of life and limb in industry. Why was it not done before, and why have so many held back and opposed legislation which had for its purpose the conservation of life and limb? Because in the case of fires the employer lost his own money. In the case of the injured workman his family stood the loss.

But the leaven was working in the minds of men. Employers' liability did not meet the case. Its foundation was laid not in social justice but on legal responsibility, — and there is a wide difference between social justice and legal responsibility. The employer paid a certain fixed sum to a liability company to fight his battle with his injured workman and to make settlement for accidents for the smallest amount possible. Often there was no justice in the settlement even though it might be legal, for legalism is not always justice; but the moral conscience was being quickened and men were being made to see that in industry great injustice was being done and that a heavy burden was being placed upon those who were least able to bear it. They began to see that the breakage of human life and limb ought not to be borne by the victim of the accident or his helpless widow and her little ones, that this human breakage was a more legitimate charge against the cost of production in industry than was the breakage of machinery, and that the adjustment of such costs ought not to be put off into the future to be settled at the end of bitter and costly litigation while those who were dependent on the victim of the accident for bread and shelter suffered, while so-called justice, which often was a travesty on justice, was being ground out by the slow processes of the courts.

Progressive men in the management of industry have come to recognize the principle that it is the duty of industry to do everything that human ingenuity can suggest to safeguard life and limb, to prevent so

far as possible this human breakage, and if accidents happen, as they will, then to provide for the dependents of the victim. Yet almost every step in this kind of legislation has been fought by some firms and corporations from start to finish, and the workman had a grievance and he had a right to have a grievance.

There are other things that need to be adjusted to meet the changing political, industrial and economic conditions. But in all our thought and in our legislation we must remember that in this part of the country we are away out on the rim of the wheel geographically with none of the natural advantages possessed by some States and with many disadvantages on account of transportation conditions. And while in the past I believe the record shows that this State, in the main, has led all the other States in much advanced legislation, we must not get so far in advance as to handicap the industries which are the very life of the Commonwealth, and without which Massachusetts' leadership in the industrial world will be a thing of the past. And let not the working-man think that industry can be handicapped without his paying his part of the price. I know what it means to work long hours for low wages. I went to work in a woolen mill, about 4 miles from my present home, before I was 10 years of age and the working hours were from 5 o'clock in the morning until 7 o'clock at night. When I was 13 years of age, during the spring of 1865, I worked extra two nights each week till 10 o'clock and Saturday night till midnight. That was in those good old days of the past, but the best thing about those good old days is that they have gone, thank God! — and gone forever.

My sympathy always has been with the laboring man and woman, and while for a good many years my work has been at a desk in the office, I still claim to be a laboring man, though my work has been more with my head than with my hands.

It is those conditions that have caused a large part of the social and political unrest, some of which found expression in the late progressive movement, of which one party sought to claim an exclusive monopoly; but the progressive spirit was to be found to a larger or a smaller degree in the political parties of all faiths. It was in reality an awakened conscience. To many men the progressive movement was simply political, but, after all, our political, industrial and economic problems are at the core of all human problems. They deal with the life, liberty and happiness of human beings.

I am persuaded that not all by any means, but a considerable part, of the so-called progressiveism in politics was a soul hunger which found expression through this avenue, — God moving in the hearts of men as never before in our day, — a spiritual power trying to find expression through service to those less favored.

In the protest of the progressive movement, one of the corner-stones was the initiative and referendum. And yet, Mr. President, I am not convinced that the initiative and referendum is the cure for these ills that afflict the body politic. I can see in the working of the initiative and referendum other special interests just as insistent and to my mind just as dangerous as any that have appeared under our present method of government.

I claim to be a progressive, though I was not affiliated with the Progressive party, — I was not a "Bull Mooser." There is a difference.

Some of us, sobered by responsibility, were unwilling to go so far or travel as fast as the great Progressive leader would have us travel; we were unwilling to throw overboard compass and chart and the anchor that had held in the day of storm, when all things seemed to be going by the board, and embark on what seemed to us an uncharted ocean, with a blind faith that things would come out all right in the end.

I came to this Convention with a conservative, open mind. I wanted to find the truth. I was committed in no wise, one way or the other, and I contend that no man had a moral right to come here committed with a closed mind. We were supposed to be a jury who were to hear the evidence and then decide. I think if I had any prejudicial leaning it was toward some form of the initiative and referendum with proper safeguards. I have felt that there should be a more elastic method of changing the Constitution. I was willing to hear the evidence on both sides, and, having heard, then decide whether it would be the part of wisdom to recommend to the citizens of Massachusetts that they make the experiment suggested; but I am not so thoroughly convinced that the way out of our troubles is by the initiative and referendum route that I am willing to throw overboard *the essential principle of representative government as I conceive it*, and the constitutional anchors that were forged for the Ship of State to hold, and which for 140 years have held, against the time of stress and storm and without which the Ship of State might be driven on the rocks.

Our fathers left us a government and a Constitution complex, it is true, yet so arranged that it can be adjusted to meet new conditions. The fundamental principle of that Constitution and government was representative government, as applied to a republic. That was their great contribution, — a new creation which made our government different from any other government on the face of the earth. I am persuaded that it has stood the test of time, and I am unwilling to abandon the great principle of representative government.

The Union for a Progressive Constitution put out a form of proposed initiative and referendum amendment, and that is what many delegates promised to support, but the amendment now before the Convention is no more like that than chalk is like cheese.

When the Loring amendment (which to my mind has some good points) was accepted by the proponents of resolution No. 335, they abandoned their measure, and the acceptance of that amendment released every man from any promise ever made or implied to support it, for no man ever promised to support something that, up to that time, the mind of man had not evolved.

It may be said that, with the amendments which have been made, the initiative and referendum is satisfactory, but I do not agree with that. The evidence submitted has convinced me that the principle is wrong and I cannot support it, for it leaves the door open to jam through just such an amendment as we would have had in the original draft if its proponents had had the votes to push it over.

Delegates in this Convention have told me that they did not like it, and did not want to vote for it, now that they had heard the arguments for and against the initiative and referendum and saw the danger; but they were committed to it and had promised to support it, — a promise that a delegate to this Convention had no right to make, — and they did not see how they could go back on their promise.

No man in this Convention ever promised to support an amendment to the Constitution like the one that is before us at the present time. The proponents of resolution No. 335 could not recognize it as their offspring.

Since we met in this Convention and in committee we have heard the arguments *pro* and *con* for proposed changes, and some of us who came uncommitted, without closed minds, have modified the preconceived notions that we brought with us. We have had the benefit of the arguments for or against the proposed changes, and in addition we have had the benefit of conferences in committee with men who also have heard some of the arguments which have helped to clear our minds.

Without discussion could any short descriptive statement printed on the ballot, or longer printed statement in a pamphlet which great masses of the voters never will read, have changed the point of view on the anti-sectarian amendment of the theological professor in the third section who is serving as a member on the committee on Bill of Rights? I think not. And will such short statement or printed pamphlet give the voters all the facts for a basis of sound judgment on which to vote yes or no? My faith is not strong enough to believe it.

What an initiative and referendum object lesson we have had in this Convention with the so-called anti-sectarian, now the anti-aid, amendment! Here a committee, made up of fifteen men, with as bright, legal, business and political minds as are to be found in the Commonwealth, having had the benefit of suggestions from scores of other members of the Convention, worked for over two months with no selfish or private interest, trying to phrase an amendment which would settle a problem which they all desired to settle and settle right. Practically every sentence has been scrutinized and modified by these men of many minds. Every word in this amendment has been scanned, every synonym considered, to see what other meaning could be given to the words employed; and, having so wrought, this Convention has placed the seal of its approval on their work. Fancy any man or body of men writing the statement for ballot or pamphlet to put before the voters the substance of what we have listened to in forming our judgment on this subject!

The initiative and referendum proposed by the Walker amendment would permit any ten men in the Commonwealth, all thinking alike, perchance with a selfish special interest, with practically no suggestions from men who think differently, to change the fundamental law of the land, provided they could, by any means they chose to adopt, secure the necessary signatures to get the amendment on the ballot, and without any of the discussion which has cleared the minds of the delegates and enabled them to approve intelligently the work of the committee on Bill of Rights, and then by an organized propaganda push it through at the election. I can but believe that this kind of legislation would lead to the "town of confusion," and with what light I have received I am unwilling to go there.

The essence of the initiative as embodied in the proposed amendment is that the Legislature must meet the views of the petitioners, whether they approve or not. The delegate in the third section, who is sponsor of this measure, said, if I understood him correctly, that while the Legislature might make minor perfecting amendments the essence

of the initiative was that they could not materially change it, for by so doing they could nullify the legislation which the signers sought to obtain; such being the case, the Legislature must surrender to the petitioners and give them that for which they ask, and if they did not get from the Legislature what they wanted, all these ten signers had to do was to reject what the Legislature suggested and automatically what the signers had asked for would go on the ballot exactly as they determined.

That means, for example, that before the ink is hardly dry on the anti-aid amendment, ten "wilful men," if you please, could put in operation the initiative to nullify the laborious work of these fifteen men on the committee on Bill of Rights and all their work approved by this Convention would be thrown into the discard. I cannot believe that this is for the larger interest of the Commonwealth. Some of the glaring defects which some of us could not approve in resolution No. 335, to which I have referred, have been modified by amendments, but I think it safe to say that none of those modifying amendments would have been permitted if many of the proponents of the measure could have had their way, if they had had the votes to push it through as originally framed.

Now that, to my mind, is a fair sample of the kind of legislation we would have under the initiative and referendum, and for one I do not want it.

What is the root of most of the troubles that afflict us? It is not the Constitution, nor our city charters, nor our laws. One word gives us the answer, — *neglect* of civic duty, and a lack of the sense of personal responsibility for the common good.

A few years ago when we had serious labor troubles in one of our Massachusetts cities, a committee of business men desired to visit Worcester to explain the conditions in that city and I was asked to invite 25 or 30 men to arrange for a meeting, that these gentlemen might tell us of the existing conditions. Near the close of the meeting I was asked if I desired to add anything to what had been said, and my reply was that I had not intended to say anything, but as the meeting had developed I thought there were one or two things that needed to be said; and standing beside my friend who had spoken of the conditions in his home city, with my hand on his shoulder, I suggested that some one ask him what he ever had done to improve the condition which he now so much deplored, what service he ever had rendered that city, what he ever had done there except to make dividends. I suggested that some one ask him how many times he had voted or served on the jury in the last thirty years, the jury of twelve good and true men, who were supposed to measure out justice between man and man, or between a corporation and a man; and if, perchance, he had been drawn as a juror how many times he had gone to the judge and asked to be excused because his private business was of more importance than the common good.

Does that strike any of you men here?

I suggested that some one ask him how many times in the past thirty years, when any man who worked for him had been drawn on the jury, he had gone to his friend the judge and pleaded to have him excused, that the private interests of the corporation were of more importance than the common good. I then suggested that they had

heard him say what a sense of security was given him when he looked down into his mill yard and saw his property protected from the mob by the National Guard of the State; and I then suggested that some one ask him how many times during the past thirty years, instead of supporting the National Guard, when any man working for him and serving the State in the National Guard had been called to camp for his tour of duty, he had refused him permission to go to camp because the private interests of his corporation were larger than the protection of the State; and when I had finished my friend said: "I have not a word to say, — I must plead guilty to all the counts in the indictment."

So I say the cause of most of our political troubles is because we have so many men who feel no sense of civic duty, no sense of personal political responsibility for the common good.

Now, in closing, may I turn your thought in the direction from which it seems to me must come our help, — an awakened conscience as to our civic duty.

We have entered upon a great war, and I would refer briefly to two of our great Allies. France for years has been misjudged. She has been looked upon by some as a frivolous and decadent Nation, lacking in virility and earnestness of purpose, but France has had a new birth and has astonished the world. She has shown wonderful initiative, and a capacity for suffering and sacrifice which has been a marvel to the world. Through suffering and sacrifice she has been elevated and ennobled. Through sacrifice she has found her soul, and every month that this war goes on seems to widen the gulf between gross materialism and unselfish service. The mad rush for and worship of wealth, power or position, the hatred and bitterness of politics and religion have been swallowed up in the consuming passion of love of country and love of fellow-men in a service which calls for blood and treasure.

The mother country of many of us (Great Britain) has had a spiritual awakening. She has been chastened by the experiences through which she has been passing. She has paid an awful price for the neglect of the interests of her common people, and that has a serious lesson for us. In the past she has not thought enough in terms of the human element, but this war has been a great educator and leveler. The nobleman and peasant, the mill and mine worker and the professional man, have met on a common level in the trenches and on the cots side by side in the hospital; and so many will have found a common grave in the bosom of mother earth that there will be a fusing and welding of the people which will hold after the smoke from the battlefields has blown away and the roar of the guns has died away in the distance.

And when this war shall end, as we pray God it speedily may, more thought will be given to the human side of her industrial, commercial, economic, political and also the human side of her religious life than ever before.

As the result of this war upon which we have entered, I believe we, too, in this country are to have a spiritual awakening. There are to be brought before our vision some of the eternal verities and we are to measure some things by different standards than have obtained in the past. We must give more thought to human interests. We must think more in terms of men and women and less in terms of money. Humanity must have first place in our hearts. The men in the trenches

of Europe have not been thinking of profits and dividends while their souls have been passing through the purifying fire and they have been giving their life blood fighting freedom's battle for you and me. They have suffered and died to save the world that now is, and also to save from the wreck of things the new world, the world that is to be, a world of higher ideals and more concrete justice.

One of our troubles in this country has been that the present generation has had freedom and liberty and their attendant blessings given to them; they have not paid for them by suffering and sacrifice as their fathers did, and so they have not been appreciated.

Now in this great war we are to make a payment on account; and when in the daily press we scan the casualty lists and find there the name of father, brother or son, we shall know then as we do not know now what liberty costs, and perhaps be willing to make some sacrifices to preserve it. How cheap mere wealth seems when we think what the next Memorial Day may mean to thousands of homes in this land, — to some of us who have sons and brothers in the ranks!

In a recent speech Lloyd George said:

> We have been living in a sheltered valley for generations. We have been too comfortable and too indulgent, — many, perhaps, too selfish, — and the strong hand of Fate has scourged us up to an elevation where we can see the everlasting things that matter for a Nation. The great peaks we had forgotten of honor, duty, patriotism, and, clad in glittering white, the towering pinnacle of sacrifice pointing like a rugged finger to Heaven. We shall descend into the valley again, but so long as this generation shall live they will carry in their hearts the image of those mighty peaks, whose foundations are not shaken though Europe rock and sway in the convulsion of a great war.

What we need in this country to give us better government is not so much a new Constitution as a vision of those mighty peaks of duty, honor, patriotism and sacrifice; and perhaps after the waves of our sons and brothers have broken over the German trenches in France and Belgium, and the Stars and Stripes have had another baptism of blood, and all that is left of some of our boys is in a mound of earth on the plains of Flanders, then the great truth may find lodgment in our minds and hearts that man does not live by bread alone or by stocks and bonds and dividends, and the thought may find lodgment that there are things larger than the almighty dollar by which so much in the past has been measured.

Let me repeat: What we need in this country is a vision of those mighty peaks to which Lloyd George referred, of duty, honor, patriotism and sacrifice more than we need a new Constitution.

Ex-President Eliot of Harvard in a recent address said:

> I cherish no new hope for humanity, only a faith that a loving God rules the Universe, and the path to loving and serving Him lies through loving and serving man.

That is what, in other words, the preamble to the present Constitution says, — it is for the service of man.

But I am not convinced that the way to render this larger service is through the initiative and referendum, to abandon the safeguards of the past that have brought us to the present; and so I end as I began by saying it is not the written documents of Constitution, charters and laws; what we need is not more laws, but a spirit that will right the wrongs from which we suffer. It is the way men work, the service they render under these man-made documents, that will give us better government in city, State or Nation. [Applause.]

DISCUSSION OF AMENDMENTS.

Debate on the merits of the proposition having closed Wednesday, September 12, the Convention, sitting as a Committee of the Whole, took up the consideration of the various pending amendments the following day, the amendments all having reference to the resolution, Document No. 335, as reported by the committee on Initiative and Referendum. The amendments and the debate are printed in the order in which they were considered.

Mr. Raymond P. Dellinger of Wakefield moved that the resolution be amended as follows: —

By striking out, in line 5, the words "and amendments to the Constitution";

By striking out lines 13 to 35, inclusive, as follows: —

AMENDMENTS TO THE CONSTITUTION.

If an initiative petition for any specific and particular amendment to the Constitution is introduced into the General Court, in the manner hereinafter provided, signed by not less than forty thousand qualified voters of the Commonwealth, and the General Court into which it is introduced shall fail to agree to such amendment in the manner provided in the ninth article of amendment to the Constitution, such amendment shall nevertheless be deemed to be referred to the next General Court and shall have the same standing therein as if once agreed to; and if such next General Court shall fail before the first Wednesday of June to agree to such amendment in the manner provided in such ninth article, and if such initiative petition is completed by filing with the Secretary of the Commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August not less than ten thousand additional signatures of such qualified voters, then the Secretary of the Commonwealth shall submit such proposed amendment to the people at the next State election; and if it shall be approved by a majority of the qualified voters voting thereon, such amendment shall become part of the Constitution of this Commonwealth;

By striking out, in lines 62 and 63, the words "constitutional amendment or";

By striking out, in line 65, the words "or an amendment to the Constitution";

By striking out, in line 77, the words "constitutional amendment or";

By striking out, in lines 161 and 162, the words "amendment to the Constitution, and each"; and

By striking out lines 168, 169 and 170, inclusive, as follows:

In the case of an amendment to the Constitution: Shall an amendment to the Constitution [here insert description] be approved?

YES.	
NO.	

Mr. DELLINGER of Wakefield: I believe in practically all of Resolution No. 335, except those parts which refer to the Constitution, and therefore my amendment is to strike out the parts that refer to the Constitution. I believe in the statutory initiative and referendum for the following reasons:

First, I believe it would give us a more democratic form of government. In the earlier history of Massachusetts a representative represented only about two hundred voters; at the present time it is nearly three thousand. During the earlier history of our Commonwealth the people could talk together about the matters that would come before the General Court much more than they can now. At the present time the population is divided; we often refer to different classes, and often a representative represents or is elected by a particular class and tries to represent that particular class.

Second, the tendency would be, through the statutory initiative and referendum, to make the people feel more responsibility in their government. I think that each of you will agree with me that when a man feels responsibility for something he will do his very best. I believe that under the statutory initiative and referendum the people

will investigate matters that are on the ballot more carefully than they do under the present referendum.

Third, the statutory initiative and referendum would make the people have more confidence in their law-making bodies. We have heard considerable evidence in this committee, and in the Convention too, that the people have not the confidence in their law-making bodies that they should have. There has been no better evidence offered than that presented by the United States Attorney from Brookline (Mr. Anderson).

Believing in the statutory initiative and referendum, but not in the constitutional, I made my motion to exclude the Constitution for the following reasons:

First, the Constitution is our fundamental law. It is the organic law of our Commonwealth, and should be changed only after the greatest care and deliberation possible. Second, I believe that the statutory initiative and referendum would give to the voters of this Commonwealth what they want and need, and that our Supreme Judicial Court can be trusted as to overruling any law passed by the initiative and referendum. In the last one hundred and thirteen years there have been only fifty-nine decisions by it overruling statutes. I, for one, if I were to vote upon the making of a Constitution in some of the western States, and New York possibly, think I would be in favor of the constitutional part as well; but in our own Commonwealth I have confidence in our Supreme Judicial Court, and believe it is one of the most liberal courts in the Union as to interpreting statutes in accordance with public opinion. Third, and most important to me, is the belief that the amendments to the Constitution would not receive the deliberation, the scrutiny and the criticism, that is necessary. The careful debate and weighing of the many sides of a question would be lacking.

I do not believe in the statutory part of this measure, which takes away entirely the right of the Legislature to pass upon a petition; but we have been told by the proponent of the measure that this is a weakness which he hopes to overcome by an amendment somewhat like the Anderson amendment. I dislike to bring any personal matter before this committee, but I have been criticized from certain sources and I desire each member of this committee to know the position that I have taken on the initiative and referendum throughout.

I was asked through a local paper, the Wakefield "Daily Item," my position in regard to various matters that would come before the Convention, and on March 29, 1917, I made the following reply:

> In response to George M. Poland, Esq.'s letter to the Editor of the "Item," printed Monday, March 26, 1917, I am glad to state my opinion at the present time concerning certain vital issues that will be before the Convention, reserving the right to vote in the Convention, if I should be elected, as my conscience and future deliberations may dictate.
>
> Initiative and Referendum: I believe in the representative form of government, but I also believe that the people should be given the right to overrule the Legislature if it abuses its power. I further believe that the people should have the power to initiate legislation if the Legislature refuses to act. Therefore, I believe in a workable form of the initiative and referendum though opposed to an extreme form.

At a later date I talked with Mr. Larson, of the Union for a Progressive Constitution, and was asked to send a statement to that Union, and this is the letter I sent, on April 18, 1917.

DEAR MR. LARSON:

Confirming our conversation of Friday last, I am writing you this letter. I made the following statement in regard to the initiative and referendum, which was published in our local paper in answer to a request for my opinion in regard to the same:

I believe in a representative form of government, but believe that when the Legislature abuses its power, the people should have the right to initiate legislation. Therefore, I believe in a workable form of the initiative and referendum, though opposed to an extreme form.

Thanking you for your kind favors in the past, I remain,

Very truly yours.

Later, in talking with members of the same Union, there was a question as to whether I should be supported or not, and it was later, at their own request, that I was supported, and letters and pamphlets sent out. After I came to this Convention I was anxious to find out the proper way to vote on this measure. I took the matter up with Mr. Walker; we talked it over very carefully for some hours. Then I talked with Mr. Hale, Mr. Walsh, many labor leaders and other members of this Convention, and let them try to convince me that the initiative and referendum should apply to our Constitution; and after several weeks' time, on their failure to convince me, without any opponent of the initiative and referendum having had any influence at all upon me, I offered this amendment to exclude the Constitution. Before doing this I consulted those in my own town who had expressed an interest in the initiative and referendum. One was an officer of a labor-union; another was a leading Progressive. None of these men was in favor of the constitutional initiative and referendum. Later, after I had made my motion, Mr. Walker saw fit to go to Wakefield and talk to some citizens about this question, — the initiative and referendum. As a result of his talk only one man called me up to criticize me for the position I had taken. Only yesterday the paper in my town, the Wakefield "Daily Item," whose editor was opposed to me in my campaign, had the following:

The American's editorial stated: "Mr. Dellinger could not have been elected if he had not promised the people he would support the initiative and referendum."

As a matter of fact, the I. and R. was not an issue here. The campaign was conducted and won largely on personal work among the voters. There was comparatively little interest in the issues pressed elsewhere.

Mr. WALKER of Brookline: The committee on the Initiative and Referendum, — I speak now for the majority members of that committee, — considered this matter at length very carefully of course. They considered all the suggestions that were made up to the time of their report, and finally reported a measure which is workable, which embodies the principle of the initiative and referendum, a measure which they believe this Convention should adopt. In opening the debate on this question, I stated at that time that whereas we took the position that that measure was the one that we wanted, I did not understand the committee at all to take the position that we were not ready to listen to the entire discussion, to consider every suggestion that was made in this Convention or elsewhere, and, if we could accept any amendments, approve of any, we would accept such amendments as we considered to be perfecting amendments. By perfecting amendments we meant simply amendments that would further safeguard, if you please, the measure, or that would make a better measure, provided those amendments were not inconsistent with the

principle of the initiative and referendum, and provided that they would not make it unworkable or too difficult to work.

In that spirit we have considered the amendments that have been proposed here and that have been suggested to us. We propose to accept a number of those amendments and changes. The gentleman from Boston (Mr. Quincy) has put in a number of amendments which the committee has considered and will accept. I myself have put in one or two amendments, which the committee has accepted, — has approved. There are other amendments that have been put in by other gentlemen in this Convention which the committee has considered and which they will approve.

Now, I wish to appeal to the common-sense and to the judgment of this committee. I take it that the proper thing for us to do at this time in this committee is to make as perfect and as workable an initiative and referendum measure as possible. I agree with the chairman of the committee on Rules that that is our business, — to consider each amendment on its merits, with the idea of perfecting an initiative and referendum measure. I think it would be a mistake for those who are hostile to the proposition to put on amendments that they know would hurt it and not help it, with the idea of killing the measure later. It seems to me better policy to vote for those amendments which will perfect it, at this stage, and then when we have got what the Convention thinks is a good initiative and referendum measure, let those who do not believe in it vote against it.

Now, Mr. Chairman, in regard to this particular amendment, I am glad this amendment came up first. It brings the whole matter before this Convention. This is the crucial amendment. I believe that this vote will determine whether or not this Convention wants the initiative and referendum, and therefore a vote in favor of this amendment is a vote, in my judgment, against the initiative and referendum. We take it as such. It is a test vote. I think we should all vote on it on that clear understanding. I believe that those who favor, — and I understand practically the opposition has conceded the legislative initiative, — those who favor a legislative initiative take an untenable position when they say they will not stand for the constitutional initiative, because all the difficulties in regard to signatures, all the difficulties in regard to informing the people, all the difficulties that can be brought up against the initiative and referendum, apply equally to the legislative initiative. The making of laws is quite important, — sometimes, in some instances, even more important than the making of a constitutional amendment. Therefore I say, and I say it earnestly, that I believe that this Convention will take an absolutely untenable position if they permit the people to pass laws and deny them the right to amend their Constitution. We are strengthened in this belief when we read our Constitution itself. Again I intend to read a part of the seventh article in our Declaration, — and this matter I intend, if this matter goes to the people, to present to the people of the Commonwealth, and ask them whether they believe that this Convention should permit the people to say that they want the initiative on legislation, and deny them the right to say whether they wish the initiative and referendum on the Constitution. Says the seventh article:

> Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity, and happiness require it.

How then can we submit to the people the legislative initiative and deny them the constitutional initiative? Such a position as that, Mr. Chairman, cannot in my judgment be held. It is not consistent; it is not tenable. [Applause.]

Mr. Cusick of Boston: I, for one, do not propose to permit the delegate in this division to state my position, if I have understood his remarks. I have listened as carefully as anybody could to the arguments advanced by the proponents of this specific measure. I have also made some considerable outside investigation, in order to enable me to see, if possible, what their point of view was. And, Mr. Chairman, I state as a fact that the proponents of this measure have given this Convention no evidence of a need of this initiative and referendum, except as to statute laws. Even the delegate from Fall River (Mr. Cummings), chosen to make the closing speech for the proponents, in the last speech made on the floor of this Convention yesterday, used his entire time in showing reasons for the initiative and referendum, and each reason referred to matters of statute law. I believe that a number of the delegates of this Convention are able to distinguish between statute law and the fundamental law of this Commonwealth. I am ready to try the initiative and referendum as applied to statute law. I refuse to consent to the application of the initiative and referendum as applied to the Constitution of this Commonwealth. I now challenge the proponents of this measure, if they are sincere, when they have had an opportunity to meet the very conditions which every proponent has described on the floor of this Convention for fifteen or twenty days, and gave those conditions as the basis for this resolution, — I now challenge them, if they are sincere, and I have asked some of them before, to get together and give the people of this Commonwealth the initiative and referendum as applied to statute law, and not lose whatever benefit to the people they might obtain by insisting on the initiative and referendum as applied to the Constitution of this Commonwealth.

No matter what they may say, the proposition that you are to pass upon, the resolution, is here in black and white; and it means, if it means anything, that 40,000 or 50,000 signatures will permit the bringing before the people of any amendment that any group may suggest, and you pretend to ascertain the will of the people by a majority of a total vote cast which may not exceed 25 per cent of the electorate. I do not think that the thoughtful citizens of this Commonwealth are ready yet to amend their Constitution under such conditions as those. I would not object to voting for a legislative initiative and referendum, but I shall not vote to adopt that policy for the fundamental law of this Commonwealth. [Applause.]

Mr. Anderson of Brookline: I beg to inquire of the gentleman (not rising now to express any view of my own), — in the light of his statement that he is prepared to stand for the initiative and referendum as applicable to legislation but refuses to stand for it as applicable to the Constitution, — whether he insists that the present method of amending the Constitution should remain unchanged, or whether he has any alternative proposition to suggest, by which the people might somehow, somewhere, sometime, without being prohibited therefrom by 34 per cent of the House of Representatives in one year out of two, be permitted to make necessary changes?

Mr. Cusick: I am rather surprised at the question put by the delegate from Brookline, but I will try to answer it. Does the delegate from Brookline realize that we are here sitting as a Constitutional Convention, that there must be in their minds some part of the Constitution of this Commonwealth that needed changing, — because after all the initiative and referendum is only a method? We are here for the purpose of submitting matters of amendment to the people of this Commonwealth. Does he go after the shadow and not after the substance? We can make suggestions to the people, and that is what we are here for now, — to suggest amendments to the Constitution.

Now, as respects the present method of amending the Constitution, I believe in the strong principle of our government which lies right in the checks and the balances that have been provided by the fathers in this Constitution. I do not care how much you smile or sneer about the proposition of Rousseau because the Constitution happens to use the word "compact." I say there are two principles in this government of ours that stand out preëminently, different from any other government on the face of the globe, and those two principles have saved this Nation and this State in many crises. Those two principles are, first, the division of power between the legislative, the executive, and the judicial departments; and, secondly, the conception of the framers of our Constitution that checks and the balances were needed in the fundamental law of this Commonwealth to protect the natural rights of the individual against the sophistries or temporary passions of the majority, — the purpose of such checks being to give time for more careful deliberation and to allow for second sober thought of the people. To answer the delegate's question more concretely I would say that while I should hesitate to change our present method, which I now state is not fairly described by the delegate in his question, I would accept less if I had to rather than that part of this resolution that applies to the Constitution.

Mr. Knotts of Somerville: From the beginning of this Convention until now I have not endeavored to say anything whatsoever. I have a very good speech wrapped up in this "precious porcelain of human clay" that I might have delivered here, but I have not taken your time. I want to point out a situation which exists in this body, and it may be that it will bring the thought of some of the members of this committee to a realization of that situation.

In the beginning of this debate the opponents of this measure laid their entire emphasis against the legislative side of the initiative and referendum, and their contention was to this effect, — that the people are not able to apply themselves intelligently to the details of legislation. That was the attack and that is the argument that was made, and I want the delegates here to remember it. Now, there came a change in the entire atmosphere of this Convention and also in the attack that was made; because when the opponents of this measure saw the way things seemed to be going here they saw it demanded a change in tactics, and they began to say: "We will concede that there ought to be some such thing as a legislative initiative and referendum, but there ought not to be a constitutional initiative and referendum," — and then the great onslaught was made upon that side of this measure.

Now, I have not heard anything very definite about that danger except that the opponents said: "Look out, watch out, there is some great danger here in connection with the initiative and referendum, applied to the Constitution, but it is all right concerning the details of legislation." I just want to call the attention of the delegates to that situation here which I have observed, and which I think you all have observed, and ask what it means.

Now, look at it. The opponents of this measure are saying that the people of this Commonwealth are unable to pass intelligently and with wisdom and calm deliberation upon a single principle effecting a change in the Constitution. But they propose to take the entire Constitution, with whatever amendments we think ought to be added to the Constitution of the Commonwealth, and submit the whole Constitution to the people of this Commonwealth; and yet they insist that the people, while they are capable of passing upon the whole, are not capable of passing upon any part of it at any time that they desire to do so. [Applause.]

If I were preaching a sermon here I would say that these gentlemen are straining at a gnat and swallowing a camel. [Applause.] Just this word and I am done. I have observed in this Convention that there are men who, to me, appear to be against Kaiserism in Germany, who seem, on the other hand, to be in favor of Kaiserism in America and in Massachusetts; and I want to say, as my final word upon this matter, that the only party in America or in Massachusetts who has divine right to play the role of Kaiser is the people. [Applause.]

The amendments were rejected, by a vote of 129 to 148.

Mr. Augustus P. Loring of Beverly had moved certain amendments similar to those moved by Mr. Dellinger of Wakefield. The Chair (Mr. Jones of Melrose) ruled that the action of the Committee of the Whole on the latter amendments precluded action on those moved by Mr. Loring.

Mr. Augustus P. Loring of Beverly moved that the resolution be amended by striking out lines 13 to 35, inclusive, and inserting in place thereof the following paragraph: —

If at any time hereafter any specific and particular amendment or amendments to the Constitution be proposed in the General Court, the two Houses thereof shall meet together in a joint session and the President of the Senate shall preside. If any such amendment shall be agreed to at such joint session by a majority of all the members elected to the General Court, it shall be entered upon the journals of the two Houses with the yeas and nays thereon, and referred to the General Court then next to be chosen, and shall be published; and in the General Court next chosen as aforesaid, the two Houses thereof shall meet together in a joint session and the President of the Senate shall preside. If any such amendment shall again be agreed to by a majority of all the members elected to the General Court, it shall then be the duty of the General Court to submit such amendment or amendments to the people; and such of them as may be approved and ratified by a majority of the qualified voters voting thereon at an election duly called for that purpose shall become part of the Constitution of this Commonwealth. If the two Houses are unable to agree upon a time for a joint session for voting upon an amendment or amendments to the Constitution, the Governor of the Commonwealth shall appoint the time for such joint session.

Mr. Loring of Beverly: The vote that we are trying to pass is in effect a form of the initiative and referendum. There is no question but what the reference would have to be taken on every constitutional question, that is, it has to be referred to the people for their adoption before it becomes a part of the Constitution and in so far as there is a

reference to the people in the amendment which I suggest it does have the referendum feature in it. It differs from the main proposition now under discussion in that the initiative is different. The initiative in this case is by anybody choosing to appeal to the Legislature for an amendment to the Constitution. Any one person can go to the Legislature and petition to have the Constitution amended. If that one person goes and puts in such a petition to the Legislature, then it is the Legislature's business to resolve itself into a Constitutional Convention consisting of both Houses of the Legislature to consider that application, and if they do not consider that application and do not resolve themselves into such Constitutional Convention the Governor can force them to do it. They will then consider that proposition, and if it is passed by a majority of all those elected to the Legislature it will be submitted to the next Legislature, and if it is then adopted it will be submitted to the people. I believe, sir, that this is a form of initiative and referendum which has this advantage: That it gives an opportunity for full discussion and getting the subject-matter of the amendment decided as to form in the very best way before it is referred to the people. I believe that it does away with the objection that a small percentage of the people in the Legislature, — that is, a majority of the Senate, — can defeat such a thing; that is, that twenty-two wilful men, as it has been stated here, can defeat a constitutional amendment. It does away with that absolutely. It does away with the requisite that two-thirds of the House, voting separately, shall vote for it. In other words, it resolves the Legislature on the application of any one citizen, into a Constitutional Convention, which shall take the matter into consideration, shall submit it, if they pass it, to the next Legislature, and, two legislatures approving it, shall submit it to the people.

Mr. SULLIVAN of Lawrence: The proposition of the gentleman from Beverly which is now before the committee has two elements. The first is that lines 13 to 25 of the committee's report be stricken out; the second is that the language which is printed on page 3 of the bulletin be substituted. The committee has already expressed its decision in regard to the first part of this proposition when it rejected the amendment providing for the elimination of the constitutional initiative. The other part of the amendment, providing for action by the two Houses of the Legislature in Joint Convention on proposals to amend the Constitution, has a good deal of merit. If, however, this proposal finds favor with the Convention, it ought to be substituted, not for the constitutional initiative, but for the method of amendment set out in Article IX of the Amendments to our Constitution. As the members of the Convention know, that method, — the only method of amendment now existing except by means of a Constitutional Convention, — requires a two-thirds vote of the House and a majority vote of the Senate two years in succession, each House voting separately. The committee on Amendment and Codification has had under consideration several resolutions proposing amendments to Article IX, and has made a report recommending that in the lower House, instead of a two-thirds vote, only a majority vote should be required. That report is now upon our docket. I suggest that the proposal of the gentleman from Beverly may best be considered in connection with the report. In any event, I hope that it

will not be accepted as an amendment to the measure now under consideration.

Mr. Brown of Brockton: I desire to say that while I favor the last half of the motion of the gentleman from Beverly concerning a joint session I shall be put in the unpleasant position of voting against it because of the ruling of the Chair. The motion before the committee was to strike out and to substitute, and you cannot substitute until you have struck out. Therefore I am rising at the present moment to amend, if it is in order, by striking out those words "strike out and substitute," so as to leave it that Mr. Loring of Beverly moves to amend by inserting that joint session provision. I hope that Mr. Loring will accept the amendment and take out of his motion those words "strike out and substitute." I make that amendment, sir, if it is in order.

The Chairman (Mr. Jones of Melrose): The Chair will rule that the motion made by the gentleman from Brockton is not in order, and will call the attention of members of the committee to Rule 43 of the rules of the Convention, that a motion to strike out and insert shall be deemed indivisible. The Chair will therefore rule that the motion made by the gentleman from Brockton, being a division of the motion made by the gentleman from Beverly, is not in order.

Mr. Brown: I should like to inquire, Mr. Chairman, of you, if the gentleman from Beverly would have the right himself to alter his motion.

The Chairman: In the mind of the Chair the only method that could be pursued would be for the gentleman from Beverly to withdraw his motion and make it in another form, if he so desired.

Mr. Brown: I should like to inquire, sir, whether if the gentleman from Beverly withdraws his motion at the present time he can immediately re-offer the other?

The Chairman: The Chair sees no objection at the present time.

Mr. Brown: Then, Mr. Chairman, I will finish by saying I think it must be clear to the gentleman from Beverly that if he will do that he will bring squarely before this Convention the question of whether or not they desire to amend the Constitution by providing that hereafter when there shall be an amendment to the Constitution the House and the Senate shall act together instead of separately. If he does so alter his motion, if he does withdraw this one and then re-offer the other one, I shall vote for it; but if he does not do that I shall have to follow my previous action and vote against it, as I voted on the previous motion.

Mr. Morrill of Haverhill suggested that the words proposed to be inserted by Mr. Loring belonged in another place in the resolution than in that indicated in Mr. Loring's motion and offered an amendment to that effect.

Mr. Luce of Waltham: It is quite apparent that we are not making the progress this morning that we had hoped to make. It is quite apparent also that the very interesting and important proposition of the gentleman from Beverly will not at this moment get the consideration that it ought to receive. It is apparent also that it may best be considered at the time of the reports of the committee on the Amendment and Codification of the Constitution. Therefore I suggest, Mr. Chairman, that without further ado we cut the Gordian

knot and end our troubles by voting against this proposition at this time without prejudice, simply that we may proceed to the consideration of the matter under discussion. [Applause.]

Continuing after the recess Mr. Luce said:

Just before the committee rose I ventured to suggest that we could get out of the tangle we were in if, without prejudice to this proposition, we at once voted upon it and rejected it. During the recess I have undertaken to confer with the gentleman who has moved the amendment, and the gentleman who has moved an amendment thereto, and it is the common opinion that the conditions of limitation of debate are such as to make it not the happy occasion for a consideration by itself of this very interesting and important proposition. Therefore rejection should be with the understanding that the proposal will be brought to the attention of the Convention later at the opportune moment. I think there is common consent, that we can at once get to the business before us relating to the initiative and referendum if we proceed in this manner, so I venture the hope that we may take a vote upon the question at once, and, if I may repeat, that we shall reject the motion and the amendment thereto without prejudice.

The amendment was rejected.

Mr. Daniel R. Donovan of Springfield moved that the resolution be amended as follows: —

By striking out, in line 16, the word "forty", and inserting in place thereof the word "twenty-five";

By striking out, in line 29, the word "ten", and inserting in place thereof the word "five"; and

By striking out, in line 38, the word "twenty", and inserting in place thereof the word "ten".

These amendments were rejected.

Mr. Josiah Quincy of Boston moved that the resolution be amended by adding at the end of line 35 the following:

A vote shall be taken by yeas and nays in both branches of each General Court before which an amendment introduced by initiative petition is pending before the first Wednesday of June upon agreeing to such amendment in the form in which it stands in such initiative petition.

Mr. Quincy of Boston: This amendment needs but very little discussion. It seemed to me that there should be provision made requiring a roll-call vote to be taken in the General Court. To be sure, there must be a roll-call before an amendment to the Constitution can be adopted; but the fact that one member or one citizen petitions for an amendment to the Constitution does not in my judgment give the petitioner any assurance that he will get a roll-call vote in the General Court.

Now, we are dealing here in this measure with an entirely new method of amending the Constitution, and from the standpoint of giving as much formality and attaching as much responsibility as possible to the action of the Legislature, it seems to me clearly desirable that provision should be made whereby the initiative amendment to the Constitution will have to be voted upon in both branches of the Legislature by roll-call. It is only fair, I think, that the people who are to vote upon the initiative constitutional amendment should

have before them the information given them by roll-call as to the opinion of the Legislature upon that measure; I think that that formal provision ought to be inserted in the resolution, and I understand that the committee accepts that view. The same principle I think should apply to taking a formal roll-call vote in both branches upon a law proposed by initiative petition; and when the proper place is reached in the next section I shall move a precisely similar amendment providing for a roll-call in regard to a law proposed by the initiative.

Mr. RICHARDSON of Newton: There are some of us here who are trying carefully and painstakingly to follow this matter in all its various stages. Speaking as one of those men I should like to ask the gentleman from Boston whether it is his intention by this proposed amendment to provide that the yeas and nays upon every such question shall be taken in both years in the two Houses of the General Court, or only in the second year, and also whether it is his opinion that his proposed amendment abrogates or changes in any way the provisions of the ninth amendment of the present Constitution.

Mr. QUINCY: I think the text of my amendment makes it perfectly clear that the yeas and nays are required only in the second General Court. The amendment says: "and if such General Court shall fail," then the yeas and nays must be taken, and it was my intention to cover only that provision. I think there is nothing in the amendment which affects the operation of the ninth article of amendment to the Constitution. We are dealing here with a constitutional amendment proposed by the initiative, and that requires a somewhat different procedure. If it develops that in both years of that initiative amendment two-thirds of the members present vote in favor of it, then it is adopted, my understanding is, under the ninth article of amendment and goes to the people from the Legislature. If, however, it fails of the required vote under the ninth article of amendment, in either branch in either year, then it goes to the people under the provision of this particular measure.

Mr. RICHARDSON of Newton: May I ask the gentleman what the logic is in requiring one General Court to be put upon record by the yeas and nays, and not the other General Court, both of which are equally required to pass upon the measure, as I understand?

Mr. QUINCY: To be frank about it, perhaps the two measures should go together, and I was simply trying to fit the amendment into the structure of this paragraph as it stands, and I found it difficult to fit in the amendment without rewriting it so that it would apply to both years; but I concede that both years should stand on the same footing. I should be glad to have that change made, if the gentleman can do it off-hand.

Mr. KILBON of Springfield: As another man who, like the gentleman from Newton, is trying to consider things carefully one by one on their merits, I should like to inquire whether there is any likelihood of the possibility of legislative discussion, amendments and verbal improvement of initiative matters being interfered with by the form of this amendment. I am very doubtful about the wisdom of requiring the General Court in this categorical form to vote upon an amendment in the form in which it shall have been presented to them. I should like to hear something on that point.

Mr. HERBERT A. KENNY of Boston: It seems to me this amend-

ment is very much in effect like the amendment which the gentleman proposed to our rules early in our proceedings. The amendment fails to carry out the intention of the gentleman. Now, to take up what I supposed to be his intention, that is, the requirement that there should be a call of the yeas and nays, there can be a call of the yeas and nays obtained in the House of Representatives by thirty members rising to their feet and joining in the call, and I am sure that we will all agree that any question that could not muster thirty members would not be entitled to very much support. Therefore it would be almost unnecessary to burden the Constitution with a requirement for a call of the yeas and nays.

Now, the point made by the gentleman who has just taken his seat applies also to this proposed amendment. That is, this amendment proposed by the gentleman from Boston will require the Legislature to record itself in the manner of the yeas and nays exactly on the proposition submitted by the initiative petition. It gives no opportunity for the Legislature to take jokers out of a bill, to correct it, to amend it in any manner, even in a manner which might be considered friendly by the proponents. Therefore I submit that the purpose of the gentleman from Boston in offering this amendment, if his only purpose is to require a call of the yeas and nays in order that the people may know how their representatives vote, is unnecessary because it would take only thirty members to secure such a call. And secondly, that he has brought in here a provision which will prevent amendment by the Legislature or correction of any proposed law. Therefore for those two reasons it seems to me that this amendment as offered by the gentleman from Boston should be defeated.

Mr. QUINCY: The point which the last gentleman who has spoken makes exactly illustrates why I think this amendment is necessary. We are trying to set up a system which will be absolutely independent of any legislative support. Now, are we going to say that if only twenty-nine members of the Legislature are in favor of a constitutional amendment duly proposed by fifty thousand voters the people shall not have the benefit of a record upon it? I think the people ought to have the record, whether there is any single one member in favor of the proposed amendment or not. If every member of the Legislature is opposed to it, let that fact be shown on roll-call and used by way of argument, as it properly should be, before the people, as an argument against the adoption by them of the proposed amendment.

Now, in regard to the facility of amending a measure: I do not understand that my amendment changes the situation in respect to the amendment of an initiative petition proposed by the people. There is no provision in the amendment as it now stands for the amendment of the proposed measure after it reaches the Legislature. There is a pending amendment under my name which offers an opportunity for the addition by the Legislature of an alternative amendment, which is to that extent an opportunity to amend through submitting an alternative; but it is not consistent with the theory of this measure that the Legislature should have any opportunity to amend a measure as proposed by the initiative petition, at any rate not without the consent of the proposers. There is an amendment pending which would give certain rights to offer perfecting amendments, under cer-

tain conditions; but the measure as it stands, and as it will stand after being amended, if it is now amended, does not make provision, as I understand it, for any amendment of the initiative measure.

Mr. Avery of Holyoke: There are quite a number of members in this Convention who want to vote for the initiative and referendum, but who are seriously troubled about certain of its features, and this amendment which the gentleman from Boston has introduced just fits into that class. The thing that has troubled has been the rigidity of the scheme, as so many people, ten or twenty, might draw up a bill or a petition and after that form had been fixed, it could not be changed. Anybody who knows about legislative procedure knows that often in the very last stages in the passage of a bill things are discovered which ought to be remedied. Now, this amendment makes more explicit the impossibility of any such modification or change, and it seems to me it would be very wise to put this in now, especially in view of the fact that the committee has under consideration some proposition whereby some change can be made in a petition after it once has been drawn.

Mr. Walker of Brookline: The gentleman who has just spoken (Mr. Avery) has my sympathy on what he wants to support. He wants to support the initiative and referendum and he wants it right. We all want it right. But we must understand, — he mistakes when he thinks it is possible to allow the Legislature to amend a measure that is presented to it on initiative petition, for the power to amend is the power to totally change. You cannot restrict it. If you allow them to amend in one respect you allow them to amend in all respects. You allow them to amend by striking out all after the enacting clause and putting in another bill; so that we lose the initiative and referendum absolutely if we permit the Legislature to amend the bill. Therefore this suggestion which has been made, which meets the approval of the committee, does not change the status of the matter at all, not in the least. It simply provides that the people may have the advantage of the advice of the General Court as to whether or not they shall pass it. The General Court must express its opinion on that measure. The matter is not as rigid after all as my words seem to indicate, because, as the gentleman from Boston (Mr. Quincy) has suggested, they may vote down an initiative measure, and then they may put in their measure with such perfecting amendments as they see fit, and then put it up to the voters as an alternative with the recommendation of the Legislature back of it, and then the voters may choose between the two, but they may pass only one. That gives the Legislature an ample opportunity to allow the people to choose between their form and the form that has been put up to them. That takes the rigidity out of it to a certain extent. Moreover, pretty soon I shall argue in favor of an amendment that permits the proposers, those interested in the matter, those who drew the measure in the first place and got the signatures, — permits them after legislative hearing and discussion to change by perfecting amendments their own proposition. It has been my experience in the Legislature that when you draw a bill you frequently, after the discussion, wish to accept a perfecting amendment, you are only too glad to accept it, and I think as far as is consistent with the principle that should be permitted. And so we say in the amendment which I sug-

gest that the first ten signers who drew the measure may change it providing they get a certificate from the Attorney-General to the effect that the amendment which they make is simply perfecting in its nature and does not materially change the substance of the measure. If we gave the Legislature the right to change the measure by amendment they could substitute another measure. But now we give all the opportunity that we can give by providing that the proposers may make a perfecting amendment, if the Attorney-General certify that such amendment is merely a perfecting amendment and does not materially change the substance of the measure. That gives elasticity.

Now I assure you that the committee is only too anxious to give every opportunity for perfecting amendments that is possible, consistent with the principle of the measure. It would be utterly impossible, of course, for us to say to the Legislature: "You may, without consent of the petitioners, amend this measure," because, as I say, the power to amend is the power to kill, and the power to amend cannot be limited.

Mr. SANFORD BATES of Boston: I should like to ask the gentleman from Brookline a question, because I, like the gentleman from Holyoke, am sympathetic on this proposition of amendment. It is a legislative rule, as I understand it, in the House of Representatives, that no amendment is in order that is without the scope of the petition. Now I should like to ask him whether the same rule would not apply even if it was an initiative petition with 50,000 signatures; therefore no amendment could be admitted which would change the scope of the act or kill it, and all amendments in the Legislature on an initiative petition would be subject to the same rule that they are to-day. Therefore why is it not possible to adopt some amendment to allow the Legislature to amend it provided it does not change the petition which goes in?

Mr. WALKER: Why, Mr. Chairman, the power to amend the measure, even though it is within the petition, is the power to completely or radically change it. That would not help the thing in the least. Of course you cannot offer an amendment that is without the scope of the petition, but it is the custom in the Legislature to make the petition so broad that you will not run against that rule. In fact I always have advised members in the House, when they came to me for advice, to make their petition so broad that an amendment would not be open to the point of order that it was without the scope of the petition. That is commonly done. A petition can be wide open so that you can change a bill in any possible way. There is no restriction to the petitioners' rights to present amendments provided they are within the scope of the petition.

Mr. AVERY: I should like to inquire of the gentleman from Brookline if the provision relative to the Attorney-General could not be applied to the Legislature just as well as to a petition brought by ten signers?

Mr. WALKER: It could be. There is only this difference: The ten signers are the men who wish this measure submitted to the people. They are the ones who originated the measure. Now you remember that the committee on Bill of Rights in this Convention asked us to reject the report of the committee on Form and Phraseology, because

they had made an amendment which the committee on Bill of Rights thought was an essential change. They objected to the amendment that was made by the committee on Form and Phraseology. Now we are perfectly willing to allow the friends of the measure to change it subject to the approval of the Attorney-General that it shall be simply a perfecting amendment; but we cannot allow a hostile Legislature to change it and then get the Attorney-General to approve the change of a hostile Legislature, because the purpose of the petitioners might be defeated thereby. I am sure the members see the point; we must allow a perfecting amendment only by those who want the legislation, and then we must limit their power so that they cannot change the petition, because if they change it materially the other petitioners would not stand for it. Of course the Legislature always can submit an alternative measure.

Mr. HART of Cambridge: The immediate question before us appears to be taking the yeas and nays in the Legislature. I should like to call the attention of the Convention to the fact that taking the yeas and nays upon a measure submitted to the Legislature for its action or non-action exactly corresponds with the present method under Article IX of the amendments which provides the method of recommending amendments to the Constitution. The proposition only repeats a precaution already taken. It is perfectly true that the ninth amendment does not provide for the yeas and nays in the second Legislature, but there is an amendment now pending before this body in which, if it be proposed by the body and duly ratified, there will be a requirement for the yeas and nays in both years for a legislative amendment.

Upon the general question of these amendments, Mr. Chairman, the friends of the measure are all of the same mind: We all want to get a result. This Convention appears to be committed to the principle of the I. and R., which is what we want. We admit, of course, that there are difficulties and weaknesses in the situation, because there are difficulties and weaknesses in human government and in human nature. What we must do is to minimize those difficulties. The question of signatures and the question which has been raised about amendments are very important matters, but not vital. Other States have found a solution for them; we can find a solution and we must find a solution, because otherwise we shall remain in the midst of legislative difficulties, due to the impossibility of realizing the will of the people, which are far more serious than the difficulties presented by this measure. For one I shall vote for any improvement of the measure which makes it more workable.

The amendment was adopted.

Mr. Charles H. Morrill of Haverhill moved that the resolution be amended by striking out, in lines 18 to 30, inclusive, the words "in the manner provided in the ninth article of amendment to the Constitution, such amendment shall nevertheless be deemed to be referred to the next General Court and shall have the same standing therein as if once agreed to: and if such next General Court shall fail before the first Wednesday of June to agree to such amendment in the manner provided in such ninth article, and if such initiative petition is completed by filing with the Secretary of the Commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August not less than ten thousand additional signatures of such qualified voters".

Mr. Morrill of Haverhill: I wish to say that I examined the list of the I. and R. States, and cannot find any State which requires that a proposed amendment to the Constitution shall be acted upon by two legislatures. An amendment to the Constitution initiated by petition is acted upon either by one Legislature or goes directly on the ballot without going to the Legislature at all. Those are the principles which prevail in the I. and R. States. Therefore I offer this amendment striking out the provision requiring action by two legislatures so that action by one Legislature would suffice to refer the question to the voters. I think that is a very conservative request. The nearest approach I can find to action twice is in North Dakota, where a proposed amendment to the Constitution is initiated directly to the voters without going into the Legislature, and if the voters approve of the proposition it then goes into the Legislature, and if the Legislature also agrees it becomes operative as an amendment; but if the Legislature does not agree to that amendment which the voters have indorsed, it automatically goes back to the voters for a second vote by the voters, whose vote is final. Now, I cannot find any State that reverses that and has a Legislature act twice before the people vote once, and I do not see why what is good enough for all the other States is not good enough for Massachusetts. I hope my amendment will be adopted.

Mr. Walker of Brookline: The gentleman from Haverhill (Mr. Morrill) has fought for the initiative and referendum for twenty-five years, many of those years in this body. I feel that to-day he, rather than I, ought to be in charge of this matter, and so, although I cannot agree with him in regard to the amendments he makes, we have considered them with the greatest of care. We have been in a difficult position. We have been between two fires. We have been between those that wish to make our measure more conservative and those who wish to make it less conservative, those who wish to put all the restrictions on it possible and those who wish to put no restrictions on it at all; and therefore we passed the amendments offered by the gentleman from Haverhill, but I assure him we treated his amendments with the utmost respect, and on behalf of the whole committee I wish to congratulate him on the fight he has made for years in this House on this measure.

The amendment was rejected.

Mr. Albert H. Washburn of Middleborough moved that the resolution be amended by striking out lines 13 to 35, inclusive, and inserting in place thereof the following:

If an initiative petition for any specific and particular amendment to the Constitution is introduced into the General Court, in the manner hereinafter provided, signed by not less than eight per centum of the qualified voters of the Commonwealth, calculated upon the whole number of votes cast for Governor at the last preceding election, and the General Court into which it is introduced shall fail to agree to such amendment in the manner provided in the ninth article of amendment to the Constitution, such amendment shall nevertheless be deemed to be referred to the next General Court and shall have the same standing therein as if once agreed to; and if such next General Court shall fail before the first Wednesday of June to agree to such amendment or shall propose a substitute form thereof, in the manner provided in such ninth article, and if a supplementary petition for such amendment signed by not less than two per centum of the qualified voters, calculated upon the whole number of voters cast for Governor at the last preceding election, in addition to those signing the original petition, shall be filed with the Secre-

tary of the Commonwealth not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, then the Secretary of the Commonwealth shall submit to the people at the next State election such amendment together with any such substitute form thereof. If such amendment, or such substitute form thereof, shall be approved by a majority of the qualified voters voting thereon, it shall become part of the Constitution of this Commonwealth on the first day of January next after such approval, provided that for any amendment proposed under this section the affirmative vote shall not be less than one-third of the highest number of votes cast at such State election. If conflicting amendments to the Constitution shall be approved at the same election the one receiving the highest number of affirmative votes shall become part of the Constitution of this Commonwealth. The Legislature shall enact proper laws to carry out the provisions of this section.

This amendment was withdrawn.

Mr. James P. Richardson of Newton moves that the resolution be amended by inserting after line 35 the following paragraph:

EXCLUDED MATTER.

No part of the Constitution which provides for the establishment of the initiative and referendum shall be the subject of an initiative petition.

Mr. RICHARDSON: The purport of this amendment already has been referred to at different times during this debate and I do not intend to take much of the time of the Convention upon it at this time. It is plain and simple. It would provide only that the initiative and referendum part of the Constitution, if it is finally adopted, shall not itself be subject to the operation of the initiative and referendum; in other words, that the precautions which are said to surround the present initiative and referendum and which have been dwelt upon at great length by the delegate from Brookline (Mr. Walker), the proponent of this measure, in his first speech, as providing ample safeguards against sudden and careless changes in the existing Constitution, shall be sustained. Without some such provision there is no bar from adopting at any time by the use of the initiative petition a much broader form of the constitutional initiative, — a form, for example, such as the one which this Convention or this committee has just voted down, submitted by the delegate from Haverhill, or a form such as is printed as Document No. 352 under the name of the delegate from Haverhill.

I appeal to all of those supporters of the constitutional initiative who are still anxious to have some safeguards thrown about the methods of changing the Constitution of this Commonwealth, to support this amendment, believing that here at least a line must be drawn which many of the advocates of this measure, even, will not be willing to cross.

Gentlemen, a remark was made in the speech of the delegate from Brookline in the fourth division (Mr. Whipple) early in this debate which seems to me to embody the danger which I fear unless some such provision as this, — and I have no pride as to the exact language in the matter, — shall be adopted. The honorable delegate from Brookline in the fourth division was referring to the discontent of the people with the decisions of the court; the distrust of their power to declare statutes unconstitutional, and he said that he was talking with some person about that and he asked the person with whom he was talking this question in substance: "Would you be afraid of the courts having this power if you knew that you could change a decision of

the courts in thirty or sixty days?" That remark I am bound to believe slipped unconsciously from the delegate from Brookline. I do not believe that he himself advocates any such change, but I think, gentlemen, that artless remark is nevertheless what we are coming to or what we may well be supposed to be coming to, unless the bars are put up at least as high as this amendment would raise them. Only yesterday the honorable delegate from Fall River who closed the general debate upon this question said that he was not one of those who felt that because the door was now being opened that the whole space hitherto filled by the doors should be occupied by the I. and R., or words to that effect.

Mr. Chairman, this matter has been referred to in connection with Professor Holcombe's book, which I desire to quote very briefly, because he is known as a day in and day out advocate of the initiative and referendum, and his book was published only a very few months ago. I for one am willing to stand pat in this respect upon Professor Holcombe and his book, the opinion of the majority of this committee to the contrary notwithstanding. Professor Holcombe says:

> It can be seen by inspection of the election returns that most constitutional amendments are no less suited by nature for consideration and enactment directly by the electorate than ordinary legislation. There is one class of constitutional amendments, however, of which this is not true, namely, those which are intended to define or enlarge the powers of the electorate itself. It is natural for all persons, voters as well as those in more conspicuous places of authority, to strive for greater power. The electorate, if permitted to define its own powers, cannot be expected to resist the temptation unduly to enlarge them. For example, in Arizona, a constitutional amendment was proposed by means of the initiative in 1914 for the purpose of depriving the Legislature of the power to amend or repeal any statute adopted by the electorate. The needlessness of this proposal and the inconveniences that might be caused by it were pointed out by an able argument published in the official bulletin, but it was nevertheless adopted. The action of the electorate in this instance was not rational, it was instinctive; and action in such cases is more likely to be instinctive than rational. The electorate is not the people, and under our system of government it is just as improper for the electorate directly to define its own powers as for the Legislature or for the courts to define their own powers.

Now, there is the plain statement and the deliberate published opinion of one of the most noteworthy advocates of these measures. Mr. Chairman, I will admit that I do not view with great pleasure the presence of the head of the camel in the tent, but there are other portions of the animal's anatomy that I should regard as even more dangerous and with more disfavor, and it is to get those other portions of the anatomy out of the tent that I think this amendment must be adopted.

Mr. BROWN of Brockton: I am opposed to this amendment because if all the evils predicted by the gentleman who has taken his seat take place in one or two years, you will circulate a petition to repeal the initiative and referendum, and if the amendment is adopted you cannot repeal the initiative and referendum by petition. Why lock the door? Criticisms like that just read apply to direct legislation. There is a difference between direct legislation and the pending resolution. What the delegate from Haverhill quoted is what President Wilson said about direct legislation. What has been quoted here from different States concerns direct legislation. The pending resolution provides for action by the people if the Legislature will not act.

Massachusetts always has made provision for that under the Consti-

tution but there is now no prescribed method of acting. If anything is worth having it is worth waiting for; under the pending resolution you have got to wait for two legislatures to act. The amendment of the delegate from Boston makes it even more conservative. It provides what I suggested to the Convention for the submission of alternative propositions. If the petition proposes something objectionable the Legislature can send down one that is opposite to it; the voter must then distinguish between the two amendments. I am opposed to this amendment. The door should be left open whereby we may repeal the initiative and referendum by petition.

Mr. ANDERSON of Newton: I said day before yesterday when I addressed the committee that I should introduce an amendment of this sort. Coming here this morning I found that my colleague from Newton already had introduced this amendment. I cannot improve on the speech which he has made. I wish to say that I endorse every word of it and that I think the Convention should take this matter up exceedingly seriously.

Mr. WALKER of Brookline: I wish to say, as to this particular amendment, the committee on the Initiative and Referendum is not opposed. However, we do feel, and feel very strongly, that this is not the proper time to consider or pass such an amendment, for this reason: When the Convention has reached the point where it is about to pass an initiative and referendum measure and we know what it is, then we might freeze it in by such an amendment as this. I doubt the wisdom of doing so, however. But how do we know that it is going to be a workable initiative and referendum? How do we know whether hostile amendments may not yet be tacked on to this measure? And do we wish to freeze in amendments which are inconsistent with the principle of the initiative and referendum? I am sure that members of the Convention will say that it would be impossible for us, the members of the committee, at this time to accept that amendment. It would be dangerous to do so. We do it with our eyes entirely shut as to the nature of the amendments that will be passed. Therefore I assure you that the committee, if we get a reasonably workable initiative and referendum, if we get one that carries out the principle of it, will be glad to consider just such an amendment as that. So I trust at this time it will not prevail.

Mr. BALCH of Boston: The argument of the gentleman from Brookline would come to me with compelling force were it not for one fact. That fact is, as I understand it, that the majority of the committee on this subject is absolutely refusing to allow the measure to be referred back to them for the purpose of reducing the amendments to orderly form and defining issues so that we may proceed upon them in a reasonably and orderly manner. That being so, I think they cannot complain of the piecemeal and odd results which we must necessarily get under the present method of proceeding.

Mr. WALKER: I should say in that respect that of course we cannot have this matter referred back to us because it would mean delay and it would accomplish no good. The committee has done its work; now it is up to this Committee on the Whole to do its work. I wish to say that after these amendments have been considered and have been voted into this measure we intend — the majority of the committee — to take the amendments, carefully go over them, see if they fit in

properly, make a few perfecting amendments in the form of the measure, some of which I already have in my mind, then we shall present at the proper time before the Convention a redraft of this measure incorporating these various amendments and seeing that the thing is smoothed out properly. That redraft will be before the Convention; then we can read it over and see whether it is satisfactory to a majority of the Convention. At that time also there will be an opportunity to amend that redraft. So I assure the gentleman from Boston (Mr. Balch) that there is no danger but what this thing will be carefully fitted together, smoothed out and in proper form for submission to the people before it goes to the people.

Mr. LEONARD of Boston: If I understand the gentleman from Brookline, the majority of the committee are not opposed to this amendment, but they have not felt that this is a proper time to consider it. Now all that leads to a certain conclusion in my mind and I wonder if any of the other delegates share that same view as to what progress we are making and the manner of progress. Now on the docket there are a number of amendments. I believe they are offered in good faith and perhaps some of those amendments are of material value to the matter under consideration. Others, it seems to me, are mere shadows. It seems to me we have what might be called a legislative mirage. We have got things of substance and we have got things that are of mere illusion. And then again this morning, which perhaps was the most serious time of the Convention up to the present time, we had a lot of questions of personal privilege and talk that might be termed in the language of the trenches the *camouflage*, which is merely theatrical matter designed to deceive the adversary.

Now I should like to know what the program is. I think the gentleman from Waltham (Mr. Luce) this morning said that each member should vote so as to have in view the sort of resolution we finally were going to adopt. But as we go from one to another amendment we have lost all sense of perspective; at least I have and I do not know the value of these amendments as one comes after another, and if one amendment is accepted it may very materially affect some amendment that is to come later in the docket. We had a very fine example not long ago in the way of handling amendments, and I refer to the work that was done by the committee on Bill of Rights in the matter of the anti-aid amendment. There you had men who were far apart on a subject as intricate as this. They were so far apart that it would almost require terms of astronomy to tell the distance. And yet by considering every amendment that was offered honestly and in good faith they finally came to a mutual understanding, and I know that I for one, and I think other members of the Convention, waited very eagerly to know what was the manner and the substance of the verdict of that committee. Now it seems to me, although we have had a lot of leadership in the way of arranging a speaking program, we need leadership to give us some sensible and sane and common-sense way of properly getting at the respective values of these various amendments. At the present time I am considerably confused; and I hope if any method of proper consideration is being developed it will be made clear and manifest to us, so that we may properly frame and shape the resolution under discussion.

Mr. Bennett of Saugus: I agree with what the last speaker has just said. The ex-Governor in the second division (Mr. Walsh) made a great speech here the other day and nothing was applauded so strongly as his reference to the method sometimes employed of getting a proposition through the Senate, when the Senators would be told: "Don't talk, but vote strong." Now, I want to ask, Mr. Chairman, if that is not precisely what certain leaders of the initiative and referendum have proposed with more or less authority and acceptance? Is not that so? [Applause.] Absolutely. Now, then, where do we find we are? Where are we at this moment? We are at this moment in an atmosphere and a condition in which we do not discuss details but we take the say-so of this man or that man that sometime or other we shall have a chance to vote on it. Well, when? We never are told when. And that is the whole atmosphere of this Convention in respect to these amendments. Do not be told how good the amendment is, but be told: "I am for it," — I, the leader, am for it, — [laughter]; "we will take it up and act upon it at some future time." Is not that what we are told? I think we ought to be a little more explicit in regard to these amendments and I think that we ought to vote upon the merits of the question.

The amendment was rejected, by a vote of 106 to 129.

Mr. Josiah Quincy moved that the resolution be amended by striking out, in line 39, the word "and", and inserting in place thereof the following: "a vote shall be taken by yeas and nays in both branches of such General Court before the first Wednesday of June upon the enactment of such law in the form in which it stands in such initiative petition, and if".

Mr. Underhill of Somerville: For the gentleman whose place I have just stolen I should like to ask in his behalf if this amendment is acceptable to his friend in the third division?

Mr. Walker of Brookline: I do not think there is any need of the gentleman from Somerville putting his sarcastic question to me on this matter. [Applause.] I wish to say that I do not believe that any one in this Convention thinks I wish to assume any leadership in this matter. I would be glad to resign, I assure you, for any member of this committee to take my place. But some one has to do this disagreeable work, — it is disagreeable. We have got to explain what amendments, after careful consideration, the committee, — your committee on the Initiative and Referendum, — approve and what we do not approve. We do not take, as I say, any arbitrary position in the matter. We are glad to have them discussed. Some of them we feel quite strongly about and some of them we do not feel strongly about. In regard to some of them we should be content if the Convention should turn us down; in regard to others we feel that it would adversely affect the measure if the Convention voted against the opinion of the committee. We intend to be, I assure you, entirely reasonable and we do not intend to be arbitrary; and I do not think it is wise, — necessary, at least, — for my friend from Somerville to criticize us.

Mr. Underhill: I am sorry the gentleman received the impression that I referred to him in any way, shape or manner. I did not so refer and I do not believe there is a member of the Convention except himself, possibly, who so understood me. If so, I not only apologize to him but to the Convention. There is no man in or outside of this Convention who has a higher opinion of the gentleman's sincerity,

honesty of purpose, and the sacrifices, the personal sacrifices, the political sacrifices that he has made for his convictions. [Applause.]

Now, sir, I do object to the methods which have been used, not by the gentleman from Brookline but by other gentlemen in this Convention, in cramming down our throats these propositions from day to day, not only during this debate but since the beginning of this Convention. They have come here with an idea, apparently, — if the voice of their popular public organ is to be believed, — with the idea of impressing the public of this Commonwealth with the fact, if it is a fact, that every man who is opposed to the I. and R. for any reason whatever is a crook, is a fraud, and is only entitled to the scorn of his constituents and of the people of the Commonwealth. It is to those outside influences to which I object, — it is to those outside influences that my remarks were directed in part at least. And, sir, if I need to apologize any further to the gentleman from Brookline or to the Convention I shall have to ask my friend from Lancaster (Mr. Parker) who has such an extensive vocabulary to do it for me. [Applause.]

Mr. Adams of Quincy: May I be permitted to ask the gentleman from Brookline for my own benefit what his opinion about this amendment is, — simply for my own benefit? I have not had an opportunity to understand it.

Mr. Walker: In regard to the amendment offered by the gentleman from Boston (Mr. Quincy) I quite approve of it. It is merely attaching to the laws, the legislative initiative, that which already has been attached to the constitutional initiative. It belongs in both places. As a matter of fact, it was originally approved by the committee for introduction in both places, but it happened to be moved only in regard to the constitutional initiative. Therefore I trust the amendment offered by the gentleman from Boston will be adopted.

Mr. Balch of Boston: In the frank statement which Mr. Walker made in reply to me not very long ago, as I understood, he gave as the reason for our present disorderly and unsatisfactory mode of procedure on these mixed-up amendments the fact that we were under the necessity of haste. If we are in such necessity of haste as obliges us to proceed in a manner which cannot produce well-reasoned and well-knit-together results, I will ask him to point out to me where that necessity resides.

The amendment was adopted.

Mr. Robert Luce of Waltham moved that the resolution be amended as follows: —

By inserting after the word "thereon", in line 50, the words "and not disapproved by the subsequent General Court";

By striking out, in line 52, the words "such State election", and inserting in place thereof the words "the prorogation of such General Court"; and

By striking out, in line 53, the word "election", and inserting in place thereof the word "prorogation."

Mr. Luce: This amendment does not go to the heart of the proposition. It is comparatively unimportant and if the majority of the committee deem it unworthy of serious consideration I shall not press it. I may explain that as the resolution is now drawn, it does not specifically say if by initiative petition a measure is enacted in November it may be repealed by the Legislature in January. Had the eyes of the committee met some testimony as to what has hap-

pened in the west, I think they might have realized that if the law stands as it is here there will be in each Legislature men who will hesitate to undo the work of the plebiscite, no matter how palpable a mistake may have been made; for in these western States under such petitions men have said that the people have voted so and so, and they have declined to correct palpable mistakes.

I am prompted to call this to the attention of the committee by the recollection of a personal experience with a referendum in the year 1903. After a long fight on this floor in behalf of the primary election bill, at the last moment, against my earnest protest, an amendment was put on compelling all the towns in the State to vote on its acceptance. I went up and down the State for the next four months or more, begging the towns not to accept that bill; but in spite of my protest, under the action of the referendum it was accepted by something more than a hundred towns. In order that we may foresee how this law is going to operate let us read the future from the past and recall that when in 1903 this law was accepted by more than a hundred towns against my protest, in numerous cases it was reported to me that it was accepted because the voters thought they were voting on the liquor question. In at least one case the law was rejected by one vote. Only one man voted on it, and thank heaven, he voted No.

When the next Legislature opened the representatives of those towns came down here like the wolf on the fold. They swept me right off my feet. They would not allow me to repeal that law in the right way; they would not wait to do it properly, such was their rush, and they repealed that law forthwith.

Now I submit it might be as a matter of expediency wiser to say in so many words that the coming Legislature may annul the law than to leave it unsaid as it is in the present form. But as I say, this is a particular where I shall not contest the judgment of a majority of the committee, and if they prefer it in this way I shall have no more protest to make in this particular.

Mr. SHEA of Cambridge: I trust this amendment regarding the initiative petition will not prevail. In 1893 the voters of East Cambridge elected me to the Legislature on the initiative and referendum platform. My two years' service in the Legislature strengthened my faith in the initiative and referendum. In the first year a measure went through the Legislature in the interest of a certain corporation. Money was stalking around in the corridors waiting to be picked up, and the measure was so bad that a Republican Governor vetoed it.

The next year, in 1894, a bill was presented to the Legislature entitled: "An Act to provide for the greater safety of railroad employees." It was a just bill, it was a humane bill, it was a Christian bill. It called for the placing of guard-rails on the side of freight cars. Picture, if you will, on a stormy, sleety night, a brakeman running from one car to another and slipping. Picture the consequences. Picture, if you will, on a windy night when those telltales so many feet on each side of a bridge to notify the brakeman that there is a bridge so many feet away, — picture one of those telltales broken down and the brakeman, in the performance of his duty, walking along from car to car and being struck by that bridge. No guard-rails along the side of the car. You know the consequences. Why, it was a bill aiming to lessen the number of brakemen killed, the number of brakemen

crippled for life; a bill to lessen the number of widows, to lessen the number of fatherless children. But, gentlemen of the committee, it interfered with the dividends, and then the machinery of the invisible government came into force. The committee on Railroads, — and I say Amen to a statement that was made on the floor of this Convention earlier in this debate, because many a member in those days held the same opinion, — the Railroad Committee, which was the most important committee in the Legislature, was named by the attorney of the railroad interests. Well, then, what did they do with this humane bill? Brought in a report, a unanimous report, — "Leave to withdraw." The bill was fought on the floor of the House and was substituted by a majority of 42, — on a roll-call, gentlemen, — and the bill went along its various readings. The invisible government got in its work and it was finally passed to be engrossed by a majority of 25 on a roll-call. Now you know, gentlemen, that as a rule people are not changing their votes on roll-calls, but the next day without any words, without any debate on the matter, they reconsidered the bill and defeated this humane measure. And the attorney of a railroad corporation told a gentleman who fought for that bill that he would not sit in the Legislature the next year, and he did not sit in the Legislature the next year.

Now, you will say, if the invisible government can defeat a legislator why cannot it defeat legislation? Oh, no, the invisible government defeated that legislator, but the invisible government with a referendum could not cause the people to vote against a bill which aimed to lessen the number of those who broke this commandment of God: "Thou shalt not kill." [Applause.]

Mr. WALKER: I will call the attention of the gentleman from Waltham (Mr. Luce) to the amendment proposed under my name on page 10, which says "that subject to the veto power of the Governor and to the right of referendum by petition as herein provided, the General Court may amend or repeal a law approved by the people." I do not think that that is really necessary, because there was nothing to prevent it in the resolution; but there it is expressly set out that the Legislature may amend or may appeal a law passed by the people. I need not argue at this time the obvious necessity for that. I do not pretend that it does what the gentleman's amendment would do —

Mr. LUCE: I will save the gentleman a moment of time, — I would save every instant possible in this Convention, — by saying that if I had known he was to present that amendment I should not have presented mine and I ask consent to withdraw the motion.

The amendments were withdrawn.

Mr. William S. Youngman of Boston moved that the resolution be amended by striking out, in lines 50, 121 and 145, respectively, the words "voting thereon", and inserting in place thereof, in each instance, the words "who vote at said election".

Mr. YOUNGMAN: The amendment I have offered I speak of in the singular, because although words are stricken out in three places the same words in each case are stricken out and the same words in each case are inserted. If you will look on page 3 of Resolution No. 335, in lines 48–51, it says: "if it", — that is, the statute or constitutional amendment initiated, — "shall be approved by a major-

ity of the qualified voters voting thereon, such proposed law shall, subject to the provisions of the Constitution, become law. . . ." I have moved to strike out the words "voting thereon" and to substitute therefor the words "who vote at said election." The difference is this: A very small number of the people who vote in an election may vote on an initiated bill. Out of that small number, of course there will be a majority. There cannot be a tie vote. If you have a requirement that in that election, on that initiated measure, on that initiated amendment to the Constitution, you get a majority of the vote cast, or, in other words, you get the Governor's vote, you have a real expression of the will of the majority. Our amiable ex-Governor in the front of the second division here (Mr. Walsh) had a great deal to say about the rule of the majority. I agree with him, and if we have a vote by a majority of the people who vote in the election approving a measure that is initiated, we have, Mr. Chairman, a verdict that has a good chance to stand. Here is a removal of one of the most serious criticisms to the initiative and referendum, namely, that nothing is settled, the same thing, or substantially the same thing, can be initiated over and over again, and if it can be voted on and passed over the Legislature by a majority of just the few who happen to vote on it, you have just the few who are interested voting. You do not have a decision that commends itself to the public at large. That is the essence of the thing.

Now I was deeply impressed, as I know all of you must have been, by the argument made by the chairman of our committee on the Initiative and Referendum (Mr. Cummings), particularly as to the desirability of having the initiative and referendum to protect the public as a whole against a thoroughly organized minority such as organized labor, who may have the best intentions and yet may be deciding a thing too much from their own point of view. Now, strong as that argument was and strong as was the argument of our ex-Governor (Mr. Walsh) for the rule of the majority, every word of it counts for this proposition, because when you can pass an initiated constitutional amendment or an initiated statute by a majority of the votes cast, — in other words, the Governor's vote, if you please, — then you have a verdict that will stand; then you have a proposition that has been carried, not only by those who are specially interested in it, who were specially organized with some one newspaper in a partizan way, but a proposition that was approved also by a very large percentage of the community, of the unorganized portion, who considered it fair, considered that that should be done for organized labor. Perhaps the very thing that the last gentleman asked for would be carried; I for one should vote for it. There you have something, — something that stands.

Now what about this particular form of the initiative and referendum? There has been this difficulty: I do not think the gentleman from Brookline in the third division whose name has been connected with this measure means to mislead this Convention, but again and again he has spoken in the debates to-day of the committee approving such and such an amendment or considering such and such an amendment. The committee on the Initiative and Referendum never has met since the vote was taken reporting this measure. None of these amendments ever has been considered, and that is where I feel that the committee on Initiative and Referendum has not served this Con-

vention as did the committee on Bill of Rights in their handling of the sectarian amendment. Of the majority members of the committee, the chairman, as you know, has offered his amendments in here, showing that he has a reservation. The other seven gentlemen of the majority simply stood pat and with the slight change of the addition of more signatures, with the change about means of amending the petitions, this measure now offered is the Walker resolution. And if we are forced to put out here a form of initiative and referendum, particularly applied to statutes, which works badly, which has not been fully considered, it is because of the rigidity of the seven gentlemen of the majority of that committee. I think that it is going to be a misfortune to have the measure put up in that way. I think that our committee should meet again, whether this is referred back or not, and really debate these amendments and debate this whole proposition, because I do not know of any vote that has been taken in this Convention that eliminated the dissenting seven from membership on the committee on Initiative and Referendum. As for those dissenting seven I know of only one member of that seven who, even in this preliminary discussion in the committee, has said that he was opposed to the whole thing and that he would not favor any form of an initiative and referendum resolution. A great mistake is being made by insisting on jamming this through in this precise form to make it an "omnibus bill," to make it carry special things for special interests, such as some special newspaper, instead of trying to make it a thing for the benefit of the majority of the people of Massachusetts, whom all of you, following the example of, or preceding, this man who stood here in uniform this morning (Mr. Bird of Walpole), swore to impartially serve.

Mr. HART of Cambridge: A very few words, two minutes, I believe, will entirely dispel the force of the argument which has just been made. We are told that this is an experiment, the submission of measures to the vote of the people who vote thereon, — an experiment which has lasted ninety-seven years! Every amendment, every one of the forty-four amendments, has been adopted by a majority of those who voted thereon. Every one of the numerous bills submitted by the Legislature of Massachusetts to the people upon what is practically a special referendum has been submitted to the votes of those who vote thereon. What the gentleman has proposed is that we shall make a different rule; that we shall provide that legislation which has gone through the form of the initiative shall be submitted to a different process, require a different majority. Until that gentleman or some other gentleman is ready to back up in this Convention the principle that all measures of every kind, whether laws or constitutional amendments which are submitted to the people of Massachusetts, must receive a majority of those who vote at the election instead of a majority of those who vote thereon, I absolutely decline to give any adhesion or attention to the principle which the gentleman presents.

The consideration of the amendments offered by Mr. Youngman of Boston was resumed on the following day, Friday, September 14, and, without further debate, the amendments were withdrawn.

Mr. Joseph Walker of Brookline moved that the resolution be amended as follows:

By striking out, in lines 50 and 51, the words ", subject to the provisions of the Constitution,"; and

By adding after the word "law", in line 54, the words ": *provided*, that the limitations of the legislative power of the General Court in the Constitution shall extend to the legislative power of the people as exercised hereunder".

Mr. WALKER: I would simply say, Mr. Chairman, that this is a mere perfecting amendment. It is intended to make the measure explicit on this point. The gentleman from Winchester suggested that limitations of the Constitution applying to the legislative power of the General Court would be removed if we simply allowed the people to pass laws, that those limitations to the power of the General Court would not apply to the people. That was not the original intention in drawing the resolution, and although there are lawyers in the Convention who think that amendment is not necessary, still, in making the matter perfectly explicit, I thought it was wise, and I understand that the committee does agree with me and the lawyers also agree with me, that it is a wise amendment to make. It simply applies the limitations now on the legislative power of the General Court to the legislative power of the people as exercised under this measure.

Mr. BROWN of Brockton: That amendment places the resolution out of the class of anything that can be called initiative and referendum. I shall vote for it, but it declares that the people are to become assistant legislators, and as such are bound by all the limitations imposed upon the Legislature. Having passed that, why should anybody oppose the initiative and referendum?

The amendments were adopted.

Mr. Frederick L. Anderson of Newton moved that the resolution be amended by inserting after the word "voters", in lines 30 and 46, respectively, the words ", obtained after the first Wednesday of June aforesaid,".

Mr. ANDERSON: This is merely to correct what seems to a great many members of the Convention the infelicity at least of these ten men having all of the signatures in their pockets before the time, and offering after the rejection of their measure by the Legislature signatures which already have been obtained in the previous canvass. This demands that additional signatures, both for the constitutional amendment and for the law, be obtained after the time set for the adoption of the amendment by the Legislature.

Mr. WALKER of Brookline: I will say that the committee is very glad to accept that amendment.

The amendments were adopted.

Mr. Frederick L. Anderson of Newton moved that the resolution be amended by adding at the end of line 35 the words: "*Provided*, that unless at least one-third of the members of the House present and voting and one-quarter of the members of the Senate present and voting in both of the annual sessions aforesaid vote to adopt the initiative petition for a constitutional amendment, it shall not be submitted to the people." [See also amendment at bottom of page 656.]

Mr. LUCE of Waltham: In my judgment these are distinct propositions and I object to their consideration together.

The CHAIRMAN (Mr. Pillsbury of Wellesley): If any member calls for a division the question will be taken on the amendments separately, and it will be so taken.

Mr. ANDERSON of Newton: This first proposition, then, simply means that, in addition to the 40,000 signatures, a proposition must

have one-quarter of the Senate and one-third of the House behind it if it is going to be submitted to the people. That takes away the objection that all a man must do in order to get his affairs before the people is to have ten supporters and $2,000. He has to have at least one-quarter of the Senate and one-third of the House. This will have two good effects. In the first place, it will eliminate all propositions by the initiative which have their support in small cliques or groups, or in single corporations. Such propositions never can get a quarter of the Senate and a third of the House. And, in the next place, these amendments will absolutely force a real debate in both the Senate and the House in both the sessions, because those who have the petition before the Senate and the House will wish to gain the necessary fraction which will be absolutely necessary to them in order that their bills shall go before the people. This of course is a conservative amendment, but I think it is not so conservative but that a large number of those who are in favor of the initiative and referendum, as I am, will be glad to see it inserted in the measure.

Mr. SAWYER of Ware: I certainly hope this amendment will be rejected. This is a most unfair amendment, and opposed to this measure. The gentleman who has made this is of course a Republican and the matter did not occur to him, but I apprehend that if the initiative and referendum goes through there will be some measures advocated by the Democratic party that will not be agreed to by the Republican party. Not in years have we had a quarter of the Senate. The last session we did not have a third of the House. Therefore, if this amendment were adopted, this great minority party would be shut out from getting before the people any amendment in any way whatsoever. Now, Mr. Chairman, in addition to this there may be other minority parties, prohibitionists, socialists, it may be the labor movement, others which do not control a quarter of the Senate or a third of the House, which want to have measures submitted to the people. This would nullify, kill as a popular measure the initiative and referendum, if it were accepted, and I trust that this amendment and the next one will both be rejected.

Mr. BROWN of Brockton: A gentleman from Boston (Mr. Lomasney) said here that he had made it a rule that when he wanted to get to heaven he followed ministers. As a general rule that is true, but for this particular object I think we would be traveling in the other direction. What he has overlooked is this: That there is already provided, with a fair probability of its passing, an amendment by the gentleman from Boston, which provides that there can be an alternative proposition framed by the Legislature to send to the people at the same time that a proposition which may not be acceptable is presented. What can be more fair? This continual reference to groups would indicate that a group of men, perhaps organized labor, was lying in wait for the very moment when the resolution is passed to rush *en masse* with a lot of propositions to the Legislature. If the gentlemen who are opposed to the resolution would help to complete it, we would have a measure creditable to Massachusetts. It would be a measure which other States will accept as amending what they now have. Not a State in the Union has so perfect a measure for obtaining the will of the people as this measure could be if it contained the alternate proposition which was brought out here in the

debate, — if I may say so, by my own suggestion. If you provide that an alternate proposition may be framed, it will give ample protection without this amendment of the gentleman from Newton.

Mr. Webster of Haverhill: Upon this amendment we get back to a thought which, in a moment of inadvertency, I did not avail myself of the opportunity of presenting at the proper time when the gentleman from Boston in the third division (Mr. Youngman) withdrew his motion, — an action which, as I had expressed myself, was particularly gratifying to me as evidencing a higher order of mentality on the part of the member than I had previously accorded him with. What I want to say is this: We get down into this thing and I doubt not the sincerity of the honorable member from Newton (Mr. Anderson), I do not doubt his sincerity and I admire the purpose which is evident behind his act; but he does not see exactly what it is leading up to. It all comes to this: An arbitrary definition of certain numbers that shall vote upon a certain thing. Well, now, that principle is all wrong. That is exactly the principle embodied in the amendment proposed by the gentleman from Boston (Mr. Youngman). It is urged again and again, and that is one of the things that I have been anxious to remark to this Convention, — it has been urged again and again that the small number of people who vote upon propositions in referenda is an argument against the principle of the initiative and referendum. Why, sir, it is the very essence of its merit. It automatically selects from the electorate, from the plebiscite, whatever you desire to call it, expert opinion. It automatically selects an expression of expert opinion. I recollect, sir, — and I hope I shall be permitted to finish this thought, — I recollect, sir, that, before the committee on Constitutional Amendments in the Legislature in the year 1913, President Lowell of Harvard College made an argument against the initiative and referendum. And of course it goes without saying that it was a scholarly, a finished, a profound and exhaustive argument, the best that I have ever heard against it. But if I were going out to talk against it, — and nobody could give me money enough to induce me to do that, I hope, — but if I were, I would dig up that speech of President Lowell's, and out of that as out of a mine I would quarry whatever building-stone I needed for my argument. Mr. Chairman, I hope I am not transgressing upon the time, but here is one of the points that that honorable gentleman made: He selected a State, — I forget whether it was Washington or Oklahoma; it was one of those western cattle-raising States where the ranching industry still survives; and they placed upon the ballot a question as to whether the authority for superintending and supervising the branding of cattle should be deposited in one or another of two alternative boards, — something as if we should attempt here to decide whether the authority for putting those brass tags in the ear of a cow should be reposed in the State Board of Agriculture or the Bureau of Animal Industry —

The Chairman: The gentleman's time has expired.

Mr. Avery of Holyoke: It seems to me we have a situation here where a majority of this Convention wants to favor the initiative and referendum. We can draft the most scientific measure that this country has seen, or we cannot. If we simply follow the example of other States in our resolution, we are not making progress. I think this amendment is in the line of progress. It is in the line of a scientific

measure, and I understand that the committee is considering something like this, and I should like to ask the gentleman from Brookline who seems to be in charge of the majority of the committee if I am not correct.

Mr. WALKER: The committee on the Initiative and Referendum is somewhat embarrassed at this time over this matter for this reason: This measure was not moved until this morning, and we understood that it was the intention of the gentleman under whose name it appears (Mr. Anderson of Newton) to move it, and therefore that is one of the amendments that the committee on the Initiative and Referendum has not come to any conclusion upon. We simply are considering the matter. I wish to say to the Convention at this time that although it appears as if we were accepting and rejecting these amendments in a haphazard way, we are not doing so at all. I hold in my hand a draft carefully prepared with all these amendments that we propose to accept, if the Convention stands by us, carefully fitted into the measure. They all hitch up one with the other. They provide as a whole all these safeguards that we believe can properly be adopted and still save the principle of the measure, so we are not doing this, I assure the members of the Convention, in any haphazard way. And the amendments that we accept, we know just exactly why they are going into the measure, and that it will be an harmonious measure when it is completed, and I believe, as the gentleman has suggested, that it will be a scientific measure. Now, on this matter, we have not discussed it, and so of course I am not in a position to do so. I intended to be in a position to say whether the committee favored or disapproved of every single amendment that would be offered in this Convention, and I simply beg to be excused at this time because I did not suppose this matter would be acted upon. Therefore it seems to me if the Convention sees fit to do so, it would be a wise thing to vote against this amendment at this time without prejudice under the circumstances.

Mr. LUMMUS of Lynn: I apprehend that the work of this committee at this time is not final. We not only have the committee on the Initiative and Referendum which the gentleman from Brookline speaks of, — and I assume in referring to the committee he means the majority of the committee, because the minority have not been consulted upon any proposed amendments, — we not only have that committee or that majority which ultimately will recommend certain amendments, but we have another committee designed to put those amendments into form. The work that we have here to-day, Mr. Chairman, is the expression of opinion, not upon the dovetailing of certain words into the measure, but upon the purpose of the particular amendments that now are being offered, well knowing, as we do, that the language of those amendments is subject to future revision. Now, with that in mind, Mr. Chairman, I see no reason why we should not express our opinion, if it be our opinion, — and I hope it is the opinion of men of all parties in the Convention, — with reference to the general proposition of the initiative and referendum, and, too, our opinion that this limitation or this amendment ought to be inserted in the resolution.

Gentlemen have suggested that the provision for the submission of an alternate proposition by the Legislature dispenses with the necessity of this amendment. That I submit is not so. The Legislature

may not approve of the proposed amendment at all, and yet if 40,000 signatures could be secured in any way by canvassers, or 50,000, if that be the number, it may go to the people, although there is no considerable part of the Legislature representing the whole people that favors the proposition. If a proposition, gentlemen, has any merit in it, surely one-third of the members of the Legislature will see it. That is not an undue requirement as a practical matter. I challenge anybody to show one measure that has real merit and that is really desired by the people of Massachusetts that cannot command one-third of the Legislature.

We cannot, Mr. Chairman, deal with this matter by starting from some dogma and then reasoning abstractly to a conclusion. We must deal with it practically and as a practical proposition. This amendment never will shut out any meritorious proposition, and if it shuts out a proposition it will shut out one that has been artificially nurtured, without the consent or desire of the great mass of the people, and therefore I hope that men of all ideas in this Convention may unite in the support of this very desirable amendment.

Mr. YOUNGMAN: I think all the members of this Convention will agree that almost as important as the question of adopting the initiative and referendum is the question of the form in which it is adopted and put into the Constitution of Massachusetts. Never under my observation has so big a question been so inadequately discussed as was the question yesterday about whether the initiative and referendum should apply to the Constitution. I regret very much that owing to the fact that dissenters from the Walker resolution did not have the organization that a newspaper outside has charged that we have, no adequate discussion I believe has taken place on the form of this measure. The question of having this constitutional part of the Walker resolution adequately discussed, fully explained to this Convention, and its workings, I think is of vital importance, because it is the most important part of the whole I. and R. proposition. It was not adequately discussed yesterday, partly due to an interjection of questions of personal privilege, and largely due to the fact that the dissenters have acted simply as individuals. We have formed no organization and attempted no organization. I do not say that to reflect on anybody, but that is the fact, and this is the situation with which you are confronted. Now, in that measure, in this No. 335 that is before us applying to the Constitution, is the biggest joker in anything that I have seen put up here. The statement of the fact that the Legislature has acted upon a measure is misleading. It is an absolute fraud and a fake, because those members of the Legislature can record themselves only on one side. They have no compelling power in reference to it whatsoever. It is simply a question of allowing it to be delayed one year, or in the case of the constitutional amendments two years in the Legislature. The recording of a vote when the voters have no compelling power in that vote amounts to nothing. How many of the men in this Convention would sit here if we were called here for any other purpose than simply to record how we thought and the thing was passed right off?

Mr. CARR of Hopkinton: I rise to give a little of my personal experience with the obtaining of a certain number of men in the Legislature to vote for a measure, because that is what the amendment

amounts to if it is carried. I oppose the amendment proposed by the gentleman from Newton. In his sincerity he may mean all right, but if he had served in the House of Representatives and had tried to obtain a sufficient number of men to stand for a roll-call, — and only thirty are required, — and there had seen the log-rolling in practice and had known of the promises that were held out to men to refrain from rising and asking for a roll-call, he then would have understood the campaign that would be adopted when there was an initiative petition proposed. What would be the campaign? It would be a campaign to prevent getting seventy members of the House to support that petition. It would be a campaign to prevent ten members of the Senate from supporting it. Mr. Chairman, the influences that I have observed operating in my two years in the House, where the Speaker has the control of recess committees, were pernicious. Out of the 240 members of the House there were 100 of them who were docile aspirants for a recess committee job, when there were probably only fifteen to be appointed. Mr. Chairman, those men who were subjected to the hope of getting a recess committee were at the beck and call of the Speaker for all purposes. Young men whom I simply pitied, who had been promised places on recess committees, were not appointed at the end of the year. They walked out of this chamber as though they had been whipped when they realized how they had stultified themselves, on the promise by the various whips in the House, that they were slated for recess committees to which they never were appointed.

Now, Mr. Chairman, imagine that condition in the House of Representatives when opponents are trying to prevent 70 members from supporting an initiative petition, when, as I say, a hundred of them hope to get a position on a recess committee for obedience, and there are probably only sixteen places. Mr. Chairman, that came under my own observation. That I have seen.

Now, the pernicious part of this amendment proposition is the definite number, — a definite number that must be obtained. Mr. Chairman, I have seen many a meritorious proposition defeated because we could not get even thirty members of the House to ask for a roll-call. For example, in the interpretation of the Workmen's Compensation Act, a court decision says that any Massachusetts workman employed by a Massachusetts employer, who is injured while working for that employer across the line in some other State, — our Supreme Judicial Court decided that such injured employee is not entitled to compensation. Mr. Hollis Bailey appeared before the committee on the Judiciary, together with a number of others who wanted to prevent the continued injustice of this decision from affecting the Workmen's Compensation Act. During the past year these men and others who were trying to establish a uniform Workmen's Compensation Act throughout the United States, came before your committee on the Judiciary and asked that the law be amended so that the Workmen's Compensation Act would have extra-territorial jurisdiction; so that when a Massachusetts employee is sent out of Massachusetts to do work for a Massachusetts employer over the State-line, if he should be injured in the course of his employment or killed, he should recover compensation for his injuries or his widow should be compensated for his death. Mr. Chairman, we were not able to amend the law or even to get a roll-call on the proposition, although it was admitted to

me privately by a majority of the members of the House that it was an absolutely fair proposition and ought to be in the act. Why, we could not get a roll-call even on the Governor's recommendation for an old age pension, even after he came to this chamber, and earnestly and sincerely asked the Legislature, at the beginning of the year, to consider a proposition for non-contributory old age pensions or health insurance for the people of Massachusetts.

Mr. Dutch of Winchester: The previous speaker has devoted all his time to showing that he could not get a roll-call. An amendment already has been adopted which necessitates and provides for a roll-call. I think it would be well to get back to fundamentals on this proposition. As I understand the proponents of the I. and R., they are suggesting a measure which shall be supplementary to legislative procedure. It is not to replace legislative procedure, it is not to be used constantly. They have argued here that it is to be used only on those rare occasions when the Legislature has failed to be responsive to a settled, determined, long-existing public demand. Now, if that is so, if that is the proposition, — and I believe it is, — I believe they repudiate that kind of operation of the initiative and referendum which tucks forty-eight measures on the ballot. If you want it to take care of an emergency situation, which is a fair basis of argument and an end toward which we are now trying to perfect this measure, then I submit there is no possible ground of objection to the amendment proposed by the delegate from Newton, because it is admitted by the man who gives his name to this measure that it is extremely difficult to phrase any provision which will automatically limit the number of measures to go on the ballot. Now, I say it is absurd for any man to get up here and argue that two-thirds of the House and three-quarters of the Senate are corrupt or will not express a decent opinion. We have had no charge in all of the debate that extended to any such proportion. Now, here is a measure which insists on simply a decent minority, — a decent minority. This measure will automatically throw out the freak measures, the measures for which there cannot be any real, settled popular demand. It is no effrontery, if you cannot get that amount of support in your Legislature, if you do not let a proposition go to the people. Therefore I say, on the essential principles of the I. and R. as properly supplementary to legislative action and if it is meant only to supplement legislative action, we ought to adopt this amendment.

Mr. Luce of Waltham: A member of the majority of the committee has told us that it has reached no conclusion upon this amendment, therefore I am very sure that he will raise no objection to this committee advising the committee on Initiative and Referendum. We may express our judgment, and then if upon further study it disapproves, at some later stage it may so inform the Convention; but this morning, to cross every bridge as we come to it, let us say that we do not desire to have it put in the power of any insignificant group of persons, who cannot even command the respect and confidence of a third of the members of the House and a quarter of the members of the Senate, to harass the people with trivial propositions or with those that may be dangerous.

I would remind you, sir, that in Switzerland the people passed a law in regard to the Jewish method of slaughtering cattle, that never

could have received enough support in the Assembly, or in this Legislature, if it were transferred here, to secure its submission to the people. Let us make it impossible for insignificant groups to harass the people in this manner.

Recalling the address of the gentleman from Fall River in the second division (Mr. Cummings) when the general debate was closed, I can without much rashness predict that one of the very first propositions to be put on the ballot under this law would be compulsory arbitration. I call your attention to the fact that unless compulsory arbitration could receive the support of one-quarter of the members of the Senate and one-third of the members of the House it ought not to go on the ballot, nor ought any measure aimed at Christian Science nor any measure aimed at negroes nor any other measure that would appeal to the passion and to the prejudice of the people, which, with the cool, calm reasoning of our Legislature, could not win this small support. As a protection to the people, as a benefit to this measure I trust this amendment will prevail. [Applause.]

Mr. WALKER: I earnestly hope that every member of this Convention who has the initiative and referendum at heart will vote against this proposition at this time. [Applause.] There is nothing that would appeal so strongly to the opposition to the initiative and referendum as some chance to divide those who are in favor of the initiative and referendum, and so far as we can we do not intend to give them that opportunity. Now, Mr. Chairman, it has become apparent here more clearly than before that there is certainly a large number of those heartily in favor of the initiative and referendum who do not want this amendment; who do not believe in it. There are some, on the other hand, who do believe in it. The committee has not considered it. The argument that has just been made that it would cut off entirely the Democratic party, perhaps some other party, must have some bearing on this question, and as our committee has not considered this amendment in all its bearings I trust this committee of the whole will vote against it. The rest of my time I give to the gentleman from Brookline in the fourth division (Mr. Whipple).

Mr. WHIPPLE of Brookline: As one member of the committee on the Initiative and Referendum I am opposed to the suggestions in this amendment. In the first place, it is calculated to meet an objection to the initiative and referendum which is purely fanciful and which really has no substance. In the second place, it is hostile to the spirit and the principle of the initiative and referendum. It prevents the mental operations of a man who is almost convinced, but who has a lingering distrust in what the people may do, a lingering fear of what the people may accomplish by means of the initiative and referendum. Therefore I earnestly hope that it will be defeated, not only for the present, but for all time.

The amendment was adopted, by a vote of 132 to 128.

A motion to reconsider prevailed and at the following session, Tuesday, September 18, the amendment was adopted again, by a vote of 131 to 130.

Mr. Frederick L. Anderson of Newton moved that the resolution be amended by adding at the end of line 54 the words "*Provided* that unless at least one-third of the members of the House present and voting and one-quarter of the members of the Senate present and voting vote to adopt the initiative petition for a law, it shall not be submitted to the people."

Mr. WALKER of Brookline: This is the same proposition applied to law. The proposition which the Convention has seen fit to adopt provides in effect that although there are 40,000 signatures on a petition asking that a constitutional amendment may be considered by the people, thirty-one wilful or unwilful Senators, may stand in the way of a petition of forty thousand citizens of Massachusetts, and say that the people shall not even pass on that measure. That has been the amendment already adopted so far as this committee is concerned. Now the proposition is to give that same negative to a proportion of the Legislature in the case of law. I trust that there will be some who voted in favor of it as relating to the Constitution, who will think fit to vote the other way as related to laws. In my judgment it was a serious mistake to allow thirty-one Senators to defy the will of forty thousand citizens in regard to the Constitution. I trust that you will not decide that thirty-one Senators may defy the will of twenty thousand citizens as applied to laws.

Mr. BRODERICK of Waltham: It seems to me that this resolution is already weighted down with every possible burden that should be imposed upon it, and as this proposal imposes additional burdens upon the resolution I hope that it will not be adopted. There is a serious phase of this question which has been only slightly referred to in the discussion of the main proposition. Its consideration, it seems to me, is pertinent and important at this time. The adoption of the initiative and referendum is urged by its supporters chiefly to protect the people against the Legislature; but is not its adoption important as well to protect the Legislature? In the face of rumors and charges current against the Legislature how can any citizen consent to serve as a member of that body without imperiling his reputation and his honor? The cause of these rumors and charges should be removed, even though every rumor should be false and every charge unfounded, because there is no other force which so endangers the stability and security of a government as a suspicion embedded in the minds of the people that their rights and their liberties are the subjects of trade and barter. Embody this proposition, this resolution, in the Constitution, giving to the people final authority to approve or disapprove a law, and it will safeguard the Legislature against aspersions that improper and mercenary motives actuate and control its conduct. In no other way can you dispel the prevalent distrust of our law-making powers, and in no other way can you attract to the public service men of ability and integrity to frame the people's laws.

Now, if this proposal of the gentleman from Newton should be adopted as a part of the system of initiative and referendum to be established, that system will fail to protect the people and fail to protect the Legislature. It will not give the people final authority to approve or disapprove a law, and it will leave the Legislature exposed to suspicion and aspersion. No doubt it has been offered as a friendly amendment, but it is in fact a hostile amendment, because it would destroy the very essence of the remedy proposed and intended. Notwithstanding all that may be said to the contrary, the resolution reported by the majority of the committee will not overthrow or impair our representative system. It will protect, defend and perpetuate it. It is not convenient, nor is it possible, for the people to take upon themselves all the duties that the Legislature is called upon to per-

form, even though that end should be desired. It is intended to be a potential rather than an active instrument of government. [Applause.]

Mr. Bodfish of Barnstable: It is manifest that some form of the I. and R. is going through; it is a question as to what form that shall be. It seems to me important that the friends of the I. and R. should realize exactly what this amendment means, and exactly what the amendment which we have adopted by so close a vote means. What I have based my argument upon in favoring the I. and R. is the right of the people to pass laws and amend their Constitution without having to obtain the consent of their substitutes and agents. The amendment which you have voted to adopt this morning, by a vote of 131 to 130, still makes it necessary for the people, before they can amend their Constitution, to get the consent of a certain number of their substitutes and agents; and if my contention that the people have the right to amend the Constitution without getting permission from their agents is correct, this vote which we have taken this morning is incorrect in practice; and we now are asked by this amendment to repeat that same condition. I trust the friends of the I. and R., those who believe the people should have a right to pass laws and amend their Constitution without getting permission from their agents, will vote this down; and then I hope that in the Convention we also shall vote against the other proposition that we have adopted by the narrow margin this morning. Do not forget, — the principle is that the people have the right to pass laws and amend their Constitution without getting the permission of their agents, and therefore this amendment is wrong or the principle of the I. and R. is wrong. [Applause.]

Mr. David Mancovitz of Boston moved that the amendment be amended by striking out the word "one-third", and inserting in place thereof the word "one-fourth"; and by striking out the word "one-quarter", and inserting in place thereof the word "one-fifth"; and to further amend by inserting after the word "vote" the words "by a call of the yeas and nays in each branch."

Mr. Bigney of Boston: I do not understand how any member in favor of the initiative and referendum could vote for this amendment, because under this amendment, as I understand it, sixteen Senators could defeat the will of forty thousand petitioners; because, requiring a quarter of those present and voting, if there were a quorum, that is twenty-one Senators, present, it would require five, the necessary quarter; therefore sixteen could defeat the will of the people, and I think for that reason that the amendment should be voted down.

Mr. Mancovitz of Boston: I am not a believer in putting a further check upon the resolution as offered by the chairman of the committee. My experience in the General Court has been, sir, that when the majority party do not desire a proposition to go through a roll-call cannot be obtained. Under the rules of the House 30 members must join in a call for the yeas and nays, and under the rules of the Senate 8 must join in a call for the yeas and nays in that branch. I have sat in the House for four years and have seen public measures of great importance defeated by a refusal of the call for the yeas and nays. Twenty-nine members of the House have joined for such call, but the majority party, not desiring the measure, were able to prevent a vote by the yeas and nays.

The purpose of my amendment, first, is, if we are going to adopt

a further check upon this proposition, to reduce the proposition from one-third of the House to one-quarter of the House, and reduce the number from one-quarter in the Senate to one-fifth in the Senate. Then if you have a compulsory call of the yeas and nays men will vote honestly on the question, but so long as you make it possible for men to avoid a call of the yeas and nays you never will get an honest expression of opinion.

Mr. Ross of New Bedford: It seems to me that here an attempt is being made to kill the principle of the initiative and referendum by at least semi-hostile amendments. I believe, Mr. Chairman, it would be more honorable to stand up here and vote against the initiative and referendum than to kill it by indirection, and that seems to be the purpose. [Applause.]

Mr. Montague of Boston: It seems to me that if the initiative and referendum can be killed by such gentle suggestions as have been made it is at least possible that its life is not worth saving. [Laughter.] I am one of those who came here absolutely opposed to the principle of the initiative as applied to legislative matters. I have come to the conclusion that, while I still think it is unnecessary, it is my duty, feeling as I do, to try and help put through and enact a measure with reference to the initiative and referendum which, if submitted to the people, will be reasonable and workable and at the same time have some restraints and restrictions.

Now, Mr. Chairman, if there were forty thousand straight signatures upon the petition to the Legislature there would be no need of this or anything else, because every man who has served in the Legislature I believe will agree with me that forty thousand men petitioning the Legislature are going to command very nearly a majority, not a third, of the members of the House, and the same proportion of the Senate. What this amendment, as I look at it, is intended to guard against is a petition signed by ten men, and, as far as substance goes, by ten men only, and the other 39,990 signatures are most of them obtained from men who neither know nor care with reference to that legislation. I do not believe one man who has served in the Legislature will say that any proposition which can command the support of forty thousand men in this Commonwealth can fail to secure a larger number than one-third of the House and one-quarter of the Senate. With one portion of the amendment of the gentleman from Boston in this division (Mr. Mancovitz) I am in entire accord. I should be glad to see the yea and nay part of his amendment adopted. The other, it seems to me, is not as good as the amendment of the gentleman from Newton as it stood in the first place. [Applause.]

Mr. Bauer of Lynn: I ask the members of this Convention who are real friends of the I. and R. to oppose this proposition, and beware of the Greeks even when bearing gifts.

Mr. Balch of Boston: The gentleman in the fourth division (Mr. Bigney) pointed out how, under certain peculiar and unlikely circumstances, sixteen Senators might be able to deny, temporarily only, the right of a measure to come before the people. He failed to point out that under those same peculiar and imaginary circumstances it would take only six Senators to force it upon the people; thus showing what an absurd result one gets when one imagines unlikely if not impossible circumstances as a test.

As to what the honorable gentleman from Barnstable (Mr. Bodfish) said, that the amendment was in opposition to the principle of the I. and R., I believe that those who favor this amendment, — and I am one of them, — are obliged to admit that he is correct. There is a conflict in principle between the initiative and referendum and the adoption of this amendment. So there is, Mr. Chairman, between the initiative and referendum in its pure form and the retention of any vestige whatsoever of the representative system of government; for the initiative and referendum seeks for pure democracy and the direct rule of the people, un-mediated; and the other for the intermediated rule of the people.

We are going to have compromise on this question anyway, for no one is proposing to sweep the Legislature entirely away. The situation Mr. Bodfish apparently dreads is bound to happen. We are going to try, if any initiative and referendum goes through, an experiment in partial direct government, at the same time that we retain partial representative government. This amendment is no more illogical than any other form of the compromise we are all considering. It amounts to nothing whatever but saying that, unless besides the signatures, you are able to obtain a small certain fraction of Senators and Representatives who are willing that the thing should go to the people, — who are willing practically to indorse the form of it as something sensible, something substantial, — it shall not go; and otherwise it shall. I hope the amendment will prevail, and I consider myself as much a friend of the referendum as any member of this Convention.

Mr. George of Haverhill: I should like to inquire if we did not adopt two amendments the other day, offered by the ex-mayor of Boston (Mr. Quincy), which provided that there should be a roll-call on all matters passed upon the initiative and referendum. Now, if that is so, there is no need of adopting the recent motion, — I mean the recent motion offered by the gentleman in the first division from Boston. We do not want to duplicate the question of roll-call on every other paragraph of the measure. It seems to me that once is enough.

Mr. Mancovitz: I should like to inform the gentleman from Haverhill (Mr. George) that the ex-mayor of Boston (Mr. Quincy) informs me that his amendment does not cover the question now under consideration; and I think it is very important, if we are going to have a further limitation, that it should be by yea and nay vote.

Mr. Lomasney of Boston: It seems to me, Mr. Chairman, if we are going to amend this matter at all we should adopt the amendment offered by the gentleman from Boston. Frequently in the House of Representatives the minority party does not have eighty votes, and it is hard to get sixty votes; they seldom have less than sixty votes. In the other branch, the Senate, eight votes now are required, — one-fifth, — for a roll-call. Often and often in the last twenty-five years the Democrats have not had eight votes in the Senate. It seems to me that if there is an issue between the two parties we should have some reasonable way of having a roll-call showing how members voted.

A request having been made for a division of the question on the adoption of the amendments moved by Mr. Mancovitz, the question was first put on the motion to insert after the word "vote", the words "by a call of the yeas and nays in each branch"; and this amendment was adopted, by a vote of 234 to 0.

The amendment striking out the word "one-third", and inserting in place thereof the word "one-fourth", was rejected, by a vote of 120 to 131.

The amendment striking out the word "one-quarter", and inserting in place thereof the word "one-fifth", was rejected, by a vote of 129 to 134.

The amendment moved by Mr. Anderson of Newton, as amended above, was then considered.

Mr. CHURCHILL of Amherst: I want to say a general word in the first place, applying to this amendment as to the other, and then a brief word for the amendment itself. It is a difficult position in which any member of the minority finds himself in debating an amendment which is intended, from one or another point of view, to perfect a measure to which he is opposed. At the same time, Mr. Chairman, I desire in working upon these amendments to make as good a measure as possible, if Massachusetts is to have the initiative and referendum, and to offer amendments and to support amendments in that spirit.

I am glad to see that some of the speakers on this amendment have assumed that they are able to distinguish whether an amendment is really hostile or not, even if it is offered by a friend, and I assume that they will be equally able to distinguish whether my support of an amendment is really friendly, though it may be offered by one who is hostile to the whole measure. The fact of the matter is, Mr. Chairman, that the whole Convention has plenty of opportunity to judge as to what the meaning of an amendment is, what its application is, what it will bring about, provided, Mr. Chairman, that we are all really looking at the nature of the amendment instead of looking to see whether this amendment is regarded by the leaders on one side or the other as friendly or hostile. Is it not possible for this Convention, even in the midst of debate upon a subject like this, for every member of us, to take each amendment as it stands and look at it, and decide each for himself whether, from his point of view, it is a helpful or a hurtful amendment? Many of you feel some things are hurtful that others do not feel are hurtful. That is clear. But if we apply that principle, Mr. Chairman, what we have here to consider, and what we ought to do is not what a leader says: "This is hostile; this is favorable;" but if Massachusetts is to have the advantage of the thought of each one of us, the thing for each one of us to do is to ask: "How does this affect the measure from my honest point of view?"

Now, what is the point of issue upon this amendment? It is a limitation upon the application of the measure as drawn by the majority of the committee. Now, there are many who do not believe in that limitation, but there are some, Mr. Chairman, who believe in the principle of the initiative and referendum and who still are able to perceive that there are dangers and difficulties in the application of that amendment. There are men who believe that some limitation upon its exercise must be applied.

Now, how about this limitation? The men who say the Legislature shall have nothing whatever to do with the initiative and referendum naturally will vote against it; and I suspect there are some, Mr. Chairman, who will feel that a measure that cannot command, so far as its submission to the people is concerned, after it has come in on a petition with forty thousand or twenty thousand signatures, — a measure that cannot command the support for its submission to the

people of so small a number of the Legislature must inevitably be one so trivial or so bad that it ought to be checked and ought not to be put before the people. It is a very startling proposition that is now put up to us, — that we may have excellent bills to submit to the people for which not even this number, one-third of the House and one-quarter of the Senate, can be found to vote submission to the people. I have heard numerous attacks upon the Legislature, especially upon the Senate, Mr. Chairman, but this is a new proposition: That it is so corrupt that it desires to block legislation which forty thousand eager and intelligent men, — or else not [laughter], — have put on a petition. Now, if that means anything it means that we have here an assault upon the whole Legislature; and yet, gentlemen, can we not trust to that extent the Legislature of Massachusetts? That is the proposition, and I think there will be found some in favor of the initiative, Mr. Chairman, who, at least to that extent, will believe that no Legislature will be found to block a bill that really deserves the attention of the people. [Applause.]

Mr. Walker of Brookline: I would not of course assume to say that this amendment is hostile or friendly to the measure. This amendment proceeds from one of the best friends of the measure. I look upon it as a friendly amendment if I look to the source from which it comes, but if I look to the amendment itself I must say that it is absolutely inconsistent with the initiative and referendum, — absolutely inconsistent with that which the friends of the initiative and referendum seek to accomplish. I do not know, Mr. Chairman, that I can influence any other vote here, but I wish to offer one more thought to the friends of the initiative and referendum. This Convention is fairly evenly divided between those who are friendly to and those who are opposed to the initiative and referendum. If those who are opposed to the initiative and referendum are going to vote solidly for every amendment that makes the measure more difficult to operate, for every amendment that is inconsistent with it, in order that the measure in effect may be killed, — and I believe their determination is that it shall be killed if they can kill it, — then all they have to get is a few votes of those who are friendly to the initiative and referendum in order to carry that amendment. Therefore is it strange that I should appeal to the friends of the initiative and referendum to yield to the judgment of their own committee? I am simply stating what the unanimous judgment of the majority members of the committee on Initiative and Referendum is on this amendment, and I appeal to those who would differ with us in reference to detail not to lend themselves to the minority, who would vote as a unit, so far as they can control their forces, in favor of every hostile amendment.

Now, that is the situation; and therefore on this matter, although I do not claim that it is hostile or friendly from the source from which it is put, I say that when you say that a certain small number of men can stand in the face of twenty thousand or forty thousand petitioners, and say that the matter that they have petitioned for shall not go on the ballot, that you are giving them a power which they ought not to have. They were not elected on that issue. They have no better opinion on that issue than have the voters of the State at large. We must depend, it seems to me, upon the people to either kill or pass legislation that is submitted to them, and we should not depend upon

the Legislature. Therefore I trust that the Convention will vote against this particular amendment.

Mr. SAWYER of Ware: Why are we passing the initiative and referendum at all? Because it has been stated on this floor again and again that the Legislature is not responsive to demands of the people. And what branch of the Legislature is it that is not responsive to demands of the people? Why, it is the Senate, Mr. Chairman. I submit to these gentlemen who have made that accusation on the floor of this House that in eight out of every ten instances it was the State Senate that had held up legislation. What are we going to make of our State Senate if we pass this sort of thing? It is going to make the State Senate the last citadel of intrenched privilege, and the fight every year will come on the State Senate.

I want to submit as my judgment, Mr. Chairman, and I believe it will be backed up by men on this floor, who perhaps have held the gubernatorial chair, that the most powerful man in the legislative machinery of the Commonwealth of Massachusetts to veto legislation is the President of the Senate.

Now, Mr. Chairman, the gentleman from Amherst (Mr. Churchill), who has just spoken, said that any measure that could not secure ten votes in the Senate would be trivial and bad, and that a measure backed by forty thousand signers would secure that number. I have seen a measure come up here backed up by one hundred and forty thousand signers, I have seen that measure passed in the House and killed in the Senate without a roll-call; they could not get eight votes for it. Time and time again legislation that the people want, legislation that the world demands, is killed in the Senate because they cannot get a roll-call of eight votes.

I shall ask for the same division on this question when it comes up. I hope, even though there be some who feel they can put this thing in the larger body of the Legislature, that we may stand united against making our Senate the last refuge, the last resort, for those public service corporations and others.

The amendment moved by Mr. Anderson of Newton, as amended, was rejected, by a vote of 127 to 134.

The consideration of amendments was resumed after the noon recess.

Mr. Robert Luce of Waltham moved that the resolution be amended by adding after line 54 the following paragraph:

If proposed laws contain conflicting provisions, the Governor shall designate one of such laws to be submitted to the voters. If it is rejected, the Governor in office on the first Wednesday of August before the succeeding election may designate another to be put on the ballot, and so on until one has been accepted or all have been rejected.

Mr. Josiah Quincy moved as a substitute for the above amendment the following paragraph to be inserted after line 54:

CONFLICTING MEASURES.

All proposed measures to be submitted to the people at any one election shall be submitted by the Secretary of the Commonwealth to the Attorney-General for his inspection, and in case two or more proposed constitutional amendments, or two or more proposed laws, to be submitted to the people at any one election, under the provisions hereof or otherwise, shall appear to the Attorney-General to be in substantial conflict with each other, he may order that such conflicting constitutional amendments, or such conflicting laws, shall be grouped and designated on the ballot as conflicting measures, only one of which is to be adopted; but in no case shall a

proposed constitutional amendment and a proposed law be so grouped as in conflict with each other, and the ballot shall afford an opportunity to each voter to vote for or against each of the measures so grouped as conflicting. In case more than one of the measures so grouped as conflicting shall receive the affirmative vote of a majority of the voters voting thereon, only that one of the same for which the largest affirmative vote was cast shall be deemed to be approved.

In case any provisions of two or more constitutional amendments, or of two or more laws, approved by the people at the same election are in conflict with each other, then the provisions contained in the constitutional amendment, or in the law, as the case may be, which received the largest number of affirmative votes shall be deemed to govern.

Any law approved by the people shall be subject to any amendment to the Constitution approved by the people at the same election, in the same manner as if such amendment had been in force prior to the approval of such law.

Mr. LUCE of Waltham: The amendment that I offered, I think, by no stretch of the imagination, could be supposed to be hostile to the measure. It is an effort to avoid certain evils that have developed in the use of the I. and R. in the west. That you may know just what those evils are, let me read what actually happened in Oregon:

In 1912 there was a conflict between the "single-tax" proposal and the proposal for exemption of household goods from taxation, and another, apparently, between this household exemption bill and a taxation amendment; another conflict between three sets of road measures, one of them a constitutional amendment; two "majority rule" amendments appeared; the proposal of the office of Lieutenant-Governor conflicts with a provision in another measure for an election in case of a vacancy in the office of Governor; and the university and agricultural college mileage-tax bill was really a substitute for the university appropriations referred at the same election. At the election of 1914 the two amendments abrogating the rule of "equal and uniform" taxation were in direct conflict with another amendment which contained this rule, and the latter amendment contained a tax exemption provision which conflicted with the fifteen-hundred-dollar exemption amendment. Moreover, the tax-code commission bill submitted at this election was really the rival of all the tax administration bills submitted.

If gentlemen noticed the California ballot laid before them the other day, they might have seen that measure No. 5 is an "Investment Companies Act," creating a State corporation department, that amendment No. 9 is one "Regulating Investment Companies," — and apparently securing the same result in another way; they might have observed that amendment No. 19 is one for the "Consolidation of City and County, and Limited Annexation of Contiguous Territory," while amendment No. 21 is a "City and County Consolidation, and Annexation with Consent of Annexed Territory," — a different way, probably, of attempting the same result; they would have noticed that amendment No. 26 is one for the "Legislative Control of Irrigation, Reclamation and Drainage Districts," and that amendment No. 30 is in regard to "Irrigation Districts Controlling International Water Systems."

No friend of this proposal, I am sure, would think it is wise to put conflicting propositions of this sort on the ballot. Now, I have suggested a remedy for this, for which I have turned to the genial lawyer from Brookline (Mr. Whipple) who ornaments the horizon of the fourth division. [Laughter.] He has suggested that we give to the chief executive the power to initiate measures, and he has spoken very forcibly on this interesting and most important proposition. Now, if it be true that it would be wise to give the chief executive power to put any measure before the people, certainly it would be true that it would be wise to let him choose between two conflicting

measures and say which one should have the right of way. We are told in these days that we may safely hold the executive responsible; that he is in the eye of all the people; that his future, — political future, — depends upon the wisdom with which he fulfils the duties of that office. In short, we are urged constantly to "trust the Governor." Why may we not trust the Governor to decide, when there are two conflicting proposals presented, which one of them the people would prefer to have presented?

These conflicting proposals are of two classes. First, there are conflicting proposals presented honestly by well-intentioned persons who believe in different ways of accomplishing the same results, or results somewhat alike.

It would be no rash prediction that one of the first propositions put on the ballot under the I. and R. will be one for the Canadian plan of investigating industrial disputes, and at the same time there is little doubt there will be presented the New Zealand plan for forbidding strikes, — compulsory arbitration and compulsory investigation. Those two things are reverse; they are conflicting. How are you going to proceed if they are both presented?

It is safe to predict that another class of measures early put on the ballot will refer to proportional representation. I have little doubt that you will find presented there the amendment urged by Mr. Clarence Hoag, also the amendment urged by Mr. William H. Gove; and if you have on the ballot the preferential system and the cumulative system, what are you going to do about it? I might prove to you mathematically that as the law now stands and as the amendment proposed by my friend from Boston would permit, it would be possible for eighty per cent of the voters to find their will defeated by twenty per cent; because all those who oppose both propositions, combined with those who oppose either proposition A or proposition B, may account for such a vote as that, — where twenty per cent of the voters may overwhelm the will of the other eighty. This is not desired by any true friend of the I. and R.

Our discussions of this have been most amicable. The gentleman from Boston raises the objection, — I think, I expect, he will raise the objection, — that we cannot trust the Governor, and he lays before you an amendment which, as I recall it, already is to be found in several of the other States, but which does not avoid this difficulty, for it permits the thwarting of the will of the people through the mathematical effects I have described. And therefore, sir, I very much hope that gentlemen favoring this resolution will join with me in attempting to make it possible to secure the actual portrayal of the popular will.

It occurs to me, sir, that I have neglected to mention other classes of measures which raise this difficulty. It has been found in the west that it is no difficult matter to devise and put before the electorate what, for convenience, is called a "fake" proposition. Honest men seek some improvement in the law; it is obnoxious, perchance, to some group of moneyed interests, perhaps to some sectarian interests, perhaps to some labor interests. The opposition immediately starts up a rival petition, definitely designed to confuse the voters, and differing only enough from the first proposition to make it impossible for the people to choose wisely. The "fake" proposition is a genuine

danger to the I. and R. It is so recognized by its friends in the west. The critics of the I. and R. all point out this defect. Friends of the system say that the danger ought to be remedied, and therefore in a spirit of perfect frankness and sincerity I invite at least the attempt to stop up this loophole, — for I am one of those who, if this measure goes to the people, desire it shall go with as few vulnerable spots as possible. Let us, then, profit by the experience of these other States. Let us not put before the people at the same time a proposition headed "Investment Companies Act" and another headed "Regulating Investment Companies," one headed "Consolidation of City and County, and Limited Annexation of Contiguous Territory" and another headed "City and County Consolidation, and Annexation with Consent of Annexed Territory." Let us not put before them at the same time the Canadian investigation act and the New Zealand compulsory arbitration act. Let us not put before them any pair of propositions that conflict. But rather let us follow the advice of my friend from Brookline in the fourth division (Mr. Whipple) and trust the Governor. I do not ask you that the Legislature shall decide, that the Attorney-General or Secretary of the Commonwealth shall decide; but let the Governor say which shall have the right of way. Let us not try to drive the team two abreast, but let us drive it tandem. Let us try this year the measure that he advises, and then if it fails make it possible for the other measure to come along in the succeeding year.

Mr. William J. Shanahan of Somerville moved that the amendment offered by Mr. Luce be amended by striking out the word "may", in the fourth line of the paragraph to be inserted, and inserting in place thereof the word "shall".

Mr. Washburn of Middleborough: I should like to ask the gentleman from Boston in the second division (Mr. Quincy), when he takes the floor, to tell us whether his proposed amendment on "Conflicting Measures," — for that is the way it is headed, — is intended in any way to be a substitute for his amendment on "Legislative Alternative Measures" on page 3 of our docket. Furthermore, I should like to ask him whether this language which I find in his amendment relating to "Conflicting Measures," to wit: "the ballot shall afford an opportunity to each voter to vote for or against each of the measures so grouped as conflicting," — does not give to the voter the right to vote for all conflicting measures, when it is intended really that only one of those conflicting measures shall be adopted.

Mr. Williams of Brookline: The amendment or substitute offered by the gentleman in the second division (Mr. Quincy) is long. I doubt if any member of the committee appreciates what it contains. I therefore move that this committee report to the Convention the pending matter, and that further consideration of this matter be postponed until the substitute offered by the gentleman in the second division can be printed. I assume if that motion prevails it will be first on the docket to-morrow, *i.e.*, the docket of the Committee of the Whole.

The motion to postpone the further consideration of the amendment moved by Mr. Quincy prevailed.

Mr. Robert Luce of Waltham moved that the resolution be amended by adding after line 54 the following paragraph:

The same measure, either in form or essential substance, shall not be made the subject of an initiative petition (either affirmatively or negatively) oftener than once in three years.

Mr. Luce of Waltham: This amendment, unless my memory deceives me, is to be found in the initiative and referendum measure of the State of Nebraska, and I think that in Oklahoma there has been an attempt to meet the same evil. The purpose of it is manifest; it is to prevent the constant harassing of voters over the same proposition. The situation is worse, or would be worse, in Massachusetts than in any other State, because we are among the few States that still have annual elections. In most of the States the measure can come up only once in two years, and in Alabama I imagine only once in four. The committee, — the majority of the committee, — has made no provision that will save us from the necessity of discussing, for example, capital punishment year after year, until some time when the people are busy with other matters, or when there is indifference, a proposition may happen to secure the support of the majority of the voters who are voting on it but who may not really believe in the measure.

Last week in Maine, woman suffrage was defeated by a vote of two to one. The leader of the woman suffrage side followed the customary practice, and announced in the next morning's papers that she was going to begin her campaign right off again. The same thing was announced when we defeated it by one hundred and thirty thousand here only a year or two ago. It is the customary practice of earnest, single-minded persons, bent upon saving the universe by putting into effect their own peculiar notion of a panacea. It is against these well-meaning but misguided enthusiasts, who can look at only one facet in the diamond, — it is against these persons that we ought to have some protection. I submit it is unreasonable that we should be required in the very year after casting one hundred and thirty thousand votes against a proposal, once more to go through the worries and trials and annoyances and expenses of a campaign. The proposition speaks for itself. There is no desire here to choke off debate, to choke off public discussion; but when so many things press for our attention, when the great complaint is that with all the work of our legislatures, and even with this new device which may be presented, we shall not be able to grapple with all the problems before us, why should we be perplexed again and again with the same question recurring every year? Why not free our minds for a while at least, and be able to turn them to fresh issues?

Here, too, I fail to see the slightest shadow of hostility to the pending measure, but simply a reasonable proposition that when the people have said that they do not at the moment care to approve the desire of the petitioners, they may at least be allowed a respite until there has been opportunity for the public mind to have changed.

Is it to be assumed that the public mind is a weather-vane, turning from day to day and from hour to hour? Is it to be assumed that once a decision has been registered, then instantly there shall be opportunity to reverse that decision? All the practice of life is contrary thereto. We accustom ourselves when we are defeated in this or that direction to turn to something else, realizing that time brings everything, — "everything comes to him who waits." So here, if they are

right, time will bring the vindication to the suffragists, or to the people who do not believe in capital punishment, or to the people who are opposed to vivisection, or to the people who think that in some one of forty other directions it is necessary for us to act in order to advance the millennium.

Therefore, sir, I trust that this proposal may not appear to the friends of the measure hostile; that they may not invite their allies precipitantly to dismiss it; but that on its merits we may determine whether we want the people to have to thresh out these questions every few months in Massachusetts; whether we want a women's suffrage campaign every year; whether we want at our annual elections, every November, the issues between the two political parties constantly confounded and confused by these ancient propositions that in the Legislature have come to be known as "hardy annuals." To you who have served in the Legislature I address the plea: Do not perpetrate on the people that abominable nuisance of our legislative halls, the "hardy annual."

Mr. Brown of Brockton: It may be that when the vote is two to one it is not worth while to again submit a proposition; but I call to your attention one change of heart that has come over the gentleman from Waltham. Who was more ready than he to have a matter which had been debated and apparently closed, with everybody ready to vote on it, reopened again, in order that it might be redebated? So intensely was he interested in the same proposition that had been presented once and decided once, with everybody ready to vote, that, in order to gain his point, he appealed from a decision of the Chair on a small question which in my opinion, if he had been in the Chair, he would have decided exactly as did the gentleman who is now there. To obtain his point once more he appealed from the decision to this Convention. He does not want the people to have the same right which this Convention takes to itself, — that once it does a thing, if it cannot get another hack at it in any other way it will move to reconsider and then raise a point of order in order to go to work and have it discussed. What is the objection? One great evil in this Commonwealth is political apathy. But if you present to them matters to be voted for, and they become matters of general discussion, the people will register and become voters; and be more ready to vote the second year than they were the first. If a matter has been presented and is defeated by only a few votes, why wait three years before it can go to the people again?

It may be, as he says, that the people might be fooled the first time, and another part of them might be fooled a second time; but, as Lincoln says: "You can't fool all the people all the time." Sooner or later the people can be converted to an earnest minority which advocates truth. What great reforms have ever been inaugurated except by men who were ready to be crucified for them, and kept presenting them again and again until they became the will of the majority? Who supposes that any great reform measure could win the first year?

I hope this amendment will be defeated. Do not be afraid of giving the people too much opportunity to exercise their suffrage. Have the subjects so important that the people will go into schoolhouses to hear them discussed. Serve them a bill of fare so that somewhere from

top to bottom, from soup to fruit, they possibly will find something that they want to talk about and to go to the polls about, and vote. That to my mind is the need of the hour, — to awaken the people from their political apathy. [Applause.]

Mr. John L. Kilbon of Springfield moved that Mr. Luce's amendment be amended by prefixing to the words to be inserted: "If a measure shall have been accepted or rejected by a majority greater than ten per cent of the votes cast upon it"; and by striking out the words "oftener than once in three years," and inserting in place thereof the words "until three years shall have elapsed."

Mr. KILBON: I find myself in sympathy with the amendment offered by the gentleman from Waltham. It has been, from my first thought of this matter, one of the things to be desired, that we should reduce the inconvenience to the voters in the presentation of initiated measures, as far as can be done, and still leave a fair opportunity for the presentation of matters which should be presented to the people; and I think that the suggestion made is in itself in its substance an excellent one. The purpose of the amendment which I have offered is to exclude from the operation of it any matters which may be accepted or rejected by so narrow a majority that the people who oppose the action taken by the voters of the Commonwealth should be at liberty without waiting three years to seek a reversal of the decision.

Mr. UNDERHILL of Somerville: While the last speaker was offering his amendment I was wondering how this might affect one of the measures in which I am particularly interested, — have been for some time, but more particularly this year, and shall be again next year. Suppose, for instance, the people in their wisdom under present conditions should accept a prohibition amendment to the Constitution; suppose they should accept the prohibition amendment by a majority of one hundred or one thousand, — a small majority. Now, the gentleman knows that in our system of local option, the cities and towns upon the first acceptance of prohibition usually wait for a while. That is, the first year under prohibition or no license they have found that the authorities were unable or unwilling to enforce the law, and there has been a great deal of illegal sale of liquor in the community, and a majority of the voters have turned another year, and said: "Well, if we are going to have liquor sold here, we may just as well have license." After turning once or twice, that city or town will either align itself permanently in the line of no license cities and towns or it will align itself permanently with the license cities and towns.

Now, my idea is that the time is ripe for State wide prohibition, and if submitted to the people this year or next year the people will accept it. But I also recognize the danger that in the first year of its operation it may be almost impossible to enforce it to the degree that it will meet with the approval of the people. Now, if prohibition could have a trial period of three years it would demonstrate sufficiently its desirability, it would give the authorities time and opportunity and inclination to enforce the law; and I do not believe Massachusetts ever would return to the license column.

The amendment of the gentleman from Springfield would shut out that possibility if prohibition were carried in this State by a small majority, and each year we would have a constantly repeated agitation

of that great question. The liquor question never can be settled until it is settled right, — and that is by the adoption of bone-dry prohibition; and you cannot settle it in one year, — it will take three years to demonstrate its advantages, and probably a year before it will be enforced. Public opinion has got to be back of a prohibition enactment or else it is worthless on the statute-book.

Now, sir, I find myself in hearty sympathy with the amendment offered by the gentleman from Waltham. Perhaps not for the reasons alone which I have stated, but if no other reason could be offered, those would be sufficient to influence me to vote for his amendment.

Mr. Quincy of Boston: The gentleman from Waltham tells us that it is not desired to have this considered a hostile amendment. I want to point out to him what seems to me one very serious difficulty about it in the form in which he has it. It is this: Do you not by that form of amendment put the question ultimately up to the Supreme Judicial Court to say whether a measure is in form or essential substance the same as one which previously has been voted upon? And if the Supreme Judicial Court finds, when a law comes before it, that its legal adoption is questioned, — although it was submitted to the people, although it was voted upon, although it was carried, — on the ground that it is essentially similar to a law which has been rejected within three years, is not the Supreme Judicial Court bound to find that the action of the people is therefore null and void?

Now, Mr. Chairman, it seems to me that if this matter is to be dealt with at all we should follow the method of procedure which is provided in the amendment which stands in my name, which follows immediately upon the docket; that is, to set up some public officer as authority, who shall say before this petition gets started whether it is in proper form. Why not have the same person, namely, the Attorney-General, determine once for all, without leaving anything open for a court decision, whether or not the measure is so substantially similar to the one which has been voted on before by the people that it ought to be ruled out on that ground? I am not saying that I am in favor of such a proposition, but I am pointing out to the gentleman from Waltham what seems to me the very serious difficulty involved in the present form of his amendment.

Mr. Luce: In answer to the gentleman I refer to the Constitution of Nebraska for this provision. In the matter of the objection that he raises I had assumed that the question would be raised earlier than he thinks, — by suing out a writ of prohibition, I suppose would be the right way to test it, — before it went on the ballot. But I should have no objection whatever to proceeding in the manner that he suggests, if he and other gentlemen interested in this measure think that is the preferable course. It is the result I am after, and not the particular method.

Mr. Sanford Bates of Boston: I do not think it would be quite fair to treat this either as a hostile amendment or a friendly amendment. House Bill No. 2739 of 1914, which was a bill reported by the committee of which I was chairman in that year, contained this provision:

> Neither a proposed amendment to the Constitution nor an act, nor a resolve, which has been submitted to the qualified voters of the Commonwealth, shall again be submitted until the expiration of three years after the date of the last submission.

Now, that amendment, Mr. Chairman, was part of the 1914 resolve which was accepted by a final vote of 126 to 81. At that time this was a friendly amendment. What has come over that amendment to make it a hostile amendment to-day, Mr. Chairman? It seems to me very definitely that this Convention is big enough and broad-minded enough to consider each one of these amendments on its own merits.

Now, for one, I am not going to vote the same way that the gentleman who offered this amendment is, on the main question. Unless this main resolution is very much changed I shall vote for it on its final passage. But I also propose to vote for this amendment which the gentleman from Waltham has suggested, because I do not think it is fair, — I do not think it is fair to the ordinary voter, — to put upon him the burden of deciding every year a question to which he may have given his thought, and have decided, the year before. That puts too great a weapon for annoyance into the hands of the cranks, and I do not think it serves any useful purpose.

I raised this point before the committee, and the only objection that was made to it was this, — that it would be almost impossible to tell whether a measure submitted this year was the same as that submitted last year. I submit that it is perfectly possible to charge the Governor or the Secretary of the Commonwealth or any other impartial officer, with the duty of saying whether a measure is substantially the same. Therefore I hope, Mr. Chairman, as a friend of the initiative and referendum, — I do not say that in the common, the trite, way, but I say it because I propose to vote for the initiative and referendum, — that this amendment will be adopted.

Mr. David T. Montague of Boston moved to amend the amendment offered by Mr. Luce by adding at the end thereof the following:

The Attorney-General shall certify before an initiative petition is filed that the measure petitioned for is not, either in form or in essential substance, either affirmatively or negatively, the same as any measure which has been submitted to the people within three years of such date.

Mr. Montague of Boston: The object of that amendment is this, — I did not draw the amendment, and therefore I could not assist the clerk in reading it [laughter], — but the idea of it is to meet the objection raised by the gentleman from Boston in the second division, and that is that somebody has got to decide whether a proposed constitutional amendment or a law is the same thing as one that has been submitted within three years. The suggestion made in that amendment is that the Attorney-General shall be the one to decide before the matter is submitted at all, rather than to leave it to the possible suggestion of being a Supreme Judicial Court decision after it has been submitted. It seems to me, Mr. Chairman, that that, as an addition to the amendment offered by the gentleman from Waltham (Mr. Luce), perfects it, and would make it a very desirable all-round amendment.

Mr. Luce: I accept the amendment.

Mr. Leonard of Boston: The amendment offered by the gentleman from Waltham, as I grasp it, has in view successive amendments of initiative matters on the same subject that are negatived at the polls. Now, I should like to ask the gentleman: Supposing this situation happens; supposing there was adopted an initiative amendment to

the Constitution, or some matter of initiative law accepted, and that one year's experience of that amendment of the law satisfied the people that it was objectionable or against the best interests of the Commonwealth, or in some other way was a matter that ought to be repealed; now, if we adopt these pending amendments, then shall we not be absolutely precluded from repealing any matter that is adopted by an initiative petition within a specified period, say of three years?

Mr. Luce: Earlier in the debate on this matter an amendment relating to that subject was in the calendar under my name, and I withdrew it when the gentleman from Brookline (Mr. Walker) called my attention to one that he proposed moving, and which is printed on page 7 of the docket, — by which it is explicitly stated that everything adopted in this manner shall be subject to repeal by the General Court. My own belief was, — and I think I agree with the gentleman from Brookline in the matter, — that we shall be protected against mistake or blunder in that way, through the opportunity that the Legislature will have to undo anything that turns out to have been done unfortunately.

Mr. Leonard: I understand then that the gentleman's opinion is this: That if we accept these pending amendments it will also be necessary as a workable proposition to accept another amendment, which is on the calendar on another page.

Mr. Luce: It is my intention to vote for the amendment which is presented under the name of Mr. Walker of Brookline on page 7.

Mr. Brown of Brockton: I want to ask the gentleman from Waltham this question: Suppose the people voted for a measure this year; under your amendment they no sooner have voted for it than the Legislature could repeal it; what shall we do then? Are you placing the Legislature to have the last word, and repeal a law about as soon as the people pass it, and then require a wait of three years before it can come back to the people?

Mr. Luce: I understand that the law repealing the amendment is open to the referendum, and therefore the repeal may be constantly rejected if the majority of the voters so desire.

Mr. Brown: Would it not be the same subject-matter, and therefore be excluded? You have ruled that they shall not put it up to the people if it is the same matter.

Mr. Luce: My proposition relates to the initiative. I have just called the attention of the gentleman to the referendum, — which is a quite distinct thing. Let me make clear the process. By initiative petition a matter is brought before the Legislature and becomes a law; then it is proposed that the subject shall not for three years be again submitted. If, on the other hand, the people reject, it cannot be submitted for three years; but any action that the Legislature takes concerning it is subject to the referendum, under which the voters always can control if they desire.

Mr. Brown: One other question I should like to ask. I should like to ask the gentleman from Waltham this: Suppose that the amendment proposed by the gentleman from Boston is passed, and you then have it in alternative form, that is to say, you send down a proposition in two shapes to be voted upon, as, for instance, the question of prohibition; suppose in the alternative form you send down to the people prohibition, — or local option; or cutting out their strong

liquors, leaving wine, and there was a vote on each of the three propositions; would you preclude them from acting on prohibition for three years?

Mr. Luce: I have no desire to continue the colloquy, but an answer to the gentleman from Brockton is fair. I do desire to have relief from the annual discussion of these propositions.

Mr. Youngman of Boston: The question as to whether this committee should recommend to the Convention the adoption of this amendment raises the issue as to whether this Convention wishes to continue the Massachusetts system of annual elections. I believe I am correctly informed that there is no other State in the Union that has annual elections. I am sure I am correctly informed that there is no State in the Union that has any form of initiative and referendum and also has annual elections; because I have it from the two highest authorities on the initiative and referendum, — the two gentlemen on my right, representing the majority of that committee. Now, if we have that fine arrangement of the annual election for keeping in close touch with the people, and we also have the power through the initiative to force again and again questions that have been rejected, — to force people to be active in campaigns about them when they have settled them once and settled them overwhelmingly, — are we not going to do one of two things: Either make the annual elections disagreeable or make the initiative and referendum disagreeable? The two things do not go together, and therefore, if the members of this Convention have made up their minds that they wish to continue annual elections and they do not wish the initiative and referendum to be abused, to be made an annoyance to the voters, then they should vote for this amendment.

Now, it has been proved in other States where the initiative and referendum exists that the constant forcing of these questions which have been rejected has been an annoyance. It comes about in this way: Some pet theory, — it may be the single tax, or something that gets a very small showing, — has a permanent organization; they can readily get their signatures for an initiative, because in most of the States that have the initiative and referendum the percentage of signatures is even a larger percentage of the total vote than is demanded here in Massachusetts, so it ought to be easier to get them in Massachusetts. They can force a constant repetition of these decisions with our annual elections, and this forcing is the greatest objection, I think, to the initiative and referendum in the minds of the people that want to support some form of it. There can be a too constant forcing of questions, and forcing activities, when there ought to be a decision and then a wait.

Mr. Walker: The committee very carefully considered this amendment in all its bearings. Of course it is not a hostile amendment. Of course there possibly may be differences of opinion about it. But the committee came to a unanimous decision that it was unwise and really impracticable. In the first place, — and of course as presented by the gentleman from Waltham, — in the first place it would lead to unlimited litigation. As amended to give the Attorney-General the right to say, it leaves the Attorney-General in a very awkward position, because whether one measure is substantially the same as another shades all the way from a measure that clearly is not the

same up to a measure that is identical; and to draw the line between a measure that is the same and one that is not the same is a very nice thing for any officer to do. Moreover, it opens the door to a very unfair practice, namely, — those who anticipate that some measure is to be put on the ballot, anticipating that, put on the ballot a measure with some objectionable features in it, in order to stall off a measure that would be put on by its real friends. That is not a fanciful objection; I believe it is a real objection. Moreover, it might well be that a measure should be brought up one year and should be killed by a small vote, and killed not because the people permanently wanted that decision, but because they have not been sufficiently stirred up and educated to form their permanent opinion. And in order that we may have under the initiative and referendum the permanent, settled opinion of the people, I believe that we should give them a chance every year, if they get the necessary twenty thousand names, to thresh out the question; because a question never will be settled until it is settled right. For all these reasons it seemed to the majority of the committee very unwise and impracticable to incorporate this in the initiative and referendum measure. I do not wish to over-emphasize the thing. It could be done without seriously injuring the measure, in the minds of some of our friends, but not, as I understand it, in the minds of any of the committee. Personally I think it is a highly objectionable amendment.

The amendment moved by Mr. Kilbon was rejected.

The amendment moved by Mr. Luce, as modified by the amendment of Mr. Montague, was adopted, by a vote of 143 to 113.

The consideration of the resolution was resumed Wednesday, September 19.

Mr. Walker of Brookline moved that the Committee of the Whole be discharged from the further consideration of the resolution and that it be placed in the Orders of the Day for the Convention for the next session. This motion was negatived, by a call of the yeas and nays, by a vote of 138 to 142.

On Thursday, the 27th day of September, the Committee of the Whole was ordered to report the resolution forthwith to the Convention and it was so reported; and it was placed in the Orders of the Day for the next session. The resolution, as amended (see Document No. 359), was as follows:

RESOLUTION

To provide for establishing the Initiative and Referendum.

DEFINITION.

Legislative power shall continue to be vested in the General Court, subject to the provisions of the Constitution; but the people reserve to themselves the initiative, which is the power of a certain number of voters to submit laws and amendments to the Constitution to the people for enactment, adoption or rejection at the polls; and the referendum, which is the power of a certain number of voters to submit laws, or any part thereof, enacted by the General Court, to the people for their ratification or rejection at the polls. The power of initiative and referendum shall be exercised as hereinafter provided.

AMENDMENTS TO THE CONSTITUTION.

If an initiative petition for any specific and particular amendment to the Constitution is introduced into the General Court, in the manner hereinafter provided, signed

by not less than forty thousand qualified voters of the Commonwealth, and the General Court into which it is introduced shall fail to agree to such amendment in the manner provided in the ninth article of amendment to the Constitution, such amendment shall nevertheless be deemed to be referred to the next General Court and shall have the same standing therein as if once agreed to; and if such next General Court shall fail before the first Wednesday of June to agree to such amendment in the manner provided in such ninth article, and if such initiative petition is completed by filing with the Secretary of the Commonwealth, not earlier than the first Wednesday of the following July, nor later than the first Wednesday of the following August, not less than ten thousand additional signatures of such qualified voters obtained after the first Wednesday of June aforesaid, then the Secretary of the Commonwealth shall submit such proposed amendment to the people at the next State election; and if it shall be approved by a majority of the qualified voters voting thereon, such amendment shall become part of the Constitution of this Commonwealth. A vote shall be taken by yeas and nays in both branches of each General Court before which an amendment introduced by initiative petition is pending before the first Wednesday of June upon agreeing to such amendment in the form in which it stands in such initiative petition. Provided that, unless at least one-third of the members of the House present and voting and one-quarter of the members of the Senate present and voting in both of the annual sessions aforesaid vote to adopt the initiative petition for a constitutional amendment, it shall not be submitted to the people.

LAWS.

If an initiative petition for a law is introduced into the General Court in the manner hereinafter provided, signed by not less than twenty thousand qualified voters of the Commonwealth, a vote shall be taken by yeas and nays in both branches of such General Court before the first Wednesday of June upon the enactment of such law in the form in which it stands in such initiative petition, and if the General Court into which it is introduced fails to enact such law before the first Wednesday of June; and if such initiative petition is completed by filing with the Secretary of the Commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than five thousand additional signatures of such qualified voters obtained after the first Wednesday of June aforesaid, then the Secretary of the Commonwealth shall submit such proposed law to the people at the next State election; and if it shall be approved by a majority of the qualified voters voting thereon, such proposed law shall become law, and shall take effect in thirty days after such State election or at such time after such election as may be provided in such law: *provided*, that the limitations of the legislative power of the General Court in the Constitution shall extend to the Legislature power of the people as exercised hereunder.

The same measure, either in form or essential substance, shall not be made the subject of an initiative petition (either affirmatively or negatively) oftener than once in three years. The Attorney-General shall certify before an initiative petition is filed that the measure petitioned for is not, either in form or in essential sub-

stance, either affirmatively or negatively, the same as any measure which has been submitted to the people within three years of such date.

Initiative Petition.

An initiative petition shall set forth the full text of the proposed constitutional amendment or law which is the subject of the petition. Such petition shall first be signed by ten qualified voters of the Commonwealth and shall then be filed with the Secretary of the Commonwealth, who shall provide blanks for the use of subsequent signers. He shall print at the top of each blank a description of the proposed constitutional amendment or law as it will appear on the ballot and the names and residences of the first ten signers. All initiative petitions for a law or an amendment to the Constitution, with the first ten signatures attached, shall be filed with the Secretary of the Commonwealth not earlier than the first Wednesday of the September before the assembling of the General Court into which it is to be introduced, and the remainder of the required signatures shall be filed not later than the first Wednesday of the following December.

If an initiative petition, signed by the required number of qualified voters, has been filed with the Secretary of the Commonwealth as aforesaid, he shall, upon the assembling of the General Court, transmit such petition to the clerk of the House of Representatives, and the proposed constitutional amendment or law which is the subject of such petition shall then be deemed to be introduced into that General Court and pending in the House of Representatives.

Excluded Matters.

No law, the operation of which is restricted to a town, city or other political division of the Commonwealth, shall be the subject of such initiative petition.

Referendum.

No law passed by the General Court shall take effect earlier than sixty days after final enactment, excepting laws declared to be emergency measures and laws which may not be made the subject of a referendum petition, as hereinafter provided.

Emergency Measures.

A law declared to be an emergency measure shall contain a preamble setting forth the facts constituting the emergency, and shall contain the statement that such law is necessary for the immediate preservation of the public peace, health, safety or convenience. A separate vote shall be taken on the preamble of such law by a call of the yeas and nays, which shall be recorded, and unless the preamble is adopted by two-thirds of the Senators and two-thirds of the members of the House of Representatives present and voting thereon, the law shall not be an emergency measure: *provided*, that no grant of any franchise or amendment thereof, or renewal or extension thereof for more than one year, shall be declared to be an emergency measure.

Submission upon Referendum.

In case of any law enacted by the General Court which is not an emergency measure as above defined, if, within sixty days after its final enactment, a petition is filed

with the Secretary of the Commonwealth signed by not less than fifteen thousand qualified voters of the Commonwealth, asking for a referendum on such law or any part thereof, and requesting that the operation of such law be suspended, then the operation of such law shall be suspended, and the Secretary of the Commonwealth shall submit such law or part thereof to the people at the next State election, if thirty days intervene between the date when such petition is filed with the Secretary of the Commonwealth and the date for holding such State election; if thirty days do not so intervene then such law or part thereof shall be submitted to the people at the next following State election, unless in the meantime such law or part thereof shall have been repealed; and if such law or part thereof shall be approved by a majority of the qualified voters voting thereon, such law or part thereof shall, subject to the provisions of the Constitution, take effect in thirty days after such election, or at such time after such election as may be provided in such law; if not so approved such law or part thereof shall be null and void.

In case of an emergency measure or of a law which takes effect because the referendum petition does not contain a request for suspension, as aforesaid, if, within sixty days after its final enactment, a petition is filed with the Secretary of the Commonwealth, signed by not less than ten thousand qualified voters of the Commonwealth, protesting against such law or any part thereof and asking for a referendum thereon, then the Secretary of the Commonwealth shall submit such law or part thereof to the people at the next State election, if thirty days intervene between the date when such petition is filed with the Secretary of the Commonwealth and the date for holding such State election; if thirty days do not so intervene then such law or part thereof shall be submitted to the people at the next following State election, unless in the meantime such law or part thereof shall have been repealed; and if such law or part thereof shall not be approved by a majority of the qualified voters voting thereon, such law or part thereof shall, at the expiration of thirty days after such election, be thereby repealed.

Excluded Matters.

No law, appropriating money for the current or ordinary expenses of the Commonwealth or of any of its departments, boards, commissions or institutions, and no law, the operation of which is restricted to a town, city or other political division of the Commonwealth, shall be the subject of such referendum petition.

General Provisions.

Provision for the proper identification and certification of signatures to the petitions hereinbefore referred to, and for penalties for the forgery of signatures thereto, may be made by law.

Not more than twenty-five per cent of the certified signatures on any petition shall be those of registered voters of any one county.

Each proposed amendment to the Constitution, and each law submitted to the people, shall be described on the ballots by a description to be determined by the Secretary of the Commonwealth, subject to such provision as may be made by law, and the Secretary of the Com-

monwealth shall cause each question to be printed on the ballot in accordance with the following provisions: —

In the case of an amendment to the Constitution: Shall an amendment to the Constitution [here insert description] be approved?

YES.	
NO.	

In the case of a law: Shall a law [here insert description] be approved?

YES.	
NO.	

The Secretary of the Commonwealth shall cause to be printed and sent to each voter the full text of every measure to be submitted to the people, together with the description thereof as it will appear on the ballot; and shall, in such manner as may be provided by law, cause to be prepared and sent to the voters information and arguments thereon.

The veto power of the Governor shall not extend to measures approved by the people.

The consideration of amendments of the new draft (No. 359) was begun Tuesday, October 9.

Mr. Augustus P. Loring of Beverly moved that the resolution (No. 359) be amended by striking out lines 13 to 47, inclusive, and inserting in place thereof the following:

If a proposal for a specific amendment of the Constitution is introduced into the General Court by initiative petition signed by not less than twenty-five thousand qualified voters in the manner herein provided, or by recommendation of the Governor by message, or if in case of a proposal for amendment otherwise introduced consideration thereof in joint session is called for by vote of either House, such proposal shall, not later than the second Wednesday in June, be laid before a joint session of the two Houses, at which the President of the Senate shall preside; and if the two Houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all amendments pending, the Governor shall call such joint session or continuance thereof. Final legislative action upon any amendment shall be taken only by call of the yeas and nays, which shall be entered upon the journals of the two Houses; and an unfavorable vote at any legislative stage preceding final action shall be verified by call of the yeas and nays, to be entered in like manner. An amendment introduced by initiative petition shall be voted upon in the form in which it was introduced, provided that such amendment may be amended in any manner not inconsistent with its general purpose by vote of three-quarters of the members voting thereon in joint session. An amendment introduced by recommendation of the Governor shall be voted upon either in the form in which it was originally recommended or in such amended form as the Governor may by message approve or substitute.

An amendment introduced by initiative petition or by the Governor shall be designated an initiative amendment, and an amendment otherwise introduced shall be designated a legislative amendment. At such joint session, if a legislative amendment shall be agreed to by a majority of all the members elected to the General Court, or if an initiative amendment shall receive the affirmative votes of not less than one-quarter of all the members elected to the General Court, in either case such amendment shall be deemed to be referred to the next General Court.

If any legislative amendment shall again be agreed to by a majority of all the members elected to the next General Court, voting in a joint session of the two Houses to be held as aforesaid, it shall then be submitted by the General Court to the people. If any initiative amendment shall again receive in the next General Court the affirmative votes of at least one-quarter of all the members elected, such fact shall be certified by the clerk of such Joint Convention to the Secretary of the Commonwealth and he shall submit the amendment to the people at the next State election. Any amendment so submitted shall be adopted and become part of the Constitution if approved in the case of a legislative amendment by a majority of the voters voting thereon, or if approved in the case of an initiative amendment

by voters at least equal in number to thirty per cent of the voters voting at such election and also by a majority of the voters voting on such amendment.

Article nine of the amendments to the Constitution is hereby annulled.

Mr. Loring of Beverly: When this Convention was sitting as a Committee of the Whole I introduced an amendment as to the method of amending the Constitution under the I. and R. resolution. That amendment as introduced by me was drawn before I had the benefit of listening to the exhaustive debate that has gone on in this body. And I came to the conclusion that it was rather crude and was not satisfactory even to myself, and it was discharged in the Committee of the Whole by an adverse vote without prejudice to its being again introduced in amended form before the Convention sitting as a whole. I now have the honor to introduce that amendment and move its adoption in its amended form. It will be found on page 6 of to-day's calendar substantially as moved. There are one or two verbal alterations which appear on the motion as it is in the hands of the Secretary, but for the matter of discussion it is unnecessary to allude to them now.

As the members will see, if they care to consult the printed form or as I shall state more briefly, there are three ways in which it is proposed that the Constitution may be amended, all of them easier ways than the present way provided under the 9th article of amendment. I was wrong in stating three ways. There are three ways in which an amendment to the Constitution may be started. The first way is by obtaining signatures and petitioning to have the Constitution amended. The second way is by the Legislature deciding that they want an amendment made, which is substantially the present way, although the number of votes required to start such a process is less. The third way is by the Governor of the State in a message stating to the Legislature that an amendment to the Constitution is desirable.

When an amendment to the Constitution is started in any one of those three ways, then the Legislature shall resolve itself by the provisions of the amendment into a Constitutional Convention, which shall sit not later than the 6th of June; and if it does not resolve itself into that Constitutional Convention, then the Governor has the power and duty of doing that thing, — of making the Legislature sit as a Constitutional Convention. Then any measure proposing to amend the Constitution which is on the docket will come before that Constitutional Convention and will be considered by them. If it is passed by one-quarter of the Convention and not more than that, then it will be considered an initiative amendment. If it is passed by a majority it will be considered a legislative amendment to the Constitution, and if it is passed also by a majority it may be a Governor's amendment, an executive amendment. As to amending the form in which it comes before the Constitutional Convention so constituted, if three-quarters of the Legislature decide to amend an initiative amendment to the Constitution, they may do so. That is, they may amend the form. If the Governor decides that he wants to amend the form in which his amendment appears before the Constitutional Convention he can do so by sending a message, and the Legislature can amend their form of constitutional amendment by vote. If then it is passed by a recorded vote on the yeas and nays, either as an initiative proposition or an executive proposition or a legislative proposition, it is then referred to

the next General Court. If the next General Court passes it in the same way it then goes upon the ballot and it is referred to the people.

Now, gentlemen, I do not wish this to be considered as a compromise proposition, because I do not look upon it as such. I look upon it rather as an evolution than as a compromise. I have sat here through the debate and I have thought of it to the extent of my ability and I have tried to find out what was required by the people as represented in this Convention as a proper way of amending the Constitution. I found out, in the first place, that there was a great objection to leaving it as it was stated often in debate, to be blocked by "twenty-one wilful men", that is, by vote of a majority of the Senate; and that has been eliminated.

I found, and I thought myself, that it was a great mistake to put any measure before the people on referendum which had not been thoroughly discussed. Any discussion which would take place in such a Constitutional Convention would necessarily go before the people and give them more information through the newspapers than they probably would get in any pamphlet or in any other way. It did seem to me if a man ran for Governor on a certain proposition, — that is, if he had a constitutional amendment and made his campaign on carrying that constitutional amendment through, — that he ought to have a right to put that before a Convention of the people and have it voted upon as a measure on which he ran and have it considered.

Now, gentlemen, the provision for having the matter discussed will not only give information to the voters but it will have this effect: It will cut off the freak proposition, the proposition that is without merit and is introduced rashly and without proper consideration. Such a proposition would be turned down by even one-quarter of the members of the Legislature. You could not get even one-quarter of the people elected to the Legislature to vote for a proposition that was absolutely foolish.

I hope, therefore, gentlemen, that this proposition, which, as I say, is not a compromise, because it does not take a part of this and a part of that and combine them together, but is really an evolution, because it is the offspring of sane parents, will meet with the favor of the Convention and that they will find it worth while to give the matter serious consideration, and I hope will give it their votes. I do not think that after the long discussion we have had on the general measure in this Convention it is necessary for me to go into any discussion of the principles that govern this proposition. I merely wish to explain, gentlemen, the amendment as it has been drawn and, I may say, as it has met with the approval of many people on both sides of the question, and to say that I hope it will receive careful consideration and will pass. [Applause.]

Mr. Quincy of Boston: The amendment which the gentleman from Beverly (Mr. Loring) has laid before the Convention, and which I hope will be made the subject of discussion until it is disposed of, brings before us one of the most important propositions, I do not hesitate to say, which has been considered by this Convention, and I ask the earnest attention of all those who have been interested in the initiative and referendum on either side of the question to the provisions of that amendment.

When a portion of the amendment, namely, that portion relating to

a change in the legislative method of amending the Constitution, was before us previously, upon the motion of the gentleman from Beverly, I raised a point of order upon it in Committee of the Whole which was overruled by the Chair. That point of order was based upon my belief at that time that the proposition to change the legislative method of amendment, in the form in which it then was presented, was not germane to the initiative and referendum measure. I was overruled upon the point of order and I believe that the question is a very different one, an entirely different one, in the form in which the present amendment is offered. I think that it was generally recognized by the Convention that his original amendment, merely proposing to change the method of making legislative amendments of the Constitution, was one of the most significant propositions which has been brought before us. It was significant in that it constituted a recognition by a representative member of this Convention, who certainly would be classed generally rather as conservative than liberal or radical in his tendencies, of the existence of a real evil in regard to amendments to the Constitution; namely, that the present method of legislative amendment, requiring a vote of two-thirds of the House and a majority vote in the Senate, was unduly restrictive; that a part of the agitation in favor of the initiative and referendum as a means of making amendments to the Constitution was due to the feeling that the present legislative method was unduly restrictive, and that some easier method, some method more responsive to the will of the people, ought to be provided.

Now the gentleman from Beverly has met us with a proposition which originates with him, which does not indeed supersede the initiative method of amending the Constitution but which does make the legislative method of amending the Constitution very much easier to operate. He has brought before us now his original proposition to make the legislative method of amending the Constitution more easy, in connection with the initiative method of amending the Constitution, subjecting the latter method to what may be described as a legislative minority check, — a subject which has been discussed somewhat upon the floor of the Convention and which has been considered a great deal by members of the Convention.

The gentleman from Beverly now proposes to require as a legislative minority check upon amendments of the Constitution by the popular initiative one-half of the vote which under his proposal would be required for a straight legislative amendment of the Constitution. That is to say, one-half of the number of members of the Legislature who have it in their power, acting in two successive years, to submit an amendment to the people are to have it in their power to send along, — to use that expression, — an initiative amendment to the Constitution to the people. Now it seems to me that that is a very fair compromise. If we are to have any legislative minority check upon the operation of the popular initiative in respect to constitutional amendments, I know of no fairer or more reasonable check than one-quarter of all the membership of the Legislature assembled in Joint Convention. It has the great merit of doing away with the necessity of obtaining any votes in the Senate as a separate branch of the General Court. It deals with the question in Joint Convention, where the vote of a member of the House is just as good, and counts for just as much as that of a member of the Senate. And I for one, as a strong advocate

of the initiative and referendum in a properly safeguarded form, believe that such measures initiated in this way as could not command the support of one-quarter of all the elected representatives of the people, assembled in a Joint Convention of the two branches, probably would be unworthy of attention from the people. Whether that be the case or not, if we are to have any legislative minority check it seems to me that this is the best and the fairest check which can be devised. In that respect, Mr. President, it takes the place of the amendment which was inserted in the initiative and referendum measure in the Committee of the Whole by the gentleman from Newton (Mr. Anderson), which provides as a check one-third of the members of the House and one-quarter of the members of the Senate, being one-half of the present constitutional requirement. The amendment of the gentleman from Beverly is consistent with the fundamental basis proposed by the gentleman from Newton in that it still proposes one-half of the vote required for the adoption of an amendment by the General Court. But that proportion being reduced to one-half of the Joint Convention, the legislative minority check as it stands in the amendment of the gentleman from Beverly is correspondingy reduced, which seems to me entirely fair and proper, and I hope and believe that the gentleman from Newton who secured the adoption of the amendment which now stands as a part of the initiative and referendum measure will recognize this check as a proper and sufficient one.

The gentleman from Beverly further makes another proposal in his amendment as now presented, which may constitute a third method of amending the Constitution, and that method is the initiative of the Governor. The committee on the Executive, of which I have the honor to be chairman, reported long since, — but not so long ago, I hope, that it has been forgotten altogether by the members of the Convention, — document No. 311, providing for an executive initiative in respect to the passage of laws. That form of initiative in its terms did not touch the question of a constitutional amendment at all, and did not give the Governor any power of initiative in respect to the Constitution. The gentleman from Beverly, recognizing, however, the soundness of the principle of the executive initiative, in his present amendment has applied that idea to the recommendation by the Governor of an amendment to the Constitution, and it so stands in his amendment. But he has applied the same minority legislative check to the gubernatorial recommendations which he has applied to his amendment to the initiative of the people, namely, the Governor cannot of his own motion, unsupported by a minority of the General Court, bring his constitutional amendment proposition before the people as proposed in the case of a law in document No. 311; the Governor, as well as the people acting by the popular initiative, must obtain support in two successive Legislatures of one-quarter of the whole body in joint session. With that qualification, and subject to that check, I believe very decidedly that the recognition in this amendment of the propriety of a gubernatorial initiative in respect to legislation, — and the Constitution is merely fundamental legislation, — is a very sound step; and I appreciate the fact that the gentleman from Beverly has incorporated that particular method of amending the Constitution in his amendment.

Mr. Creed of Boston: I should like to ask the gentleman if incor-

porating the gubernatorial initiative in the Constitution would not be going against the historic policy of the Commonwealth of not joining the executive and legislative branches of the Government?

Mr. QUINCY: While I am familiar with the doctrine in our Constitution of the separation of governmental powers into the three departments of legislative, executive and judicial, even our Constitution as it now stands makes a very important exception in that the Governor is given the veto power. There have been some States, — very few, I believe, — which have carried out this doctrine of separation of powers more consistently than we have done. For instance, until recent times the State of Ohio did not allow the Governor any veto. But the moment you allow the Governor a veto power you, to a very important extent, have brought him in with the General Court as a part of the legislative body.

Mr. CREED: Is there not a marked distinction between giving the chief executive a veto power as a check on legislation and giving him the authority to initiate legislation which always has been, under our Constitution, the province of the legislative portion of the government?

Mr. QUINCY: Of course, Mr. President, there is a marked distinction. But I would go on to point out to the gentleman and to the Convention that the Governor now has and has exercised the power of making recommendations to the Legislature. The Governor's inaugural message is looked to as laying before the General Court an executive programme, and the Governor's recommendations are treated as important and particularly weighty recommendations because they come from the executive, and those recommendations, as we all know, are treated with respect, are referred to committees, and are acted upon favorably if they meet with the approval of the Legislature, and otherwise are rejected.

Mr. CREED: The messages of our Governor to the Great and General Court are founded upon a custom that has grown up. That is far different, is it not, from incorporating in the Constitution the power to initiate a constitutional amendment or statutory legislation?

Mr. QUINCY: Of course it is different, Mr. President, but I, for one, and the committee on the Executive who unanimously reported document No. 311, are in favor of further extending that same principle. Under the Constitution of Massachusetts, as the gentleman states, the power of the executive has grown up more by custom than by formal recognition in the Constitution. In the Federal Constitution the power and the duty of the executive to make recommendations in respect to legislation is expressly recognized, and I would be glad to see the Constitution of Massachusetts brought into conformity with the Constitution of the United States in that respect.

Now what do we do? I do not disguise the fact that we are giving a new recognition to the power of the executive if we allow the executive to initiate a law and to appeal over the heads of the General Court to the people, if the General Court should reject that law, or if, subject to the legislative minority check, we allow the Governor to initiate a constitutional amendment. Now is there any danger in allowing the Governor to initiate a constitutional amendment? I confidently appeal to the common-sense of this Convention that it is as safe to allow the supreme executive magistrate of this Commonwealth, on his official responsibility, to initiate a proposal for a consti-

tutional amendment as it is to allow 25,000 voters of the Commonwealth at large to initiate such an amendment. I believe that it is not lodging any dangerous power in the hands of the executive, but only a perfectly proper and desirable power, to enable him to propose an amendment to the Constitution, and if one-quarter of all the members of the Legislature in two successive years believe that that proposal is so good that it ought to go to the people, then that it shall be passed along to them. I do not deny that that somewhat enlarges the influence, not the power but the influence, of the Governor; and the question for this Convention to determine in connection with that particular provision of the amendment of the gentleman from Beverly is whether such an enlargement of the recommending power, of the initiating power of the Governor, is or is not desirable. If it be not desirable, it should be eliminated from the amendment of the gentleman from Beverly. If it be desirable in the form in which he has it, subject to the legislative minority check of one-quarter of all the members, then it should stay there. We may not all agree, — doubtless we shall disagree among ourselves, — as to whether or not it is desirable, and the majority will settle the question. But my present task is merely to point out as clearly as I can that we have offered us by the gentleman from Beverly these three methods: First, a very much more liberal method of amending the Constitution by legislative action, by action of the General Court, than we have now, which, I believe, will result practically in bringing before the people, by the action of the Legislature, many much needed and very desirable amendments to the Constitution which otherwise could get before the people only by operation of the initiative. I do not think that the advocates of the initiative are particularly concerned about forcing amendments to go through this popular machinery before they can reach the people. What they are concerned with is the means of getting needed amendments. I for one would much rather see a desirable amendment adopted by the Legislature in two years by majority vote than to have it made the subject of a popular petition, for a variety of good reasons which readily will suggest themselves.

Now I come to this further point. One great advantage of the legislative minority check as embodied in this amendment is that it does secure real debate in the General Court. We have heard one objection to the initiative and referendum dwelt upon at much length and with much force upon this floor, namely, that it does not permit debate and amendment; that it does not permit the operation of that orderly process of discussion, consideration, amendment, which this Convention is engaged in working out as to the important matters which we have had under consideration. And while the legislative minority check is in theory, — and I admit it frankly, — contrary to the pure theory of the initiative, in that it brings the Legislature in and does not allow the people to go completely around the Legislature and to entirely disregard it, yet in the form in which it stands in this amendment I believe that it is the sacrifice of a theory for a very practical and desirable end. What we are after is results, rather than being strictly logical in respect to maintaining a theory of legislation, or of getting along without any legislative action. And I say as a practical question, as a working question, that this legislative minority check is not inconsistent with the true purpose, in its broad aspect, or

with the practical and successful operation of the initiative method of making amendments to the Constitution.

Mr. CREED: I should like to have the gentleman explain, not for the Convention's benefit but my own, just how he would compel the joint session of the Legislature to be held through even the Governor, and how it would be organized and who would preside over it.

Mr. QUINCY: I think the gentleman's question, or at any rate the second branch of it, is answered by the terms of the amendment of the gentleman from Beverly, which provides in mandatory terms that such a proposal shall be laid before a joint session of the two Houses not later than the second Wednesday of June. It certainly provides clearly that the President of the Senate is the officer who shall preside at that joint session. Now it foresees the possibility of an unwillingness of the two Houses to agree upon a time, and it deals with that contingency, which to my mind would be an improbable contingency, by the following provision:

> and if the two Houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all amendments pending, the Governor shall call such joint session or continuance thereof.

I do not believe we need to consider seriously that contingency or a defiance of the provisions of the amendment by either of these two branches of the General Court. There are a great many provisions in the Constitution where the same question can be asked: "What is going to happen if the mandate of the Constitution is disregarded and somebody declines to carry it out?" It does not seem to me that such a question suggests any very valid objection, particularly in the case of this amendment.

The only other point, I think, to which I desire to call attention is this: I believe that the gentleman from Beverly, honestly and sincerely and in a spirit of liberality, has tried to work out by a process of evolution, as it might be called, not exactly a compromise between hitherto clashing views of advocates and opponents of the initiative and referendum, but a system upon which reasonable men, whether generally in favor of the initiative and referendum, or inclined to oppose it, can meet. I believe the gentleman from Beverly has called himself upon the question of the initiative and referendum a "middle-of-the-road" man, and we may characterize this amendment, I think, as a middle-of-the-road amendment. But one concession which he has offered to the advocates of the initiative and referendum in his amendment, — and I regard that as a very important concession, — is the proposed reduction in the number of signatures required in order to effect the submission of a constitutional amendment to the people from 50,000 to 25,000.

Mr. BALCH of Boston: I should like to ask the gentleman this: Supposing that the amendment proposed by the gentleman from Beverly does, — and I believe it does, — meet one of the most destructive criticisms of the initiative method, namely, the criticism that we should lose thereby the benefits of deliberative government, — suppose the gentleman's amendment offers a fair way of meeting that at least in part, — is there any reason why that improvement should not be extended to legislative as well as constitutional matters? What dis-

tinction in this respect arises in the gentleman's mind between constitutional and legislative matters, from the gentleman's point of view?

Mr. QUINCY: I am glad that the gentleman has asked that question, because it enables me to make one point which I did not mean to overlook. The consultations between members which have resulted in the present amendment, — because it may be said frankly that the gentleman from Beverly has tried to obtain support for his amendment from both sides of the Convention before offering it, — have been restricted absolutely to the constitutional initiative. That, we must all recognize, has been the chief difficulty in proceeding with a discussion of this question. We all of us know, Mr. President, that there are quite a considerable number of members of this Convention who have indicated their opposition to a constitutional initiative but have stated at the same time that they did not object to, and were prepared to vote for, a statutory initiative if properly safeguarded. Now the amendment of the gentleman from Beverly very wisely, I think, is limited to the constitutional side of this question. I do not know what his position will be as to extending the same provision to the statutory side; I do not know what my own position will be. I am merely endeavoring to coöperate with the gentleman from Beverly to see if we cannot settle one fundamental question first; and after the Convention has acted upon this amendment we will know better perhaps whether it is desirable or not to apply any similar check to the statutory initiative. I merely want to reserve all rights to myself, and to say that so far as I am concerned I do not propose to deal with that question in any way and am not committed on that question, until we first have disposed of this constitutional question.

Now, Mr. President, in closing I desire with some hesitation to offer a motion which is designed, if it be agreeable to the Convention, to see if we cannot secure a vote upon the amendment of the gentleman from Beverly before we proceed to discuss the whole measure. As we proceeded in the Committee of the Whole, as delegates will recall, the amendments were taken up and voted upon *seriatim*, one by one, and we finished the discussion of one amendment and voted upon it before we proceeded to vote upon the next amendment, or upon the main question. Under the procedure as it exists in the Convention under our rules, there is no provision for discussing amendments separately from the main question, or for voting upon amendments separately from the main question. And if some such motion as that which I desire to offer is not adopted the result will be this: That we will take some time in discussing the amendment of the gentleman from Beverly, — and I hope other members of the Convention are going to express their views about it, — and then we will have to proceed to the general issue, or to other amendments, and it may be, probably will be, days before we get back to the question of voting on the amendment of the gentleman from Beverly.

Now I doubt whether it is practicable for us to apply the procedure of the Committee of the Whole and to discuss each amendment *seriatim* and to vote upon it *seriatim*, because of the time that it would take and the large number of amendments. But I should like to ask the Convention if it is not prepared to recognize that this amendment of the gentleman from Beverly, which supersedes the section of the

initiative measure which relates to the Constitution, stands in a category by itself. It is far and away the most fundamental amendment which can be offered or will be offered to the initiative and referendum measure as reported by the majority of the committee. And I hope that the Convention will be prepared to recognize that this amendment stands in a class by itself and to recognize the desirability of disposing of that amendment before we proceed to the general discussion which, under our rules, must involve all other amendments as well as the main question upon ordering the measure to a second reading. And for that purpose, Mr. President, I desire to move that the amendment to Document No. 359, moved by Mr. Loring of Beverly, be debated and voted upon before the Convention proceeds to the consideration of other amendments to said measure or to voting upon the question of ordering said measure to a second reading.

The motion was adopted.

Mr. Luce of Waltham: It may be well for the Convention to recall the position we have reached in the discussion of the constitutional initiative. The Convention had shown its intention, by the majority of the votes, to provide a method of amending the Constitution in which the popular initiative should play a part. It had shown also, by debating the amendment offered by the gentleman from Newton in the third division (Mr. Anderson), that it desired the Legislature to play a part in the transaction. Other safeguards were urged and some of us, who from the first had taken the ground that if this measure were to go before the people it ought to be perfected and safeguarded, were urging still other safeguards. And I find in the amendment as presented by the gentleman from Beverly some of those proposals are recognized. One of the most important is the proposal that the form in which an amendment is presented upon petition shall be subject to recasting. Gentlemen may remember arguments that with others I myself presented, showing the importance of having the benefit of discussion and deliberation such as is to be secured only within the walls of a legislative assembly. I find that here provision has been made for such revision. And therefore, sir, this combination draft appears to recognize certain objections that have been made and at the same time to recede from the extreme position taken by either side and to furnish what may appeal to the majority of the Convention as a solution of the difficulty which will get us somewhere.

It may be recalled that in previous remarks upon this subject I reminded the Convention of a distinguished visitor, the President of Columbia University, who in the course of his address to us made statements that were significant, not so much by themselves as by reason of the source from which they came. Nicholas Murray Butler has been one of the extreme exponents of conservatism in this country. His writings upon these questions were used five years ago as political tracts for the purpose of preventing action in the way of progress. And when this gentleman came before us and approved the possibility of change in the processes of amending our Constitution, it was a most significant occurrence. And I ask you once more to mark this language of perhaps the most conservative of all the conservative leaders in the land:

May it not be said, gentlemen, that those of us who are convinced democrats and believers in constitutional government have come to a substantial agreement upon three great points, and that these three points will shortly be included almost beyond peradventure in the document which is to issue from the forthcoming Constitutional Convention of the new democracy of Russia?

In the first place, it is the essence of a sound Constitution that the method for its amendment shall be such as to put within the reach of the people opportunity, after adequate consideration and discussion, to readjust it from time to time to new needs and for the solution of new problems. We are sometimes apt to overlook the formula for constitutional amendment, but I think on reflection we should all agree that it goes to the very essence of a Constitution that is to be a document of advance and of progress and of life, and not merely a fixed formula for a given year and a given generation.

Sir, in addressing the Convention at some length on this matter in the debate upon the general issue, unless my memory greatly deceives me, I expressed the personal opinion that our method of amending the Constitution is too rigid; that it ought to be made easier to amend the Constitution. This did not imply that I would go to the extreme proposed. This did not imply that I would throw down the whole barrier against popular passion and prejudice, but it did mean, as I warned gentlemen at the time, that when the fitting moment came I should stand here and raise my voice in behalf of an easier method of amending the Constitution. And it is now for gentlemen to decide whether in the draft here presented to you there are enough of safeguards. For my part I am of the opinion, now we have adopted the proposal of the gentleman from Newton (Mr. Anderson) to the effect that an amendment shall be discussed in two Legislatures, that it must receive a substantial vote in two Legislatures, and that it shall be open to correction and revision, — I am of the belief that it is not imprudent now to permit this change in the methods of amendment. And therefore, sir, I join with the gentleman from Beverly and the gentleman from Boston (Mr. Quincy) in the support of this proposition. [Applause.]

Mr. Walker of Brookline: I should like to say, not only on behalf of myself but on behalf of the majority members of the committee on the Initiative and Referendum, that this proposition offered by the gentleman from Beverly is satisfactory. We would not have written it ourselves, but we are ready to accept it, because we believe that under it we have a practical way of amending the Constitution of Massachusetts when there is any considerable sentiment in favor of such amendment. As has been said, it is not wholly consistent, — in fact it is plainly inconsistent, — with the fundamental principle of the initiative and referendum to say that, when a certain number of citizens have petitioned for an amendment, the General Court or any per cent of the General Court may prevent that matter from going on the ballot. The idea of the initiative and referendum is that, when a petition signed by a certain number is received and after the General Court has been given an opportunity to act, the matter shall go on the ballot. Nevertheless we believe that if there is any great sentiment in the Commonwealth for an amendment to the Constitution, and if that sentiment has expressed itself in a petition signed by 25,000 citizens and comes to a Joint Convention of the House and Senate, it will receive, — at least any amendment worthy of serious consideration will receive, — the necessary one-quarter of such a Convention. Therefore we do not think that that check is a serious inconsistency. It is an inconsistency, but not a serious one.

There is another check in this amendment which has been described to you that we did not incorporate, — the requirement that no amendment to the Constitution shall be considered to be accepted unless it receives the affirmative vote of thirty per cent of all the votes cast at that election. I wish to say that I consider that not a serious, — not too serious a check upon the initiative and referendum. And I speak by the card in that matter because when we take the statistics from the other States, — from all the other States, — in all the elections from 1904 to 1916, what do we find? We find that on the least important matters that are submitted to the people 68 per cent of those who vote at the election vote on the measures, and on the more important measures 84 per cent of those who vote at the election vote on the measures. And that on the average 75 per cent of those who vote at the election vote for the measure. Therefore, 68 per cent being the least, we believe that a requirement that a measure shall get at least 30 per cent affirmative votes in order to be passed is not an unreasonable requirement.

Mr. Creed of Boston: The gentleman from Brookline is reading from reports of other States. Is it not a fact that the 24th and 25th amendments of our Constitution, ordained in 1860, were passed by 3.3 per cent of the electorate at that time?

Mr. Walker: The gentleman is quite right. If my information is correct, — and I have the figures in my desk; I will not stop to get them, but my memory is that only five of the forty-four amendments got 33 per cent of the registered vote. What per cent they got of the vote cast at the election I do not know. I have not the figures, but only five amendments got as much as 33 per cent of the registered vote. But let me make this remark: Under the Massachusetts system the voters know nothing about the matter, or very few of them know anything about an amendment to the Constitution or a measure submitted by the Legislature, until they enter the voting booth. Then for the first time they find something on the ballot; they did not know it was to be there and they find merely a headline or a description on the ballot; they do not find the whole measure. And being in doubt as to what the measure means, learning of it for the first time, many citizens are inclined to say: "I know nothing about this matter" and to neglect to vote. The situation is entirely different under the initiative and referendum. In the first place, it is a matter that has been petitioned for by a large number. Information in regard to it has been given, — in fact it is provided in the resolution that a pamphlet containing information and arguments shall be sent to every voter; a sample ballot will be in the hands of every voter some days and I trust some weeks before he is called upon to vote, and in his library or in his home he may sit down and decide what matters he will vote for and what matters he will vote against. I believe that the percentage of the vote cast on measures as compared with the vote cast for men will be very much larger, and I speak with confidence because that has been the experience in the States of the Union that have the initiative and referendum.

Now I wish to say that there is another matter. We on the committee on Initiative and Referendum did not believe that the Legislature should be given any power to amend, because we felt that the power to amend was the power to change or to substitute practically

a different measure, and therefore it was impossible to consent to it. In this Loring amendment we permit amendment, but we permit amendment only by a three-quarters vote of the Convention. We believe that that position is consistent with our position with regard to the rest of the measure, for this reason: We have permitted one-fourth of the Joint Convention to say that the matter shall not go on the ballot at all. If we say that one-fourth of the Joint Convention may say that the matter shall not go on the ballot at all, it is entirely consistent with that position to say that the measure shall not be changed except by three-fourths of the Convention. Therefore those measures are corollaries and would fit in with one another. Therefore we believe that it is not inconsistent, if we permit one-fourth of the Joint Convention to say that the matter shall not go on the ballot and to say that amendments may be made by three-fourths of such a Joint Convention.

One more point, and that is this: I have felt very strongly that it was unfortunate that so many signatures were required. I do not believe that it will accomplish any good end. I believe that if we set out to get 50,000 signatures in this Commonwealth for an amendment they can be secured. I believe that 40,000 or 30,000, of course, could be secured if 50,000 could be secured. In Ohio it takes 75,000; in California it takes about 75,000. They can be secured, but it is an effort to get them. It is distressing to our public officials to have such a raft of names presented to them to verify. And I believe that practically no more measures would be going on if we required 25,000 or 30,000 than if we required 50,000. I do not believe that the difference between 25,000 and 50,000 would keep many measures off the ballot, although it might keep some. Therefore I think for every reason it is very desirable to have this number of signatures reduced; and as a compensation for that we have consented to the checks which I have described.

For all these reasons, Mr. President, the majority of the committee on the Initiative and Referendum, — I understand I speak for them all, — are willing to accept this proposition submitted by the gentleman from Beverly.

Mr. Jones of Melrose: I should like to ask the gentleman a question regarding this proposal concerning amendments to the proposed amendment of the Constitution which is submitted. It is provided that the amendments may be amended or changed by a vote of three-fourths of the members voting thereon in joint session in a manner not inconsistent with its general purpose. Now regarding that language "in any manner not inconsistent with its general purpose"; is it intended that that shall be a parliamentary matter merely for the president of the joint session to determine, or is it a matter to be determined by the court? In one case would it not put a great deal of power in the hands of the presiding officer who might be arbitrary, and in the second place might it not lead to considerable delay awaiting the determination of the court? I ask simply the gentleman's opinion in the matter.

Mr. Walker: The gentleman has raised an objection which I think is an objection. Personally I have not talked over with the other gentlemen that particular phrase in the amendment. It had occurred to me. I think if we are to permit the Joint Convention to amend we

might as well permit them to amend and cut out all limitation. On the other hand, if we put in the limitation it will be a moral restraint against putting in under the guise of an amendment an entirely different measure, and such a motion might be ruled out on a point of order raised in the Convention. That particular point is not a matter on which we lay any stress. I speak not by the card, because I have not been consulted by the gentleman in regard to that particular point. It is worth considering, however.

Mr. Balch of Boston: It seems to be fair to say after the speech of the gentleman from Brookline that there is a singular meeting of minds here to the effect that from the point of view of the conservatives this amendment is desirable as partially meeting one serious objection to the working of the initiative in general, while from the point of view of the more extreme radicals it is at least unobjectionable. I should like to ask the gentleman from Brookline the same question that I asked the gentleman from Boston (Mr. Quincy): If the principle is right why is it not equally as applicable to legislative as to constitutional matters, provided, of course, that the obvious appropriate changes from action by the General Court in two years to action in one year and other like changes are made to fit the differing conditions?

Mr. Walker: I think the gentleman from Boston raises an interesting point in asking that question. I would not say that I should not yield something along those lines when it comes to the matter of legislation. In fact, I am inclined to think, Mr. President, if this Convention can get together on this part of the initiative and referendum we can come pretty near getting together on the rest of it. I do not wish to commit myself on this point; I wish to point out this difference: In regard to a law, if people make a mistake, the Legislature has absolute power the next year to change it. That is a very great difference. The Legislature may change anything it wishes. The people, of course, have also the check of the referendum, so that if they do not like the change the Legislature is about to make they may put a referendum on it and check it. If they do like it they may let it go along. That is a very great difference between the Constitution and an ordinary law.

Mr. Kilbon of Springfield: I should like to add my voice to the chorus of praise which meets this amendment. I should like to congratulate the gentleman who drew it on his apparent success in bringing together people of opposite tendencies of thought, but I do not think either of those things would be worth the time of the Convention. What I have risen to do is to ask a question which I hope the gentleman who drew the amendment, or some one else, can answer, — *will* answer; I know they can, — and that is this: This amendment provides for three different forms of Constitutional amendment; that is, three different forms as relates to their origin. An amendment may originate by an initiative petition of 25,000 citizens; it may originate by the recommendation of the Governor, or it may originate by the petition of any one citizen presenting an amendment to the Legislature for consideration. Now as drafted the amendment provides that an initiated petition or a Governor's recommendation shall be considered in joint session of the two Houses. It provides that in case of the other form of introduction such consideration shall be given if either

House demands it. Then you read on and everything else that I find in this amendment goes on the supposition that that Joint Convention always will be held. I am wondering, and I wish somebody would tell me, what happens in case I, for instance, petition the Legislature for a change in the Constitution and am able to convince the committee on Constitutional Amendments that that amendment ought to be adopted. The committee so recommends to the Legislature. The Legislature does not care to call in either House for a joint session. What happens? For I read at the end of this amendment: "The ninth article of amendment to the Constitution is hereby repealed", and there seems to be no provision made for that procedure. It is simply a matter of form to which I should like to call attention and have my own stupidity resolved.

Mr. WILLETT of Norwood: Before offering a word in favor of this compromise I hope that the members of the Convention will bear with me a moment while I say a word on a matter of personal privilege. The other day, because of lack of legislative experience, — this is the only body of the sort in which I have had experience, — I have come to believe that I trespassed upon the privilege which was granted me the other day under the question of personal privilege. I wish to assure the members of the Convention that I had no intention whatever of trespassing, and I am very sorry for it. To a business man the most important thing in the world is his word, — his word of honor. If he loses his property or loses his business and keeps his word good, he still has the best asset that man can have. I now think that I had become unduly disturbed over the manner in which questions had been raised as to my word in connection with this matter. Now, Mr. President and gentlemen, setting that matter aside I should like to give my hearty support to this compromise. I believe that it is a businesslike way to meet this situation, and just at the time when some of us were despairing of whether this Convention ever would get down to business on a businesslike basis, it appears to me that light has come after great darkness. I hope that this amendment will prevail and I hope that I shall now have the privilege of voting for a constitutional amendment on the initiative and referendum which will represent the views of a substantial majority of this Convention.

The amendment moved by Mr. Loring was adopted.

Mr. Joseph Walker of Brookline moved that the resolution (No. 359) be amended as follows:

By inserting after the word "law", in line 84, the words "hereinafter designated as the measure."

By striking out, in line 89, the word "He", and inserting in place thereof the words "The Secretary of the Commonwealth".

By striking out, in lines 90 and 91, the words "constitutional amendment or law", and inserting in place thereof the word "measure".

By striking out, in line 93, the words "for a law or an amendment to the Constitution".

By striking out, in line 106, the words "constitutional amendment or law", and inserting in place thereof the word "measure".

These amendments were severally adopted.

The same gentleman moved that the resolution (No. 359) be amended by inserting after the word "division", in line 111, the words "or to a particular district or locality".

Mr. Luce of Waltham: I should like to inquire of the gentleman moving the amendment, — and perhaps members of the Convention by looking at the three lines in question will gather the purpose of the inquiry, — regarding the three lines reading:

No law, the operation of which is restricted to a town, city or other political division of the Commonwealth, shall be the subject of such initiative petition.

To repeat, I should like to inquire of the gentleman if he thinks the change he has suggested would be sufficient to remove from the operation of the initiative such a proposal as that for a lengthy State highway or a network of State highways such as was involved in what is known as the Berkshire County bill, I think, of two or three years ago. I think, sir, he will agree with me that it was not his intention to include State highway matters in the operations of the initiative, and I am wondering whether the change he suggests is enough to exclude that.

Mr. Walker: I think I should have made, perhaps, an exception in regard to that amendment, because that is not purely verbal. Under the heading "Excluded Matters", in the resolution, page 5, the intention was to exclude purely local matters, matters that were not State wide matters. A matter relating to a city or town should be dealt with by the Legislature or by that city or town, or by the Legislature referred to that city or town. It is clear that a matter referring to a particular city is not a matter of State wide interest that should be dealt with by the State wide initiative and referendum. At least that is the view of your committee. It was called to my attention that there are groups of towns, such as, for instance, the metropolitan water and sewerage district, the metropolitan park district, and perhaps other districts of that kind, and here is where these words are applicable, "or to a particular district or locality." Laws that relate to a particular district or locality as opposed to the Commonwealth as a whole were supposed to be described by those words. That was the purpose of putting them in. It was not intended to change the meaning of that exclusion at all, but to make it clear that it was simply a little wider than a single city or town. It might apply to a group of cities or towns.

Mr. Luce: May I ask the gentleman whether he would demur changing that to the plural, which might accomplish his end and the one I have in mind: "to particular districts or localities"?

Mr. Walker: I do not object; I shall be glad to accept the amendment.

The amendment, as thus modified, was adopted.

Mr. Joseph Walker of Brookline moved that the resolution (No. 359) be amended by striking out, in line 114, the words "final enactment", and inserting in place thereof the words "it has become a law".

This amendment was adopted.

The same gentleman moved that the resolution (No. 359) be amended by inserting after the word "law", in line 139, in both cases where it occurs, the words "or part thereof".

Mr. Walker of Brookline: If I may, I should like to explain my purpose putting this in, then I should be very glad to listen to the suggestions from the gentleman in the fourth division (Mr. Bryant). The words "or part thereof" you will find occur in many places under

the head "Submission upon Referendum," pages 5–7. The idea was that by referendum petition we might hold up a particular part of a law rather than a whole law. Those interested in the matter might be perfectly willing to accept most of the law but not a certain part of it. It may be a law dealing with various subjects and we may wish to ask the people's advice simply on part of it and not on the whole of it. There were two places only where those words "or part thereof" by inadvertence were left out.

Now it may be well to discuss the question as to whether we wish a referendum permitted on a part of a law passed by the General Court; but there can be no question that if we leave the words "or part thereof" in other places, they ought to go in in these two places. So this was intended to be a merely perfecting amendment.

Mr. Bryant of Milton: I should like to offer as a substitute for the amendment the following amendment: To strike out, in line 8, the words "or any part thereof"; to strike out, in lines 141, 146, 148, 149, 150 and 151, 169, 171, 172 and 174, the words "or part thereof"; and to strike out, in line 162, the words "or any part thereof". I have intended by this substitute motion to raise the question just referred to by the gentleman from Brookline. The referendum provided in this present resolution makes it possible for a small fraction of the people to pick out of a law which has been carefully drafted by the Legislature some part or some phrase which they do not happen to like, to put it before the people with such arguments as they can frame and to endeavor to get the people to knock to pieces this law which has been carefully framed by the Legislature. It seems to me that is a very dangerous proposition. You can easily imagine laws that are passed by the Legislature all of whose component parts are interrelated. If you take out one part you naturally throw the whole law out of kilter. Any particularly interested group of people may pick out any one clause in the law and entirely destroy the whole purpose of the law. Suppose, for example, — to go back into the ancient history of this Convention a little, — suppose in that resolve for the Massachusetts Institute of Technology and the Worcester Polytechnic somebody had taken out of that law the appropriation of a million dollars; that would have left those two institutions under the obligation of doing a great many things that they could not possibly do except with the aid of that million dollars. In other words, if a law like that is to be rejected by the people it should be rejected in whole. If any part of a law is to be rejected the whole law ought to be considered, and it is almost impossible for the voters to take a part of a law without the rest of the law before them and to decide intelligently whether that one particular part ought to come out.

To take another very important law, that law which set aside the defence of fellow-servant, the law which practically repealed the fellow-servant doctrine, that law had to be very carefully framed. If it had not been framed just the way it was framed it would have been unconstitutional. If the people by referendum should take out of that law one small clause the whole law would be unconstitutional. Almost all laws hit different people differently. They are framed possibly for the benefit of a certain class; at the same time they are likely to be in some way a detriment to another class. The two things are balanced by the Legislature; they go over the whole ground, they consider the

question carefully, and finally they frame the law. Now you are going to put it in the power of the people to destroy part of the law and to leave the other part of the law. However far we want to go in this question of referendum, it seems to me very unwise to go as far as these words carry us. And I hope, Mr. President, that the referendum will be confined to its reasonable limits, to wit, to the approving or disapproving of laws and not chopping them up by taking out small parts that various members of the community do not happen to like and which other members of the community may not realize are vital to the whole purpose of the law.

The PRESIDENT: The Chair accepts the motion as an amendment to the resolution, but not as an amendment to the amendment of Mr. Walker of Brookline.

The discussion of amendments was resumed Tuesday, October 16.

Mr. Joseph Walker of Brookline moved that the resolution (No. 359) be amended by inserting after the word "law", in both places where it occurs in line 139, the words "or part thereof."

These amendments were adopted. Subsequently, the vote by which these amendments had been adopted was reconsidered. On the recurring question, the amendments were rejected.

Mr. Lincoln Bryant of Milton moved that the resolution (No. 359) be amended by striking out, in line 8, the words "of any part thereof,"; by striking out, in lines 141, 146, 148, 149, 150 and 151, 169, 171, 172 and 174, respectively, the words "or part thereof;" and by striking out, in line 162, the words "or any part thereof".

Mr. BRYANT: This amendment does not affect the initiative; it affects solely the referendum part of the measure. I explained somewhat my idea in presenting this one day last week, and I do not wish to take more time of the Convention than is necessary in explaining further. But, to repeat shortly what I said then, it seems to me fairly obvious that it would be very difficult for the voters to take out a part of an act, leaving the rest of the act in force, and to act intelligently upon a proposition of that kind. Acts in our Legislature are carefully framed, as we all know, after discussion before committees, the reports of committees, three readings in each House, and approval by the Governor. Now, if you are going to allow, at the instance of ten men or any number of men, a part of any single act to be taken out, who can tell what will be left, or what will be the effect of that act after it is mutilated in that way?

However true the claim may be that the voters will be able to understand the purport of an entire act when it is submitted to them, either on initiative or by referendum, I think it is perfectly clear that they will not understand the purport of the referendum when it takes one sentence out of an act and leaves all the rest of the act, which may be pages and pages long.

For instance, I cited the other day the employers' liability act, which is a very long and complicated act. How could you take one clause out of that and leave the rest and know exactly what you were doing? The act which repealed the fellow-servant doctrine was phrased very carefully, after consultation with the Supreme Judicial Court. How can anybody take out a piece of that act and be sure that he has not destroyed the entire act? And I think that this proposition goes further than anything that reasonably can be expected of the voters to

understand. Look at the Acts of 1917, of which I have just obtained a copy. You can open it almost anywhere. Suppose you were asked to vote on the question of the clause: "*Provided*, that contributions may be waived or returns may be made from any surplus held in excess of reserve and other liabilities as provided in the by-laws;" suppose you were asked to vote as to whether that clause should come out of the law relating to fraternal benefit associations. Could you or any other voter be expected to pass intelligently upon that question? Therefore I respectfully submit that the referendum goes far enough if it permits the voter to repeal an entire act, and that it goes too far if it permits any faction of the voters who do not happen to be satisfied with a particular clause in the act, who do not like the act as far as it affects them, and do not care as far as it affects somebody else, — that it goes too far if it permits a faction of the voters to put that matter up to be voted upon by the public.

Mr. WALKER of Brookline: In explaining these various amendments that are proposed I wish to be as frank as possible with this Convention. As I said once before, some of them I believe go to the root of the matter and, if put in the measure, would be a serious defect. Others are less important.

This particular amendment is one that is of less importance. It is not fundamental. If you provide by the referendum for repealing or holding up the operation of a part of an act, you give the people the right to say what part of the act they want and what part they do not want. On the other hand, if this amendment is made, the voters must decide whether or not they want the act as a whole. It compels them either to take the whole act or none of it; it does not allow a group of petitioners to ask for the rejection of part of it. I may add that the provision permitting the voters to take a referendum on part of an act is a common provision, which is found in most of the initiative and referendum States. I think myself that we ought to follow the precedent of those States and allow petitioners to refer to the people either the whole act or some part of it as they see fit.

Mr. YOUNGMAN of Boston: I hope this amendment will be adopted. If this Convention sees fit to adopt an initiative and referendum measure, and a good referendum, a workable and easily workable referendum will be left if this amendment is adopted. If the amendment is not adopted, and it is possible to strike out the part of an act, one of the most important things in getting legislation, and getting it in a form with which the people are satisfied and with which they will go forward contentedly, is eliminated. The possibility of making a compromise that is effective is eliminated if this provision allowing a referendum to be applied to part of an act is allowed to remain in this resolution. It is perfectly obvious to any of you who have dealt with any legislation about which there is much of a dispute that a compromise nearly always results. Now, if one party that can influence a large group of voters agrees to that compromise, and has a few people afterwards start a referendum for the purpose of striking out the part of a compromise that they did not wish to concede, you have uncertainty and bad feeling created. I take it that the proponent of this measure is sincere when he says that he does not offer the initiative and referendum as a substitute for the action of the Legislature, but that he offers it to be a supplement to or an appeal from the action of

the Legislature. If it is going to act as a supplement, this must not be left in. We should use the referendum as a supplement to the Legislature and not use it for committing a negative act on legislation. As I said in the beginning, we have a good workable referendum left if you strike out this partial referendum. Therefore I hope the amendment of the gentleman from Milton will prevail.

Mr. WEBSTER of Haverhill: As I gauge the sentiment of the Convention it seems apparent to me that the members may be roughly divided into two camps on this important proposition. There are those who believe enthusiastically in the principle of the I. and R. and wish to see it applied, some reserving only the privilege of so having the matter safeguarded that it will meet with their approval. Then upon the other hand there are those who distrust the whole matter, who do not wish to see it come into our body politic in any way, shape or manner, and of course, although I enthusiastically believe in the proposition myself, I accord absolutely equal sincerity to those gentlemen who regard it dubiously.

Now, sir, we have had a great number of amendments offered here. Some of them, it seems to me, are not of such importance that the whole Convention should take much time in deliberating upon them, for we might as profitably discuss the question as to whether white rats or Guinea pigs are the more interesting pets. But, sir, cannot we get together upon this matter, and will not gentlemen who offer amendments simply out of distrust of the whole proposition agree to withdraw those amendments and concentrate their opposition upon some form upon which we may take clear and definite issue? Why, sir, we have a striking example before us in the session of October third, about a fortnight ago, when another matter which had perplexed us, and as to whose merits we seemed to be wandering without much hope of arriving at a satisfactory solution, was cleared as the sky of last evening was cleared by the western breeze. I refer to the measure to permit municipal trading in the necessities of life. That is rather a long title. It seems to me we ought to have some convenient and expressly termed title. I hardly know whether to go to the regions of the frozen north and take from the Hudson Bay Company the name Trading Post, or to go to those islands of the sea where my own military experience suggests the name of Canteen Bill.

Now, you know, sir, how we were progressing, disputing these various provisions of that measure. Then all at once the gentleman from the fifth Suffolk district in the third division arose and made his momentous suggestion. And the result was as gratifying, considering the incongruous elements, — speaking in the ordinary political sense of their activities, — which came to his support, as it was surprising. Immediately the proposition was made it was hailed as an inspiration. Then, from one speaker and another, additional testimony was adduced, until the litany was swelled to a chorus, and we might well imagine that some odd half-dozen honorable members had undergone an experience comparable only with his who aforetime, journeying to Damascus, saw a great light in the way. Ah, sir, we have seen strange things here within the past few months. It has been our privilege to entertain here as our guests the official emissaries of the great nations of Russia and Japan, nations which but a few years ago were engaged in deadly conflict, now appearing before us as friends and allies in a

common cause. But even that astonishing reconciliation pales into insignificance beside the armistice of two weeks ago, when the war-wearied spirit of Bourbonism, hoary with conservatism, shaggy with reaction, sought sanctuary in the cloistered seclusion of the Hendricks Club.

Now, sir, I regard the proposition of the honorable member from Beverly (Mr. Loring) as probably the most statesmanlike suggestion that has been made in this body. Perhaps it does not wholly meet my views, but I regard it as a basis for getting together. It would appear that every objection, so far as I can recall, which has been brought forward against this proposition upon this floor by honorable members, is met and obliterated by this suggestion. I contend that honorable members, regardless of a little momentary dissatisfaction, should withdraw their amendments and agree upon something. If they feel that a definite issue still must be made against the proposition of the honorable delegate from Beverly, if they still feel that, then cannot they agree upon something upon which issue can clearly be taken, that an early settlement of this most vexed question may be reached?

Members seem to forget that discussion does not end with our action here, and the vote we take is not the end of trouble, but perhaps a beginning of it; for we have to go before the people and, in the wider forum of public discussion, justify our action, and we must appeal from the decision of this body to the decision of the supreme bench of popular approval. And while the honorable member from Haverhill (Mr. George) thinks that not much interest is being shown in the Convention, I can assure him that when the question is brought before the people for discussion he will find a great deal of interest displayed in the deliberations of this Convention and in the individual action of the members here.

Mr. Creamer of Lynn: I simply want very briefly to call the attention of this Convention to the fact that if you strike out these words "or part thereof," you will render it impossible for a referendum to be taken on what sometimes happens in our legislatures, and that is the insertion of a joker in part of a bill. That would render it impossible for the people to call for a referendum on striking out that joker. Now, I think that is a very important provision to this amendment, — that under it such a thing is possible. There is not a man here who has served in the Legislature of this State but knows that such things do creep into bills, and creep in without the knowledge of a large number of members of the Legislature at times. Therefore I think, and I hope, that for that reason alone the Convention will vote against the amendments of the gentleman from Milton.

Mr. Underhill of Somerville: According to the statement of the gentleman in charge of the measure, this is not a vital part of the initiative and referendum. The gentleman from Lynn (Mr. Creamer), who has just taken his seat, states that possibly the Legislature might put in a joker and the people could not cut it out. On the other hand, there is the possibility and probability on an initiative petition, or a referendum, that ten men might cut out the very vitals of a resolution, and put it before the people, and there is no explanation on the ballot so the people may understand what it means.

For illustration, take the anti-aid or anti-sectarian measure; or the public trading amendment. Both of those go on the ballot this year in

a form which this Convention has discussed for weeks and upon which it has come to practically a unanimous conclusion. Suppose those questions were put before the people, and ten men had the opportunity of striking out certain portions of those two resolutions; you would find the change might be of such a character that what we intended here in Convention, after deliberate discussion, would be upset, and the bill or resolve would have an entirely different effect from that which we expected it should have and ought to have. If it is not vital, as the gentleman in the third division (Mr. Walker) agrees, then let us put in this safeguard. Let us have a measure, if we can, which is safeguarded so as not to give unfair power to a small group of men of whom we have heard so much in this Convention.

Mr. Luce of Waltham: Like the gentleman from Brookline in the third division (Mr. Walker), I am of the opinion that this amendment does not go to the heart of the question; and, for my own part, I find it not easy to predict just what would be the effect of the amendment or its relative importance. The tendency of the time is toward giving the Governor the power to veto items in appropriation bills, and I myself have introduced an amendment, which I trust will have met the approval of the committee having it in charge, copying the Alabama plan of allowing him to veto a part of a law. So I do not find myself in any position to say unhesitatingly that this amendment would or would not produce bad results, except for this particular: My personal belief is that it is extremely important to confine the use of the initiative and referendum, if it is to be used, to broad questions of public policy, and not to invite a participation in the details of law-making on the part of the electorate. For this reason alone, while this matter is in the experimental stage, it would seem to me wise, when all of us entertain more or less doubt about what will happen, to omit this particular provision until we have ascertained its desirability after test of the principle.

In somewhat extensive study of the operation of the system in western States, it has not come to my notice that a provision of this sort ever in fact has been used. It may have been, but I am doubtful whether it ever yet has been used. And, therefore, inasmuch as the need of such a provision in practice elsewhere has not been found of importance, and as it may invite some dangers that we cannot wholly foresee, I should hope that the amendment of the gentleman from Milton would prevail, so that we might not now saddle this resolution with too many uncertainties. Shall we not have gone far enough if we put it within the power of the people to do that which the Governor has been able to do, — to veto; and, at least until we have seen how an extension or a modification of the veto power of the Governor works, not extend it to the people in this matter of the initiative and referendum? The Governor has the Attorney-General to counsel him. His position is one of the greatest responsibility, and any course he might pursue in the veto of part of a measure would be taken only after careful deliberation and listening to the arguments on both sides. Let us try first to see how it works with the Governor, and then later, with no great difficulty if it proves evidently desirable, we can attach it also to this program.

Mr. Creamer of Lynn: I wish to give this Convention a concrete illustration of the necessity of not accepting Mr. Bryant's motion, —

a concrete illustration of the necessity of giving the people a right to call for a referendum on part of a measure. In the General Acts of 1916, chapter 302, an act was passed relative to the repairs of streets, highways, and bridges by street railway companies. The intention was evident, from reading the first three sections of that act, that the street railway companies should assume some duties in regard to the repairs of streets, highways and bridges. Section 4, however, reads as follows. This is the joker, on which the people ought to have a right to call for the referendum:

SECTION 4. The provisions of this act shall not apply to street railway companies liable for the payment of the commutation or excise tax imposed upon street railway companies, [under the provisions of certain sections, etc.].

What was the effect of that section? To make this thing apply only to one street railway corporation in the whole Commonwealth, — the Boston Elevated Railway Company. That is the kind of thing on which the people have a right to call for a referendum; that is the part of a measure on which the people should have a right to call for a referendum.

Mr. WILLETT of Norwood: Would not the same result be obtained if an entirely new measure was put in, leaving out the objectionable section? Could not the same result be obtained with greater simplicity in reality than in the attempted amendment of a measure?

Mr. CREAMER: Of course it might be obtained in that way, but it might take a good deal longer. It seems to me that on a question of this kind the people directly ought to have something to say about the pernicious principle, — and it is a pernicious principle and a common principle, — in our Legislatures, of doing just that kind of work.

Mr. BRYANT of Milton: I should like to deal briefly with exactly the situation which the gentleman from Lynn (Mr. Creamer) has just outlined: What is the proper way to deal with that act? Assume that that is a "joker"; assume that section 4 says that no street railway company liable for the commutation or excise tax, if I heard it right, should be affected by that act, — can any voter in the Commonwealth know what the issue is when he is asked to strike out the phrase "No railroad in the Commonwealth liable for the payment of a commutation tax shall be affected by this act"? Is that a proper way to raise the question? The question is not a single question; it is a double question. The question is: Should all railroads be subjected to this act, or should no railroad be subjected to this act? That is a question which you cannot answer by striking out section 4 and making the act State wide. The question can be raised only by considering the act as a whole and passing a new act affecting such railways as ought to be omitted. In other words, the question which would be raised by referendum on that one section would not be understood by any voter in the booth unless the entire act was put before him, being printed on the ballot, and unless he consulted legal authority to find out what the omission really meant. And I think I can reasonably claim that the way to subject all the railways in the State to certain obligations is not by a negative clause of this character which does not say anything about all the railways but simply apparently puts a few railways in with the majority of the railways.

Mr. CREAMER: I would say for the benefit of the gentleman from Milton that in my opinion a referendum on a matter of this kind, if

carried by interested persons to the great mass of the voters, could be carried or probably would be carried in such a way as to educate the voters on the subject before they had to pass on it at the polls, and I do not believe that the people of Massachusetts ever would vote on a question of this kind to play favorites and grant relief to certain railway companies and not to others.

Mr. Hobbs of Worcester: In order to maintain the fair fame of the Legislature untarnished, this being an entirely collateral matter, I think it might be as well to say that that exception was based on a very good reason, the commutation tax being imposed in lieu of repairs on streets; and therefore the exemption of companies paying that commutation tax was entirely equitable.

Mr. Bryant: I was just about to suggest that thought, although I was not familiar with the act, and I was going to ask this Convention whether any man here would feel himself competent to vote on whether that section should come out of the act or should not come out of the act on the evidence now before the Convention. You have heard the statement of one gentleman from Lynn that that is a joker. Are you satisfied, Mr. Voter in the booth, are you satisfied on the evidence now, — because the evidence we now have is all the evidence the voter would have, — to mutilate a carefully drawn act of our Legislature? Are you satisfied that that is a real joker? Apparently, if we had been satisfied, Mr. President, that that was a joker, it appears now that the Convention would have been mistaken because, from the explanation of the gentleman from Worcester, who, I believe, was in the Legislature when the act was passed, that act is a perfectly just act and the reason for the exception of the Boston Elevated Railway Company is a real reason and a proper reason.

Mr. Churchill of Amherst: I suppose it has become apparent, Mr. President, in the process of this debate that there are things to be said on both sides of the general subject; that there are certain advantages to be obtained by a properly safeguarded initiative and referendum, and that an initiative and referendum measure has certain defects. It seems to me that upon that proposition we all of us ought to be able to unite, and therefore that we ought to be able to unite, Mr. President, in a desire to make whatever measure is passed take care, as far as possible, of the defects which are apparent to the proponents of the measure as well as to the opponents.

Now if there is any defect in the measure that ought to be apparent, Mr. President, it seems to me that it is this: That to secure an adequate, intelligent public opinion upon complicated matters, upon matters of detail, is a practical impossibility. There are some of us who go so far as to think, for that reason, that only an extremely simple proposition should be laid before the people. But at all events it ought to be clear to us that the more details, the more complications we have in the proposition submitted to the voters, the more difficult it is for them to act upon it.

Now how about this question? The amendment is offered in order to reduce the number of complicated details upon which it is difficult and often impossible for the people to come to an understanding and therefore a proper expression of opinion. Now it may be true, Mr. President, and I am inclined to think that it is true, that, as suggested by my friend on my right, the delegate from Lynn (Mr. Creamer), there may be jokers in bills, and that it is desirable to get rid of those

jokers, and that where such a thing is perfectly apparent, allowing the people to vote upon that part of the bill might succeed in overcoming that difficulty. And yet, Mr. President, we cannot face that situation alone. We are going to have a great many complicated bills. A very, very large majority of them certainly will not contain jokers, but they will contain details that will be difficult to handle; and if we allow these bills to be voted on in part by the people, I raise the question whether we are not likely to have far more difficulties brought about by doing that than by the inability to get rid of a joker by the means suggested by the delegate from Lynn. If a joker is apparent, it is perfectly possible without any more work than is demanded for an initiative petition on a part of the bill to secure an initiative on a bill without that joker. In other words, we have to obtain means to get rid of the difficulty of which the gentleman from Lynn has spoken. We have no competent means, if this provision for the submission of any part of a bill remains in the measure, to get rid of the other difficulties. And I submit, Mr. President, upon the basis of what is likely to occur, we ought all of us to believe, — it seems to me so, — that the majority of advantage is clearly in favor of cutting out the words "or any part thereof". And it may be called to the attention of members that a referendum on part of a bill may itself be just as easily a joker as any joker in a bill that a referendum might get rid of. If you refer any part of a bill it is entirely possible, without giving sufficient information to the people, to offer upon a referendum the rejection of a part which would in effect kill the value of the whole bill. And if there be advantage in getting rid of jokers, it certainly is balanced by the advantage of cutting out the words "or any part thereof" to prevent a referendum vote with a joker.

Mr. Walker of Brookline: I do not think I have much more to say on this matter. It is a common provision found in initiative and referendum measures. It is unfortunate to require those who object to a particular provision in a bill to ask the voters to veto a whole measure rather than allow them to veto a certain part of it. I think I shall leave this matter to the Convention to decide. It is not one of those fundamental things that I care to discuss further.

The amendments moved by Mr. Bryant were adopted, by a vote of 86 to 66.

Mr. Joseph Walker of Brookline moved that the resolution (No. 359) be amended by inserting after the word "division", in line 181, the words "or to a particular district or locality"; and by striking out, in line 195, the words "cause each question", and inserting in place thereof the words "give each question a number and cause it".

The first amendment was modified, at the suggestion of Mr. Luce of Waltham, so that the words to be inserted should read "or to particular districts or localities".

The second amendment was modified, at the suggestion of Mr. Bryant of Milton, by striking out the word "it", and inserting in place thereof the words "such question".

Mr. Bryant of Milton: I should like to inquire of the gentleman from Brookline whether the wording of this phrase "give each question a number and cause *it* to be placed on the ballot" might not be interpreted to mean "cause the number to be placed on the ballot", the word "it" referring back to the last noun in the phrase and raising a serious doubt in the interpretation of the act.

Mr. Walker: I should say that that was a pretty small suggestion. I do not know, I am sure, but it seemed to me to read properly. I shall be very glad to accept any suggestion the gentleman has to make in regard to the matter. I do not think there would be any real confusion there. It seems to read properly. If it does not the committee on Form and Phraseology, if there really is anything in the suggestion the gentleman makes, can rectify it.

Mr. Bryant: I would suggest the words "said question", instead of "it".

Mr. Walker: I do not like the words "said question", but I will accept the words "such question".

Mr. Bryant: "Such question".

The amendment was modified as suggested by Mr. Bryant.

Mr. George of Haverhill: I should like to ask the gentleman from Brookline, — I have not had time to look it up, — what does that mean?

Mr. Walker: The whole purpose of this "Excluded Matter" is to exclude matters that are not of State wide interest, those that relate merely to a particular town or city. There is no sense in having a State wide referendum or a State wide initiative petition upon it. It has been pointed out to me that by simply saying "town or city" I was permitting a State wide referendum or a State wide initiative petition on a matter affecting, for instance, the metropolitan district or a group of cities or any locality which could not be defined by the words "a town or city". Therefore I am inserting these words so that a provision which relates to a particular district like the metropolitan district would not be the subject of a State wide initiative or referendum.

Mr. George: I think I understand the gentleman, but I think that that ought to be amended later, perhaps, if not amended at this stage, because I am in sympathy with the referendum features of that proposition. A few years ago we had a reform Governor, and he instigated a scheme whereby the Commonwealth of Massachusetts was going to spend $50,000,000 under the pretence of improving Boston Harbor, when as a matter of fact it was to improve the East Boston Land Company, of which he was the largest owner of stock. Now I want to ask the gentleman from Brookline if he does not think that a $50,000,000 appropriation to boom somebody's land scheme out in Boston Harbor with three-quarters water and one-quarter land, if that is not a fair proposition to put on the ballot so that the people of the rest of the Commonwealth can have an opportunity to express their opinion?

The amendments moved by Mr. Walker were adopted.

Mr. Joseph Walker of Brookline moved that the resolution (No. 359) be amended by inserting before the word "town", in lines 110 and 180, respectively, the word "particular".

These amendments were adopted.

Mr. Dellinger of Wakefield: You will notice on page 4 that the body of the amendment which I had given notice I would move, has been carried away by the adoption of the Loring amendment. I am glad to have the opportunity to say that the Loring amendment contains to a degree the two main principles for which I have been fighting. Under it, first, all amendments to the Constitution must be con-

sidered and passed upon by a deliberative body. Second, it gives to the two legislative bodies, sitting jointly, the power to amend in form all amendments to the Constitution before they are submitted to the people. Therefore I do not care to move the few remaining lines of my amendment as printed in the calendar,[1] though I do think that the Loring amendment can and should be strengthened in some respects, and at a later date I may move an amendment thereto.

Mr. James P. Richardson of Newton moved that the resolution (No. 359) be amended by inserting after the second paragraph at the top of page 3 of the calendar reading "Article nine of the amendments to the Constitution is hereby annulled.", the following:

Excluded Matter.

No part of the Constitution which provides for the establishment of the popular initiative and referendum shall be the subject of an initiative petition.

Mr. Richardson: Let me recall to the minds of the members of the Convention what occurred when this amendment was considered in the Committee of the Whole. At that time it was voted upon in its present form and defeated by a small majority. The representation was made then by those in charge of this measure to the effect that that vote should be considered without prejudice and that at a later stage of the proceedings upon the measure the question would recur, and as involving a principle, ought to be voted upon then; that the proponents of the measure were not certain at that time whether they would be willing to favor such an amendment or not, but that if it was probable that a workable initiative and referendum measure was to be adopted, then it might well be that such a proposition as this ought to be adopted. The time has come now, Mr. President, for a test of this proposition as a matter of principle, and the principle involved is simply this: Unless, in granting power, you put with it a safeguard so that the power which you grant shall not be exercised to enlarge itself, all provisions in the nature of safeguards which you originally throw around the grant of the power, to all intents and purposes are useless.

The argument has been made from the start by the proponents of this measure that their program for adopting amendments to the Constitution by initiative was surrounded by so many safeguards that, to all intents and purposes, it was a conservative measure; that it was intended to be an assistance to legislation. They pointed out the fact that measures still would have to be considered by two successive Legislatures, that a great many signatures must be collected under the terms of the amendment, that matters could not be submitted to the people until they had been considered carefully in all the ways which now and in the past have existed for such considerations, and that in other respects the method of amending the Constitution by initiative petition continued to be surrounded by safeguards of one sort or

[1] The remaining lines of the amendments of which Mr. Dellinger had given notice were as follows:
By striking out, in line 5, the words "and amendments to the Constitution";
By striking out, in line 84, the words "constitutional amendment or";
By striking out, in lines 190 and 191, the words "amendment to the Constitution and each"; and
By striking out lines 197, 198 and 199, inclusive, as follows: —
"In the case of an amendment to the Constitution: Shall an amendment to the Constitution [here insert description] be approved?"

YES.	
NO.	

another. I point out, Mr. President, that unless some such amendment as this is adopted, all such safeguards might well be thrown to the winds by the very first test of the constitutional initiative itself. There exists nothing to prevent a proposition being put upon the ballot to minimize or entirely take away every such safeguard which the proponents of the measure themselves insist upon as necessary and desirable. It seems to me that it needs no further explanation to the intelligent members of this Convention, sir, to show that such a provision as this is logical, is necessary and must be in the measure if it is to be a piece of good governmental machinery.

I called attention in the debate in Committee of the Whole to the language used in Professor Holcombe's book, which is an affirmation and an insistence upon the argument which I now present.

Now is the time to decide as a matter of principle whether this safeguard is to be attached to the operation of this measure. It is not introduced in the spirit of hostility to the general principle, and neither has its desirability or necessity been taken away by the substitution of the Loring amendment for the original clause. For the fact still remains that, by the Loring amendment and under the Loring amendment, amendments to our Constitution still are permissible by the operation of the constitutional initiative. The Loring amendment is a hybrid which mixes up executive, legislative and initiative methods of amendment in a manner to which I confess, as a student of government, I am unable to give my support. It seems to me vicious in theory. I would prefer as one individual, Mr. President, a straight-out constitutional initiative that you can understand and lay your finger on, properly safeguarded, to the Loring amendment, which reduces the Senate to the tail to the legislative kite and infringes upon the bicameral system of legislation at its very most important point. But this is not the time for the discussion of the Loring amendment.

Mr. Donovan of Lawrence: Will the gentleman be so kind as to read the passages of the Loring amendment to which he objects and compare them with the proposition which he proposes?

Mr. Richardson: At this time I must decline to answer the member's question. When the Loring amendment at the next stage comes up for further consideration and amendment it may be possible that I shall have something to say along those lines. But I advert to the Loring amendment at this moment only for the purpose of pointing out that its introduction and substitution for the original passage of the measure which relates to constitutional amendment does not take away the necessity for the amendment which I now propose and which I trust this Convention will adopt.

Mr. Donovan of Lawrence: I hope the Convention will not adopt this amendment of the gentleman in the first division (Mr. Richardson of Newton). If such an amendment is adopted it will limit the scope of the initiative and referendum, and it means simply that when this measure goes into effect, if then there are errors in it and things that should be corrected, the people of this Commonwealth will not have the opportunity to correct them properly. It will mean that probably for several years in the operation of the initiative and referendum, wherever there are any faults in it, the State will have to endure those faults for several years before an amendment can be made. Why not give the people of the Commonwealth a free rein of the initiative and

referendum? We have talked here about legislating for the people until nearly all of us are sick and tired of listening to it. But why cannot we give them a free rein? They have elected us here and why cannot we trust them with the initiative and referendum and let them amend it or change it if they wish? If we accept the amendment of the gentleman from Newton we place a rein on the initiative and referendum and we have placed a check on it that cannot be released by an initiative petition. I hope this amendment will be defeated.

Mr. ANDERSON of Newton: As I did in the Committee of the Whole, I wish to support the amendment of my colleague from Newton. I feel just as he does, that this measure on the initiative and referendum is bound to be very largely in the nature of a compromise. We feel that so far we can go and no farther, and I feel that we ought to make the initiative itself free from the action of an initiative petition. That is a part of the very foundation of the whole matter. Just as in the rules of this Convention we make certain rules which, except by unanimous consent, cannot be set aside, just as in the Constitution of the United States there are certain things which cannot be altered, part of the original compromise, so in this matter it seems to me that we have a perfect right, when we are settling the very foundations and principles of this matter, to say that those foundations and principles shall not be lightly changed. I trust that this amendment will prevail.

Mr. UNDERHILL of Somerville: I side strongly with the amendment offered by the gentleman from Newton, believing as I do that if the Loring amendment or the Loring initiative and referendum measure goes through it is of vital importance that we should have this safeguard attached. It is absolutely necessary if we are going to have proper protection. From the discussion that took place in the Committee of the Whole and the discussion that has taken place this morning the members of the Convention can see clearly how necessary it is to have this amendment adopted.

Mr. LEONARD of Boston: After listening to the remarks it seems to me that there is a middle ground here that might well be taken. We have no guarantee that the initiative and referendum measure should not be amended in some particular, and on the other hand perhaps it ought not to be too readily amended. I would suggest that there might be some middle ground whereby any proposition to amend the initiative and referendum should require a larger number of the voters voting thereon, or some other method that would insure us, in case it was absolutely essential to amend, that we still would have the method of doing it by popular initiative. If we were to adopt the amendment moved by the gentleman from Newton we should be absolutely debarred and estopped from ever amending the proposition even though we might be confronted with a situation where it was absolutely necessary so to do.

Mr. LUCE of Waltham: May I ask the gentleman from Boston in the fourth division (Mr. Leonard) if he construes this amendment as extending to the method of amendment provided by the so-called Loring amendment, whereby the Legislature may proceed in Joint Convention, or the people may proceed by a majority vote, or the Governor may proceed? I had supposed that the amendment of the gentleman from Newton referred only to the popular initiative. That

would leave, would it not, may I ask the gentleman from Boston, still available the opportunity to amend by the legislative initiative or by the executive initiative?

Mr. LEONARD: I have not given the intensive and detailed study to the proposition as has the gentleman from Waltham, but it seemed to me in the discussion here, particularly relating to matters of the legislative initiative, not as a constitutional amendment, we might find after this proposition had been working a year or two that there were phases that ought to be corrected, that there was some mechanical defect; and yet if the amendment of the gentleman from Newton should be adopted we would be so tied up that we would have no way of allowing the measure to be altered to meet the consensus of opinion of a vast majority of the people. That was the idea I had in mind and it seems to me we ought to reach some middle course which would safeguard all rights in the matter.

Mr. CARR of Hopkinton: If the gentleman from Newton (Mr. Richardson) is opposed to the Loring amendment I very well can see why he might want this particular amendment of his introduced; but with the Loring amendment, as we already have adopted it, I cannot see why all the objections that have been raised by the gentleman from Boston about the safeguards that should be thrown around any change in the Constitution that should be made in the initiative and referendum amendment are not done away with. Because with the Loring amendment we have, of course, the Joint Convention of the Legislature, that is, the House and Senate in joint session, to safeguard any change in the Constitution before any amendment can go on the ballot. As I understand the Loring amendment, there has to be one-quarter at least of that joint session voting favorably for an amendment before it can be submitted to the people. The Loring amendment also gives the Governor the right to initiate a change in this initiative and referendum law. Therefore, I cannot see, unless objection comes from a man who is opposed absolutely to the Loring amendment, why he wants to cripple still further the usefulness of this, as I understand it, beneficent law. I cannot understand why any man who votes for the Loring amendment is not satisfied with the Loring amendment without the amendment of the gentleman from Newton, and I hope the amendment of the gentleman from Newton will be defeated and that we will go along with the Loring amendment, which safeguards against any hasty or ill-considered change in the Constitution.

Mr. Arthur N. Harriman of New Bedford moved that the amendment offered by Mr. Richardson be amended by substituting the following:

The veto power of the Governor shall not extend to measures adopted by the people under the provisions of this article, and no constitutional amendment or law which is adopted by the exercise of the initiative and referendum shall be altered, annulled or repealed except by the exercise of the initiative and referendum in the same manner as the law or constitutional amendment shall have been adopted.

Mr. HARRIMAN: If the principle of the initiative and referendum means anything to those who believe in it, the authority rests in the people; and if there is anything that can come between them and their express wish it is antagonistic to this proposition. But I firmly believe that the motion offered by the gentleman from Newton is not consistent with the principles of the initiative and referendum, and if

you lay the basis that the people have a right to do these things, it is wrong to hobble or hinder them in their expression of it. It has been said in this Convention time and time again that the people would abuse this privilege. But I want to tell you now that the people of this Commonwealth are reasonable and they will not allow, neither will they tolerate, any foolish or frivolous amendments which might be proposed.

In closing I want to say that if this measure means anything to the people it means that they shall have the right, — that they are the sovereign power and they have the right, — to say whether or not this measure in itself shall be acted upon, whether it shall be changed at any time when a reasonable number of the citizens can place it before them and rest upon the final decision of the people. And if you tie this down even the opponents of the measure, it seems to me, must realize that it will be harder for them to change, if they want to, and the friends of it realize that it is something that will impede the working out of the proposition of the initiative and referendum.

Mr. Bryant of Milton: I tried to listen carefully to the amendment of the gentleman from New Bedford. It seems to me to raise an entirely different question from the question raised by the gentleman from Newton, and I think it is rather a pity if both of these amendments are going to be voted on at the same time. I would suggest that the motion of the gentleman from New Bedford be not substituted at this time, with the understanding that if it is not he may offer it again if he so desires. His amendment, as I understand it, makes it impossible for the Legislature to amend an act which has been passed through an initiative petition. We have been told many times by the supporters of the initiative that if the acts which are put in through initiative petition, — which I believe they admit are likely to be defective, — if they are defective, that the Legislature can correct them. Now if that is the case this amendment of the gentleman from New Bedford cuts out all possibility of that kind, and if, by inadvertence or by joker or by any other scheme, you have placed upon the ballot and have passed some act through initiative which later the voters discover is not what they wanted, the only method of getting rid of that or getting rid of the possibly small part of that which they do not like is by going through all of the elaborate machinery again of collecting signatures and putting it up to the people to vote on again. I hope the amendment of the gentleman from New Bedford will not be substituted at this time, even if it has some merit, and that we may vote directly on the amendment of the gentleman from Newton, which seems to have a great many advantages; because all those who agree that the safeguards in the Loring amendment are proper, must agree, I think, that they ought not to be taken out immediately, as will happen if the initiative part of the Constitution is to be subject to be amended by the initiative.

Mr. Churchill of Amherst: I should like to inquire first, Mr. President, whether the gentleman from Newton would find it agreeable to insert the word "popular" before the words "initiative and referendum", so that the amendment would read: "No part of the Constitution which provides for the establishment of the popular initiative and referendum shall be the subject of an initiative petition."

Mr. Richardson of Newton: I shall be very glad to accept the suggestion.

The PRESIDENT: Will the member repeat the suggestion?

Mr. CHURCHILL: I ask unanimous consent, then, Mr. President, for the gentleman from Newton to insert the word "popular" before the words "initiative and referendum."

No objection was made and the amendment was modified as requested.

Mr. CHURCHILL: The gentleman from Newton referred a moment ago to the attitude of Mr. Holcombe. I can do no better, it seems to me, in reply to what has been said on the floor, than to read to this Convention what Mr. Holcombe has said on this subject, for it is accurately and precisely stated. The other men in favor of the initiative and in favor of the constitutional initiative should recognize, nevertheless, as he does, that there are certain safeguards that must be applied, and he follows therein the general attitude and trend of the proponents of this measure. They have accepted one of his limitations, namely, that the people, acting as a Legislature, shall be subject to the same constitutional restrictions as the Legislature. That is one of his suggested restrictions. Most important of all, and the first of those he mentions, is precisely this restriction offered in the amendment of the gentleman from Newton. After saying that certain constitutional amendments are just as properly subject to the initiative as statutes, Mr. Holcombe goes on to say:

> There is one class of constitutional amendments, however, of which this is not true, namely, those which are intended to define or enlarge the powers of the electorate itself. It is natural for all persons, voters as well as those in more conspicuous places of authority, to strive for greater power. The electorate, if permitted to define its own powers, cannot be expected to resist the temptation unduly to enlarge them. . . .
> The electorate is not the people, and under our system of government it is just as improper for the electorate directly to define its own powers as for the Legislature or the courts to define their own powers. The right of the Legislature or courts to define their own powers is checked and balanced by the right of the other organs of government to do likewise. The same should be the rule for the electorate. The legal responsibility of the other organs to the electorate insures that the will of the voters, if well considered, will ultimately prevail. (Holcombe's State Government in the United States, p. 442.)

In view of that statement, Mr. President, and in view of what seems to be its entire soundness and appeal to reason, I had hoped and still hope that the proponents of the measure will see their way clear to accept this restriction also.

Mr. Harriman withdrew the amendment moved by him.

Mr. WALKER of Brookline: I have given this matter considerable attention since it was first suggested by the gentleman from Newton, and the more I think of it the more opposed I am to it. I believe it is inconsistent with the idea of the initiative and referendum. I think it is well for us to remember and clearly to stand on this article in the Declaration of Rights which has been read so often before this Convention:

> Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

I take issue with Professor Holcombe in the statements which have been read from his work and I wish to say that that gentleman, during the whole course of the discussion in the preparation of the initiative and referendum measure, never himself suggested that any such pro-

vision should be put in. I do not care to discuss Professor Holcombe's opinion further at this time, however, but I do wish most earnestly to ask the members of this Convention not to adopt this amendment at this time. We do not know what kind of an initiative and referendum we shall get here. We do not know that we shall get a workable initiative and referendum. We do not know what provisions or what checks will be put upon it. Now I say this is not the time to ask the members of this Convention to say blindly that whatever initiative and referendum is adopted by this Convention it shall not be changed by the people upon petition. It seems to me that it is a great deal better, and I urge this most strongly, that it is a great deal better to vote down this amendment at this time. Then at a later stage, — for instance, when the matter is on the question of passing the measure to be engrossed, — then is the time, after we have discussed and disposed of all these amendments, when we know what kind of a measure is before us, then is the time to propose such an amendment and ask the Convention to adopt it. That is all I have to say upon the subject and I again urge that we simply vote down the amendment at this time and wait until a later stage, when we know what we have got; then we can very well decide whether we will freeze it in or not.

The amendment moved by Mr. Richardson was rejected, by a call of the yeas and nays, by a vote of 107 to 119.

Mr. Albert H. Washburn of Middleborough moved that the resolution (No. 359) be amended by striking out, in lines 50 and 51, the words "twenty thousand qualified voters of the Commonwealth", and inserting in place thereof the words "four per cent of the qualified voters of the Commonwealth, calculated upon the whole number of votes cast for Governor at the last preceding election"; and by striking out, in lines 61 and 62, the words "five thousand additional signatures of such qualified voters", and inserting in place thereof the words "one per cent of such qualified voters, calculated upon the whole number of votes cast for Governor at the last preceding election, in addition to those signing such initiative petition,".

Mr. Washburn of Middleborough: The amendments which I have proposed involve nothing revolutionary. The committee has reported a proposal under which a fixed number of voters can inaugurate the initiative machinery. I entertain a very strong objection to that method of procedure. My amendments propose to substitute, in place of it, the principle of requiring a given percentage of voters to set in motion the initiative machinery. I urge the adoption of these amendments because they follow the approved system which obtains in most of the States where they have the I. and R.; and, furthermore, because the committee's recommendation utterly fails to take into account the normal, and perhaps the abnormal, growth in the number of registered voters in the years just ahead.

We have something like 650,000 registered voters in this State. According to the I. and R. bulletin, which was printed for our information, something like 85.5 per cent of these registered voters cast their vote for Governor at the last State election, — in other words, 557,000. These figures, however, do not precisely agree with those which you will find in the manual of the General Court. I can account for the discrepancy only on the theory that in one case blank ballots possibly were counted, and in the other cases only those votes actually cast for a candidate. Taking these figures as the basis for our

calculation, the committee's recommendation of 20,000 plus 5,000, in the case of a statutory initiative, would mean that about 4½ per cent of those voting for Governor at the last election would be required to start an initiative petition. If, on the other hand, we take the figures which are found in the manual of the General Court, it would be about 5 per cent, — something slightly in excess of 5 per cent.

Therefore I have done nothing more than to convert the committee's figures into percentage terms. I say that is the method which most of the States have adopted. So far as I am aware, Mr. President, there is only one State having the constitutional initiative which prefers the method recommended by the committee, and that is the State of Mississippi. Now, there may be some reason why this southern State, which seldom has a real State election, — all its contests take place in the primaries, — why, I say, this State should prefer to depart from the usual prevailing method, but those reasons have no standing in a Commonwealth like Massachusetts. Why, I ask you, should we undertake to transplant to Massachusetts soil this rare exotic of the Mississippi swamps?

There is one other State which does not have the constitutional initiative, the State of Maine, — which does have, however, the statutory initiative, — that prefers the method recommended by the committee. But there, again, the conditions are quite different from the conditions prevailing in this Commonwealth. The State of Maine has practically a fixed vote. The population increases very slowly. They require there 12,000 voters to initiate a statutory provision. They cast something like 150,000 votes for Governor, I believe. That is the maximum. So that the provision in the Maine Constitution really, if you convert it into percentage terms, is the equivalent of about 8 per cent.

Now, I am simply taking the committee's own figures. That certainly is eminently fair. The figure recommended by the committee, the fixed number, may be all right to-day, but how about five or ten years from now? How about two or three years from now? It is quite obvious that with the rapid increase in our population the 5 per cent recommended by the committee, if you convert it into percentage terms, presently will be 3 or 4 per cent, or even less. Suppose, now, this State should grant suffrage to women, — and nobody can tell what change will take place in five years in this respect, — you easily will double the number of registered voters, and thereby you will make it possible for something like 2 per cent, or a little over at best, to initiate a constitutional amendment, — to initiate a statutory provision, — something that no State in the Union does, and, in my humble judgment no State in the Union ought to do. Most States require at least 5 or 6 per cent to initiate a statute and, if we except the State of Missouri, there is not a single State in the Union that requires less than 8 per cent to initiate a constitutional amendment. A number of them require 8; quite a number, — three, I believe, — require 10; and there are three that require 15. The State of Missouri does require 5 for constitutional amendments, for the statutory initiative, and also for the referendum. It is a flat percentage figure. But that is coupled with a clause under which not more than 8 per cent of the legal voters in each of at least two-thirds of the congressional districts in the State shall be required to propose any measure

by petition. Now, that makes a very much more difficult requirement in its actual operation than the provision reported by the committee.

In my judgment it would be a very unwise and a very imprudent thing for this Convention to adopt such a provision as this, with the effect as it is likely to be in a few short years. I do not think this is an intemperate statement. Mr. Roosevelt has been quoted in this discussion. Nobody can challenge his devotion to liberal principles. He spoke to the Convention in Ohio in 1912 and he warned them against this very thing. Let me read, — it will take just a moment, — some of the things he then said:

> The power to invoke such direct action both by initiative and by referendum should be provided in such fashion as to prevent its being wantonly or too frequently used. I do not believe that it should be made the easy or ordinary way of taking action.

Mr. Roosevelt went on to say:

> I want to say right here if you do make it easy, — very easy, — you run a great risk of destroying its usefulness in inviting reaction against it. In the great majority of cases, it is far better that action on legislative matters should be taken by those specially delegated to perform the task; in other words, that the work should be done by the experts chosen to perform it.

And again, in the "Outlook," at about the same time, he said:

> It is necessary to guard not only against the cranks and well-meaning people with fads, but also against the extreme laxity with which men are accustomed to sign petitions.

Those are the words of Theodore Roosevelt.

One of the great arguments in favor of the short ballot is that too many names on the ballot tend to confuse the voter. Is there not very great danger that if we have too many legislative measures on the ballot the same difficulty will confront us and result in confused voting by the electorate? Not long ago Mr. Herbert Croly, a man who has written much of real value on political and economic questions, stated the somewhat obvious fact that the subdivision of executive power has diminished administrative responsibility, and he went on to say that:

> The leaders of the new democracy who are converted to a shorter ballot, should consider seriously whether the tendency of unlimited initiative and referendum will not be to bring about a similar disintegration of the legislative power and in the end a similar laxity in its exercise.

Mr. Underhill of Somerville: The amendment which follows that of the gentleman from Middleborough, bearing my name, seeks to accomplish the same result as the gentleman from Middleborough wishes to accomplish, — that is, to require a percentage rather than a fixed number of voters to sign initiative petitions. Mine calls for a slightly increased percentage, but I am willing to accept the amendment of the gentleman from Middleborough, as it seeks to accomplish the same result. Our growth in the last few years has been at the rate of about 10,000 to 15,000 registered voters a year, and if that continues, as the gentleman from Middleborough has stated, we shortly will find ourselves in a position where 2 per cent or $2\frac{1}{2}$ per cent of the voters can force upon the rest of the community a campaign for or against a certain measure. It is for the purpose of keeping pace with the increasing number of voters each year that a percentage qualification is preferable to a fixed number. I trust the amendment of the

gentleman from Middleborough may pass, and I shall not urge my amendment if it does.

Mr. CHURCHILL of Amherst: In presenting the view of the minority of the committee, I have to add only a word or two to what has been said. It has been made perfectly plain that there are but two States among all the States that have the initiative and referendum that have set a definite figure rather than a percentage. This makes it perfectly plain that no objection can lie against the second amendment on the basis that it tends to make the measure unworkable. It is equally plain that the percentage method takes account of the total number of voters, whereas a fixed number of voters is a certain percentage at this time and may be an entirely different percentage at another time. The percentage as it stands to-day in the proposition of the proponents of the measure is, with the exception of the constitutional 25,000 which has now been adopted instead of 40,000, about the same as the lowest demand, with one or two exceptions, in all the States. Five and 8 per cent is about the usual proportion, as the members will see by referring to the document which gives the figures for the different States. Now the question is, what is the objection to the percentage method? Personally, Mr. President, I am unable to see any objection to the method, except that it does make it more difficult in succeeding years. If you establish a fixed number to-day and keep that fixed number, it is very clear that presently, either through the ordinary increase in our voting numbers or through the acceptance of woman suffrage, we shall find that this number is very much less than the percentage required by any State; and of course it would make it easier for the initiative and referendum petition under those circumstances. The only question is whether there is a special reason why that can be justified in Massachusetts. The only ground that I can see for justifying it in Massachusetts must be that for some reason or other an initiative petition ought to be made easier for Massachusetts than elsewhere. The amendment cannot be opposed because it will make this measure unworkable, or else we shall be obliged to say that the initiative and referendum has been unworkable in all these other States. The basis is made clear, Mr. President, by the proponent of the amendment. It seems to me that we should adopt in Massachusetts the methods that have been adopted in practically all the initiative and referendum States, and have a fixed percentage of our total voting population; for the essence of the requirement is that a certain proportion of our voting population should demand a measure by their signatures to the proposition, before it is justifiable to put it before the people and require their consideration and decision.

Mr. WALKER of Brookline: It is quite refreshing to me to hear the conservatives urge this Convention to follow the example of western States in regard to the initiative and referendum. Generally they are urging us to neglect the example of the western States, and to do as we please ourselves. It also is interesting to hear a gentleman refer to the opinion of ex-President Roosevelt. I do not know how much influence his name will have in this particular Convention, but I might state, Mr. President, that this measure, substantially as it is now, was sent by me to Mr. Roosevelt personally, and I have talked with him about it and have an autograph letter from him saying that he thoroughly

approves of it. I should not have ventured to quote him myself, but as he has been referred to I might say that.

The question has been asked why it is that Mississippi should require a fixed number of signatures rather than a percentage. I can answer that question. Mississippi is the last State to adopt the initiative and referendum, and those who are most interested in the initiative and referendum have determined that a fixed number is much better than a percentage. I will say that Mr. King, the secretary of the Popular Government League in Washington, drew the Mississippi measure and went down to Mississippi to advocate it, and had the backing of all the real friends of the initiative and referendum throughout the country. It is the latest, the most modern, and on the whole I think the best, initiative and referendum measure that has been adopted in any of the States.

There are obvious advantages in having a fixed number. People get used to it. They know just how many signatures they must have, and the number does not vary from year to year. That is one advantage.

But let us consider the reason for a large number of signatures. That is the real point. You will find in that question the answer to the question asked by the gentleman from Middleborough as to why we should have a fixed number rather than a percentage. Why do we ask for a large number of signatures at all? Why not allow any ten men, or any one man for that matter, to appeal to his fellow-citizens and ask them whether or not they will pass a law? Any one man may ask this Legislature whether or not it will pass a law. Any one citizen may petition Congress and ask it to pass a law. It is the custom in Massachusetts if any one citizen petitions the Legislature to have it introduced into the Legislature, considered by a committee, reported to the House or Senate and acted upon, — upon the petition of any one citizen. Therefore, why not allow one citizen to appeal to his fellow-citizens as to their judgment in passing a law? It is purely a practical question. The answer is: Because if we permit that to be done too many questions would get on the ballot. Now, why should we say 5 per cent or 8 per cent or 10 per cent? We say a certain per cent because we want to make that per cent just high enough to make it so difficult that too many matters will not get on the ballot. That is the reason why they have higher percentages in some of the western States. Take a State with a very small voting population, and 15 per cent is a small number of actual signatures. Although it is said here that if we adopt 8 or 5 per cent, as some of the States have adopted, it will be only the same per cent that other States have adopted. That is true, but let me remind you that there are only two States under existing conditions that would require more signatures than Massachusetts, California and Ohio, simply because they are such very large States.

A lot of unnecessary signatures is a nuisance. It is a nuisance in collecting them. It is a nuisance to the officers who have to count and certify them. What we want to do is to provide for a sufficient number of signatures, and stop there. It is practically as hard to get 20,000 signatures in a community with 650,000 voters, such as we have to-day, as it is to get them in a State with a million voters. In

a thickly populated community like this you have to go around and collect 20,000, 30,000 or 40,000 signatures, and what difference does it make if there are more or less voters? The scientific way to deal with this question is to decide upon what is a reasonable number of signatures to act as a sufficient brake upon a petition, so that too many matters shall not get on the ballot. If you fix that amount, then that should be written in the resolution. It should not vary from year to year. There is no good reason, not the slightest good reason, why, if the voting population should double when we get woman suffrage, we should require double the number of signatures. In fact, there is every reason why we should not double the number of signatures, because, as I say, to require that there be collected an unreasonable number of signatures is no advantage to anybody but is a defect in the measure.

The amendments moved by Mr. Washburn of Middleborough were adopted, by a call of the yeas and nays, by a vote of 113 to 112.

Mr. Josiah Quincy of Boston moved that the resolution (No. 359) be amended as follows:

By inserting after the word "Commonwealth", in line 51 (as printed), the words ", or if a proposed law is introduced into the General Court by recommendation of the Governor by message"; by inserting after the word "petition", in line 55, the words ", or in the form in which it was originally recommended by the Governor or in such amended form as the Governor may by message approve or substitute, as the case may be"; by inserting after the word "if", in line 57, the words ", in the case of a law proposed by initiative petition,"; and by inserting after the word "aforesaid", in line 63, the words ", or if, in the case of a law recommended by the Governor, a certificate is filed by the Governor with the Secretary of the Commonwealth not later than said first Wednesday of August calling for such submission".

Mr. Quincy of Boston: I do not desire to introduce, without giving the Convention an opportunity to see the amendment before it in print, any matter which is in its nature novel or complicated; but I think that the members of the Convention will grasp the fact that these amendments, which I shall ask later to have treated as one, because they hang together, simply propose to introduce into this section of the initiative and referendum measure before us the principle of the executive initiative, which already has been discussed in connection with the constitutional section of this measure and is embodied in the so-called Loring amendment as it now stands in the measure. It seems to me that it is altogether logical, proper, and desirable, that step having been taken in the Loring amendment, — and I think very properly taken, — to endeavor to incorporate a precisely analogous provision in the section of this initiative and referendum measure relating to legislation. The proposition in brief is merely this: That the recommendation of the Governor shall be placed upon a parity with the signatures attached to an initiative petition, and that the Governor shall have the same privilege of bringing a measure recommended by him before the people for adoption or rejection by them which twenty-five thousand signers have under the machinery of the popular initiative and referendum. The amendments which I have moved do not in any way interfere with or restrict the machinery already incorporated in this measure. They do not interfere in any way with the section as it stands. They merely provide an additional means whereby a

proposed law can be initiated, — namely, by recommendation of the Governor, — and if so initiated whereby such a proposed measure can be submitted to the people for their decision upon it. In the case of a constitutional amendment there did not seem to be any need of the provision for the filing of a certificate by the Governor calling specifically for such submission. In the case of a law it seemed to me desirable to incorporate the same provision in this respect which is incorporated in Document No. 311, dealing with this same subject, reported long since by the committee on the Executive. That is to say, the Governor should be given an opportunity, on mature reflection, and after he has seen the action taken by the General Court upon his recommendations, after he has seen perhaps an alternative measure submitted by the General Court, to decide not later than the first of August whether the Legislature, although it has not adopted his particular recommendation, has dealt with the question to his satisfaction, — so that there is no need of going to the people with the question whether it is desirable that the issue as he formulates it should go on to the people, as the final tribunal, for their decision. With that exception I think the Convention will fully understand that the present amendments simply apply to the case of laws the principle of the executive initiative, which the Convention already has voted to apply, as one provision of the Loring amendment, to the case of constitutional amendments; and the case for a gubernatorial initiative in respect to laws certainly is stronger even than the case in favor of a gubernatorial initiative for constitutional amendments. I hope, therefore, that the amendments which I propose, — which are merely the embodying in this particular measure of the proposal long since reported by the committee on the Executive, — will be acceptable to the majority of the committee in charge of this measure, and will be approved also by the members of this Convention.

Mr. Williams of Brookline: I should like to ask the proponent of this measure what proportion of votes by the electorate is required in order to adopt a measure initiated by the Governor, whether as set forth in the provision for amending the Constitution, namely, a certain per cent of the votes, or a majority vote in favor of the measure.

Mr. Quincy: To answer the gentleman's question, there is no restriction of any sort imported into the section as it now stands, therefore there is no change in respect to the vote required for the adoption of a law, whether initiated by the people or whether initiated by the Governor.

Mr. Williams: In order to make it clear to my mind, I understand it requires a majority vote of those voting?

Mr. Quincy: It requires only a majority of those voting thereon. It does not require anything else.

Mr. Underhill of Somerville: It would be a great deal better for the Convention to follow the suggestion of the gentleman from Brookline (Mr. Anderson) and take up the matters as they appear upon the docket or the calendar and allow these new amendments as they are offered to go into the calendar that they may be printed, and perhaps we may digest them. If the gentleman will offer these amendments later, so that they may be printed, it will be much better for the Convention.

Mr. George of Haverhill: I understand that this subject-matter

which the gentleman from Boston is trying to inject into this proposal, is already on the docket to be considered later. It seems to me that it ought to take its regular course; it ought not to be injected into this proposal. I know there has been an effort here among certain delegates to install a dictator in the office of Governor. Previously to 1789 we had a dictator, and the people of that period decided that they did not want one. The people of Massachusetts know now that if a Governor does his duty, as he should, and attends to the business that he ought to attend to, he has all he can do, and, in some respects, has more than he can do satisfactorily to himself. I hope this amendment will not be acted upon hastily; in fact, I want to see how it reads in print. I am rather suspicious of these newfangled notions. We tried them some years ago in some cities in this Commonwealth, and every one of them proved a failure. Now, there is one difficulty with the Governors of Massachusetts in recent years. We have had political Governors. The last business Governor was the late Eben S. Draper, and since then we have had nothing but political Governors, and they have had all sorts of trouble. John A. Andrew never had any trouble. Alexander H. Rice never had any trouble. A long line of Governors, even Governor Russell, had no trouble, until we came down to the year 1911. Then we began to have trouble. Now the gentleman from Boston wants to make a provision whereby a Governor of the Commonwealth can make more trouble. And mind you, within five or six years they have increased his contingent account over in the treasury department to something like $100,000, and he will be chasing all over the Commonwealth, advocating this law and that law, and advocating this amendment and advocating that amendment to the Constitution, when he ought to be at the State House attending to the business of the office. I hope this matter will go over and be printed, so that we can look into it. It needs looking into very badly.

Mr. Buttrick of Lancaster: This seems to be a decided change in the committee's proposition, and I move that further consideration of these amendments be postponed until to-morrow, and that they be printed.

The motion to postpone the consideration of the amendments moved by Mr. Quincy prevailed.

Mr. Roland D. Sawyer of Ware moved that the resolution (No. 359) be amended by adding at the end thereof the following paragraph:

The General Court shall provide by rule that, on all reports based on initiative petitions, debate at some stage thereof [A] shall, in the case of a proposed law, continue for at least six hours, and, in the case of a proposed amendment of the Constitution, for at least ten hours, unless sooner closed by unanimous consent.

Mr. Sawyer of Ware: One of the objections to the initiative and referendum, made by its opponents here in the Committee of the Whole, was that the public would not be informed and would not take interest. Now, we can guard against that by having a full opportunity for debate in the Legislature. We all know that the rules of the Legislature are such that the majority vote can shut off debate at the end of ten minutes. Now, Mr. President, this provides that, unless by unanimous consent, by a special rule, the Legislature should provide at some stage for a full and free discussion. If the discussion ended naturally, and there was a willingness on the part of the members, by unanimous consent the discussion might close in half an hour's time or an hour, but a

special rule would have to be adopted, allowing one day's debate to a law and two days to a constitutional amendment. I believe, Mr. President, that it would be a valuable asset to the initiative and referendum if this amendment could be adopted.

Mr. Horace I. Bartlett of Newburyport moved that the amendment moved by Mr. Sawyer be amended by striking out, at [A], the word "shall", and inserting in place thereof the word "may".

Mr. Lincoln Bryant of Milton moved that the amendment moved by Mr. Sawyer be amended by striking out, at the end thereof, the words ", unless sooner closed by unanimous consent."

Mr. Bryant of Milton: It seems to me that this illustrates pretty well some of the features of the initiative and referendum. We are asked to provide by enactment, by solemn enactment of the Constitutional Convention, that the Legislature shall discuss certain matters that we think will be brought up under the initiative. What a commentary, Mr. President, what a commentary on this great form of government that we are now to initiate in Massachusetts! The objection of some of the opponents of the initiative that there would not be sufficient discussion was not that the majority would cut off debate by moving the previous question unless they happened to be members of this particular Convention and carried over their habit from this. The objection was that there would not be interest enough to discuss it when the Legislature knew that the question was going on the ballot whether they discussed it or not and whatever they chose to do about it, provided ten public-spirited citizens of the Commonwealth were not satisfied with something that the Legislature had done for their benefit. I think it would be very much better, and I should like to move, Mr. President, that every citizen of the Commonwealth of Massachusetts must read any bill proposed by initiative; but I am not going to move it, because it is obviously impracticable. In order to get any good out of this amendment, I think it ought to be provided that the Legislature shall perform their duty, and therefore I move as an amendment to strike out the words ", unless sooner closed by unanimous consent."

The amendments moved by Messrs. Bartlett and Bryant were rejected and the amendment moved by Mr. Sawyer was rejected.

Mr. Joseph Walker of Brookline moved that the resolution (No. 359) be amended by adding at the end thereof the following paragraph:

Subject to the veto power of the Governor and to the right of referendum by petition as herein provided, the General Court may amend or repeal a law approved by the people.

This amendment was adopted.

The same gentleman moved that the resolution (No. 359) be amended by adding at the end thereof the following paragraph:

This article of amendment to the Constitution is self-executing but legislation not inconsistent with anything herein contained may be enacted to facilitate the operation of its provisions.

Mr. Underhill of Somerville: I may be rather dense, but I hardly understand this provision. I should like some explanation from the gentleman from Brookline.

Mr. Walker: We wish simply to make it perfectly clear that the initiative and referendum should take effect without further legisla-

tion, but that the Legislature, from time to time, might pass any legislation not inconsistent with it to facilitate its operation. I will say that such a provision as that is common in initiative and referendum measures. I personally wondered just what the word "self-executing" meant, but I consulted Mr. Evans, the head of the commission to give us information, and he assures me that it is a perfectly good legal term, a common term, and that in his opinion such a provision as this ought to be incorporated in our measure. I do not think it affects the measure one way or the other, but it simply makes it clear that we intend to give the Legislature full power to do such things as it chooses to do not inconsistent with the provisions of the initiative and referendum.

The amendment moved by Mr. Walker was adopted.

Mr. Joseph Walker of Brookline moved that the resolution (No. 359) be amended by striking out, in line 193, the words "Secretary of the Commonwealth", and inserting in place thereof the word "Attorney-General".

Mr. UNDERHILL of Somerville: Why the Attorney-General?

Mr. WALKER: The provision now is that the description of the measure should be prepared by the Secretary of the Commonwealth. It is apparent that that is a legal question which requires a legal mind to determine. That is, the bill must be read and a description prepared to go on the ballot. It seemed to the majority of the committee on Initiative and Referendum, and to all those, in fact, every one whom I have consulted, that if we were to have either one officer or the other it ought to be the Attorney-General rather than the Secretary of the Commonwealth, because it is the business of a lawyer to do that sort of thing. We wish some one too, of course, who so far as possible will be disinterested and who will try to make up a description that will describe fairly the substance of the measure.

Mr. UNDERHILL: If I were a lawyer I should not want to be Attorney-General if this measure should be adopted. I should think the amendment immediately preceding this one, which I take to have the same or a similar application, which is fathered by the gentleman in the first division (Mr. Balch), would be a much better amendment for the Convention to adopt. That amendment provides that the Secretary of the Commonwealth, the Governor and the Attorney-General, three in consultation, shall decide by a majority vote, that is, the Governor and Attorney-General or the Governor and Secretary of the Commonwealth may decide. Now, if we are going to make the change from the Secretary of the Commonwealth to the Attorney-General, why not include them both, add the Governor, and in that way we shall have the opinion of those three officers and no one will have to bear the burden of blame if any blame is attached to the wording of the amendment. I should think the gentleman would prefer to accept that proposition rather than the one under his own name.

Mr. WALKER: Of course we do not wish to make this measure any more complicated than necessary, or bring any more officers into it than necessary. Many duties are placed upon the Secretary of the Commonwealth under this measure. This particular duty should be performed by a legal mind, and that is why we ask for the substitution. I do not believe there is any necessity of dragging the Governor

into this matter; he has plenty of other things to do, and I do not know just why he should sit down and attempt to determine what the description should be.

Mr. GEORGE of Haverhill: I hope the Attorney-General will not be directed to provide for too much. We should not give too much to the legal mind, because frequently that leads to trouble. One time we had in this State an agitation in favor of increasing the number of members of the Superior Court, and the committee on the Judiciary recommended that there should be appointed two additional judges. It came to the committee on Ways and Means, and the chairman of the Judiciary Committee appeared and said that of course we were a very busy committee and he did not want to take up our time, but he added: "I have a letter here from the Honorable Chief Justice", which he submitted and then left. Mr. Lowell, who afterwards was judge, was presiding. He read the letter, and we made up our minds that we did not need any additional judges, and therefore we reported accordingly. Finally we had to take the report back, and we had to have two lawyers come in to tell us what the judge's letter meant. Now, we should be unfortunate if we had questions go on the ballot that would require other lawyers to tell us what we were voting for. I think I can agree that the Attorney-General would be a good man, if you want a lawyer. If you had some man who could frame practical questions, so that laymen could understand them, I think we would get along very much better. Not only this, but the gentleman from Cambridge (Mr. Hart) told us the other day that the question that went on the ballot ought not to tell what was involved, — it was for purpose of identification; and further contended that it ought not to describe it. It simply ought to identify the particular act that is to be voted for. Now it seems that the Attorney-General is to undertake to tell what an act means, give a synopsis of it; he is to do it with a legal mind and with a legal purpose; and it seems to me that it would be a great deal better to leave it to the Secretary of the Commonwealth, as it was intended originally. I certainly should not want to add the Governor. I think that would make it worse. The more people you have the more trouble you make.

Mr. CREAMER of Lynn: I should like to ask the gentleman who has just taken his seat if he can give us any guarantee that at some time or other the Secretary of the Commonwealth may not be a lawyer.

Mr. GEORGE: I cannot give that guarantee, because I find that lawyers hold almost any office. We have three kinds of lawyers. We have lawyers who are very eminent and very useful. Then we have business lawyers, who are very useful. Then we have lawyers without business, and those are the people who usually get into these offices.

The amendment moved by Mr. Walker was adopted.

Mr. Robert Luce of Waltham moved that the resolution (No. 359) be amended by inserting after the word "Commonwealth", in line 111, the words ", and no private or special law and no law entailing the appropriation of money".

Mr. LUCE of Waltham: There is printed on page 9 of the calendar an amendment relating to the exclusion from the operation of the resolution, which I should like to move in a slightly different form. Since notice was given of this amendment the extension of the wording apparently has covered sufficiently local laws, and so perhaps it will be

wiser to make further change, if that shall commend itself to the Convention, by inserting after the word "localities", which we inserted previously, the words "and no private or special law and no law entailing the appropriation of money." The purport is the same as printed.

The argument as it presents itself to me is this: As on a previous occasion I have called to the attention of the Convention, it is the general belief of all students of our legislative institutions that the great source of criticism is in special legislation. This Convention, before it adjourns, may see fit to follow about 40 other States that have tried to remove this source of corruption and distraction and evil from legislative halls, by keeping special legislation out of the Legislature. Should we do that, would it not be manifestly inconsistent for us to turn it over to the popular vote? Is it not most undesirable that men, whether individuals or in groups, seeking special favors from the Commonwealth, seeking opportunities for aggrandizement perhaps, at the cost of the general welfare, shall have put at their command a new opportunity when, with the other hand, we are trying to take away an old opportunity? I think on a previous occasion I have pointed out that what venality exists in American legislatures exists not through constructive legislation but through the killing of legislation; that where the money is spent, — in my own judgment very little of it is spent in this room, — but where in other States of the land graft and corruption are rampant, the money is spent chiefly for the purpose of preventing legislation, since it is well known that selfish interests cannot in all probability secure positive legislation by the passage of an act through two branches and then its signature by the Governor. Here, however, a door will be opened to men who now cannot get special favors from legislatures in the way of constructive legislation. A door will be thrown wide open for them, through fraudulent acts, through appealing to passion or prejudice or self-interest, to secure grants of power, privileges and opportunities which they could not receive if they came to the legislative body. For this reason, sir, I greatly hope the scope of the initiative and referendum will not extend to special legislation.

Furthermore, I hope it will not extend to appropriations of any sort. Appropriations, sir, in all the history of mankind, have been the greatest temptation to popular assemblies. Rome under its emperors yielded to the cry of "bread and the games." The people in their collective capacity ask and are willing to receive largesses at the hands of their rulers, and have been so willing at all stages of the world's history. It is well known wherever the initiative and referendum has been tried, — I could bring you citation after citation, — that the measures which appeal to the cupidity of mankind are those which get the heartiest support. The voters in the mass do not take an active interest in abstract or in ethical subjects; they do take a very keen interest in that which can advance their personal fortunes; and if the opportunity is given for self-seekers, for a political faction, or a political party, to invite support by dangling before the electorate the opportunity to get something out of the public treasury, that will be the most powerful lever to advance bad government in this Commonwealth that can be submitted.

What is there in the Legislature to which we give our most earnest

attention, which most perplexes us, most harasses us? It is the expenditure of the public money. The work of the Ways and Means Committee is the most difficult, the most arduous and the most thankless in the whole range of legislative occupation. It was my fortune to fill the ungracious position of the chairmanship of that committee for a year, and I learned the difficulty of saying "No", and I saw legislatures tempted to say that easy word "Yes." I saw again and again specious pleas made within these walls, urging legislatures to give largesses, to grant the public money without due regard to the shoulders, already overburdened, that must carry additional loads. What will it be, sir, by the operation of the initiative and referendum? You may hold before this or that group of our people an opportunity to get these things, an opportunity that in the Legislature would be scanned carefully by members of committees, that in the Legislature would be discussed on the floor of the House by those bold enough to say "No" to those who sought to get their hands into the public treasury; but once put on the ballot, without that opportunity to appeal to patriotism, to appeal to thrift, to appeal to economy, they would incite the people into extravagances which the imagination hardly can conceive. Sir, all history forbids us to throw wide open without restraint this opportunity for the masses to get their hands on the property of the few.

In the opening of the debate on this subject one of our members, I think almost the first speaker in favor of this form of government, a leader in his profession, prominent in the community, perhaps without having given enough thought to that which he was saying, actually asked us to approve this resolution, if I understood him correctly, by holding out as an inducement and an incentive that if this amendment should be made to the Constitution some men could get their hands on the property of other men, that there would be a redistribution of the wealth of this State, that those who, by thrift and economy, had amassed provision for their old age would be threatened by those who could use the ballot and make up at the polls that which they had neglected to do at the loom or the anvil. I do not believe the speaker realized what he was saying. I do not believe he knew the inference to be drawn from his conclusion. If the Convention passes this measure and puts it before the people I do not believe one single man of us in his heart will do it for the sake of putting it in the power of some men to deprive other men of the fruits of their labor. The moment, sir, that you give an opportunity to use the initiative and referendum for the sake of getting appropriations of money, to be met by taxes that are ultimately to be paid by the poor, that will be shifted by the rich to the shoulders of the weak, the moment that you put before the people that opportunity, who, sir, can predict what will follow?

Mr. CREAMER of Lynn: I should like to ask the delegate from Waltham if most laws do not involve the appropriation of some money. Has he not stated it too broadly here?

Mr. LUCE: If I have it too broad I invite the coöperation of my friend from Lynn to make it right. I am talking for the principle, not talking for the phraseology.

Mr. CREAMER: I should like to say in further comment on the argument of the delegate from Waltham that this phrase "no law entailing the appropriation of money", would prevent, as far as I can under-

stand it, the introduction of laws under this method in regard to old age pensions, in regard to workmen's compensation. It seems to me that for that reason alone this amendment is fundamentally unsound. It is too broad, in the first place, and in the second place it would forbid the initiation of laws in regard to the subjects of workmen's compensation and old age pensions. I submit to the delegates of this Convention that the amendment is fundamentally unsound.

Mr. LUCE: I am quite certain from what the gentleman from Lynn has said that he and I would not be far apart in our endeavor in this direction. Had he served in the House of Representatives he would have known that under the rule of the House which requires all propositions entailing the expenditure of money to go before the committee on Ways and Means, as a matter of fact only a small percentage numerically of the bills get there; but if the wording of this measure should not meet the purpose that he has in mind, and with which I have some sympathy, possibly we may work out some better wording. Inasmuch as perchance there may be other members who would desire to coöperate to the same end of perfecting this measure, I hope the matter will be laid over until to-morrow. I move that the matter be laid over until to-morrow.

The motion to postpone the consideration of the amendment prevailed.

Mr. Charles G. Washburn of Worcester moved that the resolution (No. 359) be amended by inserting after the word "penalties", in line 185, the words "for the signing of any such petition for money or other valuable consideration and".

Mr. WASHBURN of Worcester: Desirous of having my name associated with an amendment of a perfecting nature, I now move the amendment on page 11 introduced under my name, and I will add that I have been so anxious to have this amendment adopted with substantial unanimity that I have consulted the majority of the committee on the Initiative and Referendum, to whom at the time I consulted them the amendment was acceptable.

Mr. WALKER of Brookline: I wish to say that it gives me the greatest pleasure to accept the amendment, as far as I am concerned, of the gentleman from Worcester.

The amendment was adopted.

Mr. Josiah Quincy of Boston moved that the resolution (No. 359) be amended by inserting after the word "signers", in line 89, the words ": *provided*, that no initiative petition shall be so filed until it has been submitted to the Attorney-General [A] or to [D] an officer whose duty it is to assist members or committees of the General Court in the drafting of bills and the constitutional amendment or law which is the subject of the petition has been certified [B] either by the Attorney-General [C] or by such officer [E] to be in proper form for submission to the people".

Mr. WILLIAM S. KINNEY of Boston: I should like to inquire from the gentleman who moved the amendment as to what officer there is authorized to assist members or committees of the General Court in the preparation of bills.

Mr. QUINCY: The language used is intentionally general. Perhaps the office referred to of bill drafter, to call it by that name, is not definitely enough established to give it a title, such as that of Attorney-General; but those who agreed upon that language are satisfied that

the present legislative practice in each branch, of having an officer specially selected and designated for the purpose of assisting members to draft bills, is likely to continue.

Mr. KINNEY: I should like to ask the gentleman to name anybody or any officer to whom it is now the general practice in the Legislature, in either branch, to refer measures for preparation.

Mr. MANCOVITZ of Boston: In response to the inquiry of the gentleman in the second division, I should like to inform him that Mr. Merwin, who was employed by the Committee on Rules on the part of the House, assists members of the House in drawing bills and I believe Mr. Dorman acts in the same capacity for the Committee on Rules on the part of the Senate.

Mr. George B. Churchill of Amherst moved that the amendment moved by Mr. Quincy be amended as follows: —

By striking out, at "A", the words "or to an officer whose duty it is to assist members or committees of the General Court in the drafting of bills"; by striking out, at "B", the word "either"; and by striking out, at "C", the words "or by such officer".

Mr. CHURCHILL of Amherst: I offer this amendment, the purport of which is plain enough, to require that the officer who shall certify shall be the Attorney-General, and not leave the matter for the decision of officers whose duty it is to assist members or committees of the General Court in the drafting of bills. It is a little difficult, Mr. President, to explain quite fully without arousing criticism the object of this amendment. In essence the object is this: That we shall have a responsible officer, an officer who is known to the public, who is an elected officer, to certify that there are no mistakes. If this is left to an officer whose office itself is indefinite or rather indefinite, whose name is unknown and whose position, however skilful he may be, is simply that of a clerk to committees and members of the Legislature, it seems to me that it will be plain that a bad mistake may be made without anybody's being held responsible for it. That such mistakes are possible, Mr. President, even under the most careful, painstaking handling of the drafting of bills, every member of the Legislature knows. I do not wish to criticize any of these officers, and yet it is perfectly certain that mistakes have occurred, mistakes which would change even the complete nature of a bill, mistakes which sometimes have been seen before the bill has passed and sometimes have not been seen till the bill has passed. There are plenty of such instances that can be given.

Now, what is the object of this measure? The object is to have a certification by a responsible party. The objection to confining it to the Attorney-General appears to be that it is confined to one man. As far as I am concerned, I can see no objection to that, but I should not have any objection to the putting in here of a further proper responsible and known officer. But to put it up to a clerk, however skilful, and have him certify, means that you are putting it up to a person not responsible to the people, and mistakes are more likely to occur. We ought to put it up to the highest legal authority we have in office. We ought to put it up to a person who knows that if he makes a mistake, or a mistake is made in his office for which he is responsible, it will redound to his confusion, and then we shall have a proper guarantee against mistake.

I have understood, Mr. President, though I may be wrong, that the general purport of my criticism is recognized as well founded by the mover of this amendment. I take it that his opposition to my amendment, if he is opposed to it, is based on the point that it is desirable to have more than one single officer; and I should be very glad, so far as I am concerned, to accommodate my amendment to the addition of some other responsible officer or officers. But I move the amendment, and I suggest to the gentleman, if the general criticism is approved by him, that possibly a form can be arranged which will be satisfactory to both sides.

Mr. PILLSBURY of Wellesley: The amendment offered by the gentleman from Amherst clearly ought to be adopted, and these things should go to the Attorney-General. While it would seem that we are putting a good many duties upon that already overworked officer, in the practical conduct of the office many minor duties of this character have to go to one of the assistants, and the result will be, probably, in actual practice that if we send it to the Attorney-General, as we should upon the reasoning of the gentleman from Amherst, we shall have at least the security of the opinion of an Assistant Attorney-General, which ought to be enough.

Mr. Robert P. Clapp of Lexington moved that the amendment moved by Mr. Quincy be amended as follows:

By striking out, at "D", the words "an officer whose duty it is to assist members or committees of the General Court in the drafting of bills", and inserting in place thereof the words "such other officer or board as the Legislature may designate or provide for the purpose"; and by inserting, at "E", the words "or board".

Mr. CLAPP of Lexington: I should like to ask the delegate from Amherst, and perhaps also the delegate who last took his seat, if it would not be an improvement to make it read that we submit it to the Attorney-General "or to such officer as the Legislature may designate or provide for the purpose." This is something that is going into the Constitution. It will stay there for a good many years. Perhaps in the future the Legislature may see fit to create the office of bill clerk, or something of that kind. It might be desirable that in doing so the Legislature should have the right to designate such officer or some officer to perform the particular duty in question.

Mr. WALKER of Brookline: I wish to say that a provision of this kind is not found in any initiative and referendum law in the United States. It is a very great power to give. It compels every petitioner to go to a particular officer and get his approval before the petitioner can put it before the General Court or even file it with the Secretary of the Commonwealth, and so we should be rather careful how we grant it. I have assented to it with some hesitation, but on the whole I believe that it is a wise provision to allow the Attorney-General to look over these various measures before they are filed and to see that they are in proper form. It is the very beginning of the process. Any one who wishes to file a petition goes to the Attorney-General first. But I am quite unwilling to have the matter left with one officer. An Attorney-General might be prejudiced and put the petitioners to unnecessary trouble. Under such a provision they are obliged to go to the Attorney-General and get that one man's assent. On the other hand, I realize that the language used here may be open to some

criticism. It simply says "an officer whose duty it is." As a matter of fact, these officers who have been referred to, — Mr. Merwin of the House and Mr. Dorman of the Senate, — are appointed by the committee on Rules of each body, and they are the official, as far as we have any official, bill drafters. Many of the other States provide that their bill drafting department may assist people, or shall assist people, who are about to file petitions for laws, but they do not say that they must or that there cannot be a petition for a law filed that is not approved by them. I am inclined, Mr. President, now to accept the suggestion of the gentleman from Lexington. It is proper to say "the Attorney-General or such officer as the Legislature may provide for this purpose." That is practically the way it is in the resolution now, because both of these officers have been appointed by the Legislature for the purpose, and so I am willing to leave it that way, that it shall be the Attorney-General or such other officer as the General Court may provide.

Mr. CHURCHILL: I should like to ask the gentleman who has just taken his seat a question, if he will be kind enough to answer it. I understand that one point of his objection was that the Attorney-General, a single officer, possibly might be prejudiced. If I understand his suggestion, "or to an officer whose duty it shall be", would not that be a single officer, who also as an individual might be prejudiced? Is not the proper thing to do to require either one responsible man whom we can trust or have the matter go before more than one responsible man?

Mr. WALKER: The way the matter reads now, any group of petitioners, when they get their measure ready, may take their choice; they may go to the Attorney-General and get his approval; if he refuses it, they may go to either one of the other officers. They may take their choice and go to one of the other officers. In other words, it gives them a choice of three men. If any one of those three men says that this matter is fit to go on the ballot, then it may go on the ballot. I think, as I say, I am willing to adopt the suggestion of the gentleman from Lexington and to say "the Attorney-General or to an officer authorized by the General Court." I believe the time is coming when we are going to have a responsible bill drafting department here in the State House. That is what we ought to have. We have needed it for years. I believe that department will be established some time. When that department is established that will be the proper department to which to send these petitioners.

Mr. BALCH of Boston: I call attention in this debate to a notice of intention to move an amendment on page 12 which is germane to the subject-matter now in hand. My motion on that point applies to a different point in the measure, but the central idea of it is particularly apropos at this point. It seems to me that if you gentlemen of the Convention said that the method I have suggested of checking up form is a good one then it might be applied here. That would lay the burden of checking up form on the Governor, the Attorney-General and the Secretary of the Commonwealth, or a majority of them, putting it out of the power of one man to hold up legislation by captious objection, and turning over to perhaps the three most powerful, and presumably effective, public servants we have in that line the work of passing on the form. If it is in order, I will move an

amendment to Mr. Quincy's amendment printed on page 6, similar in purport to the amendment printed under my name on page 12, to the effect that the petition shall be passed upon as to form by the Governor, the Attorney-General and the Secretary of the Commonwealth, or a majority of them.

The PRESIDENT: The Chair will ask the member to put his amendment in writing.

Mr. LUMMUS of Lynn: The amendment now before the Convention seems to be one upon which there is no substantial difference of opinion, and I submit that all that is needed is for these gentlemen who have expressed themselves on this matter to get together for five or ten minutes and they will evolve a form of expression that will satisfy every one. As there seems to be no need of extending the session to-night for the purpose of enabling them to do that in the Convention when they might just as well do it out of the Convention, I move that the Convention do now adjourn.

Without action on the pending amendments the Convention adjourned and the consideration of the amendments was resumed Wednesday, October 17.

There being no objection Mr. Quincy of Boston accepted the modification of his amendment as suggested by Mr. Clapp of Lexington.

Mr. PARKER of Lancaster: I trust that the amendment proposed by the gentleman from Amherst (Mr. Churchill) may find approval in this Convention. As I read the amendment originally proposed by the gentleman from Boston in the first division (Mr. Quincy) it was to make provision for verbal correction, possibly for verbal transposition, possibly improvement in the phrase and text of the initiative measure assumed to have come directly from the people and to express the desire or affirmation of the people. The amendment proposed by the gentleman from Boston seems to me to be objectionable, first, in its provision for a sort of ambulatory excursion of this proposal embodying a popular wish, providing that if its first solicitous appeal for certification and approval shall be denied, the petitioners may go further and find a more complaisant official to pass approval upon the scheme.

I see no reason why such alternatives should be proposed. I see no reason, if there be need to have the spontaneous wish of the people revised and put in intelligent form before it may hope to have any further life, why that proposal should not be submitted first, and submitted only, to the most competent and trustworthy official or tribunal that may be provided. And, sir, in my opinion, supporting in feebler phrase the suggestions of my honorable friend the delegate from Wellesley, yesterday, I believe that tribunal is to be found in the office of the Attorney-General. The Attorney-General is in fact, in faith, and in service the people's attorney, holding no brief for any interest, political or otherwise. If the Attorney-General be not in fact an official such as the ideals of the office contemplate, we may have no faith in any public official, or in the manner in which he may discharge the duties of the office. But certainly it is true, and all of us who from time to time have held the commission of the people and attempted to discharge the duties of this great office know, that from the moment the incumbent takes the oath of his office all thought of partizan interest passes from his mind, and he knows no inspiration for service except the deliberate, non-partizan, faithful performance

of his duties as the attorney of the people. In him, if in any one, the people may have an abiding trust. In his office, by virtue of his assumed and expected knowledge of the law, capacity for the interpretation of phraseology, familiarity with the interpreted adjudications of the court, you might expect not only the most just but the most competent determination upon such questions as the preliminary presentation of an initiative petition may require.

I think that, though there is merit in the suggestion embodied in the amendment of the gentleman from Lexington (Mr. Clapp), it is objectionable in this particular, less desirable than the provision that should make the Attorney-General, not the censor, but the aid and interpreter of the people's will in the phraseology of initiative petitions. The amendment proposed by the gentleman from Lexington suggests that some official of the General Court, created, holding office, by virtue of the will or the selection of the General Court, shall exercise these functions, which in their final action may operate as a veto upon the presentation of a popular petition.

I fear, sir, that no matter how competent, no matter how impartial, this official, the creature of the General Court, might be, consciously or unconsciously his attitude with respect to favoring or disapproving a popular petition might have taint of some political partizanship or some political interest.

I am not in favor, sir, of the policy, the scheme or system, of the initiative and referendum. But, sir, I would face it frankly and discuss it with the utmost sincerity. I do not pretend to be a friend of the measure or to speak in phrases that might make its progress or adoption more easy. But, sir, if we are to have the initiative and referendum in its full operation, let us view it with full appreciation of all its characteristics. Let the people speak freely, act freely; let there be as few barriers as may be at the gates through which they must originally pass. Let their intelligence be tested by presenting it in the form in which they would phrase it; because I believe all the measures, save that proposed by the amendment of the gentleman from Amherst, do present barriers, do restrain this spontaneous initiative will of the people, which is alleged to be the spirit of the policy of the initiative and referendum. Let there be as little restraint as possible, and let it be exercised by that officer who would be most impartial, — the Attorney-General.

Mr. Churchill of Amherst: I do not object to an acceptance by the gentleman from Boston of the amendment offered by the gentleman from Lexington, because I think that of the two forms proposed it makes the question plainer. This makes it necessary, Mr. President, for me to move my amendment in a slightly different form, and I ask permission to change my motion, and to put it in the form of a motion to amend which is now in the hands of the Secretary.

The amendments offered by Mr. Churchill of Amherst, as modified, were as follows: By striking out the words "or to such other officer or board as the Legislature may designate or provide for the purpose"; by striking out, at "B", the word "either"; and by striking out, at "C", the words "or by such officer or board".

Mr. Churchill: I have been reflecting since the meeting of the Convention yesterday upon the amendment offered by the gentle-

man from Lexington, and upon reflection I have found myself unable to believe that there is a necessity or desirability of having a second officer, or other officers, in addition to the Attorney-General. I think the argument of my friend in the second division (Mr. Parker), if it has been closely followed, will appeal to the thinking members of the Convention. The point at issue is really this: Whether, in order to prevent prejudice or a partizan action on the part of the Attorney-General, the highest responsible legal officer elected by the State, it is necessary for us to allow the Legislature to appoint some other officer to whom appeal may be made if the Attorney-General declares that a certain measure is not in proper form.

Now, it is plain that we already have accepted the view of the majority of the committee in the proposal on page 7 of the measure, that each proposed amendment to the Constitution and each law submitted to the people shall be described on the ballot by a description to be determined by the Attorney-General. We all know the criticisms that have been made as to descriptions of measures. We all know how deeply convinced various people are that measures have been passed by the people under a misapprehension caused by a deceptive or mistaken description of the law; and that, to say the least, is a decided danger. Yet gentlemen of the majority of the committee have proposed that the Attorney-General shall have the responsibility of describing laws submitted to the people under the provisions of this resolution. Why then, should he not be trusted to declare whether a measure is in proper form to go before the people? It seems to me, Mr. President, that it is carrying suspicion and partizanship to an unheard-of and unjustified degree when we say we cannot trust the Attorney-General, because he is elected by a party, to decide whether a measure is in proper form to submit to the people. It is not a question of what is contained in it; it is a question of its form.

I think, therefore, Mr. President, that we may safely, whether the Attorney-General be of one party or another, and wisely, showing our confidence in our high elective officers, declare that we intrust to the most responsible legal officer whom we elect, the duty of declaring whether a measure is in proper form, rather than submit it to some subordinate official designated by the Legislature; and I therefore favor the original form of the motion, amended, as I suggest, to confine it to the Attorney-General.

Mr. Clapp of Lexington: When I moved my amendment I assumed the desirability of providing an alternative officer to the Attorney-General; and I think that the amendment worked an improvement in the form of the original amendment proposed by the delegate from Boston (Mr. Quincy). But after listening carefully to the arguments presented by the delegates from Lancaster and Amherst I am convinced that their reasoning is sound. I believe that the amendment offered by the delegate from Boston will be improved still further if the amendment submitted by the gentleman from Amherst shall be adopted. I hope, therefore, that his amendment will be accepted, and that the one which I moved will be rejected.

Mr. Quincy of Boston: Perhaps we are giving to this matter more time than it really deserves. My whole effort in originating this suggestion and urging it upon the majority of the committee, and then offering it as it appears in the calendar, was to provide some competent

legal revision of an initiative measure before it started. Now, personally, I always have been perfectly agreeable to the suggestion which has been formulated by the gentleman from Amherst (Mr. Churchill), that the Attorney-General should be that officer; and if that be agreeable to the majority of the Convention I shall be glad to accept it in that form.

Mr. WALKER of Brookline: I wish to say that I think we are giving too much attention to this particular amendment. It is unimportant. The only point is this: I expect to see some time in the future the Legislature of Massachusetts set up a bill drafting department. If there should be such a bill drafting department it seems appropriate that the Attorney-General's office should be relieved of the work entailed in looking over petitions. There may be a good many of them presented to him that never will get the necessary signers to bring them before the General Court at all. You understand that any ten men may go to the Attorney-General with a bill, and ask him to approve its form. Now, I thought if a bill drafting department should be established by the Commonwealth it might be well to relieve the Attorney-General's office, and allow these men to go before the bill drafting department. I say it is unimportant for this reason: If there was such a bill drafting department, and a measure was not in such form that the Attorney-General thought it wise, he simply would send these men to the bill drafting department; the bill drafting department would assist them in putting it right, and then he would approve it. So it is a comparatively small matter; and, as far as I am concerned, I am perfectly willing to accept the suggestion of the gentleman from Amherst.

The amendment moved by Mr. Quincy as modified by Mr. Churchill's amendment was adopted, as follows: inserting after the word "signers", in line 89, the words ": *provided*, That no initiative petition shall be so filed until it has been submitted to the Attorney-General and the constitutional amendment or law which is the subject of the petition has been certified by the Attorney-General to be in proper form for submission to the people."

Mr. Josiah Quincy of Boston moved that the resolution (No. 359) be amended as follows: By inserting after the word "Commonwealth", in line 51 (as printed), the words ", or if a proposed law is introduced into the General Court by recommendation of the Governor by message"; by inserting after the word "petition", in line 55, the words ", or in the form in which it was originally recommended by the Governor or in such amended form as the Governor may by message approve or substitute, as the case may be"; by inserting after the word "if", in line 57, the words ", in the case of a law proposed by initiative petition,"; and by inserting after the word "aforesaid", in line 63, the words ", or, if in the case of a law recommended by the Governor, a certificate is filed by the Governor with the Secretary of the Commonwealth not later than said first Wednesday of August calling for such submission".

Mr. QUINCY of Boston: After consultation with a number of delegates and taking pains to learn as far as I could something of the sentiment of the Convention in regard to the desirability of bringing up at this time what I believe to be a very important proposition, I have concluded that it will be wise not to ask, at this time at least, to engraft the executive initiative upon the pending popular initiative and referendum measure. My reason for making this motion was to have the legislative provisions of this measure brought into correspondence with the constitutional provisions as they stand after the

adoption of the so-called Loring amendment. I find, however, that there is a considerable difference of opinion among delegates; possibly some do not agree that it is desirable to leave that provision in the Loring amendment; and, in order not to prejudice this very important proposal, as I believe it to be, of the executive initiative, by seeking to engraft it upon a measure which relates, broadly speaking, to a different subject, I desire to ask the leave of the Convention to withdraw the motion at this time.

The amendments were withdrawn.

Mr. Robert Luce of Waltham moved that the resolution (No. 359) be amended by inserting after the word "Commonwealth", in line 111, the words ", or to an individual, association or corporation".

Mr. Luce of Waltham: When this matter was under discussion yesterday, the comment upon it and also the discussion of it after it was laid over, made it seem best for all reasons to divide the proposition. In the original amendment as offered were included the exclusion of private and special laws and also the exclusion of appropriations. It was suggested yesterday that the words "private and special" needed definition. There is force in the suggestion. The words have been used, "private and special", because a large mass of adjudication has made it reasonably clear what they signify. In many of the State constitutions is to be found the phrase "private, special and local laws." I know there is uncertainty. In England —

Mr. Walker of Brookline: I interrupt the gentleman at this time in order to save the time of the Convention. This is a very important amendment, it ought to be studied with a great deal of care, and I should like to propose that the consideration of this particular amendment be postponed until to-morrow, and taken up at that time rather than at the present time. May I make the motion, Mr. President, with the consent of the gentleman?

Mr. Luce: With my complete assent and approval.

The motion to postpone the consideration of the amendment prevailed.

Mr. William S. Kinney of Boston moved that the resolution (No. 359) be amended by inserting, after lines 13 to 47 (as amended), the following paragraph:

No amendment shall be made as herein provided to Part the First of the Constitution, or in abrogation, annulment or repeal of any of the provisions therein set forth.

Mr. William S. Kinney of Boston: The time has arrived in this Convention when no man introducing or speaking on an amendment can be accused of filibustering. I have introduced this amendment not in the spirit of filibustering, not in an attempt to delay the final passage, or final action, rather, upon the question of initiative and referendum; but in an attempt to help work out a measure which, if it shall be finally passed by this Convention and submitted to the people, shall be properly safeguarded and shall safeguard and protect some of the fundamental rights of all the citizens of this Commonwealth. And I hope, sir, that this amendment which I have introduced will receive the earnest consideration of all of the delegates to this Convention, — those who have been termed radicals quite as well as those who have been termed conservatives.

Now, sir, this proposition goes directly to the very fundamental

principles upon which the foundations of the government rest. If the members will turn in their manuals to pages 18, 19 and 20, they will find that, in the contemplation of the founders of the Constitution, each individual possessed certain rights which were declared in the first article of the Bill of Rights to be natural, essential and unalienable rights. And it was the theory of those who framed the Constitution that these rights never were to be subjected to any governmental action at all. In other words, Mr. President, these rights were specifically declared in the Bill of Rights as absolutely individual rights which the Government never should infringe.

Now, Mr. President, we already have voted on this question at an earlier stage in the proceedings under the so-called Dellinger amendment. That amendment excluded from the operation of the initiative and referendum the entire Constitution. The vote upon that amendment was close; the debate upon that amendment, perhaps, was not as exhaustive as it might have been, and it always has been an unsettled question as to whether this Convention really believed that the initiative and referendum should extend to the Constitution. But I submit to the gentlemen who voted against the amendment to make the initiative and referendum apply to the whole Constitution, that the amendment which I have now introduced, limiting the scope of the initiative and referendum and excluding from it merely those great, fundamental principles declared in the Bill of Rights, is much more limited in character, that it leaves open to the operation of the initiative and referendum the frame of government, the exercise of the law-making power, the judicial power, the executive power; in other words, that the whole framework of government and of law-making powers still would be left open to the operation of the initiative and referendum if my amendment is passed. But my amendment will exclude from the operation of the initiative and referendum only such great principles, such great individual rights, as in the contemplation of the framers of the Constitution never were to be subjected to any governmental action at all.

And you will recall, sir, in this connection, that when the Constitution was originally drafted, and as originally adopted, it contained no provision for any amendment to the Constitution at all. In other words, in contemplating these great rights and privileges they never were to be changed, never to be abrogated, never to be annulled nor repealed.

Now, when the Convention of 1820 assembled for the purpose of devising a means of amending the Constitution, — if I may be so bold as to suggest it, sir, — it probably was not within the contemplation of the delegates to that Convention that any one ever would suggest that an amendment should be made in abrogation or annulment or repeal of any of the principles contained in the Bill of Rights. And so, undoubtedly, when they framed the ninth amendment to the Constitution, providing for the present method of amendment to the Constitution, they did not make the specific exception which at this time I am asking this Convention to make. There is no record in the debates of the Convention of 1820 which would lead any one to believe that the omission was anything other than inadvertent.

Now, sir, this suggestion of mine is not a novel nor an original suggestion. Other States which have adopted the initiative and

referendum have made this exception of the Bill of Rights; and I believe, sir, that Massachusetts should be at least as conservative as some other States. I am aware that certain proponents of the initiative and referendum will contend that to waive this exception which I ask would be a serious check upon their whole system, and in private conversation with some of the gentlemen who hold that view, although they have stated that to be their position in general terms, I have been unable to have them point out to me any specific article in part the first of the Constitution which they would now stand here and urge the repeal of, or the annulment of, or the abrogation of. They simply make the broad assertion or statement that they think it unwise to make this exception. They are unwilling, however, to point out any one of those great fundamental principles contained in the Bill of Rights of which at the present moment and in this assembly they would advocate the repeal, annulment or abrogation.

Mr. Hart of Cambridge: Without in the least attempting to oppose the general trend of the gentleman's argument, I should nevertheless like to point out to him one article of the Bill of Rights which he may have overlooked, and which throws some light on the question, inasmuch as it is abrogated already. That is the third article under which the Congregational Church was established in Massachusetts. That article was abolished in 1833 by the substitution of a different article, and therefore has disappeared from the Bill of Rights. I should like to ask the gentleman whether that action does not support the principle of the possibility of abrogating provisions of the Bill of Rights?

Mr. Kinney: In making my original remarks I, of course, was speaking of the Bill of Rights as it stands to-day, and not as it was originally adopted. But to more specifically answer the gentleman, the article which he mentions contained the conception which the founders of the Constitution had of religious liberty. It was the greatest step forward which they were prepared to take at that time, — to establish individual religious liberty. The principle of religious liberty at the time that our honored ancestors framed the Constitution had not been developed, and, sir, it has been finally brought to its full fruition only by the action of this Convention in submitting to the people the amendment which took so much of our time, — the so-called anti-aid amendment.

Now, sir, the action of the Commonwealth at previous times, tracing it all the way through from the adoption of the Constitution in 1780 down to now, has been to broaden the principles of religious liberty rather than to contract them. And I do not consider that the amendments, — the eighteenth amendment to the Constitution which was adopted, and subsequent amendments, and our own anti-aid amendment, — are in abrogation of the principle of religious liberty; rather, sir, are they in extension of it.

Mr. Clapp of Lexington: I should like to call the gentleman's attention to the fact that if the Loring amendment stands and this amendment is adopted in the form proposed by the delegate from Boston, it will be impossible to amend the Bill of Rights otherwise than by a Constitutional Convention. And I ask him if that is what he intends.

Mr. Kinney: I am aware of that, sir. I am aware that the Bill of Rights, if my amendment is adopted and the present measure relating to the initiative and referendum is passed in its new and present

form, — that is, with the Loring amendment intact, — thereby repealing the present ninth amendment to the Constitution, that the great principles contained in the Bill of Rights will be subject to amendment thereby only by the action of a Constitutional Convention submitting an amendment in abrogation, annulment or repeal of them, and the adoption by the people of an amendment so submitted by a Constitutional Convention. I believe, sir, that such provision is wise. I believe that any one of these great principles is so important, so vital to every individual citizen of the Commonwealth, that to place them in a position where it will be necessary to call a Convention as representative in character as this one is, drawn from all quarters and classes of the Commonwealth, in order to submit a repeal or an annulment of any of those great principles will be prudent. And I hope, sir, that the members of this Convention will give this amendment the weighty consideration to which I believe it is entitled, and I trust it may be adopted.

Mr. MERRIAM of Framingham: I wish to call the attention of the Convention to an amendment printed in the calendar under my name on page 11, which, in substance, is the same as the amendment now moved by the gentleman in the second division from Boston. I do not know whether its phraseology is better than mine, or whether mine is better than his. I think possibly I would suggest this as an improvement on both, in view of the Loring amendment, — to add after the penultimate paragraph in the Loring amendment the following:

Provided, however, that no amendment relating to the Declaration of Rights shall be the subject of initiative or executive petition.

I wish to confer with the mover of the amendment now before the Convention, and possibly after such conference to move this as an amendment to his. I second most heartily the substance of his remarks. The Declaration of Rights contains individual privileges which should be preserved for the individual against the attack of the majority. The movers of this so-called initiative and referendum matter seem to think that laws can be made by majorities. Methods possibly can be determined by majorities, but laws are not made by majorities; and these sacred individual privileges guaranteeing the safety of every individual of our Commonwealth should be preserved against the attack even of the vast majority of the Commonwealth. We do not wish to take away those rights known for so many years under the Declaration of Rights of the Massachusetts Constitution. Many of them are the result of the Puritan Revolution. They were not made by the people who framed them. They may have been declared by John Adams and by his associates, but they were made by the Creator of this Universe as a part of the heritage of mankind.

We have in the Scriptures this phrase: "In the beginning was the Word, and the Word was with God and the Word was God."

I take it that in matters spiritual that means that there were certain principles ordained in the beginning as a part of the order of things, not to be changed, not to grow old and be discarded because they were antique; but to be preserved as fundamental decrees of universal order. I think without any irreverence, without anything like sacrilege, we can apply the principle of that sublime saying not only to matters of religion and of science but to matters of political govern-

ment. And I think in these essential declarations known as the Declaration of Rights, we have some of the human privileges and human liberties which should be preserved as ordained from the beginning; and if so, they should be preserved from attack and changes even by majorities. Majorities can do harsh things; majorities are not always kind; majorities are not always just.

Listen to what Edmund Burke, the great advocate of the rights of the people, said:

> Of this I am certain, that in a democracy the majority of the citizens is capable of exercising the most cruel oppressions upon the minority whenever strong divisions prevail in that kind of polity, as they often must, and that oppression of the minority will extend to far greater numbers, and will be carried on with much greater fury than can almost ever be apprehended from the dominion of a single sceptre. In such a popular persecution, individual sufferers are in a much more deplorable condition than in any other.

Mr. QUINCY of Boston: Just one word. We sometimes hear about reactionary proposals, but it is rarely that we see one in a perfectly naked form. Now, the gentleman from Boston in this division (Mr. William S. Kinney), — and I admire his frankness more than I do his discretion, — admits that he proposes to take away a power of amending the Constitution which the people have now. He proposes that certain rights now enjoyed by the people through the Legislature to amend their Constitution shall be taken away, and that certain parts of the Constitution never shall be touched except through the medium of a Constitutional Convention.

Mr. WILLIAM S. KINNEY: I think the gentleman misapprehends. I do not take away the rights which the people now enjoy to amend the Constitution by the action of two successive Legislatures, in a manner which requires a two-thirds vote of the House of Representatives and a majority vote of the Senate for two successive years before submission to the people, — I do not take away that right. This gentleman himself, and those who voted with him on previous amendments to this measure, have taken away that right by the adoption of the so-called Loring amendment. I would be willing, sir, to subject the Bill of Rights to the hazard of amendment or repeal by such a method of amendment to the Constitution as we now have under the ninth amendment; and upon reflection I am prepared to accept the suggestion of the gentleman from Framingham in the third division (Mr. Merriam), to wit, that the Bill of Rights may be amended as provided in the so-called Loring amendment by a majority vote of the joint sessions of two successive Legislatures and then submitted to the people.

Mr. QUINCY: Then I have nothing more to say on that point.

Mr. WILLIAM H. SULLIVAN of Boston: I rise to oppose this amendment. I am one of the few who have survived this dreary debate, and I still believe in the people. I have watched these amendments day after day and have seen our leaders get together and agree to hostile amendments and thereby give away the rights of the people. I came here believing in the people and my faith in the people has not been changed by this debate. I have so much faith in the people that I believe they ought to have the right to say what kind of laws they want.

Now, the gentleman in the rear of the chamber (Mr. Merriam) has

said that he believes in protecting the Bill of Rights from the vast majority of the people. He has grown so very frank! Our leaders have given many things away here in their amendments. I am one of the few who believe that if we went right through with the initiative and referendum we have the votes to protect the people from all these hostile amendments.

They seek to protect the Bill of Rights from the people. They do not want that amended, it is such a sacred document, — it was written by John Adams, they say. They think it ought to be protected from the plain, common, every-day people. And very modestly the gentleman in the rear has suggested that he and the other great man who has uttered similar sentiments should get together and spare this Convention a dreary debate, and save us from the necessity of acting for the people. What a wise suggestion! That is why I thought perhaps the gentleman in the rear would not care to argue the matter further. It might be a waste of time to discuss this measure until these two great leaders get together and say whether or not the Bill of Rights ought to be protected from the people.

Mr. HART of Cambridge: The proposition which has just been made relating to the Bill of Rights has in it many taking features, for that part of the Constitution is a splendid body of sentiment; it is a thing to be proud of. Other States have bills of rights, but certainly none superior to ours. The protection of personal liberty is, of course, one of the objects of the Constitution. I wish devoutly that it were possible to arrange some kind of a Constitution for this Commonwealth which would be just right and, accordingly, never could be amended. That is what our forefathers attempted. A very astute member of this Convention remarked the other day that John Adams was the leader or promoter, so to speak, of the Constitution of 1780. And I told him that apparently John Adams was also the leader of this Convention. We have discovered that one cannot live indefinitely upon the principles of 1780. I have gone over here in the last few minutes the Declaration of Rights and, frankly, I see nothing at present that I should like to amend. But, Mr. President, please observe that the gentleman's amendment would prevent any constitutional amendment for extending and enlarging the Bill of Rights.

Mr. MERRIAM: I should like to ask the gentleman from Cambridge, in view of the statement by the gentleman from Boston that he would accept my amendment, if he deems his criticism still apropos. My amendment would be: "*Provided, however,* that no amendment relating to the Declaration of Rights shall be the subject of an initiative or an executive petition", leaving the Bill of Rights still subject to amendment by legislative action as at present.

Mr. HART: In answer to that question, it must be remembered, as has been pointed out, that the Convention at this moment by its vote has committed itself, at least for the time, to the doctrine that there shall be no more legislative amendments. That is a question, of course, which can be reached again, and when reached it is my hope that the total change in the possible forms of amendment which now we have adopted will disappear, and that we shall retain the ancient but acceptable method, so far as it goes, of submitting amendments by the General Court. But I repeat that the proposition in either

form, so far as I can understand it, forbids the introduction of amendments in the nature of an improvement of the Bill of Rights.

Mr. William S. Kinney: I should like to call the gentleman's attention to the language of my amendment. It says "abrogation, annulment or repeal." As I understand that language, it does not prevent the addition of any new rights which hereafter may be set forth; it merely protects the existing rights.

There being no objection Mr. Kinney modified his amendment so that the words to be inserted read as follows:

No law or amendment to the Constitution relating to the Declaration of Rights shall be the subject of such initiative petition.

Mr. Churchill of Amherst: We have in essence here in this question the fundamental point at issue, it seems to me, between those who might be called guardians of the rights of minorities and individuals, and those who are anxious to extend the rights and privileges of the majority. Here is the question of the initiative as applied to the Constitution reduced to its lowest but strongest element, — the question as to whether or not the people, by the method of popular initiative, shall be allowed to attack the guarantees of the rights of the minority and of the individual. It is in the Bill of Rights that the people of Massachusetts put themselves —

Mr. Newton of Everett: May I ask the gentleman what he thinks the words "no law" would mean, as contained in the amendment suggested by the gentleman from Framingham printed on page 11 of the Calendar?

Mr. Churchill: Perhaps this will answer the gentleman's question. I ask unanimous consent that in place of the amendment now before us there be substituted the following, after the last paragraph of the Loring amendment:

Provided, however, that no amendment annulling, abrogating or repealing the provisions of the Declaration of Rights shall be the subject of an initiative or executive petition.

I ask unanimous consent for the substitution of that amendment.

Objection being made to the substitution of the words suggested by Mr. Churchill, that gentleman moved them as an amendment to the amendment offered by Mr. William S. Kinney of Boston.

Mr. Churchill: The point at issue is just this: As to whether our fathers were correct, and the large body of modern opinion is correct, in saying that it is essential to a stable republic, to a stable and therefore a real democracy, to real progress of a real democracy, that the rights of minorities and individuals should be guarded against the action of a temporary and impulsive majority. That was the great conquest in our Constitution, that was progress, — that we should have a democracy which guarded the rights of all the people and not merely the rights of a majority of the electorate. To change that is reactionary and not progressive.

Mr. Walker of Brookline: It is perfectly apparent from the discussion in this Convention that the full force and effect of this amendment is not understood. We have heard generalities about liberty and about property and about protection of the minority; that is not the real thing in the amendment that is suggested. No one is more

anxious than I am to have liberty, right and property protected. But let me remind you that it is defining just what liberty is and what it means that those who pass legislation for the protection of the people find difficulty with. For instance, it was declared that the Workmen's Compensation Act in New York was unconstitutional. Why? Because it took property without due process of law. The court declared that the Legislature could not regulate manufacture in tenement-houses or regulate the hours of labor in bake shops. Why? Because it interfered with the liberty of the individual. If this amendment goes through, then under the initiative and referendum no social welfare legislation can be had which is declared by the courts to be an infringement upon property or upon liberty, and if it is declared unconstitutional it will be declared unconstitutional for that reason and for no other reason; and therefore it will be necessary, in order to get a Workmen's Compensation Act that will be constitutional, in order to limit the hours of labor, possibly for women and children further than they are, or certainly the hours of labor for men, — it may be necessary in order to make such laws constitutional to amend the Declaration of Rights as interpreted by the court.

Mr. WILLIAM S. KINNEY: I should like to ask the gentleman whether we have not now a Workmen's Compensation Act which is in conformity with the Bill of Rights, and whether the same is not true of all the social legislation which we have passed.

Mr. WALKER: I do not know whether these questions come out of my time or not, but it is important this Convention should understand this matter and so I will answer them. No, sir, we have not a Workmen's Compensation Act except by courtesy. We have not a compulsory compensation act in this Commonwealth. No manufacturer need come under the Workmen's Compensation Act unless he sees fit, and that is why it is constitutional, and it is very doubtful if our court would have declared it constitutional unless it had been optional. They declared it unconstitutional in New York because it was not optional. I consider that our right to amend the Constitution as far as social welfare legislation is concerned is gone if this amendment goes through. We certainly must understand that.

I think that I really have made my point so that the Convention clearly understands that when we say we want to protect the liberty of the individual, we do, but do we want also to limit the hours of labor of women and children? That is interfering with their liberty, but the courts have decided that that can be done under the Constitution. Suppose we want to limit the hours of labor for men. Undoubtedly the courts would declare that unconstitutional. Suppose we want to regulate sweat-shops. If they should declare that unconstitutional, it would be on the ground that it was interfering with the liberty of a man to do as he pleases in his own home. All those laws when they are declared unconstitutional are so declared because they interfere with the liberty of the individual. Now it is perfectly clear if we are to have those laws, if it becomes necessary to amend the Constitution so that we may have those laws, we must amend that part of the Constitution which is contained in the Declaration of Rights.

By a vote of 128 to 87 the Convention substituted the words suggested by Mr. Churchill of Amherst for those moved by Mr. William S. Kinney of Boston.

The amendment as thus amended was adopted, by a call of the yeas and nays, by a vote of 127 to 126.

Mr. Walker moved that the vote be reconsidered.

Mr. Walker: I do not believe yet that this matter is quite thoroughly understood by every one in this Convention, especially by some who came in late, and I think another vote on this matter ought to be taken. I wish to make it perfectly plain to the members of this Convention that in my judgment a vote in favor of this amendment is a vote against the constitutional initiative. The point is this, that if we vote for a law and the Supreme Judicial Court decides that it is unconstitutional, it becomes necessary to amend the Constitution in order that we may have that law. That is why we wish the constitutional initiative. Now, Mr. President, the laws in which we are most interested are commonly known as social welfare legislation, — legislation to protect the health, the safety, the general welfare of the individuals who make up the masses of our community; to protect men and women in industry, to protect children; and it is those laws that are declared unconstitutional frequently in other States and in this State. Workmen's compensation laws, laws affecting the hours of labor, laws protecting the health, laws to prevent industries being carried on in tenement-houses, — it is that kind of legislation that we wish and it is that kind of legislation that frequently is declared unconstitutional. And, Mr. President, every time such a law is declared unconstitutional it is declared unconstitutional because it is against or interferes with liberty and property, and it is liberty and property that are protected in our Declaration of Rights.

Mr. Lummus of Lynn: The gentleman from Brookline (Mr. Walker) says that social welfare legislation frequently has been declared by our courts to be in conflict with the provisions of our State Constitution. I wish to tell him that I have examined the decisions along that line and there is just one decision in the last fifty years where the courts of Massachusetts have held any social welfare legislation to be in conflict with the provisions of our State Constitution. That is the Weavers' Fine case of twenty-five years ago, the only case in the last fifty years, and that case rested in part upon the Federal Constitution. It is not a fact that our court has found that our State Constitution interferes with social welfare legislation. The tremendous mass of social welfare legislation that our State has adopted and enforced negatives that statement conclusively. Every illustration that the gentleman from Brookline used in his closing speech on this amendment related to the decisions of some other State, decisions that were based upon the fourteenth amendment to the Federal Constitution; and it makes no difference what we do here, we cannot get rid of the fourteenth amendment to the Federal Constitution. I deny, and I challenge him to disprove what I say, — I deny that our Declaration of Rights ever has been found hampering social welfare legislation. I think that the remarks of the gentleman were likely to mislead the Convention into the belief that we could do something here that would get rid of the fourteenth amendment of the Federal Constitution, which, in some particulars, has been found to hamper certain forms of social welfare legislation. It seems to me that the amendment before us is essentially what the gentleman from Amherst (Mr. Churchill) said, a pro-

tection of the individual liberty, the religious liberty, the ordinary liberty that every man ought to enjoy; and I hope that our action will not be reconsidered. I submit that the decision of the Convention was just and I beg the pardon of the Convention for occupying its time while my voice is in its present condition.

Mr. UNDERHILL of Somerville: In the Manual of the Convention which is in the possession of every member, on page 96, you will find the following:

> Judge Morton calls this article "the corner-stone of the Constitution." But he says that it does not prevent the Legislature from defining crime and providing for punishment by fine, imprisonment, or even by the taking of life.

A little further on it says:

> *Lives and liberties.* Imprisonment for debt is constitutional. It is not unconstitutional to limit the hours which women may work in any one establishment, for it does not prevent any woman from doing extra work in another establishment.

I would call the attention of the gentleman to the fact that the Legislature only a few years ago passed a law called the nine-hours-in-eleven law for street railway employees, and that law was declared constitutional. There is no provision in our Constitution which prevents the Legislature from making a law which will protect the working-man or the working woman.

Mr. DONOVAN of Lawrence: Will you please explain to this Convention why the bill that related to the railroad men was declared unconstitutional, — the one that related to the men who worked around railroad stations?

Mr. LUMMUS: I venture to suggest, being somewhat familiar with that decision, that that is exactly an illustration of what I was trying to say. Commonwealth *v.* Boston and Maine Railroad, 222 Mass. 206, to which the gentleman refers, rests on the fourteenth amendment, and there is nothing in the world that we can do here that will interfere with that decision. And that is an illustration of the very thing I was speaking about, the misleading character of the suggestions that have been made on this matter.

Mr. UNDERHILL: The Legislature, within the last three years, has passed social legislation of varied character and I do not believe a single one of those statutes has been brought before the courts and been declared unconstitutional. I know the gentleman from Brookline does not intend to mislead this Convention; I know that he does not intend to mislead; but when we passed the law limiting the hours of women and children in factories it caused a riot in our State.

The motion to reconsider was negatived, by a call of the yeas and nays, by a vote of 117 to 124.

On the reassembling of the Convention after the noon recess, Mr. Albert H. Washburn of Middleborough moved that the resolution (No. 359) be amended by inserting after the word "thereon", in line 67, the words ", *provided* that, for any law proposed under this section, the affirmative vote shall not be less than thirty per cent of the highest number of votes cast at such State election".

Mr. WASHBURN of Middleborough: During the early stages of this debate I offered an amendment which required that not less than one-third of the highest number of votes cast at the State election should be necessary for the adoption of a constitutional provision. That amendment in substance appears in the so-called Loring substitute. I

do not flatter myself that it appears there altogether in deference to my amendment. I assume, of course, that the committee came to appreciate that there was a very pronounced sentiment in this Convention in favor of the principle there involved. The amendment which I now offer applies to the statutory initiative. I think the two go together; others may differ with me.

When the matter of judicial control was before this Convention the distinguished United States Attorney (Mr. Anderson of Brookline) made the statement that he was opposed to an elective judiciary. I do not recall his exact words, but in substance he said that an elective judiciary would be elective in name only; that in reality judges would be proposed through devious and subterranean channels. If we adopt the initiative I think it is manifest that there always will be a certain percentage of people whose main concern will be to secure the adoption of particular hobbies in which they are interested and for which there is no real demand. There will be no very great difficulty in getting such measures on the ballot, especially when these people have a compact organization behind them. The history of the operation of this I. and R. in various States shows some curious things. Among other things, Mr. President, it shows that almost every year in some States three, four, five, six and seven statutory initiative proposals go on the ballot. In the State of Colorado, I think it was, in one year, in 1912, seventeen such proposals were submitted. In the State of Oregon, about the same time, ten were submitted. These were measures which related to the statutory initiative only. They had nothing to do with constitutional amendments. They had nothing to do with legislative amendments or with legislative proposals; they were initiated statutes and nothing else.

Now I say, Mr. President, it is obvious that when you get a large number of such measures on the ballot there is bound to be confusion. I believe that a certain limited number of proposals of this character can be passed upon by an intelligent electorate and be passed upon with discrimination. But when you increase that number, when you get an indefinite number, then I say that you are asking too much of an electorate, whether it be educated or uneducated, to expect it to vote with discrimination year after year on proposals of this character.

My amendment is a very modest one. It requires only thirty per cent, — and in that it agrees with the committee proposal as to constitutional amendments, — for the adoption of laws. Why not one-half? States like Oklahoma, for example, require a majority of those voting at an election before a constitutional amendment can be adopted, and there have been years when amendments so proposed were adopted, four in one year and three in another, for example. So you cannot say that such a proposition is unworkable. But, Mr. President, the facts are that not all the people who vote for elective officers vote on questions submitted to them for their acceptance or rejection. The gentleman from Brookline in charge of this measure (Mr. Walker) made the statement on the floor of this Convention that usually about seventy-five per cent of those who vote for Governor vote on questions of this character. In some cases it has been less, but that is a fair average.

Now here in Massachusetts a great many constitutional amendments have been adopted on a very meager vote, — from three to nineteen

or twenty per cent of those voting at a State election. That is government by a minority, and an insignificant minority at that. I believe it is wrong in principle, though such amendments had behind them the legislative approval, a very different situation from that which confronts us here.

One of the men in this country whose tendencies are liberal if not radical, — I refer to Professor Beard of Columbia, who has come into the limelight in the last few days because of his resignation, — has noticed and commented upon this fact of minority government, and he makes this statement in his recent book:

> Legislation by small minorities is, of course, highly undesirable, and if a system of initiative and referendum necessarily made possible such legislation, it would be open to grave objections. In point of fact, however, it is possible to establish in connection with the initiative and referendum a safeguard against legislation by small minorities.

That is precisely what my amendment seeks to accomplish. I think it is a fair proposal. The State of Michigan and the State of Nebraska, for example, require one-third, or in the case of Nebraska I believe thirty-five per cent of those voting at the election to affirmatively vote for a measure before it becomes a law or a part of the Constitution. I think we ought to adopt some such provision here. It is a reasonable safeguard.

Now it may be said, Mr. President, that an initiated statute is on a somewhat different basis from a constitutional amendment. To a certain extent that is true. But a statute, even although it remains on the statute-books for a short time, a question of months, even though it may be repealed by a succeeding Legislature, may work very great mischief during that period. To require a majority of those voting "thereon" is contrary to our democratic theory of government. I have no objection, I will take my chances with government by a majority, but I have an aversion which I cannot conquer to a government by apathy and indifference and, most of all, to a government by insignificant minorities. I trust this amendment will be approved.

Mr. George of Haverhill: I am in sympathy with the amendment offered by the gentleman from Middleborough. I think we shall find that the Constitution provides that no law can be passed by the Legislature unless there is a quorum present, and the Constitution provides the quorum for both the House and Senate, so that it will be impossible to pass a law without a majority of the House and Senate being present and acting upon these measures.

Now it seems to me that if we are going to transfer the legislative power to the people there ought to be some quorum, and I think the gentleman's suggestion is along the lines of fixing a quorum; only I think it would be more satisfactory if the subject-matter referred to the people should receive a vote equal to 30 or 35 per cent of the registered voters, based upon the number of registered voters returned to the Secretary of the Commonwealth the year previous. Last year we had 657,000 registered voters. That will increase every year and it seems to me we ought to fix some method of having a quorum. Therefore I should favor the amendment offered by the gentleman from Middleborough, but think it ought to be modified in a way that would be really more effective.

Mr. Brown of Brockton: I am following the argument of my

brother, but I want to know if he does not discover that in the House somebody can raise the point of no quorum. The point of no quorum when the people are obliged to vote cannot be raised.

Mr. GEORGE: The people when they vote on this new Constitution are going to adopt a quorum themselves by saying that unless an act receives a certain per cent of the electorate it shall not have any force. Now it may be that there are some people who believe that a small minority of the people, those who are interested, should pass a certain piece of legislation. Now I contend, Mr. President, that legislation which cannot command the respect of more than 30 per cent of the voting public will not live any length of time. Of course we all know very well that 70 or 80 per cent of the people are not going to be run by a minority of 30 per cent, so that whenever we pass laws we should take that into consideration. I fancy that we all have learned by experience that unless a public policy fairly represents a majority sentiment of the community it is destined to be a failure. Prohibition always has been a failure in a community where 90 per cent of the people drank; prohibition always has been a success in a community where there was not more than 1 per cent of the people who drank. So you take any particular piece of legislation or any public policy you wish to establish; unless it meets a fairly representative sentiment of the community or State it surely is short-lived. It seems to me we ought to provide some way to prevent a mere fraction of people from adopting some particular law which will be simply a farce after it is adopted.

Mr. YOUNGMAN of Boston: On page 7 of the calendar, next following where this amendment is printed, appears an amendment of similar purport which I gave notice that I should move. I now wish to give notice that I shall not move that amendment and that I wish to merge my claim to have some restriction put upon the government by minority with the amendment offered by the gentleman from Middleborough.[1] In other words, I wish to support Mr. Washburn's amendment and, as applied to the enactment of a statute by the initiative, I shall be satisfied if it receives a 30 per cent affirmative vote. But I agree with the gentleman from Middleborough that 30 per cent is little enough; 30 per cent is the minimum. I do not believe the members of this Convention have realized how much it is possible to stir up a small group of people in this Commonwealth. I do not believe they realize what has been done at times in stirring up a pretty large number of people on a false or a humbug proposition. One of the chief promoters of this measure and one of the promoters who will not allow this Convention, and would not in the beginning allow this Convention, to take up the practical workings of an initiative and referendum proposition, but which wanted to stand pat on the thing from the beginning, — I do not refer to a member of this Convention, but to one of the most powerful influences outside in favor of this measure, — has been most active in doing this very thing, stirring up a lot of people and getting them to produce an uproar and disturbance in the community by what is very much of a minority, and it is doing it by humbug.

Now, gentlemen, there are men in this Convention, I think, who

[1] The amendment of which Mr. Youngman had given notice was to amend by striking out, in lines 66 and 67, and 150 and 174, respectively, the words, "voting thereon," and inserting in place thereof, in each instance, the words "who vote at such election."

participated in the Tucker trial, and they know perfectly well that the man in that case was honestly and properly convicted; that witnesses who were entirely disinterested saw him dispose of the knife that fitted into the slot of the corset of that woman who was in the deserted farm-house. And yet that very organization got busy and got over 180,000 people of Massachusetts to sign a petition and send it to the Governor of Massachusetts asking that that man should be freed, whereas the rewriting of what actually occurred in the evidence in that case was what produced that result. It was humbug.

Now, gentlemen, if you are going to take an appeal from the people's representatives in the Great and General Court, let it be a general appeal. Let the people who take it get a verdict and the least they can fairly claim to have a verdict on is that of the people who go to the voting-booth on that election day when this statute overriding the Legislature is to be passed, there should be 30 per cent of the people who vote in that election voting affirmatively on the proposition. That is the minimum, and I hope this amendment will prevail.

Mr. Webster of Haverhill: While the matter upon which we turned considerable attention this morning was in my opinion a camouflage, this proposed amendment, or either of those proposed which comprehend the same principle, is a well-directed stab at the vital parts of the principle of the initiative and referendum. If there be any virtue in the principle of the referendum at all it is in this, sir, that, as I have said before, and as I now repeat, it automatically selects from the electorate the expression of expert opinion. Sir, why should ignorance or inexperience be forced to the polls and coerced into casting a vote which may nullify the vote of experience and information? I want the vote upon every matter of referendum submitted to the people of this Commonwealth to be an intelligent vote and an advised vote. Thus we may lay bare the sophistry of all the opponents of the initiative and referendum, who have insisted strenuously that the people had not the means of informing themselves upon the matters at issue which would be submitted to them upon the ballot.

Why, sir, by all odds the most scholarly and exhaustive argument against the initiative and referendum to which I ever had the privilege of listening was presented before the committee on Constitutional Amendments in the year 1913 by a gentleman for whose attainments no one can have greater regard than myself, — the honored President of Harvard University, A. Lawrence Lowell, — and that gentleman saw fit to adduce as a cardinal example in his argument an instance where some western State, the name of which I do not now recall, and it matters not that I cannot, but it was a State in which the industry of cattle-ranging is still prominent, submitted to the people upon the ballot the question as to whether the authority for supervising the branding of cattle should be vested in one or another of two bureaus, two administrative departments of the State government. If I may use an illustration, it is this: While we do not brand cattle in this State we do put tags in their ears, and it is as though we should discuss in the Legislature, and then submit to the people, the question as to whether the authority for supervising the placing of those tags in the ears of milch cattle should be vested with the Bureau of Animal Industry or the State Board of Agriculture. It was an entirely trifling and immaterial question, as we must all agree, and it never should

have gone on the ballot as a matter of referendum to the people. But a very small number of the people voted upon that at all, and as between those who did vote on it the majority and the minority were almost equally divided, so it was entirely possible for the gentleman to point out that a fraction of one per cent had decided that question. Now, sir, who voted upon that? Who voted upon that question? Why, the cattlemen voted upon it. And who knew anything about it but the cattlemen? Why should the street car conductors, or the bank clerks, or the Sunday-School superintendent be forced to the polls to say into which ear of a cow the tag should be put? Who knows about it?

What are you trying to get by a referendum? Are you trying to get an expression of intelligent opinion, or are you trying to get an expression of mob and gangsters who may be brought in there, perhaps, and compelled by somebody who knows less about it than they do themselves? "All right, A, B, and C say it is a good thing." I say leave it to the voters and do not impose arbitrary restriction upon this thing. Let nature take its course. [Laughter.]

Mr. LUMMUS of Lynn: The illustration of the gentleman who just took his seat about the ear upon which a brand should be imprinted is a very good illustration of the very sort of measure that never ought to be brought up by way of the initiative, a measure which, as he said, was familiar only to a very small percentage of the voters. It would be very unfortunate, it seems to me, if a trifling per cent of the voters should be allowed to enact such a measure into law where the rest of the citizens of the State were wholly ignorant about the matter. The proposition that is before you is a very moderate one. It calls for an affirmative vote of 30 per cent. If there were nearly as many votes on the other side there would be in all only 60 per cent voting. The measure could be passed with only 31 per cent of the people voting. It requires an affirmative vote of only 30 per cent, and I cannot see, Mr. President, how the proponents of this measure can fail to accept this very moderate suggestion if they really believe in majority rule as against minority rule. It seems to me that any opposition to this proposition must be based upon a belief in the rule of a small minority of the people.

It is not true, Mr. President, that the people who will fail to vote on initiative measures will be people who are ignorant, who lack experience and general information. That is not true. More probably the fact will be that the proponents of initiative legislation will be endeavoring to get through something that is so wanting in interest to the mass of the people that they will not take interest in it, or that the proponents of the measure will not take adequate means to make the people take interest in it. It may be something that the people do not want, and yet you cannot always induce men to vote against such a thing. Many a man, — many a man in this Convention, I think, — has seen at the polls some referendum measure as to which his state of mind was: "I don't know. I am not convinced in favor of it, therefore I shall fail to vote." He is not ignorant, he is as good a voter as anybody else, but he simply feels that the proponents of the measure have not made out their case. I submit, Mr. President, that the proponents of initiative legislation ought to make out a case. They ought to convince a considerable fraction at least of the people

of Massachusetts that their measure is right, and if they cannot convince 30 per cent of the voters that the measure is right, then it is not a proper subject for initiative legislation. To permit it to be made the subject of initiative legislation under those circumstances will make for minority rule and not majority rule, and I submit that any one who opposes this very simple and moderate provision is not a believer in majority rule.

Mr. HALE of Boston: I suppose if there is any one proposition upon which every member of the Convention is united, it is the general theory that these arbitrary checks on the percentage of votes needed are a bad thing, and that the burden of proof is upon those who advocate that check, because it is entirely contrary to our institutions. We do not have any check in regard to the election of Governor, or in regard to the election of members of the Legislature, or in regard to constitutional amendments now submitted by the Legislature, or in regard to referenda under the present public opinion bill. Now, what are the arguments that the other side have advanced in favor of this arbitrary and unusual check on the ordinary system that a majority of those voting on the measure should determine the matter?

The gentleman from Middleborough (Mr. Washburn) and the gentleman from Lynn (Mr. Lummus) who closed the argument on the other side based their principal argument on the idea that there are going to be too many things submitted on the ballot. I submit to you that this remedy does not cover at all the evil suggested by them. If they think that too many things are going on the ballot then they should submit some other amendment governing that point. But I want to call to the attention of both the opponents and the advocates of the initiative and referendum that this proposed amendment in no way meets that difficulty, in no way prevents a large number of matters going on the ballot, and in no way enables the voters to act more intelligently. In other words, we feel that this particular remedy does not meet the particular evil which it was supposed to remedy.

I think the gentleman from Middleborough (Mr. Washburn) introduced the amendment probably on account of an erroneous analogy between this and a constitutional amendment. I think it has become perfectly clear all through this discussion that both the minority and majority are agreed that a constitutional amendment should be harder to put through by initiative petition than an ordinary law, and I want to call to your attention that this amendment now submitted by him makes it just exactly as difficult to put a law through as to put a constitutional amendment through. In other words, if you vote in favor of this amendment you are voting contrary to the principle which has been advocated by both the majority and the minority of the committee on Initiative and Referendum, which has been all the time that there ought to be more effective checks on the constitutional amendments than on ordinary laws.

Now I want to point out one more fact to you, and that is: This whole question, this whole check, is only for a duration of a little over two months. No law submitted by an initiative petition can go into effect before early in November, when the election takes place, and if by any chance no other time is named it cannot go into effect for 30 days after the election. That takes it into December. The Legislature, when it convenes, if it finds after that law has been adopted that

any error has been made, can change the law. In other words, you are trying to put into this measure an amendment which is only to save something that can be changed by the Legislature inside of 30 days after the law goes into effect. I will ask all of you, whether you are for or against the initiative, to look at this simply as a matter of common-sense. Do you want to load the measure down with this kind of a provision when the Legislature can remedy anything that has taken place inside of 30 days after the law goes into effect?

And finally I want to point out to you that it is not so much the particular amendment which, I submit to you, is unnecessary and will not remedy the evil which is supposed to be remedied. I want to point out to you that it is simply one more attempt, not on the part of the gentleman from Middleborough, who is a friend of the initiative and referendum and with whom I have talked over this situation many and many a time, but it is simply an attempt which is going to be made in this Convention to load this measure down with one amendment after another. I think we are all agreed that the majority of the Convention now want some kind of initiative and referendum measure, and I hope the policy will be to put on only checks which are good, which are advisable. There may be a difference of opinion. Then we will accept the verdict of the Convention. But do not let us load it down with unnecessary things that are not going to make it any better. Let us stick to what we really mean, what we really think are necessary safeguards, and do not try to stick on things just for the fun of getting a few extra roll-calls and expect a few extra votes. This amendment will not help the measure. It is unnecessary. It will simply load it down. We recommend you to vote against the amendment.

The amendment was adopted, by a call of the yeas and nays, by a vote of 131 to 117.

Mr. David T. Montague of Boston moved that the resolution (No. 359) be amended as follows: By adding after the word "representatives", in line 109, the words "With the exception of the first ten signers of an initiative petition, all petitions brought under this article of the Constitution shall be signed in the presence of some city or town official of the city or town in which the signer of the petition is a registered voter."; and by inserting after line 186 the following paragraph:

Provision for the designation of the city or town officials in the presence of whom initiative petitions may be signed and for the designation of such place or places in each city and town in the Commonwealth where such petitions may be signed, as the convenience of the voters requires, may be made by law.

Mr. MONTAGUE of Boston: This is an amendment which is easily understood, I think, as it is read, and which provides this: That on an initiative petition, with the exception of the first ten signers, the petition must be signed in the presence of some city or town official or some one connected with those offices. The second part of the amendment provides that provision may be made by law for the establishment in the various towns and cities of different places where these petitions may be signed. In other words, it is intended to be broad of its kind. It is intended that with the exception of the first ten signers everybody else must sign in the presence of some official, but it is intended to be broad with reference to what official and with reference to where those petitions may be signed. In a small town the

chances are that the town clerk's office would be the place where those petitions would be signed. In a city like Boston or Worcester or any other sizable city the chances are that places would be established probably in every ward of that city. It is not intended so to limit it that it shall not be convenient for all the people to sign those petitions.

Now, Mr. President, this is something that has been referred to in some cases as a joker, but it seems to me that the joke is on the resolution which is now pending before the Convention.

Mr. Brown of Brockton: Considering the way that this resolution is being amended, and is going to be amended apparently, why should you not also tack onto your amendment that any man who then has anything to do with this initiative and referendum should bring with him a certificate of sanity signed by two physicians? [Laughter.]

Mr. Montague: This is no joke. The very substance of this initiative is that there is a large body of voters in the community who have wants which have not been granted and which there is no intention of granting. Everybody who goes up and down the line talking about this initiative lays stress upon the great body of voters whose rights have been taken away from them, or who cannot be heard, or who cannot have their matters attended to by the Legislature. That is what every man on the stump talks about. Of course the insiders know better. The insiders know there is nothing to that, as was admitted by the gentleman from Brookline (Mr. Walker) whose name this measure bears, in the very early part of the discussion, when he said in substance that it did not matter whether the petitioners knew what they were signing or not. But that makes a joke of the whole business. When I go out around the State and I talk with people and I find some who want the initiative, the stress that they lay is on the great number of voters, — the great number of voters, — who come before the Legislature and demand something that is refused to them, and that is the whole substance of it. Otherwise it is a fake; that is just what it is. It is a joke. It is worse than that; it is an imposition upon the people of this Commonwealth.

Now, Mr. President, I do not believe that the people of this Commonwealth want ten men, ten men only, even ten men of the learning of the majority members of this committee and two or three more whom they might add, to come up here and present petitions that must go before the people. But that is all it amounts to, because there are just three classes of people in this Commonwealth who can go out and get signatures without buying them: Organized labor, the women and prohibition. That is all there is in this Commonwealth that can go out and get twenty-five thousand signatures. Of course fifty thousand was a large number, and with fifty thousand signatures it should be cut down, if this amendment is adopted, but with twenty-five thousand it is fair and right, — that is just what it is.

Anybody who knows political conditions in this city or in any large city of this State, and I do not know but in the towns too, knows that you can go out and get twenty-five thousand signatures if you want to pay for them, and the people neither know nor care what they are signing. I appeal to every man who lives in the city of Boston, Worcester, Springfield, Fall River, New Bedford, Haverhill, Lynn or Salem, if that is not true in their respective cities. It is absolutely true. These ten good men are not going out on the stump to spend

their days and nights explaining their proposition and then ask the people to come up to the desk and sign. I should say not. It would take those ten men two years to get their signatures under those conditions. They are going to send for a man who knows the business and say: "Here, I want twenty-five thousand signatures. Can you get them for me?" He will say: "I certainly can, at a price", — not a very bad price either. They will say: "Very well, that is the easiest way to get them", and they will send out and get them. Now, what standing should such a petition as that have before the Legislature or the people or anybody else? Absolutely none. And it is not necessary that anybody should be corrupt. What do those men care? You do not have to lie. In the city of Boston you go round with your petitions, and you say to the men: "Here is something that won't do you any harm and it gives me ten cents", and you get the name. We know how it is. Everybody knows about it. It is easy enough to do it. There are plenty of men who can get those signatures. In a sense there is nothing wrong about it. But the fact remains that it can be done. Or you can tell a man that this is something that will be for his benefit. You do not need to tell him any more. Down goes his name. But the easiest way is to say: "It means ten cents to me." What earthly use, what earthly standing should a petition of that kind have in a legislative body? It seems to me absolutely none.

Now, does anybody else require signatures to be obtained as proposed by this amendment? There has not been a word said in this Convention so far about what they do in Switzerland. I had a suggestion that this was the very thing they do in Switzerland, and so I wrote to our commission to secure the information for us and I asked them to dig out and find out for me what they did in Switzerland; and they report to me in writing that that is just exactly what they do in the majority of the cantons of Switzerland, — just exactly what they do. In some of the cantons they have a different scheme, and I have another amendment which will be introduced later.

The other scheme is to have a town-meeting, and that is all right too, where they can discuss these things, do the very things that the advocates say with their lips they want should be done, — discuss them, — but which they know well enough they do not want. But that is another story. In most of the cantons of Switzerland a man has to go before a notary public, — a notary public, — sign a petition, which petition must have the full text of the measure, the whole thing, everything there. There must also be printed a provision that if he signs falsely he is subject to a heavy fine, a penalty. That is the way they do things in Switzerland, and that gives some substance to a petition.

I agree, and I think every man will agree, that the honest desire of twenty-five thousand of our voters deserves consideration. I agree to that. I agree to that absolutely, whether it comes in the form of this kind of a petition or any other way. But you cannot get it under the form of initiative proposed by the majority of the committee on Initiative and Referendum. You will not get it once out of a hundred times with this form of initiative. The gentleman from Brookline knows that just as well as I do, and he knows that this really is simply a scheme, when you come down to it. Nobody but those three, whatever you say that you may call them, however you may desig-

nate them, — organized labor, women, prohibition, — could get those signatures without money. The only three organizations, if you call them such, that exist to-day in this Commonwealth that can go out and get those signatures, or that would go out and get them, are those three. Everybody else goes out and gets them with money, — with money, — buys them and pays for them. And why should we consider such petitions as that? Why are they worth any more than the petitions of the ten men who come without the signatures? And still nobody suggests, — nobody suggests, — that any ten men should be allowed to go before the people with anything that they wish to advocate.

And so, Mr. President, it seems to me that instead of this amendment being a joke, it simply insures that this vast machinery that we are proposing to put in operation, — which is revolutionary in a way, but which if the foundation is properly laid by twenty-five thousand voters, really voters, who know what they want and ask for it, would not be very unreasonable, — shall mean something more than the wish of ten would-be reformers.

Mr. CREAMER of Lynn: It seems to me that the delegate from Boston who has just taken his seat has taken so much counsel of his fears that his mental atmosphere has become peopled with bogy men who do not exist. I think that he is proposing an amendment to the initiative and referendum that will make it all brake and no motor. I think his amendment should be designated properly a resolution to discourage public interest in public affairs. No man knows better than he knows how difficult it is sometimes to get people to take proper interest in public affairs, how difficult it is to get them even to register to vote. A great apathy in that direction is to-day one of the great evils in this Commonwealth, and this amendment of the gentleman from Boston would offer no remedy for that evil. Many people already have a feeling of hopelessness and of discouragement and of bewilderment when they go to the booth and pick up the ballot with fifteen or twenty names on it, the names of candidates who are only names to them and nothing else. Would it not be better if we offered them some inducement to vote for measures, something upon which they could form an intelligent opinion? I submit to the members of this Convention that this amendment of the delegate from Boston would do more to discourage a proper interest on the part of the public in public affairs than any amendment that has yet been offered to this resolution before us. I believe it to be unsound fundamentally, to be unwise politically. I believe that the great thing we need to do in this Commonwealth for the future of the Commonwealth, for the safety of the Commonwealth, is to create an interest in public affairs. This amendment will not do that.

Mr. UNDERHILL of Somerville: One of the greatest and gravest dangers which the direct nomination system brought to the people of Massachusetts was that every man who was a candidate for office had to procure a certain number of signatures to his nomination papers. When that was advocated in the Legislature it was thought it would be a mighty good thing, and it would give the poor man an equal chance with the rich man, it would give a good candidate or a man of standing in the community an equal chance with the politician; but all of you here who are politicians know what the real effect was. The

real effect was that the man who had money sat in his office, wrote checks and sent the ward heelers out broadcast to get signatures at so much per signature. A candidate who went around and tried to obtain signatures had a task cut out which he was unable to perform all by his lonesome; he had to have help, and he had to hire that help. But the worst feature which came about was this: When you and I first became voters we had some ideals. When we were 21 we thought it was a great thing to step over the threshold into manhood and become a voter, and we had some ideals. What is the condition to-day? Every young man of 18, 19 or 20 you approach to-day and try to interest in politics wants to know how much there is in it. Several of his friends had earned a pretty good sum at the last election by going around for certain candidates who have money and obtaining signatures for those candidates. Now, sir, that is one of the worst features of the direct nomination system, which I believe will be increased tenfold under the initiative and referendum unless you adopt some such proposition as this introduced by the gentleman from Boston.

Every man in this body, every man who is a voter, who desires to become a voter, is obliged to go to the registrars of voters or the proper city or town officers and be registered as a voter; every man who is interested in a public question sufficiently to go before a city or town official and signify by his own signature his interest in the proposition, then becomes a *bona fide* signer, and not until then.

The business men throughout the business districts of the city of Boston, and in other cities as well, are urged to sign their names to various petitions, and, knowing that it means an income for somebody, they sign frequently without even looking at the petition. Those who are active politicians in this Convention know that some organized political clubs can bring to their headquarters a petition, present it to their members and, from a membership of fifty secure two hundred signatures to that petition. Now, that is not the way to do this serious business. If we are going to be serious about it, if we are going to have good laws, if we are going to have the interest of the people aroused and continued, we want them to know what they are signing, and we want them to have enough interest in any law to go before the properly constituted authorities and sign the petition in support of such law in their presence.

I submit that of all the amendments which have been offered to this proposed initiative and referendum measure this one really is the most important when you consider the morals of the people, when you consider the welfare of the young men who are just coming into manhood and of voting age. I trust the amendment will pass.

Mr. Walsh of Fitchburg: This amendment is the most dangerous and destructive, to the principle of the initiative and referendum, of any that have yet been offered. Every man who honestly is opposed to the initiative and referendum as a principle, unwise and unsound, should vote for this amendment; but any one who believes in the principle of the initiative and referendum will have considerable difficulty in explaining satisfactorily a vote for this amendment. The adoption of this amendment means the end of the initiative and referendum. It means that it will not be workable. It means that it will not be possible ever to work out in this Commonwealth the principle

which those who favor a real initiative and referendum seek to inaugurate.

Let us be fair with each other. We permit the nomination of a man for public office without any such requirement, we permit the people to petition, without going in person to any public official, for the nomination of their candidates for public office; but we say to them, when it comes to considering a great public question in which they are interested: "You shall not have the same right that you have to petition for the nomination of a public official, but you must go to an official in person to declare your willingness to sign this petition."

The purpose, the reason for the initiative and referendum, if there is any at all, is based upon a right inherent in the people to correct, to alter, to change mistakes made by the Legislature, to remedy wrongs, or assumed wrongs, or false judgments, passed and made by the Legislature, detrimental and contrary to the will of the majority. Therefore, if this is the principle upon which the initiative and referendum is to be justified, we ought to give the people a right to petition freely and easily and readily to remedy the wrongs that they claim exist in their government and are not corrected by their Legislature. I therefore urge those members of this Convention who really believe in this fundamental principle to vote against this amendment, because in my judgment it means, — we might just as well know the truth, — the adoption of this amendment means the end of a workable initiative and referendum coming out of this Convention.

There is, as I view it, one objection to the initiative and referendum amendment proposed by the majority of the committee. The number of signatures is altogether too many at the present time. I make the prediction that not in the lifetime of any of us will there be a dozen questions, petitioned for by the people, finally placed on the ballot, because it will be impossible to get the number of signatures required.

Mr. Underhill of Somerville: I dislike to interrupt the gentleman, but does he mean to say that it is impossible for concerns such as Filene's, or Jordan & Marsh's, or any one of the big metropolitan dailies, or for the savings bank interests, to be able to secure twenty-five thousand signatures within twenty-four hours in this State?

Mr. Walsh: So far as I know, and my experience has been extensive in the obtaining and getting of signatures, I say it would be impossible for Jordan & Marsh or a metropolitan daily to do it. [Applause.] I say it is a most difficult task, and there is not a political organization in this State or a candidate for a State wide public office who, in the last hours of the last days for getting signatures (one thousand for the office of Governor) has not worried as to whether he has secured the necessary one thousand signatures. That is how difficult it is to get signatures for a position in this Commonwealth for any purpose.

Whom are we seeking to help through the initiative and referendum? The poor man, the man who cannot hire a lawyer to plead his cause in the Legislature, the man who cannot express his wish publicly upon the platform, who is at home on the farm, in the factory. These are the men who claim that the Legislature has not always been responsive to them, and we are seeking to give them the right, when they honestly believe that the Legislature has not recorded their views accurately upon an important public question, to petition to have that question placed on the ballot for their decision. If that is the principle for which

we are striving here, let us not tie the hands of our people. Let us be candid. Let us kill this principle in the open and end it. If, however, we believe in it let us have a workable, intelligent initiative and referendum, where the people, by proper petition, without difficulties unnecessary and unsound, can have the question submitted to them to be passed upon.

I therefore urge the defeat of this amendment. [Applause.]

Mr. Balch of Boston: I am able thoroughly to understand the enthusiasm of friends of mine for the people's initiative. I am thoroughly *un*able to understand the enthusiasm which some apparently feel, not for a people's initiative, but for a *boodle* initiative, and that is the proposition we now have before us, — the plain, cynical proposition that the initiative is for sale. That is a profoundly shocking proposition, morally. I have endeavored repeatedly to explain the initiative and referendum to people who wanted to know what it was, to progressive friends, to progressive friends from other States, and when they discovered that one feature of the initiative measure now before this Convention is that the initiative petition is for sale, that it is open to the man with $2,000 or the corporation with $2,000 to buy a petition at will, they are aghast, and I defy any friend of the initiative and referendum to explain that feature of it to any progressive mind; to explain that feature of it to any progressively minded man, a student of these things, from any other State.

Now, Mr. President, one great argument, and a most legitimate one, and one that I believe in, has been made for the adoption of the initiative. It is that there exists in this Commonwealth a great mass of popular discontent, rising, we are told, to revolutionary heights. At this moment, the same men who tell us of that great popular discontent tell us that you cannot get three per cent of the voters to go and sign their names unless they are paid for it. What becomes of their argument as to popular discontent? Which of their two wholly inconsistent arguments is right? Their argument as to public discontent is right. Their argument that you cannot get the popularly discontented to show their discontent is wrong, and I think they know it is wrong.

One legitimate argument that has been presented against the amendment in its present form is that working-men will not find anybody in city hall before whom to sign their names during the hours when they are able to get to city hall. That is a mere detail, which could and of course should be promptly remedied. It only needs to be pointed out to have the remedy occur to one.

I am not sure as to the exact details of this measure. I think it could be bettered if it was adopted, as I certainly hope, from the bottom of my heart, it will be. I trust it will be bettered in detail. But I tell you once more, gentlemen, those of you who have been urging that we can trust the people, that it seems to me, — I know you do not think so, but it seems to me, — you are insulting the electorate of Massachusetts when you say you cannot get three or four per cent of them to sign their names on such a vital matter as their fundamental welfare. If you cannot get three or four per cent of them to do that, then "God Save The Commonwealth of Massachusetts!"

Mr. Dennis D. Driscoll of Boston: I want to say to the delegates to this Convention that there is no more interesting question to con-

sider, to make an accusation about, than the signatures on the petition. I want to say to the delegates to this Convention that I believe we want to keep politics so far away from the initiative and referendum that you will not establish any headquarters controlled by any practical politician in any city or town of this Commonwealth for the signing of petitions. The present members of the Convention who, as past members of the Legislature, have led in great reform movements should encourage proper petition, but I see changes in future business if the present amendment passes. I hope the delegates to this Convention will defeat this amendment.

I want to say a word in behalf of organized labor and their meetings and their opportunities to meet the people who are desirous of amending the Constitution of this Commonwealth. The labor movement, not only of this city but of this Commonwealth, would like to meet many of the delegates to this Convention personally at their meetings, to question them and to argue the proposition of the initiative and referendum or any amendment they submit in the future to the people to act upon. We cannot, after our day's work, go to city hall or to any ward-room to sign a petition and ask anybody what it means; we would rather have you come to our meetings, the same as you do with your candidates for political office or in the matter of legislation when you want our support, and get the privilege of the floor to talk to us and allow us to question you, to see whether working people are interested or not. That is what we believe in regard to the initiative and referendum, that people advocating petitions shall come to our labor meetings, which are held every night in the week, and which working-men are supposed to attend, so that we may question the men or women on these amendments they want to submit to the people. I trust that no especial place will be designated where the working-men must go to sign a petition in the interest of or against any question that may come on the initiative and referendum, and that you will keep the political machinery so far from it that you will not make the working-men of any city or any town political slaves any longer, to be influenced for any petition that it is sought to submit to the people without having the opportunity to discuss it.

Mr. LUMMUS of Lynn: I ought to say first that there is nothing in this amendment which requires a voter to go to the office of any particular official. It is left open to future legislation to provide the officials in whose presence the petition may be signed, and to provide where the petition may be signed. It doubtless would be provided that some official shall be in attendance at any public mass-meeting called under the provisions which exist in some of our city charters. It is not true that this provision will compel men in Hyde Park to come down to the Boston city hall. The amendment is designed merely to have the petition signed before some responsible person.

The distinguished gentleman from Fitchburg (Mr. Walsh) has given us his dictum that this amendment is not true to the principle of the initiative and referendum. The initiative and referendum presents such manifold phases that I hardly think this Convention will accept the dictum of any gentleman, however distinguished, to that effect. So far as I have been able to discover, and I have read nearly all of the literature on the initiative and referendum, the underlying principle of the initiative and referendum is that the people as a whole should not

have their desires as to legislation permanently checked by the action or inaction of their elected representatives. Is there anything in this amendment that is contrary to that principle? Is it possible that under this amendment the people of Massachusetts will not have the legislation that they really and truly desire?

I am as strongly in favor of popular rule as any man in this Convention, and I have given anxious consideration to the question: What is the difference between my view and that of the gentleman from Brookline (Mr. Walker)? Surely this amendment will prevent all the evils of haste and forgery and fraud that have accompanied the use of paid canvassers in Massachusetts elections and in the western initiative and referendum States. Surely this amendment will make for a sound public judgment upon the question to come before the people, because the people really will have been interested in it. What is the difference between my position and that of the gentleman from Brookline? It seems to me this: That the gentleman from Brookline looks upon the initiative as something that ought to be put in the hands of this individual and that and the other, without regard to public interest or conviction, relying wholly upon the popular vote at the end for the security of the State. On the other hand, Mr. President, I look upon the initiative as something which ought to be put into the hands of the people as a whole. I submit that the whole foundation of the use of the initiative is that the people have a conviction which the Legislature will not carry out. Let us have a form of initiative that will require in the first place a reasonable showing of public interest, and when we have that we remove most of the dangers that have attended the flagrant abuses of the initiative in Oregon and elsewhere.

The gentleman from Fitchburg (Mr. Walsh) says that you cannot get twenty-five thousand signatures by voluntary work, or that you cannot get twenty-five thousand signatures in the manner proposed. Is not that a reflection upon the intelligence and political energy of the people of Massachusetts?

The gentleman from Lynn in this division (Mr. Creamer) says there is widespread apathy among the people to-day. What does he propose to do about that apathy? He proposes to substitute a sham public interest shown by signatures secured by paid canvassers. He wishes to whitewash the apathy, leaving the apathy with all its dangers just as it is. And the same gentleman from Lynn the other day said that he wished to make it easy for the citizen to express his political opinion. I should join him in that idea, but there is a fallacy in the gentleman's remarks. He begs the whole question. The whole question is whether signatures obtained by paid canvassers really are expressions of political opinions at all.

Mr. WALKER of Brookline: The initiative and referendum is now being perfected by its enemies. [Laughter.] We are now at the parting of the ways. This amendment is offered by one of the bitterest enemies of the initiative and referendum in this Convention, and he knows that it will kill it. The whip of the conservatives in the fourth division (Mr. Underhill) knows that if this amendment is carried it will kill the initiative and referendum. It is improper. It makes it unworkable. Therefore there is no need of arguing it more. I

think as far as I am concerned the issue is clear. If this amendment is passed the initiative and referendum is dead.

Mr. Sawyer of Ware: I want the attention of this Convention just a minute to call to the notice of those of the delegates who come from farming communities the injustice of this proposition. I come from a district that has seven large farming towns. One of those towns is 14 miles long, — 14 miles of straggling community over a bad road. What an injustice, to compel one of these farmers to hitch up his old horse, drive 14 miles over a bad country road to affix his name to a petition, when perhaps some city voter who lives within a hundred yards of a ward-room or a city hall can step in and sign his name! The physical inequality of this proposition is the height of injustice.

Perhaps, Mr. President, here is a man who has an automobile and a good road, and the other man has no automobile and no means of conveyance, and must walk. Do you see the injustice of this proposition? It amounts practically to disfranchisement, so far as the referendum and initiative goes, of the people in our rural communities, and I sincerely hope that every delegate who comes from the western section of the State, where our townships are large, will vote against this amendment. We want it arranged, Mr. President, so that if our farmers are interested in a proposition they may sign their petitions at their grange, where they meet to discuss these matters in which they are interested.

I want to call attention to one other feature of this matter, — the physical impossibility of any city or town official giving to it the personal attention that it demands. This amendment reads "official"; there is no plural there. I want to call the attention of these delegates to the fact that this is in the singular, this noun, some city official or some town official, and it would be a physical impossibility for any city clerk or town clerk to give his personal attention to the matter in those hours that would accommodate the people; in other words, those hours when men are not at their work or at their business are so limited that there would not be time for the city clerk or the town clerk to give his attention to this matter, and it would be unworkable on that account.

Now, Mr. President, consider the low estimate of our citizenship that the mover of this amendment has, of their intelligence and serious purpose, to say that they will sign any old thing, if you come to them with a petition and say "this means five or ten cents to me and I want your signature"; that they will sign that. It seems to me that our estimate of the intelligence and serious purpose of the citizens of our State should warrant us in rejecting this amendment on the argument that is put forth for us to accept.

The amendments moved by Mr. Montague were rejected, by a vote of 98 to 129.

Consideration of amendments was resumed Friday, October 19.

Mr. Frederick L. Anderson of Newton moved that the resolution (No. 359) be amended by striking out lines 48 to 69, inclusive, and the word "law", in line 70, and inserting in place thereof the following:

If an initiative petition for a law is introduced into the General Court in the manner hereinafter provided, signed by not less than twenty thousand qualified voters [A],

or if a proposed law is introduced into the General Court by recommendation of the Governor by message, such proposed law shall not later than the second Wednesday in June be laid before a joint session of the two Houses, at which the President of the Senate shall preside; and if the two Houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all such proposed laws pending before it, the Governor shall call such joint session or continuance thereof. The final legislative action in such joint session upon any such proposed law shall be taken only by call of the yeas and nays, which shall be entered upon the journals of the two Houses; and an unfavorable vote at any legislative stage preceding final action shall be verified by call of the yeas and nays, to be entered in like manner. A proposed law introduced by initiative petition shall be voted upon in the form in which it was introduced, provided that it may be amended by vote of three-fourths of the members present and voting thereon in joint session, and any such vote shall be verified by call of the yeas and nays if called for by not less than forty members. [B] A proposed law introduced by recommendation of the Governor shall be voted upon either in the form in which it was originally recommended or in such amended form as the Governor may by message approve or substitute.

If any such proposed law shall receive in such joint session the affirmative votes of at least one-fourth of all the members present and voting thereon, such fact shall be certified by the clerk of such Joint Convention to the Secretary of the Commonwealth and said Secretary shall submit such proposed law to the people at the next State election [C], provided that in the case of a law recommended by the Governor a certificate shall be filed by the Governor with the Secretary of State not later than said first Wednesday in August calling for such submission; and if such proposed law shall be approved by voters voting thereon at least equal in number to thirty per cent of the voters voting at such election, and also by a majority of the voters voting on such proposed law, then such proposed law shall become law, and shall take effect in thirty days after such State election or at such time after such election as may be provided in such law.

Mr. ANDERSON of Newton: I may say in preface that personally I very much prefer the amendments which stood originally under my name, requiring that one-quarter of the Senate and one-third of the House must agree to an initiative petition for a law, in order that it should go to the people; but this amendment I have introduced because of the present situation. An amendment of mine with reference to the constitutional initiative was carried in Committee of the Whole by one vote and stood in the resolution until the gentleman from Beverly proposed what has been called the Loring amendment. That amendment was carried through by the Convention in substitution for the amendment which I had made, and consequently I have felt that the Convention desired to follow that lead. So I have introduced here an amendment which is in line with and analogous to the Loring amendment. My main point with reference to it is that it constitutes the same or a similar check with reference to initiative petitions for laws.

I am in favor of that check for two reasons. First, because it shuts out by this joint session of the General Court all trivial, foolish, selfish and corrupt laws, and consequently will limit the number of those that will be found upon the ballot; and secondly because it demands a real debate upon the subject which the initiative proposes. Now, there are some other large advantages, it seems to me, in the amendment which I have proposed and which has been printed in the calendar so that all of you may see it, but there is one provision in this amendment concerning executive initiative to which I will advert.

I should not have moved this amendment if I had not believed in the executive initiative, but I think it is perfectly proper at this time that these two subjects be separated, and I should not object at all if

an amendment were proposed to separate the consideration of the executive initiative at this time from the amendment which is now before the Convention. I, of course, with my present feeling, would vote against any such motion to separate the executive initiative from this amendment, because I do believe that that matter really ought to be considered and debated in the Convention at this time, and I do believe that even if the Convention comes to the conclusion that it favors an executive initiative there is a still further question, whether it ought to stand here in connection with the initiative and referendum. Consequently, I hope this amendment will be considered in a spirit of fairness. It is proposed just to see whether the Convention will prefer such an amendment as this to an amendment which I originally offered and which was rejected in the Committee of the Whole by a very close vote.

Mr. THOMPSON of Haverhill: I should like to ask the gentleman from Newton if this amendment is similar to the one which was withdrawn recently by the gentleman from Boston in the second division (Mr. Quincy).

Mr. ANDERSON: I understand that it is somewhat similar. I do not know that it is exactly similar.

Mr. GEORGE of Haverhill: When this subject-matter was up the other day the gentleman from Boston (Mr. Quincy) told the Convention that he agreed to what seemed to be the sentiment, that this exexecutive initiative should not appear in this proposal. I have understood that this amendment was introduced at the instigation of the gentleman from Boston (Mr. Quincy). I understand that some others have been approached, asking them to offer this same amendment under their name. Now, I should like to ask the gentleman from Newton if that really is so in his case, — that it was suggested by the gentleman from Boston who the other day withdrew the amendment.

Mr. ANDERSON: I want to say that my action in this Convention, Mr. President, always is independent. I am perfectly willing to receive suggestions from my friends from all quarters. I trust that I have an open mind with reference to these matters. Long ago I said to the leaders on both sides of this initiative and referendum debate that I should not be a stickler for the form of amendment which I put forth with reference to a quarter of the Senate and a third of the House being necessary for the initiation of any law before the people, and that I was willing to put forward some substitute for it that might have a better chance of passing the Convention, and I have done so.

Mr. Augustus P. Loring of Beverly moved that the amendment moved by Mr. Anderson be amended by the substitution of the following: Striking out, in lines 55 to 57, the words "and if the General Court into which it is introduced fails to enact such law", and inserting in place thereof the following "or as amended by a vote of three-quarters of the members present and voting in each branch. If of the members present and voting one-third of the House and one-fourth of the Senate vote for such enactment, but enactment fails".

Mr. LORING of Beverly: It did not seem to me that the amendment offered by the gentleman from Newton (Mr. Anderson) and the amendment adopted by the Convention in the matter of constitutional provision, so far as the legislative action is concerned, ought to stand

on the same footing, and I contend that the way of settling a constitutional provision is not the proper way of settling a law. The main proposition in the constitutional amendment which already has been adopted was that when a petition came in, whether on the initiative of the Governor or the initiative of signatures or the legislative initiative, a Constitutional Convention should be called, consisting of the membership of the two Houses, and that they sit in a Constitutional Convention immediately for the revision of the Constitution. That is an entirely different proposition from the proposition to pass a law in spite of the Legislature, or over the heads of the Legislature. That is a different proposition, and I think it should be treated differently. There is no reason why the Legislature should resolve itself into a Constitutional Convention in the matter of an ordinary law. Nor do I think it is wise at this time to raise the question of the right of the Governor to have the laws considered by the Legislature on a special message on a different footing from any other law which is brought before them. It may be that when we get further in our labors and come to consider the Governor's initiative as a whole it may seem wise that he should be allowed to make recommendations to the Legislature on certain terms, and I dare say that we shall all come to the conclusion that he should have more power in that direction; but the question of a popular law being put to the people should not be coupled with the question of the Governor's power to suggest laws to the Legislature. I think that the action of the gentleman from Boston in this division (Mr. Quincy) in withdrawing this proposition so that it may come up appropriately at the proper time is the proper action, and it will then come up more appropriately at the proper time. Therefore I do not think that, so far as laws are concerned, the Governor's initiative has anything to do with the popular right to pass laws by direct legislation.

This substitution which I have offered for the amendment of the gentleman from Brookline is substantially the motion as he formerly put it in Committee of the Whole. It has only the slight difference that it provides that any proposition put up to the Legislature by the initiative shall be amended if three-quarters of those present and voting shall so amend it; that is to say, if a proposed law was so faulty that three-quarters of the members of the Legislature thought it ought to be amended, it seems to me it is perfectly reasonable that it should be amended.

Mr. WALKER of Brookline: As I have not had an opportunity to read the gentleman's substitute motion, I should like to ask whether his substitute provides that a measure proposed by petition may be amended by three-fourths of the Senate and three-fourths of the House present and voting.

Mr. LORING: Yes, present and voting.

Mr. ANDERSON of Newton: I should like to ask the gentleman if he means that three-quarters of either House can amend it.

Mr. LORING: Three-quarters of both Houses.

Mr. QUINCY of Boston: Perhaps I can throw a little light upon this situation so far as it affects the executive initiative.

The amendment concerning which I gave notice the other day, and decided to withdraw, simply added another provision to the section in regard to the legislative initiative as it stands. It did not introduce

any minority legislative check upon the operation of the initiative system of legislation. I concluded, and I think rightly, that it was not wise to put forward merely as an addition to the section of the initiative and referendum measure before us, standing by itself, a proposition to incorporate in it, without any other change, the executive initiative. Now the gentleman from Newton, very properly as it seems to me, presents to the Convention an amendment which is exactly parallel to the original amendment already adopted in relation to constitutional matters, as offered by the gentleman from Beverly. That, it seems to me, raises an entirely different question and I can at least state my own attitude, — and I think it is the attitude of some other delegates.

If the executive initiative is stricken out of the gentleman's amendment I shall be obliged to vote against it, because then it will come down to a plain question of imposing a legislative minority check upon the initiative method of enacting laws; and for the reasons which have been given by the member of the committee on Initiative and Referendum in charge of this measure I think that the conditions are very different in respect to laws. Therefore I cannot vote for such an additional check standing by itself. I should vote for it if accompanied by the executive initiative provision which the gentleman has incorporated in his amendment. Now, I think that is entirely a matter for the Convention to decide. If the Convention thinks it is unwise, in spite of the action that already has been taken in regard to the constitutional section of this measure, to incorporate here any provision in regard to the executive initiative, I am quite satisfied. I merely hope the vote will not be taken upon this amendment to prejudice in any way the standing of the executive initiative proposition, — standing by itself, as a separate matter.

The statement of the gentleman from Beverly certainly would show his good faith and liberality, and would have a great deal of weight with me, and I think the suggestion of the gentleman from Beverly, — I make this suggestion to the gentleman from Newton, — should govern in regard to the holding of joint conventions or in regard to the holding of sessions of the two Houses on constitutional matters. If the gentleman from Beverly (Mr. Loring) who is responsible for the adoption of the Joint Convention idea with respect to constitutional amendments thinks that the same procedure should not apply to statutory enactments, and undoubtedly the conditions are different, that opinion will have a great deal of weight with me, and I shall be very glad to vote for his amendment.

To sum up and make my position perfectly clear, I shall be content with any decision which the Convention may make as to leaving in or taking out the executive initiative from this amendment that is now pending before us, but I shall be obliged to vote against it if it comes up.

Mr. William S. Youngman of Boston moved that the amendment moved by Mr. Anderson be amended as follows: By striking out, at "A", the words "or if a proposed law is introduced into the General Court by recommendation of the Governor by message,"; by striking out, at "B", the words "A proposed law introduced by recommendation of the Governor shall be voted upon either in the form in which it was originally recommended or in such amended form as the Governor may by message approve or substitute."; and by striking out, at "C", the words ", provided, that in the case of a law recommended by the Governor

a certificate shall be filed by the Governor with the Secretary of State not later than said first Wednesday in August calling for such submission".

Mr. YOUNGMAN of Boston: To put the gubernatorial initiative into the initiative and referendum measure at this time and in this way is to place upon that measure a rider. I am aware that a point of order cannot be raised for bringing into the work of the Initiative and Referendum Committee the work of the committee on the Executive, but if there is one thing that is clear before this Convention it is that we want to deal with one thing at a time, and the big things first. I have observed the gentleman from Boston (Mr. Quincy), who really is the author of this proposition, suggesting that the Convention has committed itself already on the gubernatorial initiative in the regular initiative and referendum measure, and I beg to submit, and I believe the Convention will sustain me, that if they have so committed themselves they did it by default and by inadvertence. They certainly did it, as far as the minority of the committee on the Initiative and Referendum is concerned, because I do not believe there were any members of this Convention more surprised at finding larded into the amendment offered by the gentleman from Beverly (Mr. Loring) the executive initiative. That whole matter of dealing with the amendment of the gentleman from Beverly was a complete misunderstanding, and the true inwardness of it undoubtedly will develop later. It cannot properly be brought before the Convention, as I understand it, at this stage of the initiative and referendum measure; but I believe, even if I wanted to vote for the whole of the initiative and referendum measure as reported from the committee, that I should be doing the whole subject an injury before the people of Massachusetts, and particularly with reference to the reputation of this Convention for doing good and thorough work, work that is well considered, if I put into this initiative and referendum measure, dealing and intending to deal with the popular initiative, a hybrid arrangement for an executive initiative. Therefore, Mr. President, I submit to the members of the Convention that this thing is a rider, and that it should be stricken out, and I hope the gentleman from Boston will rise in his place before this thing is considered and agree that it may be taken up when the report of the committee on the Executive properly appears before the Convention, and that it shall not be thrust in at this time.

Mr. WASHBURN of Middleborough: I desire to move an amendment as to form only which I understand is acceptable to the gentleman from Newton (Mr. Anderson) who moves this amendment. The Convention the other day adopted a provision that the approval of 30 per cent of the voters voting at an election should be necessary for the adoption of a measure. In the form as proposed, 25 per cent only is required. This is on the third line from the bottom of page 5. I therefore move to substitute the word "thirty" for the word "twenty-five".

Mr. ANDERSON of Newton: As the Convention has voted that already, in order to bring it into conformity with the rest of the measure as it now stands, I am willing to accept that amendment.

Mr. GEORGE of Haverhill: It seems to me that we have a committee on the Executive, and I understand they have considered these matters with respect to enlarging the powers of the Governor of the Commonwealth, and that they have somewhere hidden in the docket a proposal

similar to the one that it is intended to inject here. It strikes me, if we want to do business in a business way, that we should let every tub stand on its own bottom. We shall take care of the initiative and referendum in this proposal, and we shall take care of the executive when we reach the matters that are before the committee on Executive. I do not intend to convey the impression, Mr. President, that the delegate from Newton (Mr. Anderson) has been improperly approached by any member of this Convention. I understood, and I understand now by what he says, that this in reality is the motion that was offered by the gentleman from Boston (Mr. Quincy) who is chairman of the committee on Executive. That is, I do not understand that the gentleman from Newton introduced this of his own volition but upon the request of the chairman of the committee on Executive. I do not think that is a frank way to treat the members of this Convention. I do not say it is unfair, but I do not think it is treating the Convention with customary frankness to go about and get some other person to introduce a proposed amendment which by general consent has been withdrawn. I think the question of extending the authority of the executive involves a very large question. When the proper time comes we want to discuss that at length. We have had some demonstrations in former years that are object lessons, and we would not be doing our duty here unless we took those demonstrations as object lessons to see whether or not we want to extend the power of the executive. There are a great many people, Mr. President, who think the Governor has all the authority he ought to have now, and I share in that opinion myself. I hope the proposed amendment by the gentleman from Boston (Mr. Youngman) to strike out the lines offered or accepted in the motion of the gentleman from Newton (Mr. Anderson) will prevail, and that the other matter may come up later.

Mr. CHURCHILL of Amherst: It is a little difficult, Mr. President, to be absolutely certain of exactly what is proposed, and I should like to have a little information. If I understand the amendment offered by the gentleman from Beverly (Mr. Loring), he offers his amendment as a substitute for the amendment offered by Mr. Anderson of Newton. Am I correct in that?

The PRESIDENT: The Chair so understands.

Mr. CHURCHILL: Then, Mr. President, it seems to me that all purposes are served by the acceptance of the amendment of the gentleman from Beverly (Mr. Loring). It is possible that at a later time there may be one or two matters in that amendment that I shall wish to reconsider; but as far as the amendment itself stands, and so far as I understand the opinion of my colleagues upon the minority of the committee, the amendment of the delegate accomplishes precisely the purposes for which the amendment was offered by my colleague at my right. Let us be perfectly fair as to what it does do. It does this: It does remove the gubernatorial initiative from consideration at the present time.

I want to say, Mr. President, in frankness, and I think the Convention will believe me in spite of the amount of suspicion that is sometimes raised when a member of our side suggests an amendment and offers a reason for it, that upon this matter of the gubernatorial initiative I myself, at the present time, am undecided, because I have not had before me the discussion of the committee which has handled this

matter. It is an exceedingly important matter. It will introduce a very great change in our present legislative attitude. It brings up the whole question of party program. That subject ought to be considered by itself at length and deliberately, and so far as I know the opinions of my colleagues upon the matter of the popular initiative there is a very great difference of opinion as to the wisdom of the gubernatorial initiative. I understand the attitude of the gentleman from Boston (Mr. Quincy) as he expressed it this morning and yesterday is in agreement with that. We ought really to consider that whole problem by itself. To remove it at the present time from consideration is simply to take it from a place where it does not belong and put it where it does belong, and remove it from any hard and fast attitudes of a majority and minority upon a subject which is not the same. In fairness to the proposition itself and to the Convention it ought to be considered under another head.

There is a further point. We have adopted, temporarily at least, the attitude that upon constitutional amendments it is wise to have a more elastic and easier method of amending the Constitution. So far as I am concerned, Mr. President, I am agreed to that. I might not be agreed as to the precise degree of elasticity, but I am agreed that it would be wise, if there were no further changes, to make more elastic, to make easier, the mode of amending the Constitution as it at present exists. But we have involved in that the problem of whether there should be a Joint Convention when that is done. Without expressing my opinion now upon the question of a Joint Convention upon constitutional amendments, is it not plain to us all that, when it comes to the question of laws, if we adopt in the matter of initiated laws a Joint Convention system we certainly, whether it is wise or not, are entering an entirely new question, and a very broad one, namely, the question as to whether we wish to leave in this Commonwealth a system of a two-chamber House, whether we wish to leave a check by one body upon another? Now, we may have very different opinions about that, but that is a pretty fundamental question, is it not, and one which we really ought to consider first, before we put it in our Constitution or in our vote upon the initiative and referendum. I think it ought to be clear to us all, Mr. President, that if a check is desirable anywhere, a check by having a measure handled by two separate Houses, it is manifestly desirable upon the question of a statute.

I feel that there are involved in this proposition several fundamental propositions which, whatever our view upon the initiative and referendum may be, we all of us really ought to consider and have decided in our own minds before we make the application of our decision to the initiative and referendum. I think both sides can agree upon that, unless the gentlemen already have come to an opinion upon these matters, upon some of which certainly I have not. Then, Mr. President, I want to make this plain, I hope I have made it plain, that we have involved in the form of the amendment as suggested by the gentleman from Newton, some large propositions: The gubernatorial initiative, the gubernatorial system of handling laws, the question of the amount of the check in numbers which should be required, — three very important propositions; and that the amendment of the gentleman from Beverly (Mr. Loring) puts aside for the moment two of these questions, puts aside three, as a matter of fact, and leaves to

a further stage or a further time the settlement by this Convention of how it stands upon the question of a gubernatorial initiative, of a two-House check and the numerical check which should be applied in the Legislature upon principle to an initiated law. I therefore, Mr. President, hope that at the present time the amendment of the gentleman from Beverly will be accepted.

Mr. WALKER of Brookline: I think the questions of amending the Constitution and of passing laws are two different, distinct questions. I agree with the gentleman who last spoke that they ought to be considered separately. We might well have a Joint Convention to consider amendments to the Constitution, and we might decide not to have a Joint Convention in the consideration of laws. I quite agree that it may be well to consider the question of the gubernatorial initiative distinctly from the question of the popular initiative. They do not necessarily go together. It is obvious, of course, that if we are to give the Governor the power to submit by message under certain restrictions constitutional amendments to the people we certainly ought to permit him to submit to the people a legislative program. I am not specially interested in that question at this time, because I do not believe that the Loring amendment ought to be applied to laws, and therefore whether the gubernatorial initiative is put in or put out I trust the amendment will be defeated. When I speak of the Loring amendment I refer to the amendment offered by Mr. Anderson of Brookline, but which is generally called the Loring amendment. As applied to laws I do not believe in it. Therefore I am opposed to it.

In regard to the amendment which the gentleman from Beverly (Mr. Loring) now offers, it is very much more of a restraint upon the action of the initiative and referendum by petition than was his original Loring amendment, or the amendment as it appears now in our calendar offered by the gentleman from Newton (Mr. Anderson). The proposition of the gentleman from Beverly now is that it shall require a fourth of the Senate and a third of the House voting affirmatively in order that a law petitioned for by the voters may be placed upon the ballot. It goes further than that. It says that a law may be amended by a three-fourths vote of the House and Senate. If we are opposed to the Loring amendment as a check upon laws we certainly are opposed to the later Loring amendment as a check upon laws, for it is very much more of a check than his original proposition.

Now, do we really require a check upon law? We have conceded a check upon constitutional amendments, with the other provision, as a compromise proposition. Let us, then, forget for a minute the constitutional initiative and speak of the legislative initiative.

You will notice, Mr. President, that after a law has been adopted by the people in November it does not take effect under the terms of this resolution until December. The Legislature, in January, may repeal, alter, amend, — do what it pleases with that law. It has an entirely free hand in the matter. Therefore the necessity for a legislative check upon the legislative initiative is wholly unnecessary and undesirable. The Legislature also has the power to submit an alternative measure to the people at the same time. Such measure will be provided for conflicting measures. In view of the fact that the Legislature may amend or repeal, subject of course to the referendum, any law that the people may pass which the Legislature believes inconsistent

with the public interest, I submit to you that it is wholly unnecessary to vote either for the Loring proposition as offered by the gentleman from Newton or for the Loring proposition as now offered by the gentleman from Beverly.

Mr. YOUNGMAN of Boston (rising to a question of personal privilege): I believe that owing to inability to grasp the significance of something that I hear for the first time read from the rostrum I have given the Convention a wrong impression. I believe that I gave the impression to the Convention that I was opposed to the amendment offered by the gentleman from Beverly (Mr. Loring) this morning, when I was in fact speaking about an amendment that was offered several days ago, and that my amendment which I have offered, and which will be voted upon soon, was in conflict with the amendment offered by the gentleman from Beverly this morning. It is not. My amendment is intended to deal with just the single proposition that it speaks of, namely, the inclusion of the executive initiative in reference to statutes.

The amendments moved by Mr. Youngman were adopted, by a vote of 129 to 80.

Action on the amendments offered by Messrs. Loring and Anderson was precluded by adjournment and they were considered Tuesday, October 23.

The amendment moved by Mr. Loring was rejected, by a vote of 70 to 100.

The amendment moved by Mr. Anderson was rejected.

Mr. Josiah Quincy of Boston moved that the resolution (No. 359) be amended by adding after line 82 the following paragraph, with the heading "*Conflicting and Alternative Measures*": —

The General Court by resolve passed by yea and nay vote either by the two Houses sitting separately, or by a majority of those present and voting thereon in Joint Convention held as herein provided, may provide for grouping and designating upon the ballot either as conflicting measures or as alternative measures, only one of which is to be adopted, any two or more proposed constitutional amendments, or any two or more proposed laws, which have been or may be passed or qualified for submission to the people at any one election, under the provisions of this amendment or otherwise; but a proposed constitutional amendment and a proposed law shall not in any case be so grouped.

The General Court may by resolve passed as aforesaid provide for the submission to the people of a substitute for any measure introduced by initiative petition which has been or may be passed or qualified for submission to the people as herein provided, the same to be designated on the ballot as the legislative substitute for such an initiative measure and to be grouped with the same as an alternative therefor.

The ballot shall afford an opportunity to the voter to vote for or against each of the measures so grouped as conflicting or as alternatives. In case more than one of the measures so grouped shall receive the vote required for its approval as herein provided, only that one of the same for which the largest affirmative vote was cast shall be deemed to be approved; in the case of two measures so grouped as alternatives if neither shall receive such required vote but the aggregate affirmative vote cast for both of the same shall exceed the vote cast against either of the same, then that one of such measures for which the higher affirmative vote was cast shall again be placed upon the ballot at the coming State election, without being grouped with any other measure, and if approved by the voters by the vote herein required for the approval of a constitutional amendment or of a law, as the case may be, shall be adopted and take effect as herein provided.

In case in any judicial proceeding any provisions of two or more constitutional amendments, or of two or more laws, approved by the people at the same election are held to be in conflict with each other, then the provisions contained in the constitutional amendment, or in the law, as the case may be, which received the largest number of affirmative votes at such election shall be deemed to govern.

Mr. CHURCHILL of Amherst: I move that action on this measure be postponed until to-morrow, in order that the amendments may be printed. I do not think it is clear to any of us just what the effect of these amendments is, and it would be better to act upon them when we have in printed form the exact phraseology that the gentleman from Boston proposes.

Mr. QUINCY: If there is any real reason for postponement of course I can offer no objection to it; but perhaps if I say a word explaining the character of these very slight changes from the printed form as it appears before us it may obviate the gentleman's suggestion. One of the amendments simply is intended to make the wording conform to the action already taken by the Convention, requiring under certain conditions a thirty per cent vote for the adoption of an initiative constitutional amendment or law. The use of the words "as required herein" simply makes this amendment conform to the measure as heretofore amended by the Convention itself.

Mr. WASHBURN of Middleborough: Does the amendment which the gentleman has now moved in his judgment cover measures which he describes as conflicting or as alternative in one place and measures which he elsewhere describes as alternative? There are two groups of measures. Does it refer to both of them?

Mr. QUINCY: As I grasp the meaning of the gentleman's question, I certainly should say that it was intended to refer to both of them.

One word more, Mr. President. The words "or may be" are inserted simply for this reason: That at the time when the Legislature declares it is its desire that two measures shall be treated as alternative or conflicting measures, only one of which is to be adopted, it may not yet appear whether the final completing signatures, in the case of a law, are to be filed. Therefore it is necessary to use the words "or may be", because the initiative law cannot be finally qualified until after the adjournment of the Legislature, and the filing of the additional signatures.

Now, if the gentleman desires to have the matter lie over I certainly do not desire to offer the slightest objection to that course. This is quite an intricate and difficult subject to deal with, and requires the greatest care in the use of language, and I certainly do not object to having everything before us in print before we dispose of it.

Mr. WASHBURN of Middleborough: I trust that the suggestion made by the gentleman from Amherst will prevail. This is a very important amendment. I have watched its progressive evolution with a good deal of interest. It has been in a fluid state from the start. Each day as the calendar has been printed it has appeared in a new guise. I have myself prepared one or two amendments which I desire to be considered in connection with this proposition, and I wish to offer them. In view of that fact, and the further fact that I am not quite clear as to the import of the language as now proposed, I suggest that it go over.

The consideration of the amendment was postponed until the next session.

Mr. Louis Swig of Taunton moved that the resolution (No. 359) be amended by inserting after the word "Commonwealth", in line 111, the words ", and no law relating to religion, religious practices or religious institutions".

Mr. SWIG: I offer this amendment not as an opponent of the initiative and referendum but as one who favors it. In fact, I have found

it hard to favor it, because my inclination would be to follow those men who have been opposed to the initiative and referendum, were it not that I believe in it from principle. I have the highest regard and esteem for the men who make up the minority of that committee and when I learned that they were going to dissent I again had to search my judgment to know whether or not I was justified in adhering to the majority report. Then later, when I learned that the gentleman from Waltham (Mr. Luce), whose political leadership I have been accustomed to follow, and for whom I hope some day to have the pleasure of voting for the highest office within the gift of the people of Massachusetts, when I learned that he, too, was opposed to the majority report of the committee I again questioned my judgment. But after hearing the arguments and weighing and measuring them I found myself still believing that the initiative and referendum was a move that would make this government nearer a government of, by and for the people. And so I say when I offer the amendment that I propose here to-day I offer it as a friend of the initiative and referendum.

Now, then, why do I propose this amendment? I propose it because I feel that we are a Constitutional Convention met to adopt regulations governing the body politic, and not the body religious, and from the very first day that I crossed over the threshold of this floor I have been unable to understand why religion had anything to do with a body politic and that is why you found me among those who have argued for the passage of the anti-aid amendment. Now I would protect the initiative and referendum against the religious fanatics and against the professional religionists. We have some men in politics who make religion a profession. They try to get political preferment because of their religious belief, and get on the housetops and instead of proclaiming their political beliefs proclaim their religious beliefs. I am endeavoring, by means of my amendment, to protect the initiative and referendum from the efforts that will be made by religious fanatics and these professional religionists, to drag constantly before the people these religious fights. So I hope that this amendment will prevail.

Mr. Webster of Haverhill: I am in perfect sympathy with the spirit in which the gentleman from Taunton has offered this amendment. As I have given assurance to him and to all members by my remarks on previous occasions, I think he will understand the position I take in regard to the desirability of eliminating all possible question of religious matters from political discussion. But it seems to me, sir, that the gentleman's amendment if accepted might entail this danger, and I speak, sir, in view of the fact that in my opinion we already have taken action here which will definitely remove this sectarian discussion from our political affairs, an action which I enthusiastically support and which I hope to support outside as well as in this hall.

Now, sir, it seems to me that the attitude this Convention will take if we accept the amendment offered by the honorable member from Taunton will be this: We have set up a bar here. [Laughter.] I regret, sir, that the hilarity with which members greet that little break indicates a familiarity with a subject far from my thought. Now, sir, we have fenced about this proposal with a certain restriction. Immediately the assumption will go out, or it can be easily made and seized upon. This will be pointed to, and they will say: "Here, here is a

point. There are a few who believe alike in religious things. They are going to invade the provisions of the Constitution." There is an issue. Is this worth such a result? Does not this amendment comprehend within itself the possibility of a division, which is what we are all anxious to avoid in future for all time? I believe, sir, it is perfectly safe to trust to the power and the wisdom of the future, trust to them that there shall be no recurrence of this much vexed religious sectarian discussion. Why, sir, I believe it must be that "The thoughts of men are widened with the process of the suns." No matter if we have gone along over 137 years we are getting wiser every day, we are getting more tolerant and more broad-minded every day. I hope, sir, that nothing will be allowed to creep in here which, by any possibility, ever can be the basis of a difference of opinion in the minds of men upon this sectarian question. I hope, sir, for that reason, while having, as I said in the beginning, abundant sympathy with the purpose of the honorable member from Taunton, that this amendment will be voted down.

Mr. Parker of Lancaster: I trust that the amendment proposed by the honorable member from Taunton may have the approval of the Convention and be adopted, chiefly because it seems to me to be perfectly in harmony with, consistent in every particular with, the wise provisions of the anti-aid amendment finally so overwhelmingly adopted by this Convention. To the end that that provision may be more securely protected in our constitutional provisions I myself deem it wise that this provision in such manifest support of the fundamental one should be adopted. Nor do I deem it in any antagonism to the spirit or purpose of the provisions of the initiative and referendum, with which I myself have little sympathy. But I can see no reason why even the advocates of that measure should object to the adoption of this amendment wholly in harmony with the purposes of the initiative and referendum.

Mr. Edwin U. Curtis of Boston: I have said so much from the beginning of the discussion of the anti-aid amendment that I do not care to burden the Convention much further with talk. It seems to me that all religious subjects would be handled better by considering them before the Legislature than in the way of amendments to the Constitution by the initiative and making them the subject of a general discussion by the people at large. I believe that the amendment offered by the gentleman from Taunton is a wise amendment and will be best for the State, and I trust the gentleman in charge of the initiative and referendum will not oppose it. I have said nothing before on the initiative and referendum, and expected to say nothing, but I heartily hope this amendment will be accepted.

Mr. Brown of Brockton: There is only one suggestion that I want to bring to the attention of the Convention. If this amendment is adopted, measures of this nature will be projected into your various electoral districts. Suppose that some people are determined on this question, will they not campaign in each district and ask the opinion of each candidate in a desire to control legislation? Whereas if you reject this amendment you leave it as a State wide measure to become an expression of the people without throwing the measure into the legislative districts. We well might consider all these ifs and ands. If these measures are to be brought up at all I should prefer that they

be brought up for State wide action. One of the principal arguments made by the chairman of the committee on Bill of Rights was that they kept coming up to plague the campaign plans of various candidates in their respective districts. Some members felt influenced to vote for the anti-aid amendment as a compromise measure that would cause this question to disappear entirely from your legislative districts. But I have more than once expressed the opinion that you will not stop any such feeling and that it will make itself manifest somewhere. Therefore the question distinctly presented now is whether you would like to have it come up as an initiative in which the people all over the State pass upon it by their votes, or whether you would prefer to have it come into your legislative districts. I think it would be wise not to pass this amendment, and thereby leave it open for whatever may happen. For these reasons I shall vote against the amendment.

Mr. Anderson of Newton: Believing, as I do, in the entire separation of church and State, and feeling, as I do, that religion has no place in politics at all, I think that we ought to make it as difficult as possible to bring religious questions into the politics of this State. Consequently I shall vote for this amendment.

Mr. Churchill of Amherst: On behalf of the minority of the Initiative and Referendum Committee I should like to say that we do not regard this as a matter that need cause great controversy between the advocates and the opponents of the initiative and referendum. It is simply a question as to whether the Commonwealth of Massachusetts wishes to place in its Constitution the requirement that no law relating to religion, etc., shall be initiated. The one argument which has been offered this morning that perhaps may be worthy of attention as of weight against this amendment is the argument that we may trust the people. I simply want to say about that, Mr. President, that we are making a Constitution, or shaping one, and the question before us all ought to be, utterly irrespective of the initiative and referendum, whether it is not advisable, whatever trust we may have in the people and their good sense, to place in our Constitution a requirement that no such discussion shall be entered upon. I shall hope, Mr. President, that both sides may join in practical unanimity in the desire and in the hope that no law affecting religion shall become the subject of popular debate upon an initiative petition.

Mr. Walker of Brookline: I, like the gentleman who last spoke, shall take but just a moment to explain the view of our committee on this particular amendment. This proposal to amend the I. and R. was at one time advocated by the chairman of our committee, as also another amendment. At the time we voted to submit the I. and R. he reserved his right to propose this amendment; but he has not proposed it, and, so far as I know, does not intend to propose it. Therefore the committee on Initiative and Referendum is evenly divided on this question, as far as the record shows, seven being against such an amendment and seven in favor of it; or, rather, as the minority has just spoken in favor, I suppose there are seven who are in favor of the amendment. That means seven in favor of it and seven against it.

I do not intend to argue the question. Every member of this Convention has his opinion about it. I do not think it is necessary for me to explain or to urge any member to vote one way or the other. I

simply leave this particular amendment to the discretion of the Convention without comment.

The amendment moved by Mr. Swig was adopted.

Mr. Joseph Walker of Brookline moved that the resolution (No. 359) be amended by adding, after line 109, the following paragraph:

If the General Court fails to agree to pass a proposed law before the first Wednesday of June, the first ten signers of the initiative petition therefor, or a majority of them, shall have the right, subject to certification by the Attorney-General filed as hereinafter provided, to amend the measure which is the subject of such petition. An amendment so made shall not invalidate any signature attached to the petition. If the measure so amended, signed by such first ten signers or a majority of them, is filed with the Secretary of the Commonwealth before the first Wednesday of the following July, together with a certificate signed by the Attorney-General to the effect that the amendment made by such proposers is in his opinion perfecting in its nature and does not materially change the [A] substance of the measure then the Secretary of the Commonwealth shall submit the measure to the people in its amended form; in case of failure to file such amended measure, together with such certificate, he shall submit the measure in its original form.

Mr. WALKER: It seems to me that this is an amendment upon which the conservatives as well as the liberals could agree. I believe it is an amendment in the public interest. The public certainly is interested in having a measure, submitted to it, as perfect as possible in form. If some such provision as this is not inserted, then the measure, in case the Legislature neglects to pass it, must go to the people exactly as it was written originally. Now, since it has been written it has been discussed in the Legislature, it has been heard before legislative committees, it has been made the subject of hostile criticism, and usually a measure so examined will develop weaknesses or imperfections, which the friends of the measure itself would like to correct before the measure is submitted to the people; and I take it that it is in the interest of the public to have a measure perfected before it is submitted to the people. The power given to the proposers to amend, if unrestricted, would be a power totally to change the measure, or very substantially to change it, and make it a different measure from that petitioned for; and therefore some safeguard against the petitioners petitioning for one measure and then deciding to put another measure on the ballot is required. We find such safeguard in the following provision: That the amendment offered by the proposers must be, in the opinion of the Attorney-General, perfecting in its nature and not one that materially changes the substance of the measure. If the Attorney-General decides that it is not a perfecting amendment, the measure will go on the ballot in its original form, but such amendments as the Attorney-General can be persuaded are perfecting in their nature and do not materially change the measure can be made by the petitioners. I believe, as I say, that it is in the interest of everybody that they be given this right. Therefore I trust, Mr. President, that this amendment will prevail.

Mr. UNDERHILL of Somerville: I should like to ask the gentleman from Brookline just one question regarding this amendment. He says, "signed by such first ten signers or a majority of them." Why does he make that a majority matter, instead of having it a complete or unanimous opinion on the part of the first ten signers?

Mr. WALKER: The reason is simply this: That the Secretary of the Commonwealth knows just who the first ten signers are. If you com-

pel them all to sign it you may find yourself in this position, — that one of them has died, one of them is sick, one of them is away from the Commonwealth; and we should have to make elaborate provision for the others to fill vacancies. It seemed to me wholly unnecessary to do that. The simple and practical way to get round this difficulty is to allow a majority of them to decide on these amendments. That is the only reason. I should not object at all to having the vote made unanimous in the matter except for this practical reason. In fact, I wrote it originally the other way, but it took quite a section to provide for the petitioners to fill vacancies in case of sickness or absence from the State or death. This would require filing a certificate signed by the remaining petitioners with the Secretary of the Commonwealth, to the effect that vacancies had been filled, and then the full committee so constituted would be obliged to sign the proposed amendment. It simply adds an unnecessary complication, and I think the easiest and simplest way to get out of the difficulty is simply to allow a majority to perfect.

Mr. Balch of Boston: I have one and only one objection to this particular provision. That objection is that it further beclouds or disguises the real nature of the measure we are asked to adopt. This is one more useful mask for the "boodle" petition on the initiative, which mars and disfigures the whole initiative and referendum measure as it now stands drafted. Why not face the issue squarely and fairly? The fact is that we are asked to adopt a measure by which anybody who will put up the money can ask the people, and force the people to pass on anything he wishes. That is involved in pages of useless language, but it is there. Here is half a page more of useless language for those who propose such a measure to hide behind. I should like to strip off that whole disguise. I think this should be done in a manly fashion and straight from the shoulder if it is done at all. If this Convention really is going to stand by the "boodle" initiative, let it stand by it, and let it say simply and plainly that anybody who will pay in $2,000 can have the people pass on any measure that he wishes, worded in any way he chooses that the Attorney-General will stand for. Now, there is a real objection to the amendment now under discussion, and it is a real objection for this reason: That it makes it just that much harder to explain to the electorate what it is that they are asked to vote on. It is one more bit of camouflage, and I object to camouflage when you go to the people.

Mr. Walker: In moving this amendment I failed to strike out the words "to agree to a proposed constitutional amendment or," in the first line and second line. A different method has been provided for making changes in the constitutional initiative under what is known as the Loring amendment; so therefore at this time, if that amendment should stand, there is no need of those words. So at this time I ask unanimous consent to consider that amendment as offered with those words stricken out: "to agree to a proposed constitutional amendment or."

The amendment was thus modified by unanimous consent.

Mr. George of Haverhill: If I understand the situation it is this. After we provide for the initiative and referendum, for the ten self-appointed and self-anointed men to prepare a resolve or law or what

not, and then secure the signatures of some several thousand others who do not know anything about it, after carelessly preparing this new mode of legislation, we are going up to the Legislature, and, instead of allowing the Legislature, which is composed of members elected for and by the people, to perform the functions of the Constitution and put this law in proper form, they propose, if this amendment is not accepted, to allow these ten bell-wethers to do more than they allow the members of the Legislature. In other words, they can go there and say: "We want this draft as it is," and the Legislature can only look at it. Of course they can vote for it; but they can take no other action.

Now, if we are going to give this extraordinary power to these ten self-appointed men, — and I think I can name those ten men who will usually appear at the Legislature every year with proposed laws, every one of them will be a candidate for office, to begin with, — they will go before the Legislature and ask to have such and such laws passed. If the Legislature says: "We think it is unwise," then they go out and say: "We propose to have it set up this way," or "We propose to have it set up that way." Now, it seems to me we ought to say to these ten men: "If you are going to exercise the rights of the Legislature, then you must put your laws in proper form, because if you don't you cannot change them afterwards."

If we adopt that rule, then these ten men will have to put their laws in proper form to begin with. Otherwise we are going to be in the same position that the Legislature is in. Perhaps there are some people here who fail to realize just what the Legislature has to do with these laws. In the first place, the wisest of men may propose laws to the Legislature; then they are referred to the committees, the committees advertise for a hearing, all parties in interest, for and against, come in and express their opinion; and it is a rare case that a committee reports out a bill exactly as it is printed, with all the care and with all the thought of these men, interested parties as they are, who introduced these laws. They seem to be in a very imperfect condition.

It seems to me we are taking great chances if we propose to allow these ten men to change a proposed law. It invites just the condition that we have in the Legislature. It seems to me, as I said before, that if we are going to give these ten men this extraordinary power, — these ten self-appointed men, for nobody appoints them, they appoint themselves, they say: "We are the ten wise men, we know just what the people want", — it seems to me we ought to say: "If you know as much when you start out as you think you do, you ought to prepare your bills and put them in proper form."

Mr. WALKER: I confess, Mr. President, I am a little impatient at that kind of argument. The gentleman (Mr. George) speaks of "ten self-appointed men," and says we are giving them an extraordinary power to change the proposition. Let me remind the gentleman that those ten men were the ones who drew the proposition originally. They could put it in any form they saw fit; they could change it a hundred times before they got the signatures. It is their proposition. Now, that is the situation. We give them no extraordinary power. We simply tell them that if they discover that a perfecting amendment in their measure is necessary they may make it, and ask to have it submitted to the people, in a perfected form. That is all there is to it.

They have no more power than they had in the first place, namely, to ask for the submission of such measure as they see fit. We wish to protect the subsequent signers, that is all. It is to protect them that we say that the ten original signers shall not change it in any way except to put in a perfecting amendment, and one that does not materially change the measure.

Mr. BLACKMUR of Quincy: I should like to ask the gentleman from Brookline whether this amendment proposes to add anything more than to give these gentlemen, the first ten signers, power to make changes only in form and phraseology in the act. Am I right?

Mr. WALKER: The wording is carefully drawn, with the idea of giving them a wider power than that. If it were merely a chance to change, such a change as the committee on Form and Phraseology could make, I should think it was comparatively unimportant; but we intended to allow the petitioners to put in a perfecting amendment, provided it does not materially change the measure. The word "materially" is purposely put there, — "Does not materially change the substance of the measure."

Mr. BLACKMUR: Would not any change in the substance of the bill be a material change? How could the Attorney-General judge what would be a minimum or maximum change which might be made from the language used, unless he decided that any change in the substance of the bill was a material change?

Mr. WALKER: I simply will say that it is and necessarily must be a discretionary power to a certain extent. But we give the Attorney-General a power here to accept an amendment proposed by those who originally drew the measure, — they could have made it in any form they saw fit, — provided in his opinion it can be fairly considered to be a perfecting amendment. Now, there are many of us here who have had experience with legislation. We know perfectly well the difference between a real change in a measure and a mere perfecting amendment; and as the gentleman in the first division (Mr. George) has said, it is very difficult, no matter how much care is given, to draw a measure in perfect form, so that a perfecting amendment is not desirable. Such amendments are not always necessary but sometimes they are highly desirable. I believe this is a useful provision: to allow the Attorney-General, in other words, to use his discretion in the matter, in consultation with the first ten signers, limited as the words here would limit him.

Mr. BLACKMUR: Let me ask the gentleman if he believes, if it should appear after discussion that there was some harmful provision in a bill, not necessarily destroying the entire purpose of the bill, and it was desired to eliminate that section or portion, whether under the form of this amendment the Attorney-General then could certify that there had not been a material change, although the whole ten men agreed that such a change might be made. Could any authority be given for such a change?

Mr. WALKER: That is a discretionary power, not even strictly a legal power. It is a discretionary power in the hands of the Attorney-General, to permit putting in this kind of amendment. It is as well worded as I can word it. It is not important, in one sense. I do not care much whether this amendment goes through or not. It will not affect the initiative and referendum, whether it goes through or not.

Vote against it, if you in your judgment think it is wise to vote against it. It is quite immaterial. It is simply to permit those who wrote the measure originally to put in a perfecting amendment before the matter goes on the ballot, after discussion. Now, if that is unwise in your judgment, vote it down. I do not care at all whether this amendment is adopted or rejected.

Mr. BLACKMUR: I desire to call attention to the language of this proposed amendment, in the latter part of the last paragraph, which provides that the proposal must be perfecting in its nature and does not materially change the substance of the measure. Now, it seems to me that if there should be discovered in a bill a provision distinctly harmful, requiring a change in substance, the Attorney-General could not certify under this section that it was not a change in substance, even though the whole ten men and the Legislature regarded it as desirable that the change be made. It would have to be certified as it was originally and go to the people in that form.

Mr. BALCH of Boston: I should like to ask the gentleman what basis, if any, he has for the assumption that the ten original signers, so called, were to be the parties who drew the bill; whether it is not more likely, as a practical matter, that the bill would be drawn by the counsel for some corporation, and the parties then signed it, and had the others sign it.

Mr. WALKER: I do not think it is necessary for me to answer that question. They are the ones who file the bill, who have a right to file any form they want to. Who is back of them and who is not back of them does not make any difference. It depends on what is in the measure. The people will know what is in the measure, and it will soon come out in the campaign as to who is backing it and who is not backing it. I consider that suggestion is of little importance.

Mr. BALCH: I understood the gentleman to found his argument on a statement that the ten signers drew the bill.

Mr. DUTCH of Winchester: I should like to ask the speaker if there is any precedent in any of the other States for this provision, particularly with reference to giving this power to the Attorney-General, and what, if anything, he knows about the operation of such a precedent, if it exists.

Mr. WALKER: I should say that, as far as I know, there is no such precedent.

Mr. RICHARDSON of Newton: I should like to ask the gentleman from Brookline if he has any objection to a form for possible amendment of legislation being incorporated into the I. and R. measure similar to that method of amendment of proposed constitutional amendments which, as he has just said, now forms a part of the so-called Loring addition to the I. and R. measure.

Mr. WALKER: I do oppose that, and I think it is wholly unnecessary. Let us all the time keep in our minds all the provisions of this measure. One of the provisions is that within a few months after any measure has been adopted by the people, if the Legislature wishes to perfect it they have ample power to perfect it, change it or repeal it, — to do anything that they think is wise. I believe the Legislature, in view of the popular vote on a measure, will hesitate to repeal it, that they will hesitate to change it; but in case of an obviously necessary perfecting amendment I believe the Legislature would make such an

amendment the next year. Nevertheless, I think at this state it is desirable to allow the proposers, subject to the restriction herein contained, to make a perfecting amendment. It is different from a constitutional amendment, for the Legislature has the matter in its own hands. If the people make an obvious mistake the Legislature can correct it.

Mr. RICHARDSON: I do not understand the logic in the argument of the gentleman from Brookline, which admits that it is proper that the Legislature should have the right to amend a proposed constitutional amendment by a certain vote, and would deny the same right to the Legislature in the case of proposed legislation. I fail to see the impropriety of giving the Legislature that power in the case of legislation, provided the proposed changes can command the extraordinary majority of say three-quarters of each chamber. Such a method of amendment seems to me at least to be very much more safe, to be far more consonant with the theory of government in this Commonwealth, which is an orderly form of government, than allowing a change to be made upon the assent of one man, to wit, the Attorney-General, at a time when no debate on any proposed change has been had, and when no discussion of any proposed amendment or proposed legislation can have been had in the Legislature.

It seems to me that the gentleman from Brookline rather gave his case away when he said that the ten men were the original drafters of this matter and that they could draw it in any form they saw fit before they got the signatures. But the difficulty with his argument is that this provides that they can make any change, — any six of them can make any change, — after the signatures are all on there, and without referring back to the people, from whom they get their power to initiate this legislation. I see no answer to the proposition that this proposed amendment puts a very dangerous power into the hands of six individuals, who shall decide authoritatively what is a perfecting amendment or what is a change in substance or what is a material change. We have seen some examples, in this Convention, of changes introduced into measures, even by the committee on Form and Phraseology, which many members of this Convention have felt were material changes in substance, although that is not the function of the committee on Form and Phraseology.

I submit, Mr. President, that it is improper and unwise to give six men this power to put up any such question to the Attorney-General, and to ask him to decide what is a material change in substance in the proposed legislation. It is loose, it is indefinite, it will be likely to give rise to litigation; it will hamper, in my opinion, rather than advance, the orderly administration of the I. and R. law, if it becomes a law, and therefore I oppose the amendment.

Mr. BRACKETT of Arlington: It seems to me that this amendment is inconsistent with the whole idea and purpose of the I. and R. That purpose is to give greater power to the people in the interest of democracy. Now, this amendment is clearly in the interest of an autocracy. You propose to give six men the power to change a bill which has been petitioned for by 20,000 men. It is supposed that those 20,000 men have some interest in the bill they petition for. But you are going to give a little autocracy of six the power to change it, provided the Attorney-General says that it does not change it in substance. It

seems to me that is entirely inconsistent with the whole idea and that the amendment should be rejected.

Mr. John L. Kilbon of Springfield moved that the amendment moved by Mr. Walker be amended by striking out, at [A], the word "substance", and inserting in place thereof the words "purpose and scope".

Mr. KILBON: It seems to me that the amendment we are now discussing would exclude from addition or substitution, under a fair interpretation by the Attorney-General, any measure that was under consideration on initiative petition. The Attorney-General's discretion of course under this proposed amendment, as now limited, is one of great responsibility and great importance. There are men, I am sure, who have held that position, and other men who are likely to hold it, whose interpretation of the term "substance" necessarily would be narrower than I think the mover of the amendment desires. There are others who might take that instruction in a broader sense. But it seems to me that if the Convention puts itself on record in a broader sense than the phraseology originally proposed, we would be meeting perhaps the idea of the mover of the amendment, with which I am in accord.

Mr. WALKER: I ask unanimous consent to accept that amendment.

Mr. CHURCHILL of Amherst: I object.

Mr. BRYANT of Milton: These words, "purpose and scope," certainly give as broad power to the six men to amend as could possibly be desired by anybody who wants to bring an initiative petition. Who is to decide the purpose of the persons who framed the amendment, or the scope of the amendment? If an amendment concerning labor is introduced into the Legislature, is any proposition under the name of labor to be inserted in that amendment without the consent of the people who originally signed it?

That is the whole proposition. The amendment illustrates fairly well the difficulties of the initiative and referendum. Most of us came here believing that perhaps it was a possibly workable theory of government. The more we discuss it, the more clear, from the words of the proponents of the initiative itself, become the difficulties into which we fall. The leader of those proponents of the amendment admits that almost every measure that is initiated will be faulty; and in order to escape that horn of the dilemma, he puts in the control of six men powers which he would deny to the Legislature, powers which he would deny to members who have been elected by the whole people of this State.

Mr. CHURCHILL: I objected to the substitution of the words "purpose and scope," proposed by the gentleman from Springfield as a substitute for "substance," precisely because his phrase is far wider than the original amendment contemplates, and because we ought to discuss and vote upon that proposition. It is a little difficult, perhaps, to make perfectly clear how very broad the words "purpose and scope" may be, and how far they change the meaning of the word "substance," as in general accepted in legislative forums and in legal decisions.

Let us suppose, for example, a bill proposing that all employees in the Commonwealth of Massachusetts shall be allowed one day off in seven. The purpose of the bill is in general plain; the scope of it is

complete. Suppose we narrow that, and say one day off in seven for the clerks, waiters, etc., in hotels. On the suggestion of the gentleman from Springfield, so long as the measure is the same in purpose, namely, one day in seven for hotel employees, and so confined to hotel employees, it might be changed in the most important details, under the gentleman's amendment; and if the gentleman has followed the legislation of last year he perhaps will realize that in the case of the example I am using it is precisely the purpose and scope that bothered the Legislature last year, — it was precisely the details of that measure in their application, in the effort to deal with some hotels and not with others, and so on. Putting "purpose and scope" in place of "substance," is simply to broaden very widely the opportunity of these six men to make amendments.

With regard to the amendment of the gentleman from Brookline, I want to say, Mr. President, that the minority of the committee take no attitude upon the subject whatever. We have endeavored to look upon this proposition, as upon others, from the point of view of the advocates of the I. and R. The difficulties of this amendment, as we see them, are difficulties which are inherent in the acceptance of the main proposition. If we put those aside, and assume that this measure is going to be accepted, then what should we think about this amendment? Now, if these words are thoroughly understood, if the amendments are to be only perfecting and really not to change the substance, — and "substance" is less than "purpose and scope", — I for one (I am expressing only my individual opinion now) do not see why this amendment may not be safely accepted, if you can trust to the Attorney-General. I already have argued, successfully, that this Convention should trust the Attorney-General in the matter of whether a bill is in proper form to be submitted to the people. I cannot argue to the contrary here. In the accepted meaning of these words "perfecting amendment," and "substance of the measure," I feel that if we are safe under the I. and R. at all, we are safe to accept this amendment as originally offered. The difficulties in it, as I say again, — and there are difficulties and absurdities, — depend on the main proposition and not upon the amendment. I therefore personally am going to vote for the amendment of the gentleman from Brookline, but I cannot vote for so broad a phraseology as that used by the gentleman from Springfield in his amendment.

Mr. WALKER: It was intended, — I intended, — in making this amendment, to give simply a little more elasticity to the matter. I intended to allow those who drafted the measure originally to make a perfecting amendment. But "perfecting amendment" is a very broad expression and it became necessary to limit it. I believe that the words "substance of the measure," "without changing materially the substance of the measure," are words that can be easily interpreted in a specific case by the Attorney-General. They certainly limit it enough. As the spokesman for the minority has said, you can accept it with those words in; they certainly limit it enough. If you do not wish to have the matter limited so much, you can change the words to "purpose and scope." I believe the real effect of the limitation is to permit a perfecting amendment only. If you wish to limit it very much you should stick to the word "substance;" if you are willing to be more liberal it should be "purpose and scope." I think there is use in this amend-

ment, either in its original form or in the amended form which has been suggested.

The amendment moved by Mr. Kilbon was rejected.

The amendment moved by Mr. Walker was adopted, by a vote of 98 to 60.

Mr. Louis Swig of Taunton moved that the resolution (No. 359) be amended by inserting after the word "institutions," in line 179, the words ", and no law relating to religion, religious practices or religious institutions".

Mr. Swig: This amendment is of the same purport as that already adopted this morning and is intended to make the entire measure consistent. I therefore hope it will be adopted.

The amendment was adopted.

Mr. Robert Luce of Waltham moved that the resolution (No. 359) be amended by striking out, in line 178, the words "of any", and inserting in place thereof the words "for any".

Mr. Luce: If the gentlemen will look at the resolution they will see that this change would prevent holding up an appropriation for a department, board, commission or institution, other than an ordinary appropriation. As the measure has been drafted, the laws appropriating money for the ordinary expenses of the Commonwealth or its institutions are excepted from the operations of the referendum. In Oregon one of the conspicuous illustrations of the working of this law was given by an attack on the appropriations for the University of Oregon, which had its start in a most insignificant manner. A labor organizer, whom I think all labor men here would admit was an exception to the class to which he belonged, an exception in his unfairness and his lack of consideration for the public welfare, — and I am sure no labor man here would approve what he did, — this man, for purposes of revenge, it is believed and said, started a campaign, which ultimately involved the University of Oregon, and measures thus achieved by indirection came very greatly to hamper the conduct of that worthy institution.

In our own State this might operate to delay and perhaps to prevent the construction of buildings for our insane hospitals, for our agricultural college, or for any other of our institutions. I am not at all certain that the gentleman who drafted the resolution meant that it should reach that far, but unless this change is made it would be possible for a small group of men, actuated perhaps by some personal animus, to hamper and cripple the development of our institutiohs in the most unfortunate manner; and, with this possibility pointed out to the chairman of the committee on the Initiative and Referendum, I am in hope that he will see no serious objection to making the change.

Mr. Walker of Brookline: This language is perfectly clear, it seems to me, and provides that the referendum shall not hold up any of the ordinary or current expenses, whether of departments, boards, commissions, institutions, or the Commonwealth itself. It was intended that a special appropriation could be held up. Held up how long? Held up until the next election. If the appropriation was passed in the spring it could be held up till next fall. Not the current or ordinary expenses, not the expenses that would keep the institution going; but if there were an extraordinary appropriation for a special purpose, which might stir up the people, and 15,000 of them petitioned

to have it held up, then such special appropriation might be held up till November. It would not happen, perhaps ever, certainly not often. If some appropriation, some special appropriation, was about to be made, that 15,000 people objected to, why not have it held up until the following November? I see no reason why special appropriations should not be held up. There are obvious reasons why the current and regular expenses should not be held up. The salaries and expenses of officers and the other ordinary expenses of our institutions of course could not be held up by referendum under the measure as it stands. I think it would be most unfortunate to change those two words.

Discussion of the amendment was resumed after the noon recess.

Mr. Luce: I simply desire to repeat very briefly, for the benefit of gentlemen who were not present this morning, what the question is. I think the member in charge of the matter will agree with me that this does not go to the essence of the measure; that it is a detail, but one not without importance. It refers to that part of the measure which relates to the holding up of acts of the Legislature upon petition, in order that they may be acted upon again, — a part of the measure, which, in general, I am glad to share in commending. I have suggested this alteration in order that this state of affairs, which I shall describe, may not come about.

In Waltham, the city that I have the honor in part to represent, there is a large tract of land which has been bought for the building of an insane hospital, and which has not been used for that purpose. If the health authorities of the State should decide that it might properly and usefully be applied for the purpose of a hospital for tubercular patients, and this measure went through as it is drawn, it would then be possible for interested real estate owners or others who objected to a tuberculosis hospital, by passing round a petition, to hold up the matter for a year. Now, no place wants a tuberculosis hospital; we are all trying to get it somewhere else.

Mr. Walker: I should like to ask the gentleman whether he considers an appropriation of that kind an appropriation for the regular or current expenses of the Waltham hospital.

Mr. Luce: I certainly should consider an appropriation for building a tuberculosis hospital in Waltham a special appropriation. Would not the gentleman from Brookline agree with me to that effect?

Mr. Walker: I should call it a special appropriation, and therefore it could be held up by referendum.

Mr. Luce: That is just what I am trying to bring out. The gentleman from Brookline thinks that ought to be exposed to being held up. It does not seem to me it ought to be exposed to being held up. If the health authorities of the State get the approval of the Legislature to the extent of securing an appropriation for a hospital of that sort, a special appropriation, it strikes me as unwise to expose it to rancor, vindictiveness, revenge, or any other of the things that might lead to these hold-up propositions.

My summer home is in a little town in Maine which recently has gone through the trouble that comes where a summer colony in one corner of a town desires to be set off in order to have lower taxes. After petitioning the Maine Legislature for several years, they finally

got the Legislature to set off that part of the town. Regardless of whether that was right or wrong, I submit what followed was not wise. Immediately somebody in the other part of the town got the Grangers of the State, if I am rightly informed, to circulate a petition, and they had not the slightest trouble apparently in getting the 10,000 signatures required in Maine. It happened that there were not enough of them verified to put it to the test; but they got the signatures, as they can be gotten anywhere under similar circumstances.

Now, here a real estate dealer, anybody who thinks his own interests are prejudiced, in spite of the judgment of the health authorities or of the Legislature, if he desires to prevent the speedy carrying out of a health program of this sort, relating to one of our public institutions, would be able to hold it up and possibly shunt it off the track, so it would not get back on the track. We have before us the example of what actually did happen in Oregon in the matter of the State University. Largely that was a matter of regular appropriations, but my impression is that a special appropriation, or some appropriation for the extension of the work of that institution, was thwarted in that very way.

The gentleman from Brookline (Mr. Walker) and I agree that this may not happen once in many years. For that reason it may not be of importance to give it very much attention, and no great harm will come whether my suggestion is accepted or whether it is rejected. On the whole, it strikes me that the prudent course would be to leave the decision about the extension of our State institutions in the hands of the Legislature, rather than to expose it to these interests, usually selfish, that are set on foot for the purpose of advancing some one man's welfare, no matter how many other men may be hindered thereby.

Mr. QUINCY of Boston: The gentleman from Waltham has given us one illustration. Let me give another of the possible effect of his amendment. Some years ago there was a measure passed appropriating, if my memory is correct, the sum of nine million dollars for the improvement of Boston Harbor. That was an appropriation made to a board which constituted a department of the State. That raised new and large questions of public policy. Under his amendment, as I understand its import, it would have been impossible for those who, whether rightly or wrongly I will not say, were opposed to the policy of committing the State to an expenditure of nine million dollars for a new purpose, to secure the submission of that act by referendum to the people.

I mention this as an illustration of the difficulties we run into when we try to impose these restrictions. I agree entirely with the gentleman from Waltham (Mr. Luce) that it would be wise to have such a restriction in certain cases, if we could pick and define those particular cases; but is it not wise to permit reference to the people under this measure if you have an appropriation which perhaps runs into millions of dollars, and raises new questions of public policy?

Mr. CHURCHILL of Amherst: I think we shall have to agree, Mr. President, that we have here a proposition which has plainly two sides. We have the objection, offered by the advocates of the measure as it stands, that there may be extraordinary appropriations called for upon which it is wise that the State as a whole should vote. It is quite

possible that that is true, Mr. President, but I do not think we can say there would be frequent cases of that kind. On the other hand, it is suggested that there may be extraordinary action on the part of the people against some appropriation that may be called, and clearly is not, a current or ordinary expense of a department, board, commission or institution, but which should be called an extraordinary expense in a certain limited sense; and that extraordinary expense may be held up, under certain circumstances, though perfectly justifiably, by the action of a comparatively few men.

We have those two sides and those two possibilities. Let us look for a moment at what is shut out, or rather, what is included in the operation of the referendum by the measure as it stands. All developing propositions, all propositions for the development of the work of any department, board, commission or institution, or appropriations for such developments for any of these departments or institutions, are shut out from this exclusion. That is, they are all subject to a possible referendum. Now, Mr. President, we have what may be called regular extraordinary appropriations, — appropriations that cannot be called current or ordinary expenses, but appropriations which are extraordinary in the sense that they are for something new, for some development. That is true of practically all our institutions to-day. Many of our institutions overcrowded, all of them developing, — the attitude of the State toward its charities, toward its weak in any way, is developing so that we give more and more, and wish to give more and more for them.

Now this proposition as it stands in the original measure means that any such appropriation may be held up. And it is simply a choice, as I see this thing, it is simply a choice as to whether we shall say to ourselves: Are graft propositions, or propositions that plainly would be turned down by the people, more likely to go through unless we have this check of the referendum, or is it more likely that the developing propositions will awaken hostility and opposition somewhere?

I find that very difficult to answer; I say so frankly. I have to make a guess, but it is a guess based upon experience. I am convinced that no extraordinary appropriation to which the people really ought to object and would desire to object by referendum and upon a referendum vote is likely to go through the numerous checks we have in the Legislature and outside of it. We have, first, the propositions of the commissions, of the institutions themselves, and then the gauntlet that such propositions have to run in the Ways and Means Committee, in the various forces of both sections of the Legislature, and finally before the Governor and his advisers. The Governor is to-day, and I hope he will be still more so as we develop the propositions of this Convention, the protector of the people against the Legislature. I do not believe it is so likely that extraordinary appropriations which the people would manifestly overturn if they had a chance will go through all these checks and be passed and agreed to by the Governor as that we may have, in the many, many circles with which these commissions and institutions deal, the arousing of some individual hostility which sees a chance for momentary if not complete revenge by holding up a proposition which is both desirable and necessary. The holder-up may not expect in the long run to be able to defeat it, but will seize the opportunity to make trouble for those who have opposed him. It is a ques-

tion of chances; but it seems to me it is wiser to adopt the amendment of the gentleman from Waltham than to leave the proposition as it stands to-day in the measure.

Mr. WALKER: It seems to me perfectly obvious, Mr. President, that this is a merely fanciful objection. Here is an attempt simply to lop off a little more from the initiative and referendum and not allow another series of questions to go to the people, without sufficient cause for doing so. Who is going to hold up an appropriation to build an extension for a hospital? Who is going to be interested in the matter? Purely fanciful.

Mr. LUCE: Will the gentleman, familiar as he is with the city of Worcester, recall to us the episode of the sewer connections for a hospital in the city of Worcester?

Mr. WALKER: I do not believe for an instant a State wide referendum ever would have been instituted because of the dispute that arose between the city of Worcester and the hospital on that matter. If it did, it could be held up for only a few months, — that is all. But it opens the door wide if you do put in this amendment for any development like the development of Boston Harbor, where $9,000,000 were appropriated, the extension of our park system, the purchase of land for a park or reservation in some part of the State proposed by one of our commissions or institutions; such an appropriation could not be held up until the people decided whether they wished to go into that enterprise. It seems to me foolish to withdraw these special appropriations from the control of the people under the referendum. We must allow, of course, the regular ordinary expenditures to be made without interference.

Now, Mr. President, I wish to call attention at this time to another amendment to this proposition to which I intend to assent and which settles this question and perhaps others that may be. I refer to the amendment offered by Mr. Quincy of Boston and printed on the 9th page, which says if at any time a measure is held up in this way by referendum and the Governor thinks the public interest is being jeopardized thereby, the Governor may declare it an emergency measure and cause the measure to take effect. There is the Governor to protect the interests of the Commonwealth in this matter whenever he sees fit to do so.

Mr. CHURCHILL: I should like to ask the gentleman whether the amendment to be offered by Mr. Quincy of Boston varies in its language from the amendment of which he gives notice, where he gives notice that he will offer an amendment that the Governor may decide that such and such a law is an emergency measure. Does the gentleman by his remark mean to indicate that the ability of the Governor to declare a law an emergency measure will cover the cases of these appropriations of which we have been speaking?

Mr. WALKER: If the gentleman will read the rest of the amendment he will see plainly that it does. [Reading.]

> then such law, if not previously suspended as hereinafter provided, shall take effect without suspension, or if such law has been so suspended such suspension shall thereupon terminate and such law shall thereupon go into effect.

Mr. CHURCHILL: May I call the gentleman's attention to the statement in the amendment, Mr. President?

the Governor may . . . declare any law to be an emergency measure hereunder by filing with the Secretary of the Commonwealth a statement . . . that in his opinion the immediate preservation of the public peace, health, safety or convenience require that such law should go into operation forthwith . . .

Does the "immediate preservation of the public peace, health, safety or convenience" require the Governor, for example, to call the Boston Harbor bill an emergency measure?

Mr. WALKER: If the public convenience is involved, then he may do so. If it is not sufficient to inconvenience the public, why should he?

The amendment moved by Mr. Luce was adopted, by a vote of 92 to 85.

Mr. Josiah Quincy of Boston moved that the resolution (No. 359) be amended by inserting after the word "*provided*," in line 128, the words "that the Governor may, at any time before the election at which it is to be submitted to the people on referendum, declare any law to be an emergency measure hereunder by filing with the Secretary of the Commonwealth a statement setting forth the facts constituting the emergency, and that in his opinion the immediate preservation of the public peace, health, safety or convenience require that such law should go into operation forthwith, then such law, if not previously suspended as hereinafter provided, shall take effect without suspension, or if such law has been so suspended such suspension shall thereupon terminate and such law shall thereupon go into effect: and *provided, further*,".

Mr. QUINCY: Perhaps a word of explanation may be desirable in regard to the purpose of this amendment. We can all of us recognize that in times such as we now live in conditions may render it desirable to change a policy which had been adopted, and properly adopted, a few months before. Supposing when a measure comes before the Legislature in April, we will say, that the reasons at that time are not sufficient to induce the Legislature to put it in the emergency class, so as to prevent its suspension; it may very well prove to be the case a few months later, during the summer or the autumn, that conditions may change in such degree that it will be very unfortunate to have that law continue suspended up to the date of the State election. It seems to me that this does not unduly broaden the power of the executive in any way, as it is only a power to prevent the operation of the extraordinary power of suspending the operation of a law pending action on such law by vote of the people at the polls. And in such times as these it seems to me that it would be a desirable and proper safeguard to add to the provision already in the amendment allowing the Legislature to declare any measure to be an emergency measure. It would have the further advantage, which has just been pointed out by the gentleman from Brookline (Mr. Walker), of enabling the Governor to prevent the suspending of any law for a frivolous or a bad reason, to the inconvenience of the public interest or of the interests of the State.

Mr. GEORGE of Haverhill: I think, Mr. President, the members of the Convention if they pause a moment can see the practical workings of a proposition of this kind as outlined by the former mayor of Boston (Mr. Quincy). Suppose the Governor should recommend certain legislation to the Legislature, and the Legislature, representing all the people, should give a hearing and decide that that was not an emergency measure; then suppose the Legislature should treat it as such, and then afterwards the Governor, who was the promoter of this piece of legislation, should turn about and call it an emergency proposition. That is what you would have every time you had a Governor of one

political party and a Legislature of another political party. There would be that conflict back and forth all the time, because you know that the Governor would be in a position where, if he wanted to have his measure take effect at once, all he would have to do would be to say so.

There is another proposition that might be taken into account from a practical standpoint. A few years ago, when this $9,000,000 appropriation was being put through the Legislature for the improvement of Boston Harbor, of course that was looked upon at the time by the press as being a great public improvement. It took a great deal of time and a great deal of space to work up the sentiment in favor of that proposed improvement; but the great thing behind it was the East Boston Land Company on one side and certain real estate interests in South Boston on the other side. That was the real force behind that proposition, and the Legislature was asked to appropriate $50,000,000 to improve these respective properties on both sides of Boston Harbor. And, if you remember, they finally put through an appropriation of $9,000,000, and it took the Governor about three months to find a competent commission, because there was so much division of sentiment between South Boston and East Boston. South Boston is just as jealous of East Boston as she is of the rest of the city when she has anything at stake. You can say the same thing of East Boston. The East Boston Land Company was behind that and, if I remember right, the Governor owned the controlling stock in the East Boston Land Company.

Now suppose the Legislature says: "Here, we are not going into any deal to have the Commonwealth appropriate $9,000,000 to improve property over in East Boston and South Boston," and they would vote against it; why, the Governor would come up and say: "That is an emergency measure." It seems to me, Mr. President, that is a fine proposition to put before the people of Massachusetts, — whether the people of Massachusetts want to appropriate $50,000,000 out of the State treasury to improve the East Boston Land Company and the corresponding interests at South Boston. Of course this was done under the pretense that we were going to enlarge our shipping. But at that time we had the largest dock in the United States and the only thing to do with it was to offer it to somebody, and we would have given it free to anybody who would have come, but we could not get anybody to come because we had no transportation facilities. Boston does not want any transportation. Massachusetts would like to have transportation, but Boston's financial interests do not care for it. Some years ago, when George M. Pullman was a director of the Boston and Maine Railroad, he came here and wanted the financial interests of Boston to buy the West Shore Railroad so they could have an independent line from Boston to Chicago. But no, they would not invest in anything like that; they would rather invest in gold brick schemes. In later years those who were interested in the New York, Ontario and Western Railroad offered it for sale, and the Boston and Maine could have purchased the New York, Ontario and Western cheaper than it afterwards went to the New York, New Haven and Hartford Railroad Company. But Boston would not touch it. We could have had an independent line to the coal fields of Pennsylvania. Now you may talk about improving and building up the Port of Boston. You can-

not improve the Port of Boston until you have facilities that will bring freight here, so that the steamers which come here from abroad can go back loaded with freight. No steamers will land at the Port of Boston with one way freight.

Mr. BRODERICK of Waltham: I understood the gentleman to say that owing to Boston's opposition to any improved transportation Massachusetts has been denied it.

Mr. GEORGE: Perhaps I did not make myself clearly understood. I did not mean that Boston as a municipality was opposed to it. But the financial aid which is necessary to extend our railroad facilities could not be had in Boston, because the financial interests would not respond at a time when there was an opportunity to make a very advantageous arrangement in order to secure two lines from Boston over the Fitchburg Railroad to Chicago and also down to the coal fields of Pennsylvania.

Mr. QUINCY of Boston: I think the members of the Convention realize that most of the remarks of the gentleman who has just taken his seat are entirely beside the point and have no reference to the amendment that is now before us. I want to call his attention and that of the Convention to this one point: This merely proposes that the Governor shall say that the will of the Legislature after it has passed a law shall not be set aside. The Governor cannot do anything under this clause inconsistent with the declared will of the Legislature as manifested by the passing of the law. If the Legislature chooses to pass a law and does not choose to call it an emergency law the Governor is able to prevent the interference of citizens outside with a law passed by the Legislature, which is entirely contrary to the idea which the gentleman seems to have.

Mr. GEORGE: Then if I understand the situation, Mr. President, it is this: If the Governor should make certain recommendations for legislation in which he had a financial interest and the Legislature passed it and the people thought that was a proper thing to vote on and they proceeded to ask for a referendum, then you are going to have the Governor intercede and keep the referendum from being carried out. Do I understand that is the proposition?

Mr. QUINCY: I do not propose to base any argument of mine upon the premise that any Governor of Massachusetts is likely to make a recommendation merely to fill his own pockets.

Mr. UNDERHILL of Somerville: That may be one view to take, but if the gentleman had sat in the Legislature under a certain Governor for at least two years of his three-year term, he might have another opinion. It is just as well to leave the Governor out of this proposition entirely. I believe the gentleman from Boston has a resolution to bring in later on. Let us fight that matter out on the question itself and not mix it up with the initiative and referendum. As the gentleman from Haverhill has said, we have had in recent years at least one or two gentlemen in the corner office who have played politics for most of their terms, and you are giving their like immense possibilities by this amendment. I trust the Convention will see fit to turn down the proposition now and take it up later when the gentleman offers his measure on the Executive.

Mr. QUINCY: Has this any relation whatever to the Governor's proposed power of initiative? Does this relate to anything except the

power of the Governor to prevent the suspension of a law, and is that so related to the proposition to give the Governor the initiative that the two questions should be considered in any way together?

Mr. UNDERHILL: I do not wish to reflect upon any Governor previously in office or in office now, but some Governors have pretty slick advisers and they could turn almost anything to their own advantage whether it really was *intended* to be to their advantage or not.

Mr. CHURCHILL of Amherst: It does not seem to me, Mr. President, that the proposition of the gentleman from Boston (Mr. Quincy) is one to which a very great objection could be taken. That is my individual opinion. It does seem to me, however, that the objection which already has been offered, — that this is a measure which pertains to the relation of the Governor to the legislative power of the State and therefore that it ought to be considered when we consider the whole question of the Governor's powers in relation to the legislation of the State, — is a good one. I must confess that my impression upon the basis of this amendment as it stands by itself is that I should be inclined to vote for this power, if the Governor is given certain other powers which I think he ought to be given. But the point which I wish to make here, for myself and the rest of the members of the minority of the committee, is that it seems to us that this proposition of the Governor's interference in any way with the action of the popular initiative and referendum ought really to be considered under the subject which the gentleman's committee will report upon later, the whole relation of the Governor to legislation, and for that reason I hope that this amendment will not be adopted at the present time. But I should hope that this measure would be reintroduced or reconsidered in connection with the whole topic upon which the gentleman's committee will report. Therefore the minority of the committee, Mr. President, desires that this matter should go over until that subject is considered.

Mr. WALKER of Brookline: I am somewhat surprised that the minority of the committee on Initiative and Referendum does not better understand the real purpose of this suggestion. It has nothing whatever to do with the gubernatorial initiative, — nothing whatever. If that never had been mentioned in this body this amendment ought to be passed. And I, Mr. President, will now say why. It is to meet a real objection to the referendum which experience has discovered in other States. A law, for instance, has been passed to forbid or to regulate the sale of liquor or to regulate the "red light district" or in some other way to protect the people against a great evil and those who have been interested in that evil, knowing that when the matter reaches the people the people will overwhelmingly vote to sustain the Legislature in such regulation, nevertheless have gained a few months, sometimes a year, to continue their business in defiance of the Legislature and in defiance of the people. Now, there is an evil that we recognize, and we supposed we should have the support of the minority on an amendment of that kind. And so we propose that when the Legislature has acted and certain people in the Commonwealth attempt to hold up the Legislature, even for a few months, and the Governor believes that the public interest is jeopardized thereby, or the public health or the public convenience, then he may say to those men, — not to the Legislature, but he may say to those interests that

are attempting to hold up a law of the Legislature: "Gentlemen, you shall not hold it up; the public interest demands that this law take effect immediately." It may be put on the ballot for repeal even though it cannot be held up. This simply means that the Governor may withdraw from the power of special interests an opportunity to hold up the Legislature in order that they may gain a few months longer to do the business which the Legislature may have forbidden.

The amendment moved by Mr. Quincy was rejected, by a vote of 84 to 91.

Mr. William H. Sullivan of Boston moved that the resolution (No. 359) be amended by adding at the end thereof the following: —

The power of initiative and referendum may be exercised as hereinafter provided: —

Amendments to the Constitution. — If an initiative petition for any specific and particular amendment to the Constitution is introduced into the General Court in the manner hereinafter provided, signed by not less than ten State Senators or ex-Senators and fifty Representatives or ex-Representatives of the Commonwealth, and the General Court into which it is introduced shall fail to agree to such amendment in the manner provided in the ninth article of amendment to the Constitution, such amendment shall nevertheless be deemed to be referred to the next General Court and shall have the same standing therein as if once agreed to; and if such next General Court shall fail before the first Wednesday of June to agree to such amendment in the manner provided in such ninth article, and if such initiative petition is completed by filing with the Secretary of the Commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than two additional signatures of such Senators or ex-Senators and ten Representatives or ex-Representatives then the Secretary of the Commonwealth shall submit such proposed amendment to the people at the next State election; and if it shall be approved by a majority of the qualified voters voting thereon, such amendment shall become part of the Constitution of this Commonwealth.

Laws. — If an initiative petition for a law is introduced into the General Court in the manner hereinafter provided, signed by not less than five State Senators or ex-Senators and twenty-five Representatives or ex-Representatives of the Commonwealth, and the General Court into which it is introduced fails to enact such law before the first Wednesday of June; and if such initiative petition is completed by filing with the Secretary of the Commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than two additional signatures of such Senators or ex-Senators and five Representatives or ex-Representatives then the Secretary of the Commonwealth shall submit such proposed law to the people at the next State election; and if it shall be approved by a majority of the qualified voters voting thereon, such proposed law shall, subject to the provisions of the Constitution, become law, and shall take effect in thirty days after such State election or at such time after such election as may be provided in such law.

Mr. William H. Sullivan: I confess that this amendment some months ago when it was first printed was offered in the bitter spirit of cynicism. Now, with the developments which have taken place in the initiative and referendum, it is offered in the sweet spirit of compromise. The amendment which I had hoped to vote for was the amendment which gave the people the full power to initiate and say whether a measure should be submitted to them. That amendment has been so mutilated that now the people play a most insignificant part in it. It is true the number of signatures has been reduced to 20,000, — 20,000 to submit an amendment to the Legislature, and then there is required a vote of 75 Senators and Representatives to say whether or not the amendment shall be submitted to the people. The real power is vested in the Legislature, in a combination of Senators and Representatives, and 75 of them must vote in favor before the

bill or amendment is submitted to the people. I have been impressed during the months in which this initiative and referendum has been debated by the opposition of those who pretend to be close to the people, who pretend to believe in the people but do not think the people ought to be allowed to sign a petition, because, as they have said repeatedly, the only persons who would be called upon to sign petitions are the ignorant and those in tramp lodging-houses. Ten amendments have been suggested and printed in the calendar whereby in some instances it is almost specified that the signatures shall be by finger-prints. In others there is provision made for punishment for forgery. In others they want a certain percentage of the population and in others a certain percentage of the registered voters. These friends of the people declare that in some instances the people are being imposed upon, and so they want to bring all those who sign a petition before the town clerk or city clerk, sometimes with witnesses, so there will not be any question of forgery. And there are amendments whereby people who sign other than their own names can be prosecuted for forgery. All these opponents of the I. and R. are friends of the people, because they have said so, but they do not believe in signatures by the plain people.

Now my amendment is an alternative proposition; not merely an amendment to the measure first suggested here, but an alternative way in which a bill can be submitted to the people. It provides that not less than ten Senators or ex-Senators and not less than fifty Representatives or ex-Representatives may sign the petition instead of 20,000 voters. In the so-called Loring amendment it is provided that the Governor shall be a substitute for 20,000 signatures. My amendment suggests that ten Senators or ex-Senators and fifty Representatives or ex-Representatives may correspond to the 20,000 signatures.

We have in this Convention ex-Senators and ex-Representatives, ex-Speakers of the House, ex-Governors, who ought to have some rights in this petition. We have here the member from ward 5. So long as he is in the Legislature you may rest assured that any bill of merit will receive 75 votes. But we realize that soon he will be drafted to serve as mayor of the city of Boston and he will be lost to the Legislature, and then we must have some other protection. If my amendment prevails and the ex-Representative and the ex-Senator can have a voice in these proceedings, we can have the benefit of his experience.

This seems only fair to Massachusetts. She has paid for the education of the Representatives and Senators and Speakers of the House, and she should not be deprived of their services and the benefits of their experience after they have left public life. It simply provides that ten Senators, — or raise the number if you will, — ten Senators or ex-Senators may act, and the ex-Senators to my mind are closer to the people than the Senators, because they live with the people. Now, if you have no faith in the signatures of the people why not accept a provision that Senators or ex-Senators may sign this original petition, — ten Senators or ex-Senators and fifty Representatives or ex-Representatives? Sixty signatures are required to file an amendment with the General Court. Then a delay of two years and if the amendment does not receive a majority vote then two more Senators or ex-Senators and ten more Representatives or ex-Representatives must sign in case of an amendment and five more Representatives or ex-Representatives in

case of a law, and thus a larger number of votes is required than in the Loring amendment. The Loring amendment provides that seventy-five votes of Senators and Representatives are necessary to get the amendment before the people. Why discriminate against the ex-Senators and ex-Representatives? In this Convention some of the ablest men are ex-Senators and ex-Representatives, and I contend most strenuously that in view of that education for which Massachusetts has paid, — and sometimes she pays munificently for their education in the House of Representatives and the Senate, — in view of the money that she has spent upon their education it seems to me my amendment ought to command the support not only of the friends of the initiative and referendum but also of those who are opposed to the acceptance on petitions of the signatures of the plain people.

The amendment moved by Mr. William H. Sullivan was rejected.

Mr. John W. Cummings of Fall River moved that the resolution (No. 359) be amended by adding, after line 112, the following paragraph:

No law or amendment to the Constitution relating to the appointment, qualification, tenure, or removal or compensation of judges; or relating to the recall of judges or judicial decisions; or relating to the [A] creation or abolition of courts, shall be the subject of such initiative petition.

Mr. Cummings: I wish to say a few words in explanation of this amendment. First, a word relating to its scope! It is intended to exclude from the operation of the initiative the appointment and tenure of the judges, the creation and abolition of the courts, and also the compensation of the judges; and by compensation I mean something more than what is commonly understood as salaries. I mean salaries, allowances for expenses, and the provisions that now are or hereafter may be made for the pensions of judges; so that when that word is construed, if it has to be, it may be understood at least that the mover of the amendment meant to include in the word "compensation", pensions as well as everything else that is paid for the services of the justices.

I recognize the fact that under this amendment one department of government is removed entirely from the scope of the initiative, and I wish to tell the Convention why I am compelled, although I stand firmly for the initiative and referendum, to exclude the judicial field from the operation of that principle. In all the evidence that came before our committee, in all the evidence that was presented to this Convention and in all the addresses that have been made in support of the initiative and referendum, no one before the committee or before the Convention has challenged the integrity or the competency of the courts. The reason why the initiative and referendum is urged is because the integrity and competency of another department of government are seriously questioned. Who would insist that a system under which a department of government has been administered and which has stood the test of experience for 137 years should be changed without the most convincing proof that the change was required? No such proof has been produced. Our judicial system has stood the test. Our courts have maintained their place in the front rank of judicial tribunals; at all times they have been equal to their work; and although there has been and, under any system, there will continue to be disappointment at the interpretation of laws, perhaps more general dis-

appointment when a statute is declared unconstitutional, yet it is not claimed that the court in reaching its decisions has been actuated by any other than the very highest motives. It is true there are complaints made by a great many lawyers against some of the judges, and I believe properly made, and some method of redress for these grievances should be found without attacking our judicial system.

The judges are in a certain sense the representatives of the people. They are the servants and the agents of the people. In the beginning justice was administered by the King. If we followed that method justice would be administered by the people, and all the people would constitute a judicial tribunal. We choose instead to make certain men our representatives, our judicial representatives, and we have transferred to them and have intrusted to them our judicial authority; but they have not the freedom of ordinary representatives; they cannot compromise; and that fact is to be borne in mind when we speak about the independence and integrity of the judiciary, and no man wants to sacrifice either. The independent judge is free to follow the law as he finds it, free to decide the facts as he finds them, and he is obliged, as he is honest, to decide according to the law and the facts. It is the most trying position that a public servant occupies; he must adhere strictly to the law; he must do what he finds at his hands to be done according to law, and he may not compromise. When a judge compromises, he enters on the way of tyranny, because he denies the law in a government of laws, and turns his back upon the administration of justice. If we wish to preserve the integrity of the judge, if we intend to make him independent so that he may resist the temptation to compromise, it is absolutely essential to remove his office as far as possible from the pressure of politics and politicians. Judges should not be drawn into politics to defend themselves or their decisions.

I have but a word further to say about this matter. If the people of Massachusetts believe one year from to-day, or ten, that it is necessary or advisable to modify this amendment or to repeal it and to give the initiative and referendum the entire governmental field to operate in, that may be done. If it could not be done, I should not move this amendment.

Now are you willing, — I appeal to the most ardent friends of the initiative, — are you willing to reject this amendment and take the hazard of facing the people recommending a change in the control of our courts, when you cannot tell why? If the question is asked: Was there any evidence before the committee or the Convention which made it advisable to apply the initiative and referendum to our judicial system? It must be admitted that there was not.

Our people are jealous of the good name of their courts; of their splendid traditions, and the people have confidence in their judicial system. If you ask them now to expose that system to attack by direct government, you are endangering the initiative and referendum. The people will resent it. They have the power to amend, the power to change, if experience demands a change.

When I proposed this amendment in committee, — and I want to say, and the committee will justify me in what I am about to say, that I reserved the right to move this amendment in the Convention when I agreed to the report, — I asked the question: "Why do you want this power over the judges?" And one member said: "Well, if you

don't give it to the people they will be suspicious." Is not that treating the people as if they were children? The people have not had that power for 137 years and they have not needed it. Another member said: "If you give it, we will never use it." Then if you will not use it, do not take it. Do not expose the courts to a power that you do not intend to use and that possibly may be abused.

Again, Mr. President, it is said that we are making a distinct and separate and protected class of the judges; but not more so than we have from the beginning of the Constitution. They always occupied a different position than other public officers. Their tenure was for life. Their appointment was different. It was not an elective one. The provisions for their removal show that it was not intended that they should easily be attacked. It is the second line of defence for the people. The first line is the Legislature; the second, the judicial department; the third is the initiative and referendum, the right to appeal to the people's conscience, to a new tribunal that is created to protect the entire people.

Mr. Dutch of Winchester: May I ask the speaker if he conceives that his amendment would prevent the putting forward by the initiative of a proposition such as Resolution No. 47, a proposition which either would prevent the judges from holding a law unconstitutional or would require four-fifths of the court or what not to do so? That is, does this prevent tampering with the powers of the judges and their standing as guardians of our Constitutional assurances?

Mr. Cummings: In answer to the question of the gentleman from Winchester, it is intended to protect the court and to keep the power in the court to declare acts of the Legislature unconstitutional. It is intended to secure them from any attack, direct or collateral.

Mr. Dutch: Does not the gentleman think that he will have to put in some such word as "powers" before the word "creation"? I see nothing here except what refers to the constitution of the court, its personnel, its tenure. I see nothing here as to the powers of the court, and would he object to putting in the word "powers" before the word "creation"?

Mr. Cummings: I should not object. I am anxious to have that right secured, not endangered.

A word more about the justices if I have a moment longer. The justices here will not be exposed to criticism, unjust as it may be, to which they frequently are exposed. Under the initiative and referendum, if the courts declare a law unconstitutional we have the power to expand the Constitution and reënact the law and make it constitutional. If the law that is invoked does not fit the case we have the power under the initiative and referendum to pass a new law that will fit the case. In brief, the principle of the initiative and referendum is restricted in its operations so that it shall not invade this field. If the time comes when it is necessary that it should occupy this field it may do so. The time has not come. This Convention owes it to the Commonwealth, it owes it to the judicial system, to protect that system from invasion or attack and insure it in all its independence and integrity.

Mr. Parker of Lancaster: Because I interpret the amendment proposed by our distinguished colleague from Fall River to be an amendment to safeguard, defend and maintain the function and the power of the courts of the Commonwealth rather than to hold up the judges

themselves as privileged individuals beyond the reach of criticism to which every public official ought to be subject, I gladly enroll myself under the standard of my distinguished friend and venture to offer a few additional considerations which I hope may find approval in this Convention and lead to the adoption of this, as I conceive, most wise measure, strengthening, safeguarding all, if there be anything really good in the principle of the initiative and referendum so ardently advocated by those who support it.

Who dares, knowing the history of the Massachusetts judiciary, to urge that there now is or ever has been distrust of the administration of the law as displayed by this long succession of eminent, honest and learned jurists? I have heard no one dare suggest so preposterous and false an assumption as basis for opening wide the gate of intemperate, unwise criticism of our judges. I have heard, sir, a suggestion that by direct popular action some of the functions of our court ought to be brought within the immediate control of the popular will. And what are these functions which have excited some protest on the part of those who would remove constitutional restraints or judicial restraint upon the popular will?

The criticism of the courts, or rather the suggestion that the exercise of some of their functions has made them unpopular and requires review and the immediate action of the popular will, is that the courts now have, — and I pray that they always may have in this Commonwealth, — the power, not in the interests of the court or any part of the community, but in the interests of the people themselves, to declare that a legislative enactment is in conflict with the restrictions of the Constitution itself. And in this particular and in the exercise of this power, Mr. President, it appears to me that the court displays itself absolutely, manifestly, as not the betrayer or the invader of popular rights, but as distinctly the protector of the popular rights, the popular will, the popular authority. For what is the significance of an adjudication wherein the Supreme Judicial Court declares an act of the Legislature to be unconstitutional? Nothing but this, gentlemen of the Convention: The court says that the Legislature, the agent as we all agree and understand the Legislature to be, of the people, has violated or exceeded the powers or limitations of its agency; and the court in so declaring the statute unconstitutional usurps no power of its own, but declares only that the popular will is supreme and that any one, whether he be legislator or Governor, who attempts to contravene that will or to act in excess of a delegated authority shall at once be rebuked and his unlawful act annulled. The court in exercising this power of reviewing the constitutionality of legislation is first the guardian of the people's rights. To deny this power to the court or to hold that the exercise of this power makes the court so unpopular as to hazard the continuance of its authority, is to deny to the people this first guardianship, wisest, most learned, most vigilant guardianship of the people's right. Remove it, and the people themselves must assume this function which the courts of Massachusetts always have wisely exercised for them.

Mr. Herbert A. Kenny of Boston: The distinguished member of the Convention from Fall River (Mr. Cummings) to my mind lays himself wide open to the charge of inconsistency when he arises in this Convention and introduces this measure. The members of this Con-

vention well know that when the distinguished citizen from Fall River took that strategic position as the head of the initiative and referendum and went to the front of this Convention he said that the principal reason that changed his mind toward the initiative and referendum was the "fellow-servant" doctrine; the cruelty, the hardship and the tragedy of the fellow-servant doctrine. Now it was no Legislature that passed that doctrine; it was no General Court or Senate that passed that doctrine. It was Lemuel Shaw, the old tyrannical judge of Massachusetts, who, he charged, took that doctrine from the storehouse of legal precedents —

Mr. CUMMINGS: Did not the gentleman from Boston understand that the complaint I made of the Farwell decision was not that the court had not declared the law, but that the Legislature remained forty years without doing anything to amend the law?

Mr. KENNY: I inferred from the remarks of the gentleman from Fall River that he was complaining about judge-made law and not law made by the Legislature. That was what I understood and that was where the "fellow-servant" doctrine came from. It was not up to the Legislature. If the Legislature was inefficient and negligent or indifferent that Legislature may be charged with the sins of omission; but the judge who took that tyrannical law from the storehouse of precedents was committing a sin of commission.

Now I cannot understand the gentleman's change of mind. The gentleman went on further to say that the labor men who came before the Initiative and Referendum Committee, who complained about hostile judicial decisions for years, about the hardships which they underwent from legal decisions, groaned under the legal decisions of judges and not of the laws passed by the Legislature. How can the gentleman from Fall River get up here and explain and reconcile the remarks he made in front of this Convention in support of the initiative and referendum, and then have the audacity to arise in this Convention and protect those self-same judges? The gentleman from Lancaster (Mr. Parker) of course is against the initiative and referendum. The gentleman from Fall River, the distinguished gentleman from Fall River! I say, beware the Greeks bearing gifts. That remark probably has been overworked here. But I want for the benefit of the distinguished members of this Convention to read to them a distinguished Republican's view, — the view of a man who was not afraid, a man who is consistent and a man of whom the Republicans think highly; a man who is not afraid to take 500,000 men to France and go into the trenches. That is Mr. Theodore Roosevelt. This I quote in answer to the distinguished gentleman from Lancaster. Mr. Theodore Roosevelt says, — I am quoting from the book "Majority Rule," and introduction to it by William M. Ransom, written by Mr. Roosevelt:

> As a matter of fact, judges are human, like other people, and in this country they will either be chosen by the people and be responsible to the people, or they will be chosen by and be responsible to bosses and the special interests and the political and financial beneficiaries of privilege. In the course they are taking the great corporation lawyers are in some cases certainly unconsciously and in other cases, I fear consciously, acting in behalf of the special interests, political and financial, and in favor of privilege and against the interests of the plain people and against the cause of justice and human rights.

Mr. McAnarney of Quincy: The adoption of this amendment, in my opinion, is essential to the proper administration of justice in this Commonwealth. If ever there was any doubt in my mind as to that it vanished when the Convention last week exempted the Bill of Rights from the operation of the I. and R. Section 29 of the Bill of Rights deals with our court and refers only to the Supreme Judicial Court, the tenure of office of its judges and their salaries, but not as to their appointment or selection. The provisions of the Constitution providing for the appointment of the judiciary are to be found elsewhere. When we excepted the Bill of Rights from the operation of the I. and R. we put upon the courts a burden which never before has rested upon them, nor, so far as I know, on the courts of any other State. Heretofore our courts from time to time have passed upon the constitutionality of laws and at times have been forced to declare some unconstitutional. Does not every member of this Convention recall how two advocates of the I. and R., one from Brookline in this division (Mr. Anderson), one from Brookline in the fourth division (Mr. Whipple), appealed to the delegates to remember the feeling of unrest which was taking possession of the people of Massachusetts; how it was likely to affect our courts; how the people were beginning to look with disfavor, if not with hostility, upon the courts, because they, in the discharge of their duty, have declared some laws passed by the Legislature to be unconstitutional? Those words still are fresh with us. We remember them. We remember the reasons why, and the force with which they were urged. Now by the exemption of the Bill of Rights we have placed this added burden upon the courts: Not only must they continue to declare laws passed by the Legislature unconstitutional, if they believe them to be so, but they now will be required to pass upon the constitutionality of constitutional amendments. Do you realize the full significance of this further burden you have put upon our courts, and the position in which it may place them?

Amendments to the Constitution may be made by popular initiative petition under the I. and R.; the courts may be compelled to declare such amendments unconstitutional because in conflict with some provision of the Bill of Rights, or some right either expressly or by implication reserved thereunder; yet they may be amendments of such character as for the time being have back of them the great force of an overwhelming popular sentiment, — of the masses, if you will. Think what an object of attack our courts would become if they were forced to declare unconstitutional a constitutional amendment the people of the Commonwealth had adopted after years of agitation! Does not that suggest the wisdom of protecting the courts and their decisions from an attack under a popular initiative petition under the I. and R.? Can you throw too much protection around our court? Is it not our duty to do our share in making our courts as independent and free from improper influence and clamor as possible? The adoption of this amendment will help materially in securing that end.

I am requested to yield for a moment so that the delegate from Winchester (Mr. Dutch) may offer an amendment, and I do so for that purpose.

Mr. Charles F. Dutch of Winchester moved that the amendment moved by Mr. Cummings be amended by inserting, at "A", the word "powers,".

Mr. McANARNEY: Imagine if you will what may happen to our Supreme Judicial Court if, as our court of last resort, it should be compelled to declare a much needed constitutional amendment relating to some portion of the Bill of Rights unconstitutional because adopted by a popular initiative petition. This may happen: Notwithstanding we may have exempted the Bill of Rights from the I. and R. if we submit to them and the people adopt an I. and R. law without such an amendment as is now moved, there will be reserved to the people the power by popular initiative petition to amend Chapter 3 of Part II of our Constitution, create new courts, provide for an elective judiciary, one of which courts may be a new court of last resort, a court of appeals, leaving our present Supreme Judicial Court, but shorn of all its power.

Mr. MANSFIELD of Boston: I should like to ask the gentleman whether or not he construes the word "appointment", in the second line of the proposed amendment, to include election.

Mr. McANARNEY: I construe the proposed amendment with the addition made by the delegate from Winchester as covering the entire judicial field, — all the field occupied by our courts.

Mr. CHURCHILL of Amherst: I should like simply to say that the minority of the committee is entirely in favor of the amendment offered by the gentleman from Fall River as amended by the gentleman from Winchester; and I yield the rest of my time or such portion of it as he desires to the gentleman from Fall River.

Mr. CUMMINGS of Fall River: Let me thank the gentleman from Amherst for his courtesy. I am obliged to take notice of the good-natured criticism of the gentleman from Boston (Mr. Herbert A. Kenny). He charges me with being inconsistent. I am very sure that I am fairly exposed to that charge day after day, and yet I should regret if I were inconsistent in urging matters as important as those that come before this Convention. The gentleman seemed to think, —I am sure he did think, — that I have said that the people mistrusted the courts and complained of the courts, of court-made law. I feel obliged, therefore, to call his attention to what I did say as it is recorded by the stenographers who took it down at that time. I had finished discussing the iniquitous, barbarous law that Massachusetts enforced for a great many years to the pain and disadvantage of working-men, and then I said this, — and I am reading from the text of the speech:

> What was happening during all this time? One, possibly two important things. First, the working-men began to distrust the Legislature. *They did not distrust the courts.*

The gentleman was mistaken when he said that I declared that the courts were distrusted. I stated:

> They did not distrust the courts. They seemed to take it for granted that they should accept the law as they found it.

In twenty-five years, as was pointed out by the gentleman from Lynn (Mr. Lummus) in an address last week, the Supreme Judicial Court of Massachusetts has declared unconstitutional but one act relating to labor up to the decision of Bogni *v.* Perotti, where the definition of the right to labor as being other than property was denied. The people, — I repeat, Mr. President, and I repeat it for the benefit of those who are friendly to the initiative and referendum, — will guard

jealously the integrity and independence of the courts. If you send out advice in the form of the initiative and referendum to the people to expose their courts to attack, you will expose the initiative and referendum to defeat. If I was seeking to defeat this principle, to reject it, to secure its denial by the people, I should leave this judicial field open to attack. [Applause.]

Mr. WALKER of Brookline: I wish simply to state the fact that seven members of the committee on Initiative and Referendum, including Mr. Whipple, were opposed to this amendment. I give the rest of my time to the gentleman from Fitchburg.

Mr. WALSH of Fitchburg: I venture to assert that there is no man in this Convention who has more respect for the judiciary than I. I am opposed to the election of judges by the people. Among the judges of the Commonwealth are some of my warmest and best friends. Yet I am opposed to this exemption, and I am opposed to it because I believe in the common-sense, the fairness and the sense of justice of the common people. [Applause.] I am opposed to any limitations upon the right of the people to petition for the enactment of laws or to change their Constitution as they see fit, provided the process is legal and the procedure under proper regulation. For the same reason I was opposed to the amendment offered by the gentleman this morning exempting religion and religious institutions. Both this amendment and the one adopted this morning are based upon a belief that a majority of the people of this Commonwealth cannot be trusted to act intelligently and reasonably on a question of public policy. I am willing to leave the protection of my religious convictions and my judicial rights to a majority of my fellow-citizens. [Applause.] I am willing to trust the protection of our institutions to the fairness, the honesty, the integrity of the judgment of a majority of our fellow-citizens.

Now this amendment seeks to exclude from review by the people, one class, one branch of the Government. Why not the Governor? Why not the Governor's Council? Why not the Public Service Commission, — which deals with powerful corporations and the regulation of rates? Why single out the judiciary and say that this department of the government shall be exempt from the people ever having the right to petition for a measure to enlarge or limit their powers, to further protect their own rights? Hence it seems to me that we ought to defeat this amendment and every amendment which seeks to make less useful the initiative and referendum. If you are going to begin to limit it why not limit it in every particular? Already we have cut out the Bill of Rights; to-day you exempted religious questions. Now comes the exclusion of judicial questions. Why stop here? What about taxation, the most important law-making function of the Legislature, dealing as it does with the distribution of the burden of government? What can be said in favor of the judiciary and the courts that cannot be said in favor of various other branches of the government?

Now I know it is embarrassing to some in this Convention to oppose this amendment. As a lawyer it is particularly difficult. There is a possibility of one's vote being misunderstood. It is very much pleasanter to have it appear that you have such extreme confidence in the present members of the judiciary that you want them protected and

safe from any interference by the people. But we are not dealing merely with the present judiciary; we are making laws for the future; we are providing means and ways for the people of future generations to change their Constitution as they deem prudent and wise. The judiciary does not need our protection. It has stood and it will stand securely upon its own well-developed foundation. There is no better judiciary in any Commonwealth in the United States of America than that of Massachusetts, and if it cannot rely for protection upon the judgment of a majority of our fellow-citizens when attacked, then I say something is wrong with the electorate, and if the electorate is wrong, then the initiative and referendum is wrong and the people ought not to be trusted with this power. It is because I believe in the judiciary, it is because I know the character and capacity of the men who are in the courts of Massachusetts, that I oppose this exemption. The Massachusetts judiciary is safe in the hands of the people. It does not need to be handled by us like a delicate piece of china. I oppose this amendment because it indicates a distrust of the people and a fear that the people will not exercise caution and a calm common-sense in passing upon judicial questions and upon the power of the courts. [Applause.]

There being no objection, Mr. Cummings was permitted to incorporate as part of his amendment the amendment suggested by Mr. Dutch of Winchester.

The amendment moved by Mr. Cummings, as thus modified, was then adopted, by a call of the yeas and nays, by a vote of 142 to 111.

The consideration of amendments was resumed Thursday, October 25.

Mr. Josiah Quincy of Boston moved that the resolution (No. 359) be amended by adding after line 82 the following paragraphs:

Conflicting and Alternative Measures.

The General Court by resolve passed by yea and nay vote either by the two Houses sitting separately, or by a majority of those present and voting thereon in Joint Convention held as herein provided, may provide for grouping and designating upon the ballot either as conflicting measures or as alternative measures, only one of which is to be adopted, any two or more proposed constitutional amendments, or any two or more proposed laws, which have been or may be passed or qualified for submission to the people at any one election, under the provisions of this amendment or otherwise; but a proposed constitutional amendment and a proposed law shall not in any case be so grouped.

The General Court may by resolve passed as aforesaid provide for the submission to the people of a substitute for any measure introduced by initiative petition which has been or may be passed or qualified for submission to the people as herein provided, the same to be designated on the ballot as the legislative substitute for such an initiative measure and to be grouped with the same as an alternative therefor.

The ballot shall afford an opportunity to the voter to vote for or against each of the measures so grouped as conflicting or as alternatives. In case more than one of the measures so grouped shall receive the vote required for its approval as herein provided, only that one of the same for which the largest affirmative vote was cast shall be deemed to be approved; in the case of two measures so grouped as alternatives if neither shall receive such required vote but the aggregate affirmative vote cast for both of the same shall exceed the vote cast against either of the same, then that one of such measures for which the higher affirmative vote was cast shall again be placed upon the ballot at the coming State election, without being grouped with any other measure, and if approved by the voters by the vote herein required for the approval of a constitutional amendment or of a law, as the case may be, shall be adopted and take effect as herein provided.

In case in any judicial proceeding any provisions of two or more constitutional amendments, or of two or more laws, approved by the people at the same election are

held to be in conflict with each other, then the provisions contained in the constitutional amendment, or in the law, as the case may be, which received the largest number of affirmative votes at such election shall be deemed to govern.

Mr. QUINCY: I desire to direct the attention of the Convention to the importance of inserting in this measure some provision for dealing with the possibility that conflicting measures may be enacted by popular vote at the same election. This possibility and this difficulty have been recognized in the legislation or the constitutional provisions of several States which have adopted the initiative and referendum. If members will look, for instance, at page 37 of Bulletin No. 6, on the initiative and referendum, they will find a statement that four States, namely, Arizona, California, Nebraska and Nevada, provide that if conflicting measures submitted to the people at the same election are approved by the electorate the measure receiving the highest number of affirmative votes shall thereupon become law as to all of the conflicting provisions. That is substantially the provision which is contained in the last paragraph of the amendment printed under my name on page 7 of the calendar. That meets the case of the adoption by the people of conflicting measures, which may happen in several ways. It may be by some very close vote. Supposing there are two measures which are obviously conflicting with each other, and the people so understand; it might happen, nevertheless, that upon a close vote they would vote for the adoption of both. The courts are deprived of the benefit of the usual rule in respect to legislation, because these conflicting provisions are not adopted successively, so as to enable the courts to say that the latest enactment governs, but are adopted by the people at one and the same moment. Therefore it seems to me to need no argument to establish the need of some provision laying down a rule for the courts if it should happen that two measures, obviously in conflict with each other, are adopted by the people at the same time.

The second paragraph of the amendment provides for the submission by the Legislature of an alternative measure. That provision, or a similar one, is found in the constitutions of California and of Maine. If members are interested they will find on page 61 of Bulletin No. 6 the provision of the California Constitution to substantially this same effect, that is, giving the Legislature the right to submit an alternative measure; and if they will look at page 79 they will find a similar provision under the Constitution of Maine. So that we are not raising here an imaginary or a purely theoretical difficulty, which has not been recognized in any other States which have adopted the initiative and referendum.

A more elaborate provision, however, is contained in this amendment to cover the case of measures which may be regarded as alternative to each other, and to bring the matter before the Convention in concrete form I want to give several illustrations of possible alternatives which it certainly is desirable to have presented to the people as such. Suppose, for instance, that one group of voters is in favor of municipal suffrage for women, but desires to stop there. Suppose another group of voters is in favor of State wide suffrage for women, but does not favor presidential suffrage for women. Suppose a third group of voters favors presidential suffrage for women, and that only. Now, these measures, in the case of the first two that I have mentioned,

would be conflicting in the sense of being overlapping, and they should be presented to the people on the ballot so as to show this. If the people are asked by initiative petitions to vote for municipal suffrage for women and also for State wide suffrage for women, their attention should be called to the fact that these are alternative measures to this extent at least that the adoption of State wide suffrage for women supersedes the need of any provision for municipal suffrage for women.

Take another illustration: Suppose that one group of voters proposed to extend our present local option system in this State by making it county option, instead of municipal option, and another group of voters proposed to submit a measure to enact a State wide prohibition law; those measures obviously would be in conflict with each other. Now, the proposition of this amendment is simply this: That the Legislature, when it sees what measures are to be presented to the people, whether by direct action of the Legislature or by the initiative, shall have the right in its discretion to group any of these measures together which are in conflict with each other, or which fairly should be regarded as alternatives, — only one of which should be adopted, — so as to give notice to the people that they are conflicting, or that they are alternative, and to invite the people to vote for whichever of the two measures most commends itself to their judgment.

The gentleman from Middleborough (Mr. Washburn) suggests by his amendment a different method of arranging the ballot to provide for the submission of alternative measures. The amendment as it stands contemplates giving the voter the right to vote for either or both of the alternative measures, as well as against either or both. The gentleman from Middleborough suggests that it would be desirable to restrict the voter to voting for only one of these measures. Of course the right of the voter to vote against both of the measures must be safeguarded; and that brings us to a mechanical difficulty, how to arrange the ballot, without confusing the voter, so that the voter can vote against two conflicting measures but can vote for only one of them. Now, I am prepared to meet that difficulty and adopt a form of this measure satisfactory to the gentleman from Middleborough by leaving that matter entirely to the Legislature, allowing the Legislature to say in what form these conflicting or alternative measures shall be presented upon the ballot. I believe that the gentleman from Middleborough will move, in lieu of the amendment which he has printed in the calendar, a short and simple amendment leaving the matter upon that basis, which will be entirely satisfactory to me and, as I understand it, will reconcile any difference of view which may exist between us.

The gentleman from Waltham (Mr. Luce) has printed upon page 8 an amendment which deals in an entirely different manner with this question of conflicting provisions. The gentleman will speak for himself, but I have had the advantage of consulting with him as to some feasible method of accomplishing the result which he has in view, which in part at least is this: Suppose there are two rival systems, as there are, of preferential voting. Suppose the advocates of those two systems taken together outnumber the opponents of the two systems, but cannot agree as to which of the two systems is the better. The gentleman from Waltham wants some method, as I understand it, by which either the Legislature or the people shall

decide which of those measures has the larger popular support, or is the better in itself, so that the advocates of this particular reform may unite upon that measure which is found the stronger. I have incorporated in my amendment as printed in the calendar, — the part I refer to is printed in the calendar at the top of page 7, after the letter A in the third line, — a provision for dealing with this matter which I believe is satisfactory to the gentleman from Waltham. That provision is this: Two rival measures are submitted; if the two receive more votes taken together than are cast against either of them, then the one which gets the higher vote goes upon the ballot automatically at the next election.

Mr. WASHBURN of Middleborough: I think some form of amendment similar at least to that proposed by the gentleman from Boston is needed badly. Of course as the measure was reported by the committee it would have been entirely possible for antagonistic groups to agitate their particular panaceas at the same time. It would have been entirely possible for conflicting measures to get on the ballot at the same election, and it also would have been entirely possible for two conflicting measures to be adopted at the same election. That is a contingency which, as the gentleman from Boston has pointed out, it seems to me, we should guard against. I think, too, that the people should have the benefits of the judgment of their trained experts, in other words, the members of the legislative branch of the government, and that they should have an opportunity to choose between measures proposed through the initiative and measures which have received the mature judgment and deliberation of the members of the General Court. As the measure was reported by the committee, it contained no provision of this kind. I say I think we should make such a provision.

But, sir, my objection to the form of the amendment as originally offered by the gentleman from Boston was this: In effect it provided for a system of preferential voting on legislative measures. To that I am opposed in principle. His amendment distinctly states that only one of these conflicting amendments or alternative measures shall be adopted. Why should we extend to the voter the opportunity of voting for all of the conflicting amendments which may be offered, any more than we should give him the opportunity of voting for all of the competing gentlemen who may be running for some particular office? He ought to choose. But, says the gentleman from Boston, this presents some mechanical difficulties. I recognize that, and therefore for one I am entirely willing to leave it to the discretion of the Legislature. However, I do not want to make it obligatory that conflicting amendments shall be submitted in such a way as to insure preferential voting and therefore I submit, in lieu of what I had originally intended to offer, this form of amendment, which I understand is satisfactory to the gentleman from Boston:

To insert after the word "for", in the second line of the third paragraph, the words "each of the measures, or for only one of the measures, as may be provided by law", so as to read, — I am talking now about the third paragraph: "The ballot shall afford an opportunity to the voter to vote for each of the measures, or for only one of the measures, as may be provided by law, or against each of the measures so grouped as conflicting or as alternative."

In effect I think that takes care of my objection and leaves it to the discretion of the Legislature, where I think it ought to be left in the last analysis. But so far as the principle of the amendment is concerned I think it is highly important, for the reasons that I have explained, and I trust that the provision will be adopted.

Mr. RICHARDSON of Newton: As we consider or try to consider these propositions about conflicting and alternative measures, and get into the ramifications and subramifications of the debate, it is occurring to some of us that the various remedies which are being suggested are worse than the disease. It is possible, Mr. President, that some proposition of this kind ought to be framed. It is an adjective matter and not a substantive matter. It seems to me that, this being a matter of form and not of substance, it is such a proposition as ought to be worked out carefully before it is advocated and urged upon the floor of this Convention. I therefore move, Mr. President, that all proposed amendments which are printed on the calendar with reference to conflicting and alternative measures be recommitted to the committee on Initiative and Referendum.

The PRESIDING OFFICER: The Chair rules that the motion is not in order.

Mr. LUCE of Waltham: The amendment offered by the gentleman from Boston is designed to meet objections that have been laid before the Convention on several occasions through the possibility that conflicting measures may be submitted, and also through the possibility that a measure presented on an initiative petition may not be in a form commending itself to the Legislature, which might desire to present what seems to it a better form. Inasmuch as the third paragraph of this proposed amendment meets the purpose of the amendments I had given notice of intention to move —

Mr. UNDERHILL of Somerville: I am so confused regarding this phase of the initiative and referendum that I should like to propound to the gentleman a question which possibly may clear the atmosphere for me and for some of the members. According to the amendment of the gentleman from Boston as offered at the present time, it seems to me that it is one of the biggest jokers that possibly could be inserted into any piece of legislation. For illustration we will take the question of woman suffrage. Suppose one group of people put upon the ballot through the initiative a question: Shall woman suffrage be granted? The same group may put upon the ballot a question: Shall municipal suffrage for women be granted? And the same group or another group may put another suffrage question upon the ballot. Now, some people who are opposed to woman suffrage may vote for municipal suffrage, but in any event the opposition is divided. We will take the question of pensions. I believe most of the people in this Commonwealth are opposed to unlimited pensions. Suppose that we put upon the ballot a question of unlimited pensions, that is, non-contributory pensions, and then another question was put upon the ballot by the same group for contributory pensions to the extent of ten per cent, and another question went upon the ballot for contributory pensions to the extent of seventy-five or fifty per cent. Now, sir, will you tell me how, under this provision, those who are opposed to pensions have got a ghost of a show, providing their forces are split on

the three propositions, unless the Legislature first says which one of the three shall go on?

Mr. Luce: The purpose of this section is to accomplish precisely what the gentleman in the fourth division desires. It is the objection that has been emphasized here repeatedly. We do not want that to happen which he suggests may happen. Now, the first suggestion for a remedy was that the Governor should choose between conflicting propositions. Objections were raised to that, and a redraft specified that the Legislature should choose between conflicting propositions. Objections were raised to that, and now there has been some measure of approval of a suggestion that the people shall choose between conflicting propositions. Of the conflicting propositions of which the gentleman speaks, under this provision not one can be enacted in the first year unless it receives a majority vote. That answers his question. Unless a majority of the people, more than half the people, vote for some one of the three things, it cannot be enacted.

Mr. Quincy: I should like to ask the gentleman if it would not be a little more accurate to state also that it must be not merely a majority vote but also a 30 per cent vote, under the amendment already inserted. In other words, does this amendment alter in any way the provisions or the conditions required for the adoption of a measure by the people?

Mr. Luce: It does not. It requires that there shall be a majority vote and a vote of at least 30 per cent of the people voting. Now, assuming that none of the three conflicting measures gets a majority vote, this measure provides that the one which the people most prefer by giving it the largest vote shall be submitted in the following year. This is distinctly conservative. It gains another year of discussion of the question. It prevents what might have happened under the original form of the law. It is a gain for those who desire that the initiative and referendum shall be conducted with more caution.

It was a choice between having the Governor choose which of conflicting measures should have the right of way, or having the Legislature choose, or having the people choose. This method of having the people choose secures another year of deliberation on these matters, not an expensive concession on the part of those who favor the initiative and referendum but a gain for those who desire adequate and thorough discussion. For this reason, and because the important point was to get somebody to choose, so that the people could not on the same vote put upon the statute-books conflicting laws, it seemed to me this method of solving the question was a happy one.

Mr. Balch of Boston: Here we have nearly a complete page of fine print, which I have now re-read three times. Twice I have thought that I understood it, but on a third reading I have realized that I did not. Of amendments of this type we have a great number. This fact points to a very serious, well-nigh vital, defect in the initiative as a working measure, as distinct from the referendum feature, that it requires a page of fine print, something too difficult for the average brain to grasp in three readings, to set it going.

On page 14 of to-day's calendar there is printed under my name an amendment, — see clause 3, — which offers in about fifteen words a complete and workable and perfectly simple way out of this difficulty.

Now, it is extremely likely that the Convention will not adopt my amendment. Nevertheless, I trust that at this stage of the proceedings this Convention, and particularly that section in this Convention which is in favor of the initiative and referendum, will not insert in the resolution this mass of technicalities. I hope so for the reason that I think all of us should be satisfied that it is not yet certain that there is not a better way out. I think the thing should be reconsidered at a later stage, after some of the alternative suggestions bearing on this matter have come up at this stage, and for that reason I trust that the amendment will be defeated at this time.

Mr. Morrill of Haverhill: In some of the initiative and referendum States the voters are allowed to choose between competing measures. In my opinion the State of Washington has the best plan along that line. Take, for instance, old age pensions, to which the gentleman from Somerville referred. In Washington it would appear upon the ballot like this: Shall an old age pension system be approved? Then if the majority voted "Yes" they could choose Plan 1 or Plan 2. Shall it be contributory, for instance, and shall it be non-contributory? Of these they would take their choice. If they did not want any old age pension system they would vote "No" on the first question, and that would settle the whole proposition. I do not see how anything could be more simple, and that would settle it within one year, without going over to the next year, as some of the conservatives here are trying to bring about.

Mr. Churchill of Amherst: I have to confess, Mr. President, with regard to these amendments, that I am very much in the position of the gentleman in this division who spoke a moment ago. It is exceedingly difficult to estimate exactly the effect of the various amendments, the amendment proposed by the gentleman from Boston, the proposed amendment of that amendment by the gentleman from Middleborough, and the relation of the effect of what he has moved this morning to that which he gave notice he should move. We ought, Mr. President, to take care of this question of conflicting and alternative measures. It may not be entirely possible, in the difference of view as to how much check or direction the Legislature ought to have in this matter, for both sides to arrive at exactly the same preference; but I am inclined to think, Mr. President, if this were agreeable to the gentleman from Boston who has moved the original amendment, that if this were to go over until to-morrow and give us a chance to get together on both sides, for a few of us to investigate in quiet the effect of these different amendments, we might be able to come to a conclusion that would be satisfactory. I feel it very unsatisfactory, Mr. President, for myself individually to vote at this minute upon any one of these propositions, and if we might have a little more time for a few of us to sit in quiet and go over it I think it would be to the general advantage. I do not offer that in any way for delay or in opposition to any of the amendments regarding conflicting or alternative measures, though I might not agree with the gentleman from Boston as to what is the wisest plan to handle it; but I offer that suggestion in good faith, that it go over until to-morrow, that we may get together in conference. The thing cannot be referred to the committee without referring the whole measure, and that of course is

ruled out, but I make that suggestion and ask the gentleman from Boston to agree.

Mr. QUINCY of Boston: If the gentleman will yield the floor to me for the purpose I am ready to state that I shall be very glad to agree to that course. This is a complicated and difficult matter. I believe it to be a very important matter. I have assumed the burden, as an individual member of the Convention, of trying to draft something that shall deal satisfactorily with this question. It has been printed a long time in the calendar, but it demands a great deal of study; and it will be entirely agreeable to me to have the matter go over until to-morrow, in the hope that the members will recognize the need of some provision of this nature, which necessarily must be somewhat elaborate, and see if they cannot agree as to its proper form. Therefore I ask unanimous consent, Mr. President, to withdraw the motion at this time.

The consideration of the amendment moved by Mr. Quincy and the amendment of that amendment moved by Mr. Washburn of Middleborough was postponed until the next session.

Mr. Francis N. Balch of Boston moved that the resolution (No. 359) be amended by adding at the end thereof the following paragraph, with the heading "*Referendum Board*":—

1. A referendum board is hereby established to consist of as many members as there may from time to time be congressional districts in the Commonwealth, one member to be elected from each such district in such manner, and for such term of years not less than ten, as the Legislature may from time to time determine, provided that nominations shall be without political designation.

2. No measure, whether originating in an initiative petition or in the Legislature, shall be submitted to the people for direct popular vote unless it shall first have been submitted to the said board in such manner and at such time as the Legislature may from time to time determine, and unless at least three-quarters of said board shall first have certified in writing substantially as follows:—

We, the undersigned members of the Referendum Board, certify that we have personally examined carefully and fully into the matter of a measure entitled (here giving the title of the measure) submitted to us as the proposed subject of a popular vote, and without regard to our individual political, racial, religious or economic views or affiliations we express our opinion as follows:—

1. It contains no self-contradictory or inconsistent provisions.

2. It contains nothing contradictory of, or inconsistent with, existing laws which does not clearly appear on its face.

3. It is not contradictory of, or inconsistent with, any other measure which has been submitted to us to be voted on at the same election; or if so contradictory or inconsistent then is capable of being arranged as an alternative measure in the manner hereafter pointed out.

4. It is as clearly and briefly expressed as is reasonably practicable.

5. It is not misleading in its title or phraseology.

6. It and its title are so expressed as not to give unfair advantage to either the affirmative or the negative.

7. It touches only one subject; or subjects so related as not fairly to require separation.

8. It touches a matter which has been publicly discussed, whether in the press or elsewhere, to such an extent, or for such a time, that a popular vote upon it is likely to be reasonably well-informed.

9. It touches a matter of such large and general public interest as renders it probable that not less than two-thirds of the registered voters will act upon it.

10. It contains nothing which requires a special technical education, as distinguished from a good general education, for its understanding; and contains nothing which requires the sifting of bulky and conflicting evidence of technical facts for its decision.

11. (Here the board may, if it sees fit, give brief reasons for any adverse decisions,

with or without suggestions for possible improvement or for the arrangement of conflicting measures as alternatives, and the like; the minority of the board, if any, having a like privilege).

Mr. Balch of Boston: One of the penalties paid for warfare of the kind that at times has been carried on on the floor of this chamber is that it becomes well-nigh impossible for those who have taken part in it to credit one another with anything but belligerency in their performances. It is a fact that I have been allied with the most extremely conservative section of opinion in this Convention. At times I have been in a close defensive alliance with them. I presume therefore I have no right to complain of my fate if any suggestion I now make is taken by the initiative and referendum advocates to be in some way unfriendly, and yet if that is their judgment they are in fact making a mistake.

I should like for one moment to state my position on the floor of this Convention. I have not forgotten that not long since a statement made by me that there was no more sincere friend here of the initiative than I am was met with the laughter of the Convention. My feelings were hurt. I now think the Convention did right to laugh, and the reason was that I failed to make my position clear. I had failed to make it clear that I have been from the beginning and am now opposed to the initiative most sincerely, and that I am now, as I have been from the beginning, in favor of the referendum, believing as I do that almost all the remedial features center around the referendum and almost all the dangerous features center around the initiative. But, Mr. Chairman, I believe that we are going to have the initiative in some form. That being so, I am anxious to see it in a workable form. It is with that thought I have made this motion, and not as a method of either side-tracking or injuring the initiative. Quite the contrary, I have made it in complete good faith.

Now, coming down to the actual motion, the first seven clauses cover points pretty clearly remedial of practical but minor difficulties in the working of the initiative scheme, and I should suppose that the most extreme advocate of the initiative could scarcely object to them, although he might raise the objection, and undoubtedly will raise the objection, that the machinery suggested for obtaining those improvements in the working of the measure is too cumbersome to be worth the trouble. I realize that clauses 8, 9 and 10 are very different in character, and that the extreme advocates of the initiative naturally would object to those, at any rate in their present form. I wish to say at this point that when a vote is taken on this I trust it will be considered merely as a vote on the proposition of whether or not we shall erect in this Commonwealth a regulating board as free as possible from party politics, and not burdened with other and conflicting duties, to see to it that the initiative machinery works rightly. If the Convention should take up that idea, and should get that far, it would be time then for the conservatives and the radicals to determine on the exact form of the matters touched in clauses 8, 9 and 10, whether to strike them out entirely, as undoubtedly the extreme radicals would wish, whether to preserve them entirely, as the conservatives would wish, or whether to modify them in some way, to take a middle ground. Now, Mr. President, I call attention to one or two other points specifically. In the first place, as to the proposed board. Of

course I realize that it will be met at once with the damning accusation that it creates another State board in a Commonwealth already overburdened with boards and commissions, and that accusation is correct. It does, and there is no denying it. But it is not an appointive board. It is an elective board. It adds little burden to the elections, for the elections would come only once in many years. It adds nothing to speak of to the expense, for the work of the members of this board would extend over only a few weeks in each year, and a slight compensation, hardly more than a mere nominal honorarium, ought to be enough for them. This board would be elected on the district system, thereby reflecting something of the opinion of all the various sections of the State.

Contrast that board as a regulative agency of the machinery, and the machinery only, of the initiative, with what you are proposing to do now. What are you proposing to do now? You are proposing here either to let the machinery run wild, — and it will run very wild as you have it now, for it is not jointed up very well, — or else you are proposing in the alternative to turn the entire power of regulation, of making it work right, over to whom? Why, to the Attorney-General, a party officer, elected for short term on Heaven only knows what kind of a platform. Whence this sudden faith that our Attorneys-General will continue to represent the people of Massachusetts and all sections of opinion with complete impartiality for an indefinite future? And how could one single man reflect the different sections of public opinion? What becomes of the old adage that there is wisdom in many minds? How is it likely that one lawyer, no matter how well-meaning, no matter how well-informed in his own specialty, can be a true mirror of all the different stripes of political opinion, of all the different points of view of the whole Commonwealth of Massachusetts? I submit to you that this board of fifteen men, elected on the district system, is very much more likely to give you a workable and really successful initiative measure than an Attorney-General is.

Mr. Creamer of Lynn: I should like to ask the gentleman if he does not think this board, as the amendment is offered by him, is going to have a good deal of power, much more power than it is healthy to grant under our form of government. It seems to me, Mr. Chairman, that this whole suggestion is purely Prussian in its nature. It might be much better referred to the German Reichstag.

Mr. Balch: I fail to see that a proposition to give power to men nominated and elected directly by the people is Prussian. We give a good deal of power to men elected by the people to-day. We do not hesitate to give a good deal of power to President Wilson. Why? Because he is elected by the people. This board is nominated and elected directly by the people. As to their power, their power is not much excepting under clauses 8, 9 and 10, and those clauses, as I say, if this should be adopted, I think should stand for further consideration.

I recognize that it could be made much shorter, but it is purposely made this way, in order that each separate thought in it should be made a separate clause for the purpose of consideration. If adopted, the committee on Form and Phraseology would be able to put those clauses together in as much briefer form as they saw fit.

Mr. Leonard of Boston: I have some hesitation about taking the floor against my colleague in the first division, but he referred a short

time ago to amendments that cover one or two pages that are rather difficult for the average brain to grasp. In looking over his amendments I find the same difficulty in grasping his proposition. I should like to ask the gentleman, in the first place, whether he thinks his amendment conforms to section 4 of paragraph 4 of his own amendment, in which he says that the language of the initiative and referendum measure should be as clearly and briefly expressed as is reasonably practicable. I think that might be the first objection raised against the gentleman's amendment.

As far as my own attitude toward the initiative and referendum goes, I have lent a willing ear to every proposal that I thought would go toward a constructive and workable measure.

Now, as to the gentleman's novel proposal that a board or commission be established to which would be referred initiative petitions. If the people are looking for anything at all in an initiative and referendum measure they are looking for relief from the legislative body, and, instead of 240 Representatives and 40 Senators elected annually, the gentleman proposes a board elected for a period of ten years, chosen from the sixteen Congressional districts of this State, for this one purpose. That is a peculiar answer to give to the people who require some method of relief. Let me illustrate by citing a modern instance:

Some time ago a gentleman who was traveling in Germany on a train that went through to Munich, wished to get off at the city of Nuremberg. The traveler called a porter to him and said: "I want to get off at Nuremberg. I understand the train arrives at Nuremberg at two o'clock in the morning. I am a very heavy sleeper, and I may resist being put off the train, but it is absolutely essential that I be put off. Here are five marks." The porter thanked him. The next morning he awoke in Munich. He called the porter to him and berated him with that wonderfully expressive manner of which the Teuton is capable. The poor offending porter took it all. The station-master happened to be going through the car, and said to him: "That is too bad. You should have put the man off at his proper destination. It is very bad. But there is one thing you should remember. You are in the service of the Emperor, and wearing the uniform of the Kaiser. You never should take language such as I just heard from any passenger." The poor porter said: "I don't mind. I don't mind. You ought to have heard what the fellow said that I put off at Nuremberg." [Laughter.]

The people are asking us for a measure, a definite initiative and referendum measure, and the gentleman takes the whole matter, throws it off at a side station, called an Initiative and Referendum Board. I ask what would the people *say*, and what would the people *do* to any group of men who subjected them to treatment of that character?

Mr. CHURCHILL of Amherst: I should like to say on behalf of the minority of the committee what would have been said by the gentleman who moved the amendment if he had not been cut off, that this proposition has not been considered by the minority of the committee in conference, and that while individuals may be in sympathy with the purpose of securing results which would be secured by this particular proposition, the minority of the committee takes no position whatever on this particular amendment.

The amendment moved by Mr. Balch was rejected.

Mr. George B. Churchill of Amherst moved that the resolution (No. 359) be amended by striking out, in lines 164 and 165, the words "or part thereof".

Mr. CHURCHILL: By referring to the calendar, page 5, you will find that the measure has been amended already by striking out, in lines 141, 146, 148, 149, 150, 151, 169, 171, 172, and 174, the words "or part thereof." It was an inadvertence in the original motion that they did not notice that in lines 164 and 165 also, the same words appear, — "or part thereof." They have been struck out of seven places on that same page. It simply completes the amendment to strike out the words "or part thereof" wherever they occur. This particular place where they occur evidently escaped notice, and I therefore move, Mr. President, the amendment, that in lines 164 and 165 the same words be struck out.

Mr. MORRILL of Haverhill: I do not believe those words should be struck out. I believe in the cases cited where they have been struck out they should be reinserted. During my eight years' service in the Legislature I recall that quite often the Governor has vetoed a proposed law because there was an objectionable feature in it, and in his message giving his reasons for vetoing the bill, which otherwise was a good bill, and which the Legislature sometimes almost unanimously favored, and which the Governor distinctly stated that he favored as a whole; he was compelled to veto that whole bill because it contained that one objectionable feature. Now are we going to say if the Legislature passes a good law and one which should go into operation immediately, that just because there is one feature that is objectionable the whole law must be held up from going into operation? I do not think we should do that. If we do that we are making the case parallel to what it is when the Governor is now compelled to veto a whole bill because of one feature that is objectionable. I do not believe it is a wise thing to do. I am surprised that the Convention struck out those words which read "in part." I think the sensible thing to do is to insert them again so as to make a complete measure, the same as it was before in this respect.

Mr. CLAPP of Lexington: I should like to ask the gentleman from Amherst if he purposely refrained from moving to eliminate the same words in line 162. The phrase occurs in that line, and has not been stricken out.

Mr. CHURCHILL: If you will look just below on the calendar, you will see that in the next line, "by striking out in line 162 the words 'or any part thereof,' " they already are cut out. The objection which has been raised by the delegate in the fourth division (Mr. Morrill) is an objection to the whole proposition of striking out the provision that any part of a law may be considered. We already have passed upon that. The intent of the action, of course, was to strike out these words wherever they occurred. It is entirely possible that at another stage of our proceedings the Convention may wish to restore those words. The gentleman's intent is not hindered in the least by the passage of this amendment which I suggest. It is simply to complete as a matter of form what the Convention has done already and even if the Convention should not choose to accept this amendment upon it, these words have absolutely no effect. Keeping these words "or any part thereof" in lines 164 and 165 will not help the gentleman either upon his general proposition or the specific proposition, because

the section now reads: "In case of an emergency measure or of a law which takes effect because a referendum petition does not contain a request for suspension, as aforesaid, if, within sixty days after its final enactment, a petition is filed with the Secretary of the Commonwealth, signed by not less than ten thousand qualified voters of the Commonwealth, protesting against such law and asking for a referendum thereon, then the Secretary of the Commonwealth shall submit such law or part thereof." That is the situation that we have now. The gentleman well says that these words are of no avail to one side or the other as they stand, and I simply offer this as a perfecting amendment.

Mr. Morrill: We might agree to have them stricken out now without prejudice as to the merits of the proposition, simply as a matter of editing, although the committee on Third Reading, or the committee on Form and Phraseology (we call it Third Reading in the House) could recommend that they be stricken out if necessary. Or we could do it now, as I say, without prejudice, and later take up the matter of reinsertion. But this is another example of the way that things are done in a slipshod manner here. If you are going to strike them out, why did you not strike them all out while you were about it? Mr. President, they quibble over matters, they take a simple proposition and make a complicated case out of it, apparently, and then they take something else that is a case of editing and do not half do the work. They waste time all the time, and do things over and over again. We never will get anywhere that way. I suppose under the circumstances we might as well strike those words out now, and take up the whole proposition later.

The amendment moved by Mr. Churchill was adopted.

The Convention then considered the motion of Mr. Harriman of New Bedford that it reconsider the vote by which, at the preceding session, it had adopted the amendment adding after line 112, the following paragraph:

No law or amendment to the Constitution relating to the appointment, qualification, tenure, or removal or compensation of judges; or relating to the recall of judges or judicial decisions; or relating to the powers, creation or abolition of courts, shall be the subject of such initiative petition.

Mr. Harriman of New Bedford: I want to say to this Convention that there has been considered no more important matter in the I. and R., to my mind, and to the minds of the working-class of this Commonwealth, than this amendment. I want to assure this Convention, — and I think that I can speak perhaps not with authority, but with knowledge, — that there is no class of citizens within the confines of this Commonwealth who hold in higher respect the law, or have a greater respect for the machinery of the law known as our courts. But, sir, if my understanding of government leads me to any particular foundation, it is that the people themselves are the source of all authority, and that our judiciary is but an arm, a branch, of our government, filling in its place somewhat as the Legislature does in its place. When you hear the newspapers of this Commonwealth, some of them, which are opposed to all progressive legislation, say that the labor-unions for years have sought to undermine the courts of this Commonwealth, they are stating something that I, as a worker, ought to repudiate and say that it is not true.

But, sir, I ask you to consider that the lives and the destinies of the working-class of this Commonwealth are at the mercy of this arm of our government. It is the place where the ordinary citizen has the least opportunity to present his case, and to present it as it ought to be presented, and it is nothing against the courts. It is a system and a custom that have grown up; and they are governed, not by modern conditions, not by the needs of the people, but in nine cases out of ten we have been told by the courts themselves that they look back to some decision, and on that they are governed.

You men should consider the Workmen's Compensation Act. A reference was made to a decision in this room only recently. And I say here and now that there never was made a decision in this Commonwealth from which has followed such damnable results to the interests and to the peace and happiness and prosperity of our people as that other fellow-servant doctrine, which was read into the laws of this Commonwealth. There is not a man here who will deny it. You say to us that you want to take the courts and place them beyond the pale of where the will of the people can reach them. I say, with the distinguished ex-Governor of this Commonwealth, that if the courts of this State cannot stand the criticism, or if they have to be hedged about so that no one can get at them, I tell you they will not stand as well in the opinion of the people of this Commonwealth as if they were directly responsible to them. There are many men in the labor movement who do not believe in the election of judges by the people. That has nothing to do with the fact that this is an arm of our government with which you do not dare to trust the people, and you do not dare to say that, from the source of all authority, they shall listen to those people who are the working people of this Commonwealth. I want to say now in all seriousness that, while there are many lawyers who are in favor of this, there are many who are not. I ask this Convention, Mr. President, that we may reconsider, that we may more fully discuss it, and that the labor side may be argued upon this floor better than I can do it. We can do it only at this time by a vote to reconsider, and for that reason I make my motion.

Mr. KILBON of Springfield: I wish to add a word in support of the gentleman who has just taken his seat. There has been nothing done in connection with the whole proposition of the initiative and referendum which has struck me with so great a sense of impending mistake as the adoption of this amendment. There is no man in this Convention who esteems more highly than I do the character and history of the courts of this Commonwealth. There is no man who appreciates more deeply than I do the essential fact that if the people's liberties are to be maintained they must be maintained by a judiciary that is independent of the whims and gusts of popular fancy. Of the fact that we have such a judiciary, I am heartily and gratefully proud. But, Mr. President, the safety of the judiciary, and its independence, lie not in any artificial safeguard.

I belong to a profession which for a great many years intrenched itself behind artificial safeguards, and now that the artificial safeguards are withdrawn the result is felt in every month and every week of professional life. There is not a minister now engaged in the practice of his profession in the Commonwealth who does not wish that his ancestors had been more willing to let the people get at them, let the people

criticize them, let the people stand over against them and oppose them. They would have stood, as I believe the courts of the Commonwealth will stand, secure and firm in the hearts of the people, and that is where safety lies. If you put up artificial safeguards the attention of those who are discontented is drawn toward those artificialities; and by and by, when the repressed antagonism that the people feel comes to boil over, it boils over in a way which makes the final result altogether undesirable. There can be nothing that really is more dangerous to the security of our judicial system and the welfare of the Commonwealth, which depends so much upon that system, than making artificial safeguards behind which we shall put our judges.

Mr. Cummings of Fall River: I rise to say just a word in opposition to this motion. No one has stated the precise reason, the exact reason, for wishing to bring the judicial field within the scope of the operation of the initiative and referendum. The gentleman from New Bedford in the first division (Mr. Harriman), who moved to reconsider, indicated what the real reason was. It was that they should get a chance at the courts. A chance to do what? Be more specific. What do you want to do with the courts? It is not simply to assert your rights to deal with them. That is not what you are after. But exactly what do you want to get at the courts for? What process or procedure is there that you want to correct? Why do you wish to throw this shadow of your authority over the courts?

I beg this Convention to leave the courts alone. The courts have done their work well; the judges have done their work well. [Applause.] I want to say further, in conclusion, that if the appeal is made to the citizens of this Commonwealth, through the cities and towns, to defend their courts, and the admonition is given that the courts are in danger, the initiative and referendum will be beaten if you attack the courts. [Applause.]

Mr. O'Connell of Boston: I take issue with the honorable gentleman from Fall River in his last conclusion in which he expresses the fear that unless his amendment is kept in the resolution, the people will reject the initiative and referendum. My judgment is that unless this amendment is stricken out of the measure, the people are very likely to defeat anything that leaves this Convention as an initiative and referendum proposition in which the judiciary are exempted from its operation. Our courts are surrounded by all the necessary safeguards to-day. In fact, they have more security than any other courts in this Nation, and if you add to their security by carrying this exemption into the initiative and referendum, you are going to remove them so far from the people that, in the nature of things, they must become arrogant. It is a sense of responsibility only that prevents men in positions of power, such as judges, from becoming arrogant and tyrannical, and unless our judges are kept responsible to the people, they certainly will become more and more arrogant.

Let me briefly call the attention of this Convention to a few salient points as to the origin and history of the judiciary of Massachusetts. No other State in the Union has an appointive judiciary for life. Is it not significant that no other State in the Union now follows the Massachusetts system of having the judges appointed by the Governor for life? It is true a few States did follow the Massachusetts idea in the early days of the country, but each and all of them abandoned the

system because it was hostile to the spirit of a Republican form of government.

The motion to reconsider was negatived, by a vote of 72 to 121.

Mr. Robert Luce of Waltham moved that the resolution (No. 359) be amended by adding at the end of line 111, as amended, the words "or to an individual, association, or corporation".

Mr. LUCE of Waltham: As this amendment was first drawn it contemplated excluding from the operations of the initiative and referendum private, local and special bills, — a phrase found in many of the constitutions and upon which there has been much adjudication. By reason of the frequency with which the courts have passed upon the meaning of the words, it seemed to me safe to use them; but objection has been made, and so I have resorted to the only Constitution that gives a clear statement, — the Constitution of Alabama. It will be remembered that already we have disposed of the exclusion of local matters by phraseology presented by the majority of the committee, and this left private and special matters to be considered. The doubt as to what those words mean has been due to a difference in practice in England, in our Federal relations, and in the States. In England the discrimination has been made between public and private, and our Federal Congress has followed the same discrimination, but the general practice in the States is to use in contradistinction the words general and special.

In Alabama an admirable Constitution was drafted sixteen years ago, and, in part at least, it was the work of Governor Emmet O'Neal, one of the wisest and most judicious of present-day authorities on political science. In response to a letter of inquiry, he recently wrote me that he was chairman of the committee on Local Legislation in that Convention, and therefore I assume that the authorship of this very happy expression, which I have here copied, is to be credited to him. And let me take just a moment, by the way, in saying that he concluded his letter to me by praising the Massachusetts judiciary, and our judicial system, in the clearest language. That of course has no bearing upon the point at issue, but comes in with some pertinency in view of the discussion through which we have just passed. He said that in framing the Constitution of 1901 Alabama had frequent occasion to study the Constitution of Massachusetts. If now we may repay, by in turn looking to Alabama, the debt will be cancelled; and in Alabama a very simple phrase has been applied, — "individual, association or corporation", — covering apparently the whole ground of special or private law.

It is undoubtedly needless to rehearse here the arguments that already have been presented, for the matter has been under consideration in one connection or another several times. Therefore I will do no more than recall, in summary, the serious objections to private and special legislation which have led by far the greater part of the States of the land to forbid their legislatures to engage in that pernicious practice. It has been found everywhere that to private and special legislation is chiefly due log-rolling, venality, graft, and corruption in all its forms. Everything that has gone to hurt legislation in public estimation is in large part to be traced to special legislation. Previously I have pointed out to the Convention that to-day no man

desiring special favors is able to buy them from Legislature and Governor. The money, such as is spent in other legislative halls, is spent to prevent special legislation. Therefore if the I. and R. opens a way to those who would advance self-interest at the expense of general interest, by permitting those men to turn to the people, cajoling, persuading, deceiving them, into the passage of acts granting special favors, we shall have added to our burden of trouble.

We have a rule in the Legislature corresponding to the constitutional provisions of other States, aimed at checking special legislation. No special bill is to be passed whenever a general bill can be passed. And inasmuch as all matters to go before the people ought to be within the purview of general bills, I fail to see why we should invite the mischief sure to follow if we permit those who are seeking to line their own pockets, seeking to advance their own interests at the expense of others, to secure signatures that will grant favors and privileges they could not secure from a Legislature with the approval of His Excellency the Governor.

In this state of affairs I trust that this amendment may join that which the majority of the committee itself has approved in its exclusion of local legislation.

It has been suggested to me that the word "particular" would better be inserted, so that it should read "to any particular individual, association or corporation." If, however, you will look at the language of the clause mentioned you will find that the phrase is "the operation of which is restricted to." Therefore if we say "the operation of which is restricted to an individual," the insertion of "particular" would seem to me superfluous. However, I should have no serious objection to it if gentlemen should desire to have that put in. All that I am anxious about is that we shall not inflict on the people of the Commonwealth the troubles, the difficulties, hardships and injuries, due to special legislation.

Mr. CREAMER of Lynn: The delegate from Waltham evidently wants to keep log-rolling a special privilege of the Legislature. I am afraid there is a little "Alabama coon" concealed in what he is proposing. Why, sir, this proposition of the gentleman from Waltham is a weasel one; it is fuller of weasel meanings than the average dog is full of fleas; even at that, sir, I am inclined to apologize to the dog. Let us dig into it and see what it really does mean.

Does he want to exempt from the operation of the initiative and referendum measures concerning the New York, New Haven and Hartford Railroad, for instance? That is a particular appropriation. Does he want to exempt measures concerning the Boston and Maine Railroad? Does he want to exempt measures concerning the Hampden Railroad Company, or the New England Telephone and Telegraph Company? Is he so well satisfied with what has occurred in the past in regard to legislation in these Houses concerning individual corporations that he wants it to continue? Does he think that the popular initiative and referendum could produce any worse results than we have had in the past? Does he wish to have such matters continue to be influenced by nests of lobbyists anywhere, within or without the Legislature?

Why, sir, what he proposes is the exact opposite of what our Governor recommended in his opening address to this Convention, — that

we should let the wind blow through legislation in this State. Mr. President, I submit to you and to the members of this Convention that this is the most vicious and dangerous proposition that has yet been submitted by any delegate in this Convention. It would do much to mutilate the principle of the initiative and referendum, — it would make it a joke and absolutely of no value to anybody. I sincerely hope that the members of this Convention will see the "Alabama coon" in the woodpile and vote it down.

Mr. Clark of Brockton: In view of what happened only yesterday, I should like to call the attention of this Convention to the New York, New Haven and Hartford Railroad corporation. At the session of the Legislature of Massachusetts in 1917 this great corporation came up to this chamber and to another chamber in this State House and asked the privilege of issuing forty-five million dollars in preferred stock, with the proceeds of which they said they purposed to take up forty-five millions of outstanding short-term notes, which they were compelled to renew every twelve months, paying six per cent interest, paying a commission, and paying a bonus. They never should have had this amount of outstanding notes, but they have it, and the Legislature granted it and the Governor signed the bill; and yesterday the directors of that great corporation, in their annual meeting, voted to issue the forty-five millions of preferred stock, and voted that it should draw seven per cent dividends; and, furthermore, gentlemen, they provided that that stock might be redeemed at any time in the future at $1.10, giving the financiers of New York city the great opportunity that they have been ready to seize upon, to further bury the common stock, owned quite largely in Massachusetts by widows and orphans and men of small means. Seven per cent, preferred stock, and perhaps within twelve months redeeming it at $1.10! And the proposition is made in this Convention to exclude corporations from the provisions of the initiative and referendum. That is what the amendment does.

Mr. Luce: I desire simply to call the attention of the gentleman to the fact that this is a provision to secure the treatment of such things by general laws.

Mr. Clark: Perhaps others understand perfectly well the answer given by the gentleman from Waltham. I do not understand myself in what way it weighs against the argument that I present.

Mr. Churchill of Amherst: I confess that I have listened with some amusement to the argument that has been offered against this amendment. This amendment does not apply to the referendum. All arguments about the bills that are log-rolled in the Legislature are absolutely beside the question. There still remains in the resolution the opportunity of referring to the people any log-rolled bill that has passed the Legislature. Any New Haven Railroad bill, any Hampden Railroad bill, any of these bills that have passed the Legislature, under this measure may be referred to the people, and held up from going into effect until the people have had an opportunity to vote for them.

What is the proposition? This, and only this: That we shall not give the power of initiating bills that refer to special and particular individuals, associations or corporations. In other words, this amendment prevents a log-rolling initiative. It prevents any individual, association or corporation from doing what has been done in other States under the initiative and referendum, offering under the guise of specious

grounds or reasons a proposition which looks like a popular proposition and which, nevertheless, is a proposition really for the benefit of a particular association or corporation. This amendment cuts out all that. It does not change the situation one bit with regard to the referendum. The sole question at issue upon this amendment is this: Do you desire to give to the people the opportunity to initiate laws, propose measures, dealing specifically with a single association or corporation? Now, if you do, if you think that it is wise for the people to initiate and pass measures with regard to the Hampden Railroad or the New Haven Railroad, you ought to vote against this amendment. That is clear. Do not for one minute think that you are taking away by this amendment the power to correct by the referendum any bill which might pass the Legislature and which is subject to criticism on the part of the people.

Mr. WALKER of Brookline: There is a great deal to be said in favor of prohibiting the Legislature itself from passing special legislation. But if the Legislature is to have power to deal with special corporations in a special way, I submit to this Convention that it is essential that the people have a similar power under the initiative and referendum to correct, not only what the Legislature may have done, but what it may have left undone. Frequently there is made a sharp distinction between the initiative and the referendum. I wish to point out this fact: That if a law should be passed by the Legislature and its evil effect should not immediately be seen and a referendum taken within sixty days of the time the law is passed, then the referendum cannot be applied and you have to go to the initiative. Therefore if the Legislature passes a bad law, the effect of which might not be discovered in the first sixty days after it is passed, the people of the Commonwealth would be helpless under the referendum, and they must have the initiative. And so the initiative is as necessary as the referendum frequently, to upset a law which the Legislature has passed. The Legislature may refuse to pass legislation which the situation demands. The lobbyists of these various corporations may have influence enough to prevent desirable legislation. It is much harder to get a good law passed in the public interest than it is to keep a bad law from being passed. Therefore I say that so long as the Legislature itself has the power to pass laws affecting particular individuals, associations, and corporations, it is essential that we have the initiative as well as the referendum.

The amendment moved by Mr. Luce was rejected, by a call of the yeas and nays, by a vote of 123 to 132.

Mr. Luce of Waltham moved that the resolution (No. 359) be amended by adding at the end of line 111, as amended, the words ", and no law calling for an appropriation of money from the treasury of the Commonwealth, except for purposes incidental to the administration thereof,".

Mr. LUCE: This is an amendment to protect the people of the Commonwealth from demagogues. I desire to repeat that lest some gentleman in the Convention may not have heard it, Mr. President. I desire that every gentleman in the Convention shall have the proper title for this amendment: *An amendment to protect the people of the Commonwealth from demagogues.* At every stage of the world's history there have presented themselves men who, by appealing to the cupid-

ity, the selfishness or the venality of their fellows, have acquired power by offering largesses, by offering bonuses, by offering gifts in order that the few might be enriched at the expense of the many. If you put this law in the Constitution as it stands you invite every man in the Commonwealth who seeks public office to go up and down the State pledging himself to lay before the people a measure by signatures easily secured that shall enrich some at the expense of others. It has been the pleasure of nearly every speaker on this floor to pronounce that the measure that he was urging was the most important that had come before the Convention. I do not purpose to repeat that, but simply allow gentlemen in the Convention to draw their own conclusion.

Mr. LEONARD of Boston: I should like to ask the gentleman just which amendment is under discussion now. Some of the gentlemen here think it is on page 8 and others on page 9.

Mr. LUCE: This is the amendment against demagogues, found at the top of page 8 of the calendar [applause]; the amendment against those who, in times of hardship and distress, urge their fellow-citizens to connive at taking the property of some and giving it to others; aimed at the men who would hoist themselves into public office by pledging their influence in order that this or that species of property may be transferred from one man's pocket to another's. Do I repeat too much? I cannot too much emphasize the fact that the initiative and the referendum unguarded throw wide open this opportunity by a majority vote to take away property and give it to other persons. I already on another occasion have called attention to the fact that almost the opening speech in behalf of this measure sounded to some ears as if it were an inducement to voters to vote for it for that purpose. It was alleged as one of the reasons for the initiative and referendum that the few have acquired property and the many have it not. One of the suggestions was that a distribution might be made of property. If that be the base, sordid, venal, dishonest motive behind this measure, how can any honest citizen support it?

Sir, I have said I believed this measure could be safeguarded; I believed it could be perfected, brought within the approval of a majority of this Convention, perhaps a large majority, but I do not believe that any self-respecting man can vote for this measure so long as its demonstrated, determined purpose is to take property from some and give it to others.

Mr. BROWN of Brockton: It is because of my own want of perception, that I am asking you this: Does it do what you want it to do? "Except for purposes incidental to the administration"? How could you take and use any money except it was incidental to the administration?

Mr. LUCE: These are technical words put in, as any one who has served in the Legislature would understand, for the purpose of permitting the people to pass measures which require incidental appropriations, such as the paying of salaries, printing and other expenditures. There is in the House a rule requiring that any measure appropriating money shall go to the committee on Ways and Means, and it has been decided repeatedly that though the expenditure is insignificant, of a few cents or a few dollars, it nevertheless must be treated as a money bill. I have not thought the exclusion should go so far, so

this has been framed to prevent the throwing out of a measure simply because it entails some of the incidental costs of administration.

Mr. HARRIMAN of New Bedford: I should like to ask the gentleman who is now speaking, if his amendment should become law, whether it would prevent the passage of a law to establish and make appropriations for a State University or anything of that kind? Would it prohibit that sort of legislation?

Mr. LUCE: It is specifically meant to prohibit the appropriation of money, and if for that reason it does not meet favor with the gentleman from New Bedford, then he and I must differ in this matter. I do not want him or any other man to make himself Governor of Massachusetts by going about and offering the people the opportunity to spend the money that has been earned by the thrifty, that has been saved for just such crises as that in which we are engaged, — by offering to spend their money without the calm, deliberate, judicious, fair scrutiny that is given by a legislative investigation.

Mr. BROWN: That is along the line of my inquiry. Would not the purpose that brother Harriman spoke about be incidental to administration?

Mr. LUCE: It never would have been so construed in the legislative practice. I cannot believe it ever would be so construed by the court.

Mr. CUMMINGS of Fall River: I should like, Mr. President, to ask the gentleman from Waltham if, in the case where the authority to establish the United States bank was brought in question, it was not held that such authority was incidental to the purposes of the Government, and if it were so, if that is brought back to the gentleman's mind, would not the establishment of a State University be equally incidental?

Mr. LUCE: It would be incidental to government. I think the gentleman missed my point. I am perfectly willing that the people of this State should decide whether they want old age pensions; I am perfectly willing that the people of this State should decide whether they want a State University. I am not willing that the people of this State should appropriate money for it. If, however, in the establishment of one of these projects it is necessary to create salaries, spend money for printing or other incidental things, then that does not take the subject out of the category that I would submit to the people. What I object to is the possibility of largess, of what was meant by the Latin words, *panem et circenses*, "bread and the games". *Panem et circenses*, "Bread and the games". That I do not want demagogues to offer to the people of Massachusetts as a bait for votes.

Mr. DONOVAN of Springfield: I should like to ask the gentleman if he would interpret it as being "largess", in case the people decided that under the present conditions where two per cent of the people who own sixty per cent of the wealth came into possession of that wealth through the operation of unjust laws, if the people had the power to change those laws so that the two per cent could not continue to exploit the people and continue to increase their largess?

Mr. CREAMER of Lynn: It seems to me that this is another one of the "weasel" amendments that I spoke about —

Mr. DONOVAN: I have asked a question, Mr. President.

Mr. LUCE: The laws of which the gentleman speaks are not now at issue. I have no doubt he and I would agree as to the wisdom of

changing many of those laws. What I denounce is an attempt by the use of the initiative and referendum to take money from the people of this Commonwealth by taxation and appropriate it for the benefit of individuals.

Mr. CREAMER: The delegate from Waltham evidently wishes to deny to the people of this State collectively what they possess in every town-meeting of the State, — the right to pass money bills. If the people of the State have the wisdom and the proper knowledge and the authority to pass money bills in their town-meetings, why should not they have that authority collectively?

Mr. LUCE: Is it not true that towns are hampered and controlled in every direction as to the purposes for which money may be expended?

Mr. CREAMER: It would be perfectly possible to hamper, — if the gentleman likes the word, — to hamper and control them under the present measure without the gentleman's amendment.

Mr. LUCE: How?

Mr. CREAMER: I do not think there is any doubt that the courts of the Commonwealth would protect the inhabitants of this Commonwealth, the humblest of them, against confiscation. But, Mr. President, if this amendment is adopted it will be possible to make absolutely useless any legislation proposed by the initiative and referendum looking toward health insurance, toward old age pensions or toward any social welfare legislation. You certainly would prevent and make useless such legislation if you forbade the people to initiate legislation appropriating money for those purposes. I submit, therefore, that this amendment is as dangerous, if not more dangerous, than the amendment offered by the gentleman which has just been rejected.

Mr. UNDERHILL of Somerville: I do not believe the last speaker has quite sized up the situation or caught that which is in the mind of the gentleman from Waltham. The gentleman from Waltham would save Massachusetts from a situation which to-day exists in New York, and I will read an editorial I clipped from the "New York World" which shows the necessity of such an amendment as he offers here this afternoon:

> The Gary school riots in the Bronx are a natural sequence to the Tammany campaign. Having decided to drag the public schools into politics Tammany opened the way to all the disorders that are bound to result from inflaming class hatred and capitalizing the ignorance of the great alien population of New York. The Murphy-Hearst political syndicate has made this campaign a class war and has loosed forces that it cannot control. Already the Tammany boss is deeply concerned by the spread of revolutionary Socialism on the East Side. But it is revolutionary Socialism that Murphy and Hearst and Hylan are preaching. They are seeking to array the poor against the rich. They are fanning the fires of religious passion. They have encouraged the East Side to believe that a Russian revolution is possible in New York city, in consequence of which the workers will seize everything and will then be able to stop working while they live off the wealth that has been accumulated. They have publicly proclaimed that the government of New York city is a rich man's government under which the poor are oppressed and their children brutally left to die of infantile paralysis, while those that survive are trained in the public schools to a form of servitude imposed by the greed and cunning of organization capital. Tammany knows it is a lie, Hylan knows it is a lie, Hearst knows it is a lie, but hundreds of thousands of New York's ignorant, restless alien population eagerly believing, riots against the Gary school system come as a matter of course, and if the Tammany-Hearst campaign of class hatred is to proceed New York is likely to witness far more serious riots in far more serious directions. Tammany and Hearst have been playing with dynamite in ruthless determination to rule or ruin New York.

That is the situation the gentleman from Waltham wishes to prevent in the Commonwealth of Massachusetts, — the appeal of the demagogue to the class or race prejudice. He wants to prevent the arraying of class against class; and as much as you may deny it, we have classes in this country as they have in all countries. One class would array the poor against the rich and, by making a specious plea and appealing to the passions or the prejudices or the ignorance of the populace, bring about a condition in Massachusetts which is deplorable as it exists in New York city to-day.

Now, sir, I claim the gentleman is doing a public service in bringing this feature of the I. and R. to the attention of the delegates, and there is not a Jew, there is not an Irishman, there is not a Frenchman, there is not a Yankee in this Convention who ought not to support the gentleman from Waltham in his endeavor to allay the danger which confronts us unless his amendment is adopted; and I hope and trust the amendment will be adopted.

Mr. Buttrick of Lancaster: I had not intended to inflict myself upon the Convention in a discussion of this amendment, and I may say for the benefit of the delegates here that I am not the next friend of the initiative and referendum, but that I do desire to see, if the initiative and referendum goes through, a measure which is safeguarded and which is in proper form. I listened to what the gentleman from Lynn had to say and I beg to call his attention and the attention of the delegates here to the statutes of the Commonwealth which restrict cities and towns in the expenditure of money. Cities and towns cannot expend money except for purposes as set forth in the statutes unless special legislation is had. Further than that, sir, I desire to call the attention of the delegates to the fact that in almost every large town there is now a finance committee. Every appropriation which is suggested by the different boards is referred to that committee or commission and in nearly every town where they have this commission they have a by-law which provides that if the town does not accept the recommendation of the finance committee the appropriation cannot be passed over the protest of the finance committee except by a two-thirds vote of those present and voting.

Now unless this amendment is adopted you have no restriction, you have no regulation whatever, and you will have the whole thing wide open to allow Tom, Dick and Harry to come in and mulct the citizens of the Commonwealth.

Mr. Lomasney of Boston: I cannot allow the gentleman's remark about the "ignorant aliens" of New York to pass unnoticed. The ignorant aliens of New York are not responsible for the corrupt conditions in the city of New York. It is the corporations that have put New York's finances on the slide. And Massachusetts is the next State to New York in debt. I do not know but we may be as badly off when we put in State, metropolitan district, county and municipal debt. It is not the ignorant aliens who have done it; they do not do these things. It is the rich men who have wrecked the finances of New York. For what purpose have they used the money? For the purchase of gold bricks, in many instances, and five of these men, I think, are now under indictment in that city for various offences. You should take similar action in this city and State against rich and

powerful men who do wrong before you criticize the Empire State of New York.

One word more. The word "incidental" which the gentleman uses here is a broad word. He put into other words to-day his view of the law when he tried to restrict the other amendment we passed here on necessaries of life, and he put in words that would tend to limit what it meant. I say, sir, we should state clearly what we mean to restrict them to, but not use the word "incidental." That is a dangerous word and we do not want it in here. If he has some specific things, put them down; but a man, sir, who would put in the words he did in Convention Document No. 366 to limit the necessaries of life amendment needs to be watched when he undertakes to put in an amendment like that and says it means something else. Let him specify clearly what he means now. I believe in protecting the expenditure of public money. We need to protect the public money. There has been too much extravagance in the past. We should have a law here that no more bond issues shall pass the Legislature except by a two-thirds vote, because it is our duty to protect the taxpayer. Do not put the word "incidental" into the Constitution in this place. In my opinion it should not be there.

Mr. UNDERHILL: I should like to ask the gentleman if he will come to the rescue of the Convention as he did a day or two ago on the food amendment and suggest some word in place of "incidental".

Mr. LOMASNEY: There are men in this Convention far better qualified to meet the situation than I am, but it was the unfair attack, — and probably the gentleman can see now how unfair it was, — on the "ignorant alien population of New York" that stirred me up and brought me into this debate.

Mr. UNDERHILL: It was no attack made by me. I read from an editorial in the New York "World" and, if he desires, the gentleman can have the clipping, after the debate. I tried to bring to the attention of the Convention the fact that the same influences that were backing Hylan in New York were backing the initiative and referendum in Boston, — the Hearst influences are trying to array class against class in New York and in Massachusetts.

Mr. LOMASNEY: The gentleman from Brookline (Mr. Walker) is backed by no Hearst influences. He has coin of his own. He does not need anybody's backing. [Applause.] There are many men in the State, Mr. President, in the same condition. The gentleman from Somerville said "the Jews, all the Irishmen and all the Yankees," and he continued. I say, sir, that New York can take care of itself. The Jews and Irishmen are not the people who put New York in its present financial condition. Who gave the twelve millions for a site for a new city hall that they have not started to build? Who bought the land for from five to twenty-five cents and sold it for almost as many dollars? Certainly it was not the people he referred to. The New York grand jury have taken hold of some of these questions and they indict and convict the rich lawbreaker as well as the poor one.

Mr. Ross of New Bedford: While I was listening to the gentleman from Waltham (Mr. Luce) and the continual use of the word "demagogue" my mind was at work and my subconscious mind was using continually the name of a small town while my conscious mind was

using that of a town near by, and between my subconscious and conscious minds were wavering the words "Waltham, Waverley; Waverley, Waltham," and so on. [Laughter.]

Some little time ago I think I told this Convention that it was more honorable to stand up and vote against a measure than to kill it by indirection. I want to say, now, Mr. President, with all of the vehemence at my command that you have murdered the measure in the house of its friends. You are not satisfied with the murder, but you are now kicking about a misshaped mass that once was a comely form under the name of the I. and R. [Laughter.] I think if you keep on a little while with some further amendments we can all vote one way. Those who do not want it can vote against it because it has got the words "I. and R." attached to it. Those who did want a real I. and R. will vote against it. It has had burdens attached to it and I do not know what has not been done. I am very sure what has not been done to it will be. [Laughter.]

We have exempted the Bill of Rights from the I. and R., and we have exempted the judiciary in order that the unjust judge can go along and disgrace the populace and disgrace the courts and the lawyers of Massachusetts. That is what you have done in the amendment of yesterday. You have disgusted the people of this State with this matter and you have made the lawyers appear as supporting a man who did not want to tread the right path. We know judges, and every lawyer in this Convention knows them, men who do not want to do the right thing in the courts. Do not tell me that all your lawyers and all your judges are right, that all your court decisions are right. This was a proposition to straighten out and dignify your courts and your lawyers, and you stabbed it in the back in the dark. Now go to it if you want to. I am one of the men who was elected, — I did not have to come to this Convention, I did not want to come. Let that reporter up there put it down if he wants. I am here because I said if elected I should vote for the I. and R. and I did not ask to be put on the ballot. It was done, but those who know about that of which I am speaking know that I had no desire to come here. But being here, Mr. President, here is what I want to say: I am one of the men who said if I came here I should vote for this measure. I know there are men who vote for it because it was believed they would vote for this measure. Of course they will vote for it when it comes to the final vote. They will vote for something that means nothing unless a change is made.

There is a great deal more I might say, but I feel I have taken enough of your time. I want to say this in conclusion: Is it not time that we tried to be fair with each other and that we treated this matter in a firm and courteous way instead of, because we are beaten on one thing, getting sore and trying at every stage, every five or ten minutes, to go to work and murder it?

Mr. CHURCHILL of Amherst: Long before the word "camouflage" was invented, long before the use of the thing designated by that name became known to all of us who read the war news, every child had developed and used with more or less success, according to the wisdom of his parents, one of the most effective examples of the thing which we now call camouflage. When our fathers, sometimes our mothers, gave us correction, we early learned that the more noise we

made, the more dust we raised, the more apparent pain we were undergoing, the less actual pain we should receive.

I regret having to take part in this debate on this amendment at the present moment precisely because this Convention, in consequence of the way in which this debate has gone, the camouflage which has been offered us, is not, perhaps, in a position to come down to rationality and look at the situation. I do not wish to over-state the case. I do not wish to suggest for a minute that there is any intent on the part of those who urge the initiative and referendum to raid the treasury of Massachusetts and that the way in which they aim to get the chance to raid the treasury is to cry out against those who are trying to prevent it, "Murder! Thieves! Robbers!", under cover of which the actual assailants of the treasury may steal in by the postern gate. I do not mean that, Mr. President. But the actual situation is this: We have a very skilful attack conducted against the supporters of this amendment as if they were taking away from the people something that they ought to have, when as a matter of fact the proposition before us is simply this: Do we wish to give to the people the open opportunity to initiate appropriation bills of every sort? That is the actual situation, and I am amazed, Mr. President, that men on both sides who are desirous of seeing this thing carried out really to the good of the Commonwealth cannot see that it is desirable to limit the power of the initiative in the matter of attack upon appropriations.

I want to repeat what the gentleman from Waltham has said: There is not one single thing in this amendment that is designed to prevent social welfare laws being initiated; not one thing that is designed to prevent direction on the part of the people that appropriation shall be made to carry out a specific scheme for old age pensions, health insurance, whatever it may be. It simply says that the actual appropriation, the actual attack upon the treasury, if you choose to put it that way, shall be made by the Legislature. Now, that is dangerous, say the gentlemen on the other side; that is dangerous. I submit to the good sense of this Convention, whatever its feeling about the Legislature, whatever its changes of feeling about the Legislature, that no Legislature that had received a mandate from the people to put a certain scheme into effect and that scheme voted for by a considerable majority of the people, would dare stand up and say: "We won't appropriate any money for this scheme."

Mr. WALKER of Brookline: I wish to take this opportunity, because of what the gentleman from New Bedford (Mr. Ross) has said, to say to those in this Convention who favor the initiative and referendum, that they will have an opportunity at a subsequent stage to vote for a real initiative and referendum measure. [Applause.] On this stage this measure has been cut and mutilated and stabbed in the back, and that is what has been attempted from the beginning. The opponents succeeded on this stage. I do not believe, Mr. President, that they will succeed on the next, because I believe in the first place that a majority of the people wish an initiative and referendum measure, — a majority of the people of Massachusetts. I believe that a majority of this Convention were elected to put through an initiative and referendum measure. [Applause.] I believe that the opponents of the initiative and referendum have no more respect for the majority in a representative assembly than they have for a majority of the people. But

the majority of this assembly is going to have an opportunity to vote for a real initiative and referendum measure, and then it will be up to them to vote for it or against it and take the responsibility.

Now in regard to this particular amendment. It has been called a perfecting amendment. It is not a perfecting amendment. The initiative and referendum, in my judgment, Mr. President, would not be worth the paper that it is written on if this amendment went through. We throw ourselves back absolutely into the control of the Legislature. Whatever law may be passed the appropriation may be withheld. Let me tell you that in the State of South Dakota the people passed an initiative and referendum measure and left to the Legislature simply the necessary formality of putting it into effect, nothing but formal action; and for twenty years the Legislature in South Dakota defied the will of the people and it did not go into effect.

This amendment says: "No law calling for an appropriation". What law does not call for an appropriation? It does not say anything about appropriating the money; it says that "no law *calling* for an appropriation from the treasury of the Commonwealth shall be the subject of initiative and referendum." That amounts to saying that no law involving an appropriation, which is absurd. I know that this Convention is tired to death of my voice, but I hope that because I say these things and am obliged to say them day after day you will not take offence at the amount of time that I take. I feel sometimes when I get up that I am prejudicing the resolution from the mere fact that I do stand up on my feet so often. I have but one more word and then I am through. It is said here that under this measure money can be taken from one man or one set of men and given to another. Of course it cannot. Have we not a provision in this amendment that says that in passing initiative and referendum laws the people will be under the same limitations that the members of the Legislature are under, and therefore when the people pass a law which takes money from one man and gives it to another it is unconstitutional, and the people if they wish to permit that would have to amend their Constitution before they could do it? And does the gentleman think that under the initiative and referendum the people will so amend it?

The amendment moved by Mr. Luce was rejected, by a call of the yeas and nays, by a vote of 115 to 130.

Mr. Creamer of Lynn moved that this vote be reconsidered but, without considering that motion the Convention adjourned until the following day, Friday, October 26.

When the question of reconsideration was taken up Mr. Creamer asked unanimous consent to withdraw his motion; but objection was made.

Mr. George of Haverhill: I did not object because I wanted reconsideration, but because this is such an important motion, when you stop to think of it. Here is a matter on the second reading, and an amendment is defeated, and some one gets up and moves a reconsideration. Of course there are two or three stages at which that same amendment can be offered, but the importance of making that motion the other night was so great that I think it ought to be completed on the record. Therefore I think we better have a vote on it.

Mr. Luce of Waltham: The gentleman from Lynn (Mr. Creamer) having moved that this matter be reconsidered, may I suggest that he

give his reasons why it ought to be reconsidered? [Laughter.] If the gentleman is not willing to give reasons perhaps I might furnish him with one or two. [Laughter.]

In the first place, an adequate reason for reconsidering is that the question was discussed yesterday and a vote was taken under conditions that did not permit a reasonable and fair consideration of the proposition itself. The whip snapped through this chamber, and its echoes still go back and forth from wall to wall. I heard the wails of the wounded, coming from the trenches. I heard those in the throes of death begging that they might be spared for a few days of existence. I heard those who were unwilling to face the enemy attempt by some flank movement to find an excuse for retreating to safer points of vantage. All these things I heard, and the din of battle. The attempt made to exercise camouflage, the evident desire to avoid the clear issue, the unwillingness to face the specific proposition, all present reasons why, in the cooler, calmer mood of a beautiful morning, when everything is peaceful, we might be willing for a few minutes to discuss the question before the Convention; and not, as we did yesterday, be diverted to problems of loyalty, problems of obedience, — shall I say problems of servitude? [Laughter.]

For these reasons, I beg for one moment to call the attention of the gentlemen who earlier in the Convention expressed a willingness to perfect this measure, including the gentleman from Brookline in the third division and his associates, to the very simple proposition of yesterday, which was to the effect that it is not wise to throw down the barriers against appropriations which in our Legislature, and in all legislatures, during the history of law-making bodies, have been found all important. The gentleman in charge of this measure for the majority was chairman of the committee on Ways and Means in the year 1907. It was my good fortune to attempt to fill his shoes in the same position in the year 1908. He and I cannot fail to be in perfect accord as to the wisdom of those rules of the Legislature which impose an especial restraint on the expenditure of money, which forbid the Legislature, — albeit I know the Legislature can at any moment change its rules, — which forbid the Legislature even to consider the report of any of its committees, when such a report contemplates the expenditure of money, without a further scrutiny, not by one committee, but by two committees, sitting separately.

Mr. Sawyer of Ware: I hope that we as a Convention will not make ourselves any more ridiculous than we already have made ourselves. We have now one more debatable stage in our parliamentary proceedings than most bodies. Now we are proceeding to take amendments that have been acted upon at one stage and discuss reconsideration of them. Why, Mr. President, we make ourselves ridiculous if we reconsider this matter. Let us vote no.

Mr. Montague of Boston: As a rule I do not believe in reconsideration, and I should not say a word now except for this: As I was going away from the State House yesterday I talked with a delegate who voted against this amendment, and who told me that the reason why he voted against the amendment was that he understood that if the amendment was adopted no matter ever could be proposed by the initiative which would involve the expenditure of money. It seems to me there may have been others who voted with that understand-

ing. As I understand the matter, that is not this thing at all, and the suggestion made by the gentleman from New Bedford in this division yesterday was a pertinent illustration of how this would work. He suggested that, suppose an initiative petition was brought for the establishment of a State University, one of the most fitting and proper things to be sought for in that behalf if the people wanted it, if this amendment is not adopted, and such a petition was brought, that petiton might have in it also an appropriation, $1,000,000, $5,000,000, $10,000,000, $15,000,000, for the establishment of that State University. If this amendment is adopted the petition could be brought just the same, and then if the people voted to have a State University the experts would be called in, those who understood the financial situation of the Commonwealth, and where the University should be located, and how it should be provided for, and that would be done in the orderly and regular way. I submit that it would not be wise for an initiative petition to be brought which at the same time involved the expenditure of $1,000,000 or $5,000,000 or $10,000,000 of money. That part should be left, properly left, to the usual and regular authorities and the experts connected with the Commonwealth, who are called in in such cases, whether it is the Legislature or anybody else that is appropriating the money. It seems to me that this is a real practical consideration. It does not seem to me it is a question of largesses; it is a question of practical things. Do you want a petition brought forward for the establishment of even so beneficial a thing as a State University, and at the same time tack on to it the exact amount of money which shall be spent for that purpose?

Mr. Balch of Boston: It came to my notice in yesterday's session that a very considerable number of men voted against this measure because they thought there was no sufficient answer to the criticism made by the gentleman from Brookline (Mr. Walker), and I think myself there is none. Practically no bill can be passed which does not in a sense "call for an appropriation of money." But that is a point easily covered by a simple change in wording. My question is this: I shall vote against reconsideration of the vote whereby the amendment was defeated in its present form, although I am heartily in favor, fundamentally, of what the amendment was intended to produce. Is there at this time a parliamentary method by which, with the positive consent of the mover of the amendment, we can secure a change in the wording so as to avoid that position? On reconsideration, in other words, may I move an amendment to this amendment?

The President: The Chair will state that if reconsideration is voted then the amendment will be before the Convention, and any amendments offered to it will be in order. At the present time no amendment is in order, the question being merely on reconsideration.

Mr. Dutch of Winchester: I think we ought to have more coöperation in this body on this proposition. I do not believe it is understood. If there is any bugaboo about the word "incidental", let us consider and alter it. Let us get at the true intent of the proponent of this amendment. We have some other matters that are coming up that are very important along this line. We have similar reforms that we all want to put through. We are all interested in some proposition which will bring us near to a real budget system, some real

business proposition for handling the finances of this State. It cannot be done, we cannot work it, if we have this unlimited proposition that is before you in this measure now.

The motion to reconsider prevailed, by a call of the yeas and nays, by a vote of 121 to 115.

Mr. Luce of Waltham: I move that the amendment be placed at the end of the calendar, the purpose being to reconcile the opposing views and secure a wording of the amendment that will be satisfactory, — at the end of the amendments, I mean, Mr. President, the purpose, as I say, being to secure, if possible, a phraseology that shall be generally acceptable.

Mr. Walker of Brookline: I object.

Mr. McAnarney of Quincy: I voted in favor of reconsideration, but if this amendment is to go to the Convention as it is now worded I shall vote against it. I believe the idea that is behind the amendment is a good one and may be met in a manner that will not be objectionable to those who believe in the initiative and referendum, and therefore I suggest, Mr. President, to the mover of this amendment, that he amend by striking out the words: "calling for an appropriation of money from", and in place insert words so that the amendment shall read: "and no law calling for an appropriation of a specific sum of money from the treasury of the Commonwealth." I apprehend the evil that this amendment was directed against was any combination or interest in the Commonwealth asking for a specific appropriation of money for a certain purpose, in the hope that with the purpose and the money being voted on together one would carry the other by. I can see many objections to such a procedure, but I —

Mr. Luce of Waltham: The purpose of the amendment offered by the gentleman is precisely what I had in mind accomplishing by putting this at the end of the calendar. Offhand it will be very difficult for us to assure ourselves that the phraseology he has submitted is precisely what we should all prefer after further reflection; but if we may accept his amendment at the present stage it will be easy to perfect the wording to accomplish his purpose later on, and with that understanding I cheerfully accept his amendment.

Objection was made to the modification of the amendment as suggested by Mr. McAnarney.

Mr. Quincy of Boston: My position on this matter is identical with that stated by the gentleman from Quincy. I voted in favor of reconsideration in the belief that something could be arrived at which would go some way at least toward safeguarding the danger which the gentleman from Waltham apprehends. On the other hand, I certainly could not vote for his amendment as it stands, and I do not believe that the Convention at this time can put this amendment in satisfactory shape. I do not think it makes very much difference what is done with this particular amendment now, because that does not preclude a further effort to try to arrive at some reasonable restriction, if there be such, upon the direct appropriation of money by the people.

Mr. John W. McAnarney of Quincy moved that the amendment moved by Mr. Luce be amended by striking out the words "calling for an appropriation", and inserting in place thereof the words "appropriating a specific sum".

Mr. Clapp of Lexington: It seems to me, Mr. President, that the way in which the amendment just offered leaves it is not quite satisfactory. I am in accord entirely with the sentiments expressed by the delegate from Quincy, but I want to ask him if he is not willing to accept in place of the amendment suggested by him an amendment which will read: "no law making an appropriation of money from the treasury of the Commonwealth." It seems to me not right to leave in the words "except for purposes incidental to the administration thereof". According to my view, if this initiative petition is in force the people of the Commonwealth will have the right to declare their wishes with regard to projects of importance, and, if they please, they may vote that they are in favor of having a hospital built or an addition made. They may advise, if you please, that $500,000, more or less, be expended for the purpose. But it is to be left to the Legislature to take action in response to the expressed wishes of the people. The Legislature, having learned what the people want, should take means to provide suitable plans to execute the project, and should determine not only how much money should be expended but should act in making the appropriation. It seems to me, therefore, that the matter would be left in workable shape by making it simply this: "no law making an appropriation of money from the treasury of the Commonwealth shall be the subject of initiative petition." If that amendment is not acceptable to the gentleman from Quincy, I should like to move it.

Mr. McAnarney: If the gentleman will make it read "no law making a specific appropriation of money," etc., I shall be glad to accept it.

Mr. Clapp: That is entirely satisfactory.

Mr. Bennett of Saugus: I am opposed to the whole thing. I am opposed to modifying it in any way, as I am informed at the present time. I should be glad to be further informed, but as I understand the growth of the Anglo-Saxon parliamentary system nothing has been defended so extensively as the idea that appropriations emanate from the people. Now, take our town system, our town government in Massachusetts. The selectmen may do a great many things. They have the power to legislate to a certain extent, but when it comes to any appropriation it must be made by the people in town-meeting assembled. What I do not understand about this is: It seems to me, as it stands, that the whole principle of the initiative and referendum is involved. If the people cannot be trusted to propose an appropriation I must say that I do not see where they can be trusted with the initiative and referendum at all. As it occurs to me hastily in the form which this has taken, if an initiative petition is brought on some great movement, a park system, a system of boulevards, a system of taxation, a system of better distribution of school funds on personal property, I fail to see how it can be effective unless accompanied by an appropriation. You may say the Legislature will make the appropriation; but will they? I remember on one occasion when the question of eradicating bovine tuberculosis was very much agitated in the State, a whole paraphernalia of suppression was adopted by the State, inspectors and veterinarians and all, and it went through the Legislature, and when it came to the question of an appropriation they voted down all appropriations, — did not give the State a cent with which

to execute the provisions of the law. Now, it seems to me that what I object to is the very amendment of the gentleman from Quincy, a specific amendment.

I have had something to say about the better distribution of personal property for school purposes. If any of you care to get the report of the Board of Education of the years 1915–1916 you will find some extremely interesting figures, as, for instance, the expenditures per $1,000 of valuation, and I want to make myself clear on this point. Where the expenditures per $1,000 of valuation are the smallest the amount of money expended per pupil is the largest. That is a very interesting fact. For instance, take Wellesley. Wellesley raises $3 per $1,000 of valuation, but it spends per pupil $53.32. The town of Saugus raises about $9 per $1,000 of valuation, and it expends per pupil about $25.

Mr. Robert P. Clapp of Lexington moved that the amendment be amended by striking out the words proposed to be inserted, and inserting in place thereof the words ", and no law making a specific appropriation of money from the treasury of the Commonwealth".

Mr. Dutch of Winchester: When I was cut off in my remarks previously by the expiration of the time for debate on reconsideration, I was remarking that all true friends of democratic government desire to approximate a budget system of running the finances of the State, and that we cannot do it in any reasonable sense if we do not make an amendment of the sort that has been proposed here. Now, I am not going to discuss form. Put it in the form the gentleman from Quincy suggests or the form the gentleman from Lexington suggests, with a view of perfecting it on the next stage, but let us put something in that represents this principle. I was going to illustrate by the very matter that the gentleman from Saugus has brought up, and that is this: The one form of direct government by the people to-day is the town-meeting system. That is the one illustration that you have where it works to-day. Of course you have got deliberation, fair notice, and all that, but what else have you? What else has town-meeting government absolutely demonstrated that you have to have? Where you have a community of any size you absolutely have got to have a finance committee or an appropriation committee. It is provided by the standing laws of this Commonwealth, and there is not a town where they have their finances in good shape where they are not being steered by such a committee, which practically makes up a budget, comes in with recommendations on every single article which calls for an appropriation of money, and is able to advise as to just where that appropriation will land the tax rate. The handicap in the towns to-day is the lack of further control of the appropriations, so as to bring about a proper result.

Now, the second point that I wish to make is this: That true friends of democratic government and good finance desire to see the day when legislatures and any other bodies that pass laws will not appropriate money for matters until the proper administrative department of the State has investigated and reported. That is a proposition that the committees of State Administration and Executive expect to report to this Convention. We expect to have your approval of that proposition. It is fundamental that we should have investigation and report by the appropriate administrative departments before we proceed to

appropriate funds from the treasury of the Commonwealth, and of course that investigation, in connection with the budget system that the committee on Finance is going to bring in here, will have in view to some extent the looking after the ways and means of raising that money. That is all essential. In trying to perfect one system let us perfect the other, if we are going to have this parallel system of legislating. I appeal to all of those interested in the work of those committees and of true and proper administration of State finance to adopt this amendment, and then if the details are not right let us perfect it later. But I am astounded at the opposition of the leader who gives this measure his name, that he is unwilling to have any such perfecting. Therefore let us take as it is one form of this amendment, and then perfect it later. It is absolutely essential to good government.

Mr. Parkman of Boston: The committee on State Finance appointed by the President have considered very carefully the budget system for State finances referred to by the gentleman who has just spoken, and have made a report recommending a budget for the State finances, which of course cannot be considered at this session, but will be considered next summer. I want only to call the attention of the gentleman from Brookline (Mr. Walker) to the fact that he appeared before that budget committee, recommending a State finance budget, and I think he, as well as anybody, should recognize that an appropriation by the people of specific sums of money would knock spots, if I may use a slang expression, out of any State budget, and prevent any real regulation and careful administration of the finances of the State.

Mr. George of Haverhill: The gentleman from Saugus referred a moment ago to where in the past a law had been adopted by the people and the Legislature had refused to make the necessary appropriation. I want to call attention to the fact that down in Sagadahoc County, Maine, a bridge was carried away some ten or fifteen years ago, — between Bath and Bowdoinham, I think, — and after a term of years the Legislature passed an enabling act that a bridge be constructed, that the State should pay a certain proportion, the county a certain proportion and the town a certain proportion of the expense. That was referred to the people, and the people, — that is, all who voted, — voted for a bridge. That was seven years ago. Since they voted for the bridge the towns have refused to make appropriations, and the county has refused to make an appropriation. There is one of the difficulties where they have the referendum and refer things to the people with the hope that they can get some great improvement. When they find that the expense is so great on the county and so great on the towns they negative a law by withholding appropriations. The same results have obtained as referred to by the gentleman from Saugus (Mr. Bennett) where the Legislature of our State has failed to grant the necessary appropriation to meet certain laws.

I voted in favor of this proposition yesterday, not because I believed in it as it was written but because I believed that some step should be taken to conserve the resources of Massachusetts. Our expenses are increasing, and of course that carries with it increased taxation to such an extent that we ought to have some exercise of business sense in respect to making large appropriations of money, and I am rather inclined to think that the people can determine whether or no they want

a certain sum of money appropriated for a given object. For instance, in the city of Philadelphia, the city of Baltimore, and in nearly all the southern cities, they cannot pass a law in the State legislatures authorizing those cities to appropriate large sums of money, especially where it involves a bond issue, without those questions being referred to the people, and I have taken the papers in some of those cities in every campaign to see how they treat the subjects. For instance, within five or six years the city of Philadelphia has had under consideration the issuing of bonds to the extent of millions of dollars to improve docks. Baltimore has had a very extensive system of sewerage. You see the exhaustive and effective way in which those matters are discussed in the big papers of those cities.

It seems to me that we ought to have this carefully drawn. I am willing to vote in favor of this amendment with the amendment of the gentleman from Quincy (Mr. McAnarney) in the hope that on its next stage, or by the time that we meet this proposition on the next stage, we can have some conference whereby we can have a little clearer understanding of what is going to be accomplished.

Mr. BENNETT of Saugus: I objected to the amendment because it seems to me that is precisely what I object to in this matter, — preventing the people from making specific appropriations, — and I am amazed at the course which this has taken yesterday and to-day. As I have followed the growth of initiative and referendum sentiment for twenty-five years, the thing which I have heard said continually was that this might be desirable and proper for the bestowal of franchises for large, new enterprises by the State and for similar matters which might be submitted to the people. That is what I have heard said for twenty-five years in regard to the initiative and referendum. Now comes in my friend from Waltham (Mr. Luce) with amendments to prohibit precisely the things which we have been told for years the initiative and referendum were for. The city of Hartford, as I understand it, still retains the town form of government for the purpose of voting upon large matters of this kind, and has town-meetings occasionally, so I am told, for the purpose of voting upon these matters.

I am opposed to that amendment to the amendment, because that is the specific thing which I am in favor of. The gentleman from Winchester and the gentleman from Boston have spoken of a budget and of a finance committee. The finance committee has no power in the town. It is the people who make the appropriations. The finance committee simply make the recommendation and present figures, and the people make the appropriation in every case.

Take the budget system, to which the gentleman from Boston has referred. I am not familiar with the details of that proposition, but I understand they put into the budget the matters which are incidental to the present administration; but when you come to a great, new enterprise, a great, new proposition, as, for instance, a better distribution of moneys for schools, they would not put that into a budget. That is for the people to vote upon, and it is one of the great issues in this Commonwealth. When the colony began, as I understand it, every man was to educate his own children. Then we had school districts, and the education was by school districts. By and by the school districts were mostly abolished, if not wholly abolished, and the town became the unit, because the interests were so intermixed

and so identified. Now the time has come to make the State the unit. I refer to that only as one issue. The time has come to make the State the unit for the education of children and for the distribution of personal property, and the same arguments which prevailed in regard to the town now prevail in regard to the State. How, under this, are you going to carry forward great enterprises of that kind for which the initiative and referendum is proposed, unless you can carry with them a specific appropriation? I do not see any value in the initiative and referendum unless it is to be applied to those two matters which the gentleman from Waltham (Mr. Luce) endeavored to eliminate in those two amendments.

I hope this amendment will be voted down. I do not think there is any merit in it at all, — not the slightest merit. I do not think there is any danger in allowing the people to make their own appropriations. And let me tell you, here is a point, it seems to me, in regard to the initiative and referendum as applied to those matters. You send representatives to the Legislature who represent a majority of the inhabitants. The minorities have no representation. But you take those minorities throughout the State and put them together on the initiative and referendum, and you have a very substantial representation.

Mr. Washburn of Middleborough: My attitude with respect to this particular amendment has been stated correctly by the gentleman from Quincy (Mr. McAnarney) but still I am somewhat uncertain about the scope of the word "specific". Might not a measure be initiated calling for the creation of a commission, we will say, to build a State House, and authorizing that commission to spend out of the general funds of the Commonwealth such sums as should be necessary for its erection, — I mean making a general appropriation and not a specific one? That, I take it, would be entirely possible. And yet that is precisely the thing, as I understand it, which the gentleman from Waltham (Mr. Luce), as well as the gentleman from Quincy (Mr. McAnarney), is trying to reach and prevent. My inquiry, then, is, ought the word "specific" to remain in the amendment?

Mr. Churchill of Amherst: There are two or three things that I should like to say as distinctly as I may without taking too much time.

We have had put before us on the other side this morning an analogy between the operation of town government and the operation of the State government under the initiative and referendum in regard to our finances. Now, I want to call the attention of the members of this Convention, in the first place, to the fact that this amendment refers only to initiative petitions, and not to referendum petitions, not to the control of appropriations by the people when said appropriations have been made, but to the power of the people *ad libitum* to offer measures appropriating sums of money. We have had pointed out very carefully the fact that the town-meeting form of government is the closest form that we have to a direct democratic form. What is the case, gentlemen, to-day, with regard to the action of the town-meeting and form of town government with regard to town appropriations? What has been the great progress in this State in the last fifteen years in the matter of town finances? Has it not been the perception on the part of town after town that, even when they know

the conditions, when they know the specific objects for which the money is to be appropriated, when they know whether the amount of the appropriation is a proper amount or not, for this bridge or that road or that other town purpose, — practically every citizen knows that, — they cannot act wisely until they have finance committees, budget committees, the preparation of a budget by men who shall look over the whole field of town appropriations and shall recommend to the town appropriations divided among the projects which are recommended? That does not prevent the town from overturning any one of those appropriations, and it does not prevent the town from increasing any one of them. It does not prevent the town from offering new appropriations under the general head of the general departments of the town government. But it does precisely the thing that the towns, even under the best conditions for direct government and direct appropriations, are coming one after the other to see to be necessary. If that is true, if the progress of town government in this matter is directly toward the principle indicated by this amendment, why should we listen to an argument, gentlemen, that we should save to the Commonwealth the appropriation power which is used by the town?

There is just one more point, Mr. President, that I want to make. Is it true that this thing goes to the very principle of the initiative and referendum? Is it true, in the words of the gentleman from Brookline (Mr. Walker), that to pass this amendment will "knock the stuffing" out of the initiative and referendum? Is it true? If that is so, that is the heaviest indictment of the initiative and referendum that has been offered. [Applause.] That was not said in public. A great measure offered by the people! I hope the measures will be great that are offered by the initiative. I hope they will further the social welfare of the whole community. Are the gentlemen on the other side prepared to say that they still think we shall have so obdurate a Legislature that they cannot handle by the present methods these obdurate legislators? Are the gentlemen ready to say they still think that when, by a large majority, a great scheme of advance in social welfare has been passed by the people and a mandate given to the Legislature, that the Legislature of Massachusetts, — not of Dakota, Massachusetts, — will stand up and say to the people: "We won't appropriate the money"? How long would a Legislature last if it should say that?

Mr. Walker of Brookline: If I remember rightly, I spoke last night with some heat on this question. [Laughter.] I am speaking this morning with the utmost calmness, I assure you, but for that reason with no less earnestness. The gentleman who offered the amendment is opposed to the initiative and referendum, I realize.

Mr. Luce of Waltham sought recognition.

Mr. Walker: I decline to yield.

Mr. Luce: I rise to a question of personal privilege.

The President: The member will state his question of personal privilege.

Mr. Luce: Recalling that the gentleman from Brookline early in the session properly remonstrated against an attributing of motives to another, I desire to state that in my opinion he is unjustified in saying that I am opposed to the initiative and referendum. [Laughter.]

Mr. WALKER: I am sorry if the gentleman thought I criticized his motives. I have said before in this Convention that I have the highest regard and admiration for him. I never questioned his motives. I gathered from his argument that he was opposed to the initiative and referendum. I may have been mistaken. I hope he will vote for it when the vote comes. But, Mr. President, the real situation is this: Do you wish to give the Legislature a veto power on every measure passed by the people that may involve an appropriation and which would not be effective without an appropriation? You provide all the necessary machinery to permit the people to enact a particular law. Would the initiative and referendum men in this Convention after that had been done grant to the Legislature the absolute veto power on a measure so adopted? I do not believe they intend to do that. And yet the power to withhold an appropriation, in many cases, is an absolute veto power on legislation. Mr. President, such a provision is not heard of in any initiative and referendum State in this Union, for obvious reasons. That power is not abused. Appropriations are not in fact made by the public. But the reserve power to make an appropriation when the Legislature neglects or refuses to make one must reside in the people, or else all the teeth are taken out of the initiative and referendum. That is obvious.

I object to delay in this matter for further amendment of the proposition, because the proposition cannot be amended. The idea is that the people shall not have the right to say that the money necessary to carry out a measure that they have voted for shall be appropriated. Now, I do not expect the people to exercise that right, but I do believe that they should have it.

Mr. WALSH of Fitchburg: A newly developed branch of the State government, the extension of education by correspondence schools, now has four or five thousand pupils. The Board of Education has felt that the activities of this branch of the government were not so important as the regular school system. The Legislature has been reluctant to appropriate money. If this amendment was adopted would it or would it not be possible for the people by initiative to petition for the further development and extension of education free to the people by correspondence and appropriate a reasonable sum of money for that purpose?

Mr. WALKER: If this amendment is adopted they could not. There is no trouble about this matter in the other States. I have never heard of any abuse of this power and yet the power resides and must reside in the people.

The amendments moved by Messrs. McAnarney and Clapp were severally adopted.

The latter amendment, substituted for the amendment moved by Mr. Luce, provided for adding at the end of line 111, as amended, the words ", and no law making a specific appropriation of money from the treasury of the Commonwealth".

This amendment, as modified, was adopted, by a call of the yeas and nays, by a vote of 117 to 109.

The debate on amendments was resumed Tuesday, October 30.

Mr. Robert Luce of Waltham moved that the resolution (No. 359) be amended by adding, after line 109, the following paragraph:

If, of the measures introduced into the General Court by initiative petition in any one year, more than five fail of enactment by the General Court, and the petitions relating to more than five are duly completed, the five that received the larger votes of the Senate and House of Representatives combined, and no more, shall be submitted to the people at the next State election. The measures not so submitted shall be deemed to be introduced into the next session of the General Court and pending in the House of Representatives.

Mr. LUCE: I hold in my hand the argument for this amendment. It has been on the desks of all the members, and I need but remind them that they have seen a copy of this California ballot, which contained forty-eight proposals submitted to the electorate at one time. Forty-eight proposals! Surely no discussion of that situation is necessary. The evil has been recognized by the friends of the initiative and referendum in the western States. I think nobody is inclined, so far as I have observed, to question the existence of the evil. The remedy is the difficult matter, for it has been feared by friends of the initiative and referendum that any attempt to restrict the number of measures might lead to the introduction of fake proposals, meant to crowd out legitimate proposals, behind which there was a reasonable public demand. Therefore if we may focus our attention on the remedy and admit the evil, we shall make progress. I suspect friends of the initiative and referendum may urge that the evil cannot be met. Under the western systems it is probable such is the case, but we have modified the western systems by providing that these measures are to be passed upon by the Legislature, immediately putting in our hands a device to solve the dilemma which the western States do not have, and that device is very simple. It is to the effect that those measures which have the largest approval in the Legislature shall have the right of way. Whether you make the number 5, 4, 6, or any other reasonably small number, is a matter of little concern. The provision simply is that a reasonable number of propositions shall go on the ballot as indicated by the preference of members of the Legislature. The device is so simple and so reasonable that I indulge the hope it may meet with general acceptance.

Mr. COLEMAN of Boston: It would seem that the remedy as proposed is worse than the difficulty which it is intended to relieve. The mere presentation of this blanket ballot, showing forty or more measures for the people to consider, is not an argument in and of itself. The matter should be analyzed, and we should inquire what the action of the people was with reference to those numerous measures. Even in their inexperience in the first year of handling such a proposition as that did they meet the situation intelligently or did they not? I understand that an analysis of the voting on all those measures shows that the people handled them in a very intelligent and satisfactory fashion. It does not argue, therefore, because the people of California were asked to consider so many measures in the very first year of the initiative and referendum that therefore we should make a provision which would artificially limit the number of measures which the people might consider not only in the first year but in all subsequent years. It has been shown also by the experience in other States that the number of measures put upon the ballot in the first year or two is greatly in excess of the number that occur on the ballot thereafter. It is quite natural that when the people have not had an opportunity for a generation to have a direct vote with reference to

measures passed by the Legislature there should be at first a large number of questions which they want to consider. It is shown by the record in other States that after the first year or two the number of measures submitted falls down to a small number, as few almost as the number indicated in this amendment, five. To allow this amendment would be to encourage the presentation of picayune amendments for the very purpose of adding to their number, and amendments of a character that would be so unimportant that they would not carry any heavy objection to them anywhere, but would exclude certain important measures. Therefore the five amendments that might be submitted in a given year would be perhaps those dealing with details, perhaps mere phraseology, and they would preclude from the consideration of the people real vital measures. This proposition simply adds a complication that confuses the whole situation, and does not work to the advantage either of those who are for or of those who are opposed to the general principle of the initiative and referendum. If we want to have something that will work out satisfactorily and creditably we ought to have the situation stand just as it is, it seems to me, and not add this complication, which would encourage strategic presentation of amendments that were not sincere and that were intended merely to delay or postpone or make impossible the consideration of really worth-while amendments.

Mr. QUINCY of Boston: I am sorry to take up the time of the Convention again in speaking on an amendment, but I really believe that this amendment offered by the gentleman from Waltham (Mr. Luce) would have most unfortunate results in practice. We have spent much time in this Convention in trying to develop what may be called a safeguarded Massachusetts form of the initiative and referendum. We are trying to put in a lot of safeguards. But I think that all those who finally are going to vote for any measure on the initiative and referendum want to see a workable measure. In my judgment, one of the most unfortunate things that could happen in this Commonwealth would be to have the initiative and referendum measure passed and then have it proved by subsequent practice that the hopes of its friends were rendered illusive by the ease with which, through such a device as here suggested, the practical working would be absolutely nullified.

We can all recognize to some extent the evil that is pointed out by the gentleman from Waltham (Mr. Luce). We none of us want to see, or expect to see, such a great blanket ballot in Massachusetts as has been held up to us so often as a horrible example of the possibilities of the initiative and referendum. But as the gentleman from Boston in the fourth division (Mr. Coleman) has said, I believe that an examination of what has occurred in the initiative and referendum States will show that this evil chiefly occurs when the system is new. In the State of California the people desired nothing less than a political revolution. It took a great many measures introduced by the initiative and referendum to accomplish the general objects which the people of California wanted. But in that State, as in other States, the evil has largely cured itself. Now, it seems to me that this remedy would be infinitely worse than the disease, so far as there is any serious evil, for this reason: If you limit the number of places upon the ballot you invite those who object to certain proposed measures

to get in first and occupy this limited number of places, five as proposed by the gentleman from Waltham; to occupy them by getting a larger vote in the Legislature, which we are assuming to be more conservative than the people, in favor of certain conservative measures, as we may call them, introduced simply for the purpose of taking up the total number of measures which the Constitution allows and forcing the radical measures, if we may call them so, over to another year. If we pass any sort of initiative and referendum measure and then the people find, as I believe they would find, that it is perfectly easy under this amendment to put forward innocuous propositions, propositions which had no great opposition, and by getting a large legislative vote for those propositions to postpone, to put off, the real propositions that the people might be ten times as much interested in, would that be for the public good? I submit to the conservative members of this Convention, as well as to the liberal members, that it would not. It would be most unfortunate to offer the people bread in the shape of an initiative and referendum measure, and have them find out through the operation of such a provision as this that they had received a stone. It certainly would not benefit any interest whatever.

Mr. CHURCHILL of Amherst: I should like to ask the gentleman if he and his friends would be willing to adopt this amendment if the manner of selecting the five that should go on the ballot should be changed from the method proposed here, the five that received the larger votes in the Senate and the House of Representatives combined, — whether, in other words, he would favor an amendment which limited the number that should go onto the ballot to five, provided another method of choosing the whole five were selected.

Mr. QUINCY: I have no doubt that the method of choosing might be improved, but my objection goes rather to the root of the whole proposition. I do not think any method of picking out five measures will work in practice, because it still is open to this great, — and I believe fatal, — objection, that it prevents by indirection measures which are highly objectionable to certain people, who may have more influence in the Legislature than others, from getting on the ballot. Now, let us be direct in our action. Let us not have anything which holds out a delusive hope to the people and then deceives that hope.

Mr. COLEMAN: I should like to add just a word, Mr. President, in confirmation of what I have said already in reference to the way this matter worked out in California itself. For example, the constitutional amendments by the initiative that were proposed in 1914, two years I think after the law went into effect, were eight in number; in 1916 they were only four in number. The initiative laws that were proposed in California in 1912 were only three, in 1914 there were only four, and in 1916 there was only one. This matter takes care of itself. You do not need any measure limiting the amendments to five; it naturally works out satisfactorily.

Mr. WASHBURN of Worcester: A reference having been made by both the proponent of this amendment and its opponents to the experience in California, it may be instructive for us to know how they sought there to avoid any misunderstanding or unwise action at the polls on the part of the people in passing upon proposed changes in the laws. These rules I think ought to find a place in our records, in order that we may invoke them at some time in the future if perchance

the need should arise. Here are the directions, as I am informed. They appeared in the California "Outlook," a Progressive political weekly:

> On a referendum — vote your opinion, if you have one; if not, vote yes.
> On an initiative — vote your opinion, if you have one. If not, vote no.
> On a constitutional amendment — vote your opinion, if you have one. If not, do not vote at all.

Mr. KELLEY of Rockland: During the discussion of this measure the number of matters appearing on the California ballot has been referred to as having been reduced from 21 in 1914 to 5 in 1916. I wish to ask the gentleman if he is not aware that this year on the California ballot there appear 30, — 18 initiative constitutional amendments and 12 laws submitted by the Legislature.

Mr. BRYANT of Milton: I should like to point out that in the State of Oregon, which adopted the initiative in 1902, there were in 1910 more measures than could be contained on one page, — over 20, I believe. In 1912 there were still more measures, nearly two pages in our pamphlet; in 1914 about a page. In 1916 it had dropped back temporarily. There is no indication from these figures that the use of the initiative and referendum falls off as time passes.

Mr. MORRILL of Haverhill: The conservatives are indulging in the same pastime that the other conservatives in the Legislature indulge in, that is, waving aloft the ballot used in some initiative and referendum State in one or two years when an unusually large number of measures appeared upon it, and holding that as a horrible example. Now it so happens that the number of measures acted upon by the Legislature varies from year to year. We might take numerous other things to offset these, if it is an evil to have a large number of measures on the ballot. Why do they not refer to what happens in those States every year, or over a series of years? In Oregon, — to carry it from 1912 where the member in the rear of the fourth division left off, — in 1914 what happened was as follows: Only thirteen constitutional amendments were proposed by the initiative, and in 1916 there were but four. That is in Oregon, whose early blanket ballot has been shown in this chamber at every legislative session for years, — the horrible example *par excellence*. Again, in 1908 there was but one referendum on laws submitted in Oregon, in 1910 there were three, in 1912, three, in 1914 and 1916 there was none; the ballot was blank. These are the facts, Mr. President, and in the face of them I would ask the delegates to this Convention to inquire of themselves: Is that blanket ballot of an early year a horrible example or merely legal camouflage provided by corporation attorneys and special pleaders?

Mr. CHURCHILL of Amherst: There are two things that I want to make perfectly clear in what I have to say. First, in regard to the point of the decreasing use of the initiative and referendum as years go on. Gentlemen upon the other side are upon record this morning, and at other times in this assembly and in committee, as indicating that it is desirable, as the initiative and referendum works out, that there should be but few measures upon the ballot. They admit that. They proclaim it. They come this morning with an assertion that to limit the number of measures to be placed upon the ballot is absolutely to "stall the proposition," if I caught the words of the gentleman from Boston correctly. Now, Mr. President, I deny that we have real

reason to believe from the experience of the western States that we may depend upon a decrease in the number of amendments and laws proposed by initiative and referendum; and the facts which have been offered by the gentleman in this division (Mr. Kelley of Rockland) and by others in regard to Oregon and California seem to me clearly to prove that. We shall have ups and downs, but looking over the years in which this measure has been in use longest in the various States we have no right to conclude, and no rational man can conclude, that we may depend upon a slight use of the referendum after the first year or two. The "high water" mark of Oregon has been indicated to you. The I. and R. was there adopted in 1902, and in 1910 there were 26, in 1912, 31, in 1914, 21 measures on the ballot. This was checked in 1916. Why? Because, on account of the acceptance of woman suffrage, the percentage requirement demanded a much larger number of names on a petition, — which is a wholly different matter. The figures in regard to California have just been put before you. I do not believe any man on either side can look at the record in an impartial manner and say that we are entitled to judge that the initiative and referendum, after a year or two in Massachusetts, will be used for but few proposals.

And second, Mr. President, I want to insist on this thing: Gentlemen upon the other side have admitted that it is desirable that there should be but few measures upon the ballot, but they refuse a proposition which will secure that. Now, this proposition before us in the amendment of the gentleman from Waltham (Mr. Luce) puts five measures upon the ballot. That is about as many, in my opinion, as the people at any given election really can consider thoroughly and vote upon, so that we may feel that we have a real public opinion expressed. The gentlemen themselves admit the desirability of it. They say they want a workable initiative and referendum, they want an initiative and referendum with few measures on the ballot. Here is their opportunity to prove that they mean what they say. Instead of which, the proposition is that we should throw this thing absolutely open to the people, let them put on as many as they want, for, — and this they cannot prove, — in course of time the people will become satisfied and then will put but few measures upon the ballot.

Upon either ground, Mr. President, have we not reason to favor this amendment? The nub of the opposition is really to the proposal that the ballot shall have but five measures, — that those having the largest vote in the Senate and House of Representatives shall be put upon the ballot. Speaking for myself personally, I am perfectly willing to consider at a later time a different kind of proposal as to selection of these five, but that we should have an amendment that limits the measures to a number that the people really can understand seems to me an excellent and desirable thing. If the gentlemen on the other side are not content with a fair proposition of that sort, it simply goes to show what they have been showing all along, that while they themselves may be conservative, they wish to throw this thing absolutely open to all the radical forces of the Commonwealth.

Mr. WALKER of Brookline: The way that has been adopted in all the initiative and referendum States to keep the number of measures down to a reasonable number on the ballot is by requiring a large number of signatures. That is the object of requiring a large number.

If you make any arbitrary selection you simply provide a means for jockeying. It will fill your Legislature with a lot of debate resulting in wasted time if the Legislature is to decide what measures shall go on the ballot and what measures shall not. Now, let me say that the average number of measures on the ballot in all the States is less than five; the average is only about four and a half. It has been said that the evil of too many questions on the ballot is not curing itself. I do not intend to dispute that statement myself, but I say that our commission appointed to investigate this particular matter have published a pamphlet on the initiative and referendum and they have this to say on this point. I wish to call it to your attention:

Apparently this abuse of numbers is correcting itself in some measure. There has been a marked falling off in several States in the number of measures upon which the people have been asked to vote. In some cases this may be attributed in part to the double difficulty in securing the fixed percentage of voters as signers of the petition after granting the suffrage to women.

Of course, double the number.

In the first few years after the introduction of the initiative and referendum it is to be expected that measures which its sponsors have been seeking will be forced upon the ballot. The more desirable of these are soon secured. With that accomplished, and with the novelty of the initiative and referendum worn off, there seems a clearly marked general tendency with these legislative devices to come to their normal use as implements or weapons not to be employed or experimented with, but to be kept in readiness for time of need.

There is your own commission's statement in regard to the matter. We have had the California ballot called to our attention. The real question, after all, is not how many measures go on the ballot, but the question is how the people deal with the measures. The California ballot is the worst ballot in that respect that ever has been presented to the people. How did the people deal with that ballot, and did they deal with it successfully? It seems to me that we had better deal with the questions that are pressing and get rid of them rather than have them drag along, as the gentleman's amendment permits, from year to year, — 5 the first year, 5 the next year, 5 the next year. Let us consider them at one time. Now, how did California actually deal with this great ballot? I have an article from the greatest authority in California on the subject. He is an initiative and referendum man, of course; you can discount what he says if you want to. His name is Dr. John Randolph Haynes. This is what he said:

How do the people do in matters of direct government? Their methods may be illustrated by the election of 1914, when the people of California voted a ballot containing 48 measures —

Think of it. Suppose we were offered by the Legislature a ballot of that size. Forty-eight measures!

. . . one of the largest, if not the largest, ballot in the number of measures ever submitted in American history. The people in this election took their responsibilities seriously. The discussion of them began in the newspapers, at home, and in business establishments, when the petitions first began to circulate. For many months before the election these measures were given large space, with speakers on both sides, on the programs of men's and women's clubs in the State. More than 100 meetings discussing them were held in the school-houses of Los Angeles and hundreds were in the private homes of the city. This was going on throughout the State. A teacher informed the writer that school children talked about them on the playground, some of them saying that their parents spoke of nothing else at their meals. Finally, on the day of the election, husbands and wives

together, with their sample ballots in their hands, marked after weeks and months of study, repaired to the polls, and in the privacy of the voting booth registered their decision. I have never seen any haste or passion in the operations of direct government in California; and I haven't seen anybody else who has seen any.

That is the way it works.

The amendment moved by Mr. Luce was rejected, by a call of the yeas and nays, by a vote of 109 to 138.

Mr. Henry H. Bosworth of Springfield moved that the resolution (No. 359) be amended by striking out lines 197 to 201, inclusive, and inserting in place thereof the following:

In the case of an amendment to the Constitution: Shall an amendment to the Constitution (here insert description, and state, in distinctive type, whether approved or disapproved by the General Court, and by what vote thereon) be approved?

YES.	
NO.	

In the case of a law: Shall a law (here insert description, and state, in distinctive type, whether approved or disapproved by the General Court, and by what vote thereon) be approved?

YES.	
NO.	

Mr. Bosworth: This amendment relates merely to the direction to the Secretary of the Commonwealth as to how and in what manner the proposed amendment or proposed law shall be placed upon the ballot. Down to and including the words "here insert description," it reads precisely as printed in Document No. 359. Then the amendment inserts these words: "and state, in distinctive type, whether approved or disapproved by the General Court, and by what vote thereon."

The whole object of this amendment as it stands in my mind is perfecting. I do not now care to debate it at any great length or with any great force, for I do not know exactly how we stand here to-day. The intimation last week all through the corridors and later on the floor of this body was that some one was going about among us a good deal like an old mama kangaroo, with something concealed about his person that later was to be exhibited to us, which was very interesting to the kangaroo and probably would be very interesting to this body.

Mr. Walker of Brookline: It may save some time on this point if I say to the gentleman that, as far as I am concerned and as far as those with whom I have consulted are concerned, we are very glad to accept this amendment.

Mr. Bosworth: Under the circumstances I am very glad to hear that statement.

The amendment was adopted.

Mr. Lincoln Bryant of Milton moved that the resolution (No. 359) be amended as follows: By inserting after the words "not earlier than", in line 95, the words " the first Wednesday of the August and not later than"; and by adding, after line 109, the following paragraph:

If an initiative petition for a constitutional amendment or for a law, signed by ten qualified voters, shall be filed with the Secretary of the Commonwealth not later than the first Wednesday of September as hereinbefore provided, then at any time before the first Wednesday of the following October a petition concerning the same general subject signed by ten qualified voters may be filed with the Secretary of the Commonwealth, and if signatures as hereinbefore required for an original petition shall be filed not later than the first Wednesday of the following December, the Secretary of the Commonwealth shall transmit any such petition to the clerk of the House of Representatives and the proposed constitutional amendment or law which is the subject of such petition shall then be deemed to be introduced into

that General Court and pending in the House of Representatives. The Secretary of the Commonwealth shall give public notice in such manner as the General Court shall provide of all petitions filed as hereinbefore provided.

Mr. BRYANT: These are substantially the amendments printed under my name on pages 7 and 8 of the calendar. The first amendment, or the first paragraph in my amendment, which is short, provides as to the time of filing an initiative petition. The resolution before us provides that a petition may be filed at any time before the first Wednesday in December. My amendment suggests, — and I hope, Mr. President, that this will be considered as a constructive suggestion by the majority of the committee on Initiative and Referendum, — my amendment suggests that petitions should be filed on or before the first Wednesday in September. That does not mean that the whole 20,000 or 25,000 signatures must be filed at that time, but simply the petition signed by ten individuals. The petitioners will then have until the first Wednesday in December to complete the 20,000 or 25,000 signatures, as the case may be.

Now, it seems to me that there are many advantages connected with filing a petition earlier than is provided in the present measure. In the first place, it gives greater publicity, and I have incorporated in my amendment a provision that all petitions filed shall be advertised in some method to be determined by the General Court, so that all the people of the Commonwealth may know just what petitions are filed and may come up here and examine them. Furthermore, if a petition is filed by September, anybody running for the Legislature may be asked as to his stand upon the petition before the Commonwealth.

Further than that, expense may be saved, because there will be better opportunity for anybody to come to the State House and indorse his name upon the petition, and so save the trouble of going around to gather together signatures.

If a petition is filed before the first Wednesday of September it seems that some leeway ought to be left for other persons to file petitions on the same general subject, if they desire to do so. Therefore in the second paragraph of my amendment I have inserted the provision that a second petition on the same general subject may be filed by ten other voters, provided it is done before the first Wednesday in October. The Commonwealth and the candidates for the Legislature then will have before them either one petition, or possibly two, taking up the question from different angles. If a particular proposition does not happen to please 20,000 people in the Commonwealth, under my amendment they have a method of going before the Legislature to express their ideas as to the treatment which they think the proposition should receive. It will mean possibly that when ten men come before the Legislature with a petition, another ten will lay the matter before that body from another angle. It will mean that there will be more discussion in the Legislature, that they will have the views of more men. The Legislature will have the opinion of 40,000 voters instead of 20,000. It should be borne in mind, of course, that the second petition must be signed by 20,000 additional signers, just the same as the first petition, in order to have any standing. But assuming that one petition, with the approval of 20,000 men, has the right to come before the Legislature, it seems only fair that a second group, if there be such, should have the same right, provided they do it within a reasonable

time. Furthermore, if a petition is filed in September, and no petition along different lines is filed, it will be some indication that there is not any particular opposition to the proposition as filed.

For those reasons, Mr. President, I hope that this amendment will be adopted. I think the present provision, that the petitions may come in at the last minute, before December, when it is too late for the people of the Commonwealth to know what is going on, is hardly fair. I think there can be no disadvantage in having them file a petition before the first Wednesday in September, because it needs only ten signatures; and it has great advantages in that it will spread publicity of what is going on, it will spread discussion even before the election, it will appear in the newspapers under the direction of the Secretary of the Commonwealth; and I hope it will meet one of the objections that have been raised to the initiative, that it has not sufficient public discussion.

Mr. QUINCY of Boston: I rise to say a word about this matter, because it has some relation to the subject of an alternative measure to be proposed by the Legislature, which is included in the amendment temporarily withdrawn, but which will be renewed shortly, printed under my name on page 6, in the second paragraph.

Now, if we give the Legislature the right to determine on an alternative proposition, it does not seem to me that we want to invite the people to prepare alternative propositions by any such provision as the gentleman from Milton (Mr. Bryant) has moved. We shall have conflict enough, the Legislature will have trouble enough, in dealing with conflicts and with alternatives; these should be dealt with by the Legislature, which can deliberate and deal with the matter wisely and properly. But if you adopt the amendment of the gentleman from Milton you make the advocates of an affirmative proposition put in their petition, and then you give all kinds of opportunities, — you give practically an invitation by holding the door open, — to any group of men who want to confuse the issue, who want to present some alternative, to get up another conflicting petition.

Now, why should we not stand on this simple position, — that those who do not approve the affirmative proposition contained in an initiative measure can vote against it at the polls? If their views are sound, and if some alternative to that proposition ought to be offered, the Legislature, if my amendment prevails, can offer that alternative. I think we should stop there, and that any invitation to others to get up another competing proposition, at a later date, will cause merely confusion and will accomplish no legitimate and proper object.

Mr. BRYANT: It seems to me that the suggestion of the gentleman from Boston (Mr. Quincy), that the people who do not approve of a measure that comes to them have their rights protected by being able to vote against it, is hardly a fair proposition from the point of view of those who do not approve of the measure. Undoubtedly, if they do not approve of a measure, they will have certain reasons for it. Those reasons may go to the essence of the measure, or they may go merely to the manner in which the purpose of the measure is being carried out. If they go to the essence of the measure, of course they can protect their rights by voting against it. But if they go merely to the method of carrying out the measure, they have no way of protecting themselves, they have no way of approaching the Legislature

to get the Legislature to act for them, because this other group of ten will have the right of way throughout.

Now, if 20,000 people have the right to make an original proposition, what is there in the theory of the initiative and referendum which prevents another 20,000 from presenting their views? If the measures presented are to come down to a few, after we have been using the initiative for a while, what confusion can possibly result by having two measures on some subjects? On the other hand, if the people of Oregon can deal intelligently with 30 measures at one time, cannot the people of Massachusetts deal with all the measures that are likely to come up in Massachusetts at the same time?

It seems to me that this is only a matter of fairness. I do not like to think that any special group will take advantage of the initiative and referendum to throw in a petition at the last moment before it must be filed, with the hope of letting it get by the attention of the voters. If there is any such group who intend to do that, who will do that, there ought to be some check upon them; and those who do not happen to agree with them should have the right, in the same way, to bring to the attention of the Legislature their particular views, and should have the same standing before the Legislature, — the same standing before their representatives that the first 20,000 have before their representatives. It is offered only as a question of fairness, and in that light I hope the amendment will be adopted.

Mr. LUMMUS of Lynn: I do not conceive that this amendment is a proper subject for controversy. It seems to me that this amendment runs along in line with the principle which the leading advocates of the present resolution on this floor always have supported. The Convention a few minutes ago recorded itself on one matter involving the number of measures to go upon the ballot, in favor of the open door policy. Now the gentleman from Boston (Mr. Quincy) seeks to close that door when certain petitioners come who happen not to be the first ones to introduce an initiative petition on a particular subject. I cannot conceive that that attitude can be consistent with the attitude of the majority of our committee. The gentleman from Boston proposes to leave the opening or shutting of that door, and the offering of an alternate proposition along the same line, to whom? To the Legislature, — the very Legislature against which the whole resolution is directed! And he proposes to put every one, except the first men who start an initiative petition, practically at the mercy of that very Legislature that he distrusts. I cannot conceive that that can be consistent with the attitude with the majority of our committee.

The original ten men themselves who get up the first initiative petition on a particular subject may be trying to confuse the issue. They themselves may be trying to take advantage of a generally popular idea, to work through, under the cover of that, details that are contrary to the public interest. It ought to be possible for another ten men to get up another initiative petition along the same line, for the same general object, but with the purpose of having the details honest instead of dishonest, in accordance with the public interest instead of against the public interest. Unless it is possible to ascertain at an early stage the fact that the original petition has been filed, unless that fact can be made public, unless those who believe in doing the thing differently can have a practical opportunity to start another, an

alternate, initiative petition, then you are giving tremendous power to whom? To the people? No, indeed. To the particular section of the people who first get the start on the rest of the people by filing the first initiative petition. I cannot conceive that that section of the people is entitled to any more faith and credit and power than any other section of the people. I cannot conceive that this amendment, which seeks merely to give the right of initiative to the people equally, can be anything but consistent with those principles which the majority of our committee have proclaimed to us.

Mr. WALKER of Brookline: Of course under the method of initiating legislation as provided in our resolution the measure has to be filed with the Secretary of the Commonwealth, and then the people have to go about the Commonwealth in four different counties and get the necessary 20,000 names. The matter is a public record, the papers will know all about it, every one interested in the matter will know all about it. There is no secrecy about it.

This is an obviously hostile amendment to which I do not intend to devote very much time. It is an amendment to encourage conflicts, confusion and lawsuits. It says that the first ten signers may have a month to put in all the petitions they want to. Then those are to be advertised, and you are to ask any other ten men in the Commonwealth to come in and put in conflicting measures. It is to ask them and invite them to come in and complicate the situation. It is such an obviously unwise thing to do that I do not believe that even the conservatives will vote in favor of it.

Then I wish to point out that it is impracticable. The gentleman says "measures concerning the general subject-matter." Well, how is that to be defined? Who is to define it? Are you going to allow them to go to the court and get an injunction against any measure that is not concerning the same general subject-matter?

I do not care to say anything more about the subject, Mr. President; I do not think the Convention will vote for it.

The amendments moved by Mr. Bryant were rejected, by a vote of 75 to 94.

Mr. Josiah Quincy of Boston moved that the resolution (No. 359) be amended by adding, after line 82, the following paragraphs, with the heading "*Conflicting and Alternative Measures*":

The General Court may by resolve passed by yea and nay vote, either by the two Houses sitting separately, or in the case of a constitutional amendment by a majority of those present and voting thereon in Joint Convention held as herein provided, provide for the submission to the people of a substitute for any measure introduced by initiative petition which has been or may be passed or qualified for submission to the people as herein provided, the same to be designated on the ballot as the legislative substitute for such an initiative measure and to be grouped with the same as an alternative therefor; *provided*, that any such legislative substitute for a constitutional amendment shall be passed as above provided in each of the years in which such constitutional amendment is passed.

In case in any judicial proceeding any provisions of two or more constitutional amendments, or of two or more laws, approved by the people at the same election, are held to be in conflict with each other, then the provisions contained in the constitutional amendment, or in the law, as the case may be, which received the largest number of affirmative votes at such election shall be deemed to govern.

Mr. QUINCY: As the gentleman from Amherst (Mr. Churchill) is in his seat, I desire to move an amendment, which consists of the second and fourth paragraphs of the amendment printed in my name on page 6 of the calendar, with two changes, which I will ask the

Secretary to read. Those two paragraphs, Mr. President, are moved by themselves in an effort to separate the contentious questions involved in this difficult matter of conflicting and alternative measures from the non-contentious questions; at least, I assume that they are non-contentious. I do not believe there is any material opposition to the proposition that we allow the General Court the right to propose an alternative measure. That is the provision contained in the second paragraph. Nor do I think there is any opposition to the idea that a court should be given some criterion, if there are certain measures conflicting with each other, for guidance in deciding which shall govern. I therefore move the second paragraph and the fourth paragraph printed under my name, with these changes:

In the second paragraph strike out the words "as aforesaid," and insert "by yea and nay vote, either by the two Houses sitting separately, or in the case of a constitutional amendment by a majority of those present and voting thereon in Joint Convention held as herein provided." Those words will be found printed in the first paragraph, lines 2 to 4, and they simply are brought down to the second paragraph. Because of the absence of the first paragraph, they cannot be imported by reference, by the use of the words "as aforesaid", but must be specifically included.

The other amendment consists of adding at the end of the second paragraph a provision which was suggested to me by the gentleman from Amherst. The paragraph as it stands does not undertake to distinguish between a vote one year and a vote the second year in the case of a constitutional amendment. The gentleman from Amherst suggested to me that in the case of an alternative measure for a constitutional amendment that alternative ought to be adopted by the two General Courts before which the amendment itself comes, which is a very proper suggestion, not in any way inconsistent with my intention; and to meet that suggestion these words are inserted at the end of paragraph 2:

Provided, that any such legislative substitute for a constitutional amendment shall be passed as above provided in each of the years in which such constitutional amendment is passed.

With the exception of those two formal changes, the motion includes paragraphs 2 and 4 of the amendment printed in my name in the calendar.

Mr. Churchill of Amherst: The amendment offered by the gentleman from Boston (Mr. Quincy) is the result of a conference for which the Convention was kind enough to give us time, — a conference of individual members, — and I speak for myself only in regard to these amendments. Upon consideration it seemed to some of us that the details in the first paragraph and the third paragraph might wisely be further considered, either by this body or by the Legislature, under the head of laws to facilitate the operation of a constitutional amendment providing for the I. and R., but that, as amended, the second and fourth paragraphs of the proposed amendment were acceptable.

I want to repeat that I speak only for myself in this matter; but, after giving it a good deal of consideration with others, I cannot see any reason why these two paragraphs should not be adopted in that form. There are one or two details, as in the last sentence, for ex-

ample, "the largest number of affirmative votes at such election shall be deemed to govern", — there are possible slight injustices in that, but it is a grave question whether any other arrangement would not work greater injustice. And speaking simply for myself, as a member of that conference, I wish to say that I see no reason why these two paragraphs should not be adopted.

Mr. GEORGE of Haverhill: I should like to inquire of the gentleman from Middleborough (Mr. Washburn), who seemed to be interested the other day in this proposition, whether or not he is pleased with this form of these amendments in this paragraph.

Mr. WASHBURN of Middleborough: As an alternative proposal at this stage, yes. There is another matter, as the gentleman from Boston has said, about which there is more or less contention, still left for consideration at the next stage.

Mr. GEORGE: I should like to get some idea of what that other matter is, if it has any relation to this matter. I should like to know just what that other matter is that the gentleman speaks of.

Mr. WASHBURN: It does not relate to the second and fourth paragraphs now moved by the gentleman from Boston (Mr. Quincy), but rather to the third paragraph, which provides the way and manner in which the voters shall express their preference. That is a thing about which there is a great deal of division. But, so far as I have been able to gather, there is little or no division on the proposition that the Legislature should have the power to propose a substitute amendment. That is what the gentleman from Boston now seeks to cover. But the third provision, which provides the way and manner in which the voter shall vote, whether he shall vote for all of the conflicting or alternative measures, or whether he shall be restricted to voting for only one, — that is something about which those who are interested in this amendment have reached no conclusion as yet.

Mr. RICHARDSON of Newton: I think some such provision as that incorporated in the gentleman's amendment is necessary, or desirable at least, in order to make this part of the measure effective. At the present time I do not intend to move an amendment to it, but I should like to call the attention of the members of the Convention to the possible injustice and inconsistencies which will come about if the clause at the very end of the amendment, providing that the amendment which receives the largest number of affirmative votes in such election shall be adopted, is allowed to stand. As I look at the matter at the present time, Mr. President, on the next reading of this measure, if this amendment shall be incorporated, I shall hope to amend that clause by substituting for those words language in substance like this: "which received the fewest number of negative votes at such election."

I speak of the matter at this time because I should like to have the members who are interested at all in the subject thinking about that proposition, and deciding which is the best way to handle it. My reason for making the suggestion is that we already have provided the minimum number of votes which shall be necessary in order to have any amendment adopted, and, having approved that 30 per cent provision, that we then ought to recognize the lack of opposition to an amendment rather than the positive support of it.

The amendment moved by Mr. Quincy was adopted.

Mr. Allan G. Buttrick of Lancaster moved that the resolution (No. 359) be amended by inserting after the word "signers", in line 92, the words "A filing fee shall be required by law."

Mr. Buttrick: On page 7 of to-day's calendar will be found an amendment, or, rather, notice that I should move an amendment, and this amendment which I have just moved is in substance the same as the amendment that is before the Convention on the calendar, with the exception that the amendment in the calendar says, "a filing fee not exceeding one hundred dollars may be required by law." The amendment which is before the Convention reads "A filing fee shall be required by law."

Now, why the necessity for a filing fee? I have no doubt that some of those who are very much interested in the proposition will say that this is a hostile amendment. Well, it is not; and it is offered in perfect good faith, and my reasons for offering it are these: Any man who has had experience in the Legislature knows full well that every year the time of the different committees is taken up with a lot of foolish bills, and that there have been attempts made many, many times to amend the rules of the House and Senate, and the joint rules, to provide that a filing fee should be necessary to enter a petition before the General Court. The expense to the Commonwealth in the matter of printing, in the matter of publication, is tremendous. Thousands of dollars are spent every year to print and to publish notices of bills that do not deserve any consideration whatsoever.

Mr. Mancovitz of Boston: I should like to inquire of the gentleman: To whom shall the fees be paid, and whose property shall the fees be?

Mr. Buttrick: I should assume that it was apparent on the face of the resolution, with the amendment, that it would have to be paid to the Commonwealth, — be paid to the Secretary of the Commonwealth, to be sure, the property of the Commonwealth, the same as all fees which are paid into his office.

Now, Mr. President, if there are any people who are anxious to put measures on the ballot, any matter of initiative or referendum, it should be no great hardship to them or for them to pay a reasonable fee. I have left that, if this amendment is adopted, in the hands of the Legislature. The Legislature may determine what, in their opinion, is a reasonable fee. This amendment says that a filing fee shall be required. It does not leave it "may be required," but "shall be required." I see no reason, sir, why a filing fee should not be required. The State ought not to be put to a tremendous amount of expense for taking care of bills which may not or ought not to have any standing.

I want to call the attention of the Convention to one particular bill which has been introduced in the Legislature for several years; and that is House Document No. 1217, which was introduced last in 1916 and had been before the Legislature several years previously to that. It is the bill accompanying a petition relating to the suspension of judges from office; and its wording is so peculiar, though you read it carefully, that you cannot understand what it means. It says:

Any judge, justice, magistrate or any person acting in a judicial capacity created or existing by virtue of the laws of this Commonwealth, who shall refuse to be controlled by the Revised Laws and statutes, until duly declared unconstitutional, or shall make, authorize or sanction arbitrary arithmetic, refusing to make correct addition, subtraction, multiplication or division in matters under adjudication, or shall, by subterfuge or perversion of the Constitution or laws, deprive a citizen of trial by jury or shall make a decree, judgment or order to eliminate, or attempt to eliminate, the laws of gravitation. . . .

and so forth and so on.

Now, Mr. President, it may be that such a bill as that would not be brought before the people to be put upon the ballot; it may be that it would. And if such measures are to be brought before the voters there ought to be some way whereby a filing fee should be paid. I trust this amendment will be acceptable to those who are in favor of this resolution.

Mr. SHERBURNE of West Springfield: I wish to call the attention of the Convention to the fact that this is an entirely new proposition in initiative and referendum principles. No State having the initiative and referendum has anything of the kind, and nothing of the kind ever has been proposed to my knowledge.

I wish also to call the attention of the Convention to the fact that it is a well-known principle in law-making in the Commonwealth of Massachusetts that any citizen, without money and without price, may appear before the Legislature and petition for legislation. Whether or not it ever has been proposed that such a fee should be charged, the fact remains that the Legislature never has seen fit to change their procedure and penalize a man for wishing new legislation. If there is no reason for charging a fee in legislative matters, how much greater the reason for not calling for one here on an initiative petition! Here ten men appear, supposed to be responsible parties, backed by a large number of petitioners, giving weight and responsibility to the petition, and why compel these men to pay a fee of $100 for the privilege of asking the Commonwealth of Massachusetts to grant some legislation? I do not believe it is necessary, Mr. President.

Mr. BUTTRICK: The gentleman in his remarks asked: "Why compel the petitioners to pay a fee of $100?" I desire to call it to his attention that I have in my amendment provided that a filing fee shall be charged, and left it entirely with the Legislature to determine the amount.

Mr. SHERBURNE: Is not his amendment not less than $100, as printed in the calendar?

The PRESIDENT: The Chair will state that the amendment offered by Mr. Buttrick of Lancaster reads as follows:

"Insert after the word 'signers', in line 92, the words 'A filing fee shall be required by law.'"

Mr. SHERBURNE: All the more reason for rejecting the proposition, because there is no limit to the filing fee. It might be possible to charge $1000. I fail to see the necessity for a proposition of this kind. It is something new, and entirely foreign, I believe, to the principle of the initiative and referendum, to compel people to pay a fee of this kind; and I most earnestly hope that my friend's amendment will be rejected by the Convention.

Mr. BALCH of Boston: The gentleman stated that it is supposed

that the ten signers would be responsible parties. I wish to ask him who supposes that, and why he supposes it.

Mr. SHERBURNE: Naturally, any ten men of sufficient ability and insight in public affairs to desire an initiative proposition would be men of some responsibility in the community. They certainly would be citizens and men who were giving thought to public affairs. No other would think for a moment of asking for or petitioning for legislation.

Mr. GEORGE of Haverhill: There are two classes of people who introduce bills in the Legislature. The larger class are the members of the Legislature. Very few people outside introduce bills in the Legislature. It so happened some years ago that twoscore or more people who died left sons with a competency sufficient to live and not work, and they have been hanging around the State House for the last twenty-five years introducing all kinds of bills. They were there when I was there, and I understand there are some of them left. They do not die young.

Now, I have thought many times that there ought to be a provision in the Legislature whereby the person who introduces a bill or petition should pay a fee. I do not mean a $100 or $50 fee. But when you see members of the Legislature introduce 150 bills, and have them printed at the expense of the Commonwealth, with no purpose except to help them out in some future political campaign, it seems to me that it is an unnecessary expense. I well remember some years ago when two or three individuals up in the Merrimack Valley used to introduce anywhere from 25 to 30 bills, and they were known only by their titles. Of course they did not expect the bills to pass. If they had they would not have introduced them. All there was to the bills was the title; that was what interested them. I used to go up there in the fall of the year to attend to business, and I used to see big posters put up, that Representative so and so introduced House Bill No. so and so, and they had about twenty of them up and down the main street, all for political purposes, and all at the expense of the Commonwealth.

Mr. WALKER of Brookline: I should like to ask the gentleman whether he seriously believes that the Legislature ought to be given a right to put an unlimited fee upon the introduction of any initiative or referendum measure. Is he arguing for that proposition?

Mr. GEORGE: Why, Mr. President, knowing the Legislature as long ago as when the gentleman from Brookline was a member, I do not have the slightest idea that the Legislature ever would provide a fee that would in any way interfere with anybody's petitioning for legislation.

Discussion of the amendment was continued after the noon recess.

Mr. BAUER of Lynn: I rise, Mr. President, to oppose the amendment offered by the delegate from Lancaster in the fourth division (Mr. Buttrick) permitting the filing of initiative bills only by the payment of some fee to be determined by the Legislature. I oppose it because in my judgment it is a pernicious amendment. I can see very well how those men who walk up and down our corridors representing public service corporations would be very glad indeed to have a large-sized filing fee for all bills initiated by the people. I

can well understand how these corridor creatures of privilege are interested in the advocacy of filing fees for bills by the initiative. There will be no doubt of the providing of the funds, if they are interested.

But how about the people in medium circumstances, of moderate means, when they desire to file a bill for social welfare betterment, or something of that nature, and the Legislature, because of the influence of men in the corridors like these creatures of privilege, have denied the opportunity to the people of this Commonwealth, notwithstanding that the matter has great merit and ought to be? How about that? Are we going to provide a filing fee, an additional expense and burden, for that class of people who may seek to establish in this Commonwealth their rights? I believe, Mr. President, that this filing fee amendment is an amendment that could be offered only by men who bask in the light of the privileges of public service corporations, — that no man who has an interest at all in the welfare of the whole people of this Commonwealth could advocate such a measure, — and I hope it will be unmercifully defeated.

Mr. Henry T. Lummus of Lynn moved that the amendment moved by Mr. Buttrick be amended by striking out the words proposed to be inserted, and inserting in place thereof the words "A filing fee not exceeding one hundred dollars may be required by law."

Mr. LUMMUS: It is an unusual experience, but none the less a gratifying one, that I rise to agree with my fellow-townsman who has just spoken. I think that the amendment offered by the gentleman from Lancaster (Mr. Buttrick) is unduly loose, that it gives too much power to require a high filing fee. I sympathize with the gentleman from Lancaster (Mr. Buttrick), however, in his idea that the Legislature, just as well as the future unknown initiative petitioners, may be trusted to deal fairly with these matters. But still I think his amendment is too broad and gives too much power. The purpose that I suppose the gentleman from Lancaster has in mind is to prevent the annoyance of the Secretary of the Commonwealth by any ten fanatics in the Commonwealth who may get up some measure which they have no hope, or only a delusive hope, of putting through or even of getting signatures for. It is intended, I suppose, that only those who have a serious purpose to get through a matter shall start these petitions and cause the Secretary of the Commonwealth, and the Commonwealth, annoyance and expense. Therefore I move as an amendment the amendment printed under the name of the gentleman from Lancaster on page 7, which seems to me to be very much superior to the amendment as he moved it, providing simply that the Legislature in the future may protect the initiative from being fooled with by those who simply are trying to play a joke on the Secretary of the Commonwealth, by a fee which may be anywhere up to $100, as the Legislature may find necessary.

Mr. CREAMER of Lynn: I had hoped when the last speaker arose that it might be a case where the delegates from Lynn who took the floor would be unanimous. It would be the first time in the Convention, I believe. But I want to object seriously to the amendment he has moved. It means an added expense to those people who seek to initiate legislation through the initiative and referendum. I

think the fears of my colleague from Lynn unfounded, — that foolish petitions will be initiated. The members of this Convention must realize that it is going to cost a lot of money to put an initiative petition in shape for the Legislature, and through the Legislature to the people. I do not believe it is helpful to make it cost too much. The more difficulty you put in the way of initiating legislation the further you remove the opportunity of such initiative petition from the people. It is no joke to get ten thousand or fifteen thousand or twenty thousand signatures to a petition under any circumstances. I think we should make it easy, not hard, for people who take that much interest in the government of their State.

Mr. LEONARD of Boston: Is this a "private scrap" between the gentleman from Lynn and the gentleman from Lancaster, or may we all come in? If it really is not a private matter and some of us may come in on it, I should like to participate for a few moments. I realize of course that it must be a very grave issue that separates the gentleman from Lancaster from the gentleman from Lynn who has moved a substitute to the amendment as offered by the gentleman from Lancaster. I recall that in "The Rivals" Sir Lucius O'Trigger challenged Jack Absolute. Jack asked what the fight was about. Sir Lucius said it was a pretty enough quarrel as it was and not to spoil it by asking the reason for it [laughter]; and perhaps I ought not to break into any such quarrel as this. I suspect the issue is as great as that between Sir Lucius O'Trigger and his rival, but I deplore this lack of harmony between the gentleman from Lynn on the minority of the committee and the gentleman from Lancaster, — where the gentleman from Lynn offers an alternative proposition to the amendment of the gentleman from Lancaster. We certainly have had so many alternatives during the past few days that I should suggest that, for the good of our Constitution and to restore our failing and declining spirits, we really need an alternative. [Laughter.]

Now I may be unduly suspicious, Mr. President. I may be voicing my conclusion upon superficial evidence; but I do regard with suspicion the constructive amendment of the gentleman from Lancaster. To speak in the common parlance of the day, I am rather afraid he is trying to "ring in" something on us. I remember a few years ago there was a Councillor from one part of our town who served I think with Governor Crane, and the Councillor had a constituent whose boy was confined in the Lyman School. The constituent saw no reason why the Councillor should not get that boy out of the Lyman School. After wearing a path to the Councillor's door, the latter finally took the matter up with Governor Crane, who, you remember, was not one of the largest Governors we have had from the standpoint of avoirdupois, but nevertheless qualified otherwise. So the Councillor brought this case to the Governor. The Governor said: "Well, bring your constituent around and perhaps I will be able to smooth him over." So one morning the Councillor introduced the gentleman, — I think his name was O'Halloran, — and Mr. O'Halloran waited a couple of hours in the anteroom one muggy morning, till he was brought into the sanctum sanctorum and presented to the Governor. The Councillor said: "Mr. O'Halloran, this is Governor Crane." And Mr. O'Halloran looked at the Governor. He expected to see a man with epaulets, gold braid, of imposing size and accoutre-

ments. He looked at the Governor, and he asked: "Jerry, is this Governor Crane?" The Councillor replied: "Yes, Mr. O'Halloran, this is Governor Crane." He said: "Jerry, I am afraid you are trying to run in a 'ringer' on me."

Now, that is not the nature of the "ringer" that the gentleman from Lancaster proposes. I may be in somewhat of the attitude of the constituent of the distinguished Councillor, but I do confess, even though the evidence is perhaps a little bit superficial, that I am rather chary about accepting the amendment either as offered by the gentleman from Lancaster or the alternative proposed by the gentleman from Lynn. I trust both may be voted down.

Mr. BUTTRICK: In so far as I may, in accordance with the rules of the Convention, I desire to accept the amendment offered by the gentleman from Lynn (Mr. Lummus), who does not agree with his confreres.

Objection was made.

Mr. CHURCHILL of Amherst: I think there is no ground of controversy between the two sides on the general proposition of the amendment. The object of the amendment, as I understand it, is that the Commonwealth shall not be put to the expense of furnishing petition blanks with printed heads, and so forth, for petitions that manifestly are never meant to be carried out. The object, as I understand it, of the amendments of both the gentlemen from Lancaster and from Lynn has been simply to provide that the Legislature may require a fee which shall be a guarantee of good faith on the part of those who offer a petition. For my part, I should be perfectly willing to have the fee returned when the petition is completed. But I raise the question as to why the Commonwealth should be put to the expense of allowing people who have no real purpose or intent to carry out their petition, to offer a petition, and put all this machinery in motion when it amounts to nothing.

The general purpose of the amendment, as offered by either gentleman, I personally believe in; and I am wondering simply whether if the filing fee were to be returned if the petition is not completed, — whether that might not settle the difficulties in the minds of the gentlemen who have spoken. If it would, I should be very glad to offer that as an amendment to the amendment of the gentleman. I believe I cannot do that, since it has not been accepted. But I would offer it as an amendment to the amendment offered by the gentleman from Lancaster, if it is acceptable. I will just ask the question whether that would be acceptable to the objectors, that a filing fee not exceeding $100 may be required by law, which shall be returned if and when the petition is completed. (A pause.) I hear unanimous consent, I believe, as "silence gives consent." I make that motion.

Mr. George B. Churchill of Amherst moved that the amendment moved by Mr. Lummus be amended by inserting after the word "dollars", the words "which shall be returned if and when the petition is completed,".

There being no objection Mr. Lummus accepted the amendment moved by Mr. Churchill.

Mr. WALKER of Brookline: I do not think there is any need of my saying anything on this question. Of course I am opposed to the

original proposition of the gentleman from Lancaster, but I am entirely agreeable to the proposition that has been suggested by the gentleman from Lynn.

The amendment moved by Mr. Lummus, with the modification suggested by Mr. Churchill was adopted, by a vote of 93 to 73.

The amendment moved by Mr. Buttrick, as thus amended, was adopted, by a vote of 104 to 62.

Mr. Charles L. Underhill of Somerville moved that the resolution (No. 359) be amended by adding at the end of line 111, as amended, the words ", and no law affecting labor organizations".

Mr. Underhill: This amendment is offered not particularly for the purpose of having it carried or accepted, but in order that the labor men who are supposed to represent labor in this Convention may not have the excuse two or three or five or ten years after the initiative and referendum may have been adopted of saying that they did not know the blamed thing was loaded. My experience in the Legislature has shown me that anything which labor asked which was not altogether too unfair received very welcome reception and was treated with the greatest consideration by the members of the Legislature. Those who commonly have been accused of opposing labor have tried at various times to place upon the statute-books two or three laws which I believe the people of this Commonwealth would be glad to see enacted. One is that all labor-unions shall be incorporated and that they shall be amenable to the laws which govern other corporations. The other is compulsory arbitration, and I believe the people of the Commonwealth, if they ever get a chance through the initiative and referendum, after such an occurrence as we had in Lawrence only a few years ago, would vote overwhelmingly for compulsory arbitration. Those of you whose minds go back to that incident will remember that the Legislature passed a law governing the hours of labor of women and children in mills and factories. They reduced the hours at that time and either through a misunderstanding or through the fault of the mill-owners or through the fault of the operatives, — it does not matter which now as far as my illustration is concerned, — there was a terrible upheaval, culminating in a riot in the city of Lawrence which necessitated the calling out of the militia. Suppose after such an occurrence as that some one put in an initiative or a referendum petition to the people, do you not suppose that they would accept a proposition to oblige labor-unions and labor organizations as well as the employers to arbitrate all their differences rather than force a lockout or a strike? Do you suppose after some of our men who have tried to run an open shop and have been practically ruined by labor-unions, — do you suppose they would not get together and put before the people of this Commonwealth a proposition to incorporate labor-unions so that for any injury to their business they might receive heavy damages from the labor-union? Now I am just bringing that to the attention of the labor leaders of this Convention in order, as I stated before, when the time does come, as it will come, provided the initiative and referendum ever becomes operative in this State, — the time will come when they will be upbraided by their fellows and they

will not have the excuse that they did not know those possibilities were in this measure; and I leave it with the Convention to do as they please.

Mr. Dennis D. Driscoll of Boston: I hope the delegates to this Convention will defeat the amendment offered by the gentleman from Somerville. It is pleasant to see him show his good feeling toward that organization known as organized labor. I do not know that a delegate who sits here, who carries the union card, has authority to represent organized labor in this Convention. I had the honor to be one of its officers for about sixteen or seventeen years and these questions are what they discuss in their conventions. If they did not have that manly, fighting spirit with them to-day that they had in my time they ought not to get the initiative and referendum. The one thing that I regret is that the gentlemen who are so much interested in the people of this Commonwealth do not give us liberty and freedom, with no exceptions to anybody under the initiative and referendum, and show the same confidence in the people of this Commonwealth that men have who do belong to labor organizations here to-day. The same argument applies to the judges and to the religious proposition you voted in favor of a few days ago. I opposed it personally in the committee and I oppose it now, and when the time comes I hope the delegates to the Convention will do what I am asking them to do to-day, — defeat it. And if the labor men are in favor of the initiative and referendum and they have not got that American fighting spirit in them to go before the public, they should fight the initiative and referendum instead of fighting for it.

As to the question of compulsory arbitration, it is a great question of education, and of course the representatives of capital may favor it; and perhaps after they have been educated to what compulsory arbitration means, they will oppose it as do men who have had experience in organized labor.

As for the Lawrence strike, let the dead rest in peace for the interest of the Commonwealth and the interest of the capital that the people have invested in this Commonwealth. So far as organized labor is concerned they never will be afraid to go before the public. The representative government of this Commonwealth has forced us and we have to go to the people when the representative government adopts an 8-hour law, — it does not go into effect until we refer it back to the people in the cities and towns of this Commonwealth for a referendum vote, and it must be accepted by the people before the 8-hour law can be put into effect. And the confidence that the officers of organized labor always had in the people of this Commonwealth they hold to-day. In my many years as an officer of the trade-union movement in this Commonwealth we won our interest and our success with the assistance of the public in this State, and, I trust, in behalf of organized labor, their interest, their American spirit, their courage to fight. We want no exceptions on the initiative and referendum and we want the initiative and referendum with no exception to anybody, — the freedom, the right of American citizenship without interference of courts or religion. And I only regret that the delegate from Somerville (Mr. Underhill) and the other delegates in this Convention from the organization known as the Bar Association do not stand on the floor of this Convention and repeat the words that the representatives

of organized labor always repeated: "We want no exception, we want fair play, we want justice, we want the right kind of an initiative and referendum, and we will trust our future success in the hands of the people of this Commonwealth." [Applause.]

Mr. Brown of Brockton: The gentleman from Somerville (Mr. Underhill) tells labor men that it is loaded. Yes, it is loaded so that its friends hardly recognized it, and if the gentleman from Somerville had his way he would load it still more. He has no idea that his amendment is going through the Convention; neither have I. When did the Legislature ever pass any measure the first time labor asked for it? How long did labor ask for the 10-hour law before it got it? If it ever got any measure the first time it asked for it, it was about six years ago, when labor sent an organized committee into politics and was recognized as the one force that by its organization held the balance of power in this Commonwealth and seated a Governor. Following that was the one year that labor did not have to ask for some legislation twice. That was the one year when labor tore up vetoes that might have been sent in against organized labor. Do you want to force labor to again take that position? Possibly you will. I can see very easily here what may be coming. Organized labor then would be under obligations to the conservative force in this Convention, because it furnished the arguments and the issue needed to get labor solidly organized politically. How long will it take to discover that the one way to unite divided forces is to give them an issue on which they can rally? You could not see it some weeks ago on the anti-aid measure you adopted in this Convention. You will see it later. Now repeat such hints for organized labor. I think you are not going to, but the gentleman from Somerville would do so. What is a labor-union? It is an organization that is doing the work that government ought to do; nothing else. Government guarantees first that a man is born free, that he has a right to life, a right to liberty, he has a right to enjoy happiness, he has a right to acquire property. How can he acquire property unless, as the gentleman from Norwood (Mr. Willett) said, the wages are enough to have something left over? Therefore your labor-unions are nothing more or less than organizations undertaking to help men and women to get the living that is guaranteed to them under this Constitution as a natural right.

Mr. O'Connell of Salem: I believe that this amendment is an insult to the men of this Convention who are trade-unionists and carry a trade-union card. Does it not seem strange that the gentleman from Somerville should be the Moses unto the labor movement? Would he try to make the men of organized labor a distinct class, a different class of people than other laboring people? I say, Mr. President, that the men who are under organized labor are no different than any other man who labors. They are only blazing the way. The gentleman from Somerville has told us before of his sacrifices. Those sacrifices were for himself. But the sacrifices of the men of organized labor have been not for themselves only but for those who surround them. My sacrifices in the labor movement have been for every man who toils, and so it will be unto the end. I do not believe such a distinction should be made or should be allowed to go on the records of this Convention without its being made known fully.

I believe this amendment should be voted down, and voted down unanimously.

Mr. CHURCHILL of Amherst: I merely want to say that the minority of the committee takes no attitude on this measure.

Mr. HARRIMAN of New Bedford: While I do not speak with authority for the labor movement I am convinced that the labor movement has no desire to be put in the same class with the judges. [Laughter.] We believe the amendment should be defeated and I am sorry that the gentleman from Somerville has stood alone and no man has taken his part. I believe this is to be defeated, but I want to point out this one particular phase: Organized labor is not afraid of the people of this Commonwealth, and those who are opposed to the initiative and referendum are afraid of the people. Organized labor is willing to place its planks, its platforms and its aims at the mercy of the people of this Commonwealth, because, Mr. President, the labor organizations are of working-men themselves and the majority of the people of this Commonwealth are those who labor for wages. And how much different is our attitude from the attitude of vested privilege within the confines of this Commonwealth! Something has been said about compulsory arbitration. The labor movement is opposed to it, but the labor movement stands to-day willing to come under that if the whole people of the State say that that should be done.

The gentleman has referred to the condition in Lawrence. Let me tell him that the rank and file of the people in this Commonwealth understood the reason of the trouble in Lawrence, and the mill owners of Lawrence and those who opposed the 54-hour law would not have dared to submit their proposition to the people of this Commonwealth.

And so I say to you it is wrong in principle to single out any particular class; but if there is any particular class in this Commonwealth that has been singled out, it is the labor movement, and if there is any class in this Commonwealth that has come openly, boldly and bravely before the people and has not subjected itself or its opponents to subterfuge, that, gentlemen, is the labor movement. And I believe the common-sense of this Convention and I really believe that the common-sense of the gentleman from Somerville will see that this amendment should be defeated by the Convention.

The amendment moved by Mr. Underhill was rejected.

Mr. Robert Luce of Waltham moved that the resolution (No. 359) be amended by adding, after the paragraph previously inserted after line 112, the following paragraph:

No proposed law shall contain more than one subject.

Mr. LUCE: I am not sure but this amendment is acceptable to the majority. Possibly time can be saved if I can ascertain that matter at once.

Mr. QUINCY of Boston: I cannot speak for the majority, but this is a subject which has been discussed between delegates. If the gentleman would make his amendment read "shall not contain unrelated subjects", which I think conveys the proper idea, I do not believe that it would be objectionable to the majority.

Mr. LUCE: I am perfectly willing to accept that modification. The language here is the customary language in the Constitutions of various States that have seen fit to prescribe to the Legislature in the matter,

but I am inclined to think, sir, the gentleman from Boston has conceived a happier phraseology than that usually found in other States. I ask unanimous consent to substitute the language presented by the gentleman from Boston.

No objection was made to the modification as suggested by Mr. Quincy and it was adopted.

Mr. Robert Luce of Waltham moved that the resolution (No. 359) be amended by adding after line 112 the following paragraph:

A proposed law shall be confined to a specific, concrete proposition, unaccompanied by administrative or technical detail, but may direct what agency of government shall administer it.

Mr. Luce: When addressing the Convention at some length upon the subject of the initiative and referendum a few weeks ago I had occasion to call to my aid the testimony of the gentleman from Cambridge in the fourth division (Mr. Hart), who I regret to say is now kept away from the Convention and with its permission is absent. I would he were here that he might enjoy my further quotation from him as printed in "The Nation" of September 13, 1894, written at the time of a visit he was making to Switzerland, the letter being dated from the capital city of Berne. You will recall that I cited certain results of his observations, and I would supplement them by another statement that he made after watching on the spot the operation of the initiative and referendum. He said, — and these are his words, not my own:

Certainly the referendum is especially fatal on complicated questions of commerce and finance, the least suited to such a system.

I have no idea that this amendment will be accepted by the gentlemen representing the majority of the committee, because it is a question of essence, a question of principle and sharply demarked by the difference in the point of view of the gentleman from Brookline and myself. As I have before observed, I am perfectly willing that the people should say whether they want old age pensions or a State University or compulsory arbitration or anything else. I am quite unwilling that they should undertake to erect the structure of legislation. Unfortunately we have not the phraseology carefully to discriminate, but for lack of anything better I would divide the work of legislation into two classes, law-making and statute-making. I am willing the people should say what laws they want. It does not seem to me reasonable that they should undertake to frame the statutes, filling them with administrative details, providing the machinery. Here I know perfectly well the advocates of direct legislation, as it is called, come squarely at issue with those who doubt its wisdom. It does not take a prophet nor a son of a prophet to predict that direct legislation will in the end fail because it is based upon an unscientific proposition. It is based upon the proposition that the machinery for perfecting legislation which has come to us through so many centuries of development is useless. It is based upon the belief that all the system of committees, various readings of bills, careful discussion and deliberation within the walls of a legislative assembly, is needless. We may engraft upon the representative system, if you please, the principle that you will take a plebiscite on the principles and the policies of government. Only last night I happened in my reading to run across a statement by

John Stuart Mill, made in Parliament some fifty years ago, when he pointed out that sooner or later legislatures will realize that they are incapable of making laws. They ought to be what they are fast coming to be in many other countries, policy-determining bodies. Speed the day when our Legislature becomes a policy-determining body. But long may the day be postponed when men inexpert in the framing of statutes shall be intrusted with this procedure for carrying out the popular will.

And so let us clearly understand the purpose of this amendment. It will be said that the purpose is indistinct, that the language is inadequate, that it will not carry out what is attempted. It may be that it is impossible to draft this amendment so as to draw the line distinctly. But it will point out the purpose of this Convention, if such be its purpose, and that purpose I construe to be this, if the amendment is adopted: That we shall permit the people to say what ends they want to accomplish, but we shall leave to experts the determination as to how those ends shall be accomplished. Looking at it, then, from the purely scientific side, for the success of the system itself, in order that if the system goes through it may have a fair chance of lasting for years instead of being a temporary makeshift, — for these reasons I urge upon the Convention the adoption of this amendment.

Mr. Quincy of Boston: I have a great deal of sympathy with the underlying idea in the mind of the gentleman from Waltham. I agree with him that many measures are framed by the Legislature embodying administrative and technical details which might better be left to some expert administrative authority. But I do not think that the friends of the initiative and referendum should be called upon to agree to restrictions of this character until they are imposed also upon the Legislature. I will admit that it is peculiarly difficult for the people at large to deal with matters of administrative and technical detail and that the Legislature is at least somewhat more competent to deal with provisions of that character. But I believe in approaching this question, — and I am glad to join with the gentleman from Waltham in connection with another measure in so approaching it, — by endeavoring to restrict the passage of special legislation by the Legislature. I would go so far as to extend to the people any restrictions imposed upon the Legislature in respect to special legislation of an administrative or technical character. The advocates of the initiative and referendum, as I understand it, have broadly accepted the principle that whatever restrictions are imposed upon the Legislature, — and certainly we have done so in case of constitutional restrictions, — shall be imposed also upon the people.

Now this is an attempt, in advance of any restrictions upon the Legislature, to impose these restrictions upon the people. The gentleman from Waltham himself in his remarks has admitted and indicated very frankly and fairly the difficulty of employing any language which clearly would accomplish the end which he has in view. I have given some study to the matter and have been unable to find any words which it seemed to me, used in substitution for those employed by the gentleman from Waltham, would establish any safe line of demarcation. We none of us desire to see amendments incorporated in this measure which would lead simply to litigation, and I submit in all

fairness that the result of the amendment proposed by the gentleman from Waltham would be to raise so many doubtful questions that it simply would be inviting litigation. I think it is impossible in the nature of the case to define what administrative or technical detail is. The question is too vague and too broad. One man would have one opinion as to whether a bill included any administrative detail and another man would have another opinion. Some propositions you cannot possibly carry out without embodying certain administrative provisions. How are you going to draw the line between necessary provisions to make a measure work, and an administrative detail, as the word "detail" is used here? Again, what does the word "technical" in a Constitution mean? Generally we understand what it means, but when you ask courts to construe the word "technical" it is not an easy word to define. I believe that the effort of the gentleman from Waltham to impose these restrictions would lead to undue confusion and litigation, and therefore that the object which he has in view could not be accomplished successfully by the amendment he has offered; and I frankly confess that I know of no way of defining in clear terms, which would not lead to constant doubt and litigation, the end which he has in view.

Mr. Sanford Bates of Boston: I think there are a great many of us who are tempted to agree with the gentleman from Waltham in his desire to confine the operation of this project to broad and general propositions, but there are three things that occur to me as arguments which would make his proposition not undesirable but unnecessary. It seems to me, Mr. President, that it is not necessary to assume that those who undertake initiative petitions are going to bring their petition all clogged up with a mass of detail. That is the first proposition. The people who really want initiative measures to pass the Legislature will make them in the simplest form so that the people can understand. The second reason I should like to advance is this: These amendments, after being initiated and having been considered by the Legislature, will go on the ballot in November, and if adopted by the people —

Mr. Luce: Before the gentleman passes from his first contention may I ask him to look at a ten-page law placed before the people of California entitled "The Land Title Law" and ask him if he thinks it is safe to assume that matters of detail will not be put before the people? Ten pages of finest print!

Mr. Bates: I can look at the law, Mr. President, only in a general way, in the time that remains before we adjourn, but I think anybody could gather from the title of this bill or this proposed act that it is what has been proposed in a number of different States, — the Land Registration Act or something of that kind. I am not prepared to say that that is the general kind of initiative petition that will be expected, simply because it was done once in California. I do not know what the action of California was on this particular initiative; they may not have passed it. I still contend that the large majority of petitioners will bring simple petitions before the Legislature.

The second argument, which seems to be a good deal more impressive than this one, is this: The referenda submitted under this amendment will be voted on in November. They are not constitutional amendments, they are not anything which has the slightest

binding force on succeeding legislatures. The Legislature in this State will come into being again in January. The Legislature, with a real desire to carry out the will of the people as manifested in that petition, can proceed immediately and undoubtedly will proceed to perfect the measures which have been adopted by referendum.

In the third place, under one of the amendments which has been adopted to this resolution, the Legislature, while this petition is going through, may submit an alternative legislative substitute which will contain the necessary details, and that can be put on the ballot along with the people's initiative.

It seems to me, Mr. President, that those two latter safeguards go a long way toward making this amendment unnecessary. I think we should strive if possible for simplicity in this measure as well as in all constitutional amendments; therefore I hope that this amendment will not be adopted.

Mr. Balch of Boston: I recently submitted to the Convention an amendment aimed primarily at this same difficulty. My amendment died a-borning. It was intended to make this initiative smooth working and moderate. The radicals do not wish it moderate, the conservatives do not wish it smooth working, and the middle-of-the-road men are not organized as a separate body. Hence the amendment had no effective friends. The question is whether the same fate will overtake the amendment offered by the gentleman from Waltham, and I trust it will not; and I have courage to think it will not in spite of the sad precedent set by my amendment.

This amendment is limited to the one specific point, which my amendment was not. It does not call for complicated machinery, which my amendment did. In other words, it is a much more simple, specific, concrete, easily understood proposition than mine was, and yet it has the same merit, and I do trust that this Convention will consider the point carefully. Now, Mr. President, we all see, — it shows up all the time, — the idea in the minds of the gentleman from Brookline (Mr. Walker) and Senator Bates and others of the real leaders of the I. and R. movement. They have in their heads, — whenever they picture to themselves the working of the I. and R., — they have in their minds a picture of ten earnest men sitting down together in good faith to frame to the best of their ability important measures for social betterment. Very good. If it were limited to such uses no one could conceivably object to the measure or to its present form. The thing apparently its friends have not been willing to admit, or, so far, to grasp, is that there is nothing to limit the use of the initiative and referendum measure to people like themselves, to people whose intentions are like their own or to people whose straightforwardness and frankness is like their own. This initiative and referendum weapon is being placed in the hands of every single little crooked corporation, every single little crooked man in this whole Commonwealth, and it is now rigged so that 98 per cent of the voters of the Commonwealth may be bitterly opposed to it and yet cannot stop it.

Now if you are going to rob the people, as you are in this measure, of their entire power to check in any way the ability of any irresponsible party to force anything he wants before the voters of the Commonwealth, had you not better bethink yourself carefully as to what

sort of measures you are going to permit the irresponsible individual to force before the electorate? I say you had better, and this is the time and this is the place to consider that question.

Mr. CREAMER of Lynn: I should like to ask the delegate from Boston if I understood him aright. I understood him to say that there might be forced obnoxious legislation, legislation objected to by 98 per cent of the people of Massachusetts. I cannot believe I heard him correctly. I cannot believe that legislation can be forced by 2 per cent of the people of Massachusetts against 98 per cent, and I should like to ask if I understood him correctly.

Mr. BALCH: Evidently the gentleman did not hear me correctly. What I said was that any individual, in spite of the opposition of 98 per cent of the voters, could force any measure he saw fit before the electorate for action. When you come to the referendum you have a wholly different proposition. On the referendum the people will rule; on the initiative the people not only do not rule but you are robbing them of any power whatever to have anything to say about it.

Mr. CREAMER: I should like to ask the delegate from Boston if he does not believe the people, even on an initiative petition, will rule in the last analysis? Of course the 2 per cent he mentions may make the people pass on their proposed measure, but if it is an absolutely ridiculous proposition and he thinks the 98 per cent would not favor it he ought not to be unwilling to trust it to this great majority who are opposed to it.

Mr. CHURCHILL of Amherst: I had hoped that it would be possible for both sides to agree upon this amendment as wise and sane. I cannot follow the argument of the gentleman from Boston (Mr. Quincy) who insists that because the Legislature has a power which he thinks is a bad power and should be taken from it, — until this is taken away from the Legislature, upon a new proposition for legislation by the people the people should have that same bad power. I do not regard that as an evolution or reform, Mr. President. If it is bad we should cease to give it to others and should take it away as soon as we can from the Legislature. And in general I heartily agree with the gentleman that we should limit the power of our Legislature to deal with these things, and I shall hope to see from his committee or from others propositions which will help us to do that very thing. But why in the name of common-sense should we be asked to give this power anew to another body, when it is a bad power, which we want to take away from the body which now has it?

In the second place, Mr. President, the object of this amendment is perfectly clear. If there is any criticism justly to be passed upon an open initiative, it is the criticism which is embodied in this proposed amendment. There is not time, Mr. President, for me to say what I would like to say on that point. I want to give one concrete example of what may be done unless this amendment is passed. I hold in my hand the pamphlet submitted to the electors of the State of California on November 3, 1914, "Amendments to Constitution and Proposed Statutes." I wish I could read the whole of the statutes; I am sure I should have no audience after I had gone on for five minutes. But let me read simply the title of one and you will see what it is that it is desired to shut out by this amendment:

ACT REGULATING INVESTMENT COMPANIES.

Initiative act authorizing Governor —

I will ask for the best attention the gentlemen are willing to give me [reading].

Initiative act authorizing Governor to appoint Auditor of Investments empowered to employ deputies and fix their compensation, defining investment companies, authorizing examination thereof by Auditor and judicial investigation of their practices, defining securities and prohibiting sale thereof to public, or taking subscriptions therefor, by such companies before filing with Auditor their financial statement and description of security, excepting from act certain companies and individuals, securities thereof and certain installment securities, regulating advertisements and circulars regarding securities, creating fund from official fees for salaries and expenses under act; repeals all laws on subject adopted heretofore or concurrently herewith.

Now that is only the condensed description of that act, and the moment you begin to take the different sections you find such items as this:

SEC. 3. This act shall not apply to corporations, associations, copartnerships, companies, firms or individuals when they are subject to the jurisdiction or authority of the Railroad Commission, nor to corporations, associations, copartnerships, companies, firms or individuals after they have secured from the State banking department, the Insurance Commissioner or the Bureau of Building and Loan Supervision a certificate of authority to do business within this State, etc.

I will not weary the Convention by reading more. Now it may be, Mr. President, that the word "technicality" may introduce a little difficulty. I do not believe, — in spite of my readiness to admit that the judgment of the gentleman from Boston (Mr. Quincy) from his training is much likelier than mine to be correct, — I do not believe that that difficulty cannot be overcome. What an administrative detail is ought to be clearly plain, and the principle of this amendment and what it accomplishes, it seems to me, both sides ought to be willing to accept, — that we shall submit to the people only propositions about which, whatever our view upon this subject, we fairly, as reasoning men ready to look at facts, may believe they really are competent to understand and have an opinion upon.

Mr. WALKER of Brookline: I consider this one of the most deadly amendments that can be imposed upon the initiative and referendum measure. It is especially deadly, Mr. President, because it is so plausible. If you provide that the people simply may propose a law but cannot submit it in a complete form, then you throw the whole law into the hands of the Legislature.

Now there have been other amendments here which have been proposed which give the Legislature *de facto* veto power on initiated laws. I am sure that point is clear. If you do not give the people a chance to complete their law and make it workable, but provide that the Legislature must complete it, then a hostile Legislature never may complete it, and therefore wherever this takes effect it throws the legislation finally into the hands of the Legislature and takes it out of the hands of the people.

The law which was read by the gentleman from Amherst was a common, well-known "blue sky law." This law has been adopted in many States. When such a law is presented to the people, if it is wrong, if it is bad in its details, it can be explained to the people that although the intention is right the law is wrong and ought to be

killed. And as has been said here, when a measure comes into the Legislature an alternative may be submitted, an alternative which the proposers themselves might be willing to accept.

As I understand it, this amendment makes the initiative and referendum a mere public opinion bill; the people may suggest to the Legislature what they want done, but the Legislature must do it. Now the public opinion bill, as has been demonstrated already in this Commonwealth, is most ineffective and a hostile Legislature pays no attention to it. If the Legislature is not hostile it will pass such legislation as is desired and there is no need of the initiative and referendum. If the Legislature is hostile such an amendment as this practically permits the Legislature to kill the measure. Therefore it is clear, I am sure, Mr. President, that this amendment is hostile and, as has been admitted by the gentleman who proposed it, in its present form it is impracticable and unworkable.

The amendment moved by Mr. Luce was rejected, by a call of the yeas and nays, by a vote of 114 to 126.

Discussion of amendments was resumed Wednesday, October 31.

Mr. John L. Kilbon of Springfield moved that the resolution be amended by striking out, in line 187, the words "twenty-five per cent," and inserting in place thereof the word "one-eighth."

Mr. Kilbon: This is a very simple matter. It will not require any very great amount of argument, but it seemed to me it ought to be brought to the attention of members of the Convention. The provision now standing in the resolution as it is printed is that not more than one-fourth of the signatures to any petition presented under this article shall come from any one county of the State. That means, of course, as everybody knows, that if a man cares to do his circulating of a petition without going outside of the city limits of Boston he can finish his work practically in this district. It means that we are apt to have presented to us over and over again matters about which people who do not live in Greater Boston have neither information nor interest, although of course matters strictly local in their application, under the terms of the resolution, cannot be presented. It may be that that is a desirable thing. If it is, the Convention ought to vote so. It does not seem to me, who have lived in Boston and who now live somewhere else, to be so desirable, and therefore I make the motion that this amendment proposed by Mr. Arthur B. Curtis of Revere be adopted.

Mr. Churchill of Amherst: I do not know that it is necessary to do much more than to state that the minority of the committee approves of this measure. The general argument, of course, has been stated by the gentleman who has just spoken. This is simply an amendment to provide that there be a broader basis upon which the signatures are secured than the basis offered in the resolution. I think it ought to commend itself to both sides as a fair basis for such petitions, and a provision that the signatures must be obtained from different parts of the State. That is the proposition now. It is true that we have in the measure an amendment providing against any special or local laws. To that extent, therefore, the fact that the initiative cannot present a law filed by the people of one locality, the object which is attempted to be obtained by this amendment would be

a burden, but it is not sufficiently a burden to defeat the amendment. It is wise, it seems to us, that on any measures that come from the people there shall be a sufficiently broad basis, so that no objection can be raised against the law, that no disturbance or bitterness of feeling in different parts of the Commonwealth against an amendment may be aroused, by saying this is a measure that belongs to eastern Massachusetts, this is an attempt on the part of a particular section to accomplish something. If, now, we have a measure which is produced in this district here, — I mean the counties of Suffolk, Norfolk, Middlesex, Essex, — if the petitioners can say that their measure is supported by signatures from other counties, such petition will have a basis for the action of the people far different from that which it would have, if it came from these four counties only, down here in this narrow section of the State. For that reason, the minority of the committee is entirely in favor of this measure.

Mr. Walker of Brookline: This is an amendment which simply adds another difficulty, another complication, in collecting signatures. The population of the various counties is very different. Some counties are much larger than others. The amendment is wholly illogical. We did not approve of putting in "four counties" in the first place. We believe that citizens of Massachusetts are citizens of Massachusetts, wherever they live. But we yielded that point, at the suggestion practically of the gentleman from Boston (Mr. Sanford Bates) who was chairman of the committee on Initiative and Referendum or the committee on Constitutional Amendments of the Legislature. That we think is reasonable. We consider that dividing it up into eight counties makes it unreasonable and too difficult, and therefore we oppose it.

The amendment was adopted, by a call of the yeas and nays, by a vote of 122 to 105.

Mr. Reginald T. Fitz-Randolph of Nantucket moved that the resolution (No. 359) be amended by adding after the word "county," in line 189, the words ", and there shall be the signatures of at least four per cent of the registered voters of every county."

Mr. Fitz-Randolph: The gentleman from Brookline (Mr. Walker) some time ago said that the initiative and referendum was gradually being perfected by its enemies. Under those circumstances I wish to do my bit, in a spirit of friendship. [Laughter.]

The provisions of this instrument, as it stood before the last vote, were such that four counties, that is, within a radius of the city of Boston of eight miles, could initiate any petition, — Boston in Suffolk, Cambridge in Middlesex, Lynn in Essex, and Brookline and Quincy in Norfolk. Those cities and towns could initiate any petition, and it would mean that Greater Boston would control the rest of the Commonwealth. My amendment calls for four per cent from each county. That would mean obtaining the following number of signatures from each county: From the county of Barnstable, 285; from the county of Berkshire, 922; from the county of Bristol, 2,087; from the county of Dukes County, 45; from the county of Essex, 3,496; from the county of Franklin, 415; from the county of Hampden, 1,753; from the county of Hampshire, 503; from the county of Middlesex, 5,368; from the county of Nantucket, 32; from the county of Norfolk, 2,354;

from the county of Plymouth, 842; from the county of Suffolk, 5,221; and from the county of Worcester, 3,029.

The advocates of the initiative and referendum say that the initiative and referendum will bring the people closer to the government. If that is so, let us make it for all the people and not for a centralization of population. My amendment simply generalizes the proposition. It means that portions of all the people would have something to say as to their laws, and not one group. Counties are the natural geographical political districts of a State, somewhat analogous to the States of the Union. They have their own industries, customs, habits and separate centers. The rights and interests of the people of the different counties should be protected, no matter how small their population, and no one portion of the community should be able to dictate to other portions of the community without some sentiment of approval from those portions of the community. The four per cent of signatures called for by my amendment shows that sentiment.

While I speak for all outlying counties I can take only one concrete example, and that is my own. In the war of the Rebellion the county of Nantucket sent more men in defence of the Union than any other place proportional to its population in the Union, and it now is following in the footsteps of '61. In the first Liberty Loan bond issue it subscribed $412,000, and in the last Liberty Loan bond it subscribed $589,000, — more than $1,000,000, or one-quarter of its assessed valuation [applause], — being nearly three times its quota. Now, Mr. President, I do not believe that Nantucket should be wiped off of the political map. I do not believe that with any such sturdy patriotism as those patriots have shown they should have nothing to say in regard to their government.

Hitherto Nantucket has had a representative in the Legislature to see that no general law is passed detrimental to her interests, but under the present plan, without a word in her own behalf, any law may be initiated detrimental or otherwise to her interests. She is a separate political district and has separate interests and industries, and although she is but a small island yet there are those of us who believe that her rights, guaranteed under the old Constitution of this Commonwealth, should be held sacred. Why should the city of Boston and environs be able to tell the citizens of Nantucket when they can shoot black duck or when they can dig clams? True democracy is that which benefits the majority of all communities, and not that which benefits one community simply because it is a center of population.

The gentleman from Fall River, the chairman of the Initiative and Referendum Committee (Mr. Cummings), told me that under this amendment of mine any small county would be able to hold up a law which would be beneficial to the whole State. With that I disagree, because if a bill cannot get by the Legislature and it cannot get 32 signatures out of 800 in Nantucket County, or 40 signatures out of 1,000 in Dukes County, or 280 out of 7,000 in Barnstable County, then that bill or proposed law is not of much value.

I wish to appeal to every delegate in this Convention for a matter of right and for a matter of justice, and I want to say to the delegates who come from the outlying counties that if they wish their districts to be subservient to the political machinery of Greater Boston then

they should vote against this amendment, but if they wish them to keep their independence and their individuality they should vote for it. [Applause.]

Mr. Reidy of Boston: A smaller, a more narrow, argument never has been delivered on this floor in my memory. If we follow the analogy of the gentleman's argument then the city of Boston should be reduced to one-eighth of all the representation in the Commonwealth of Massachusetts, in spite of the fact that our population is 800,000, in spite of the fact that in wealth we are almost equal to all the rest of the Commonwealth put together, and in spite of the fact that in many, many ways Boston is the greatest city in all the world. [Laughter.] I am going to suggest to delegates in this Convention that whenever the county of Nantucket has come to the Legislature and asked for consideration it always has received it without reference to the size of the population; and that is true of every small county in the Commonwealth. The men who represented Suffolk, the men who represented Middlesex, the men who represented Worcester, always were glad to give those small counties every possible facility, particularly in the matter of their judicial arrangements. I am going to suggest to delegates from Middlesex, and from Worcester, and from Essex, and from Suffolk, and from Norfolk, that now you are going a step in the wrong direction. I find no fault with conservative members of this Convention who desire to tie up, to limit if you please, the operation of the initiative and referendum; but I desire to suggest that we agreed long, long ago, as a basic principle in Massachusetts, that political power should follow population, and there is no reason why the man who lives in Boston should be deprived of his political power under the form of the initiative or of his power to vote for a representative at the polls. If we follow the proposition now made by the delegate from Nantucket we are announcing to Massachusetts that, whether the initiative and referendum is a good thing or not a good thing, we are prepared to beat its operation by going to the extent of denying a basic principle of the Commonwealth that population should count for something in the affairs of its government.

Mr. Dean of Fall River: I was impressed by my friend in this division (Mr. Fitz-Randolph) in what he just said. I think he came here with the fairest desire to treat this matter and protect his own district, a small county; but the difficulty with the proposition is that he fails to see just what he is dealing with here in the matter of signatures for an initiative petition. This is not deciding a matter; this simply is providing a way to start the adoption of a law or an amendment. The unfortunate part of it would be that if we had to get our 40 signatures in Nantucket we would face that difficulty which we have all realized, during the discussion, which is, I think, that what we want to avoid is the possibility of having to deal with a small group. In other words, we probably should transfer our interests from the Senate to the county of Nantucket or of Dukes County. And there is another reason to consider here, and that is this: That there are certain pieces of legislation which are advocated by classes in our community, the labor class for example. Now, the county of Nantucket might not be at all in sympathy with something which might be of great benefit and well worth while for the rest of the State, which, as the gentleman from Beverly described early in the session, is a manu-

facturing State. The whole idea of this initiative, I take it, simply is this: That where one class of the community feels that the Legislature does not deal fairly with it, and it cannot get fair treatment there, then that particular class may go out and by securing a certain number of signatures initiate a bill which, if the people as a whole say should become a law, shall become a law. It simply is the case of the client who feels that with one jury, with a small group, he does not get fair treatment, and he asks that the final judgment and decision may rest with the sovereign power, the people. Now, this is a preliminary consideration. This simply is starting a petition. This is not deciding the matter. And that, it seems to me, is the difficulty with the proposition as advocated by my associate here. I have every confidence in my associate from the county of Nantucket, but what I do say is that if the labor class or any other large group in this State feel that they cannot get in the Legislature what they think they ought to have, they have a right to appeal and have the judgment of all the voters of the Commonwealth pass on this matter. I trust the amendment will not succeed.

Mr. Bauer of Lynn: Speaking in opposition to the amendment of the delegate in the fourth division from Nantucket (Mr. Fitz-Randolph) I hesitate to do so because of the fact that I have a very high regard for any one who is a booster for his home community, and certainly the delegate in the fourth division answers to that qualification. But it seems to me that, in a matter so broad in principle as the initiative and referendum must be, it would be disastrous for this Commonwealth to permit any specific county or locality to hold a whip-hand on any matter that perchance may be of general State wide interest. For instance, I can see very well how in the near future it might be advisable to ask for legislation that will permit the exemption from taxation of producing machinery that gives employment to labor in this Commonwealth, as an inducement to the further increasing of the manufacturing industries of the State. That is now being done in the Commonwealth of Pennsylvania, and being done largely to its advantage. It might be that in the re-conditioning of business affairs after this great war that would be desirable in this Commonwealth, and it might be that we should have a hostile Legislature opposing such matter and some one might desire to ask an initiative and referendum matter to see how the people of the State felt upon it, and I can understand very well how Nantucket would not be particularly interested in that at all. Again, we might want to develop the resources of the Connecticut Valley. They will be developed some day, and it may be desirable to get a State wide opinion on this. Nantucket, again, might be entirely indifferent to that. And we might say the same about any big public improvement in many of the counties of the Commonwealth, the Merrimack Valley or the Berkshire district. In case the amendment of the delegate in the fourth division (Mr. Fitz-Randolph) should be adopted by this Convention it would place every matter of initiative and referendum importance under the decision of the single county of Nantucket. That county would hold the whip-hand on all of them. I do not believe that Essex County and any of the other counties of this Commonwealth desire to be included in the same proposition or a similar proposition to that proposed by the delegate in the fourth division in

his amendment. If this initiative and referendum is to be of State wide importance let us make it of State wide importance. Let us treat it fairly, and let us refuse to allow any community to hold the whip-hand over any other part of the State.

Mr. William H. Sullivan of Boston: This amendment must be taken seriously because of the personality of the member who offered it, and especially because he has voted loyally during these weary months with the opponents of the initiative and referendum, and that of course is the strongest argument in favor of it because of the teamwork that has been done by the opponents of the initiative and referendum. The learned judge from Nantucket (Mr. Fitz-Randolph) has voted loyally and earnestly and daily and faithfully with all the opponents and the enemies of the initiative and referendum, and so of course that will insure him warm support for his amendment. There are some difficulties with his amendment which, however, will not deter his friends from voting for it. One of them is that to get the signatures of 45 people one would have to go to Nantucket in the summer time, because that is about the only time when 45 people abide in Nantucket. His 800 voters or residents are the summer visitors, — and I know, because I spent years in Nantucket. Another difficulty is that, if the "jedge" from Nantucket is against any measure, rest assured one could not get 45 signatures down there anyway, no matter how good the bill was. We have met the "jedge" before. He has come to the Legislature year after year, and we have increased his jurisdiction down there.

Of course there are some here who conscientiously vote against everything that would help the people, and who vote in favor of everything that will weaken the initiative and referendum. They have said very frankly, when I have become incensed with them because they have voted against the people: "I am against the initiative and referendum, and I am in favor of anything that will weaken it." Now, this surely will weaken it. Think of anybody tramping over the ice to Nantucket in the winter time to get a few votes, and our friend patrolling the coast to see that no hostile amendment is landed there on the island! Rest assured, Mr. President, that if this amendment is adopted the "jedge" will be a bigger man than ever in Nantucket, for no voter would risk his judicial displeasure by signing a petition to which "the Jedge" was unfriendly.

Mr. Sanford Bates of Boston: If this amendment is to be taken seriously, I should like to call the attention of the Convention to what will be the situation if the previous amendment is retained and this also is adopted. This also serves to accentuate the absurdity of this amendment and of the one we have just adopted. We have adopted an amendment that says you shall not get more than one-eighth of 25,000, to wit, 3,000 signatures in the county of Suffolk. Now the judge wants to put on an amendment under which we have got to get 6,000 in the county of Suffolk. Where does that leave the initiative and referendum? There are about 130,000 voters in Suffolk County, — Boston, Revere, Chelsea, and Winthrop. Four per cent of that number would be 5,200 voters. Yet under the last amendment we cannot get more than one-eighth of the signatures to an initiative petition in any one county. That is about three thousand one hundred and some odd signatures. That will result, Mr. President, if this Con-

vention really seriously adopts both these amendments, in the impossibility of any law being initiated by petition in this Commonwealth.

Mr. Clark of Brockton: I regard this amendment as a most dangerous one. [Laughter.] We have a newly coined word in the English language, and I think it has its application to this amendment. It is the word "camouflage." I think this is a most deceitful amendment. It will enable the little county of Nantucket to hold up any proposed legislation under the initiative and referendum; and who does not suppose, with the power, the influence that the honorable member from that county who sits in this body (Mr. Fitz-Randolph) has, that he could influence the voters to the extent of preventing the securing of the required number of names under his proposition? Beware of the Greek bearing gifts!

Mr. Leonard of Boston: I am rather surprised at the modesty of my friend from Nantucket, that he simply requires that there shall be four per cent of the signatures. Why does not the gentleman require what probably would be required if this amendment was accepted, that is to say, that there shall be at least a majority vote in each county in voting on the initiative and referendum? It seems to me that that will be the next step, and a step that very properly might be taken. If we are going to adopt an amendment like this I believe we ought to change the title of our resolution. It reads: "Resolution to provide for establishing the initiative and referendum." I cannot see how, with these amendments, the resolution will in any way conform to the title. If we adopt this amendment after the one that already has been adopted, and after all the expert attendance that we have had here in the Convention for several months past, like the old adage of the mountain laboring and bringing forth a mouse, we are in great danger of bringing forth something that is entirely defective, crippled and deformed.

Mr. Churchill of Amherst: We have had two amendments offered, — the amendment offered under the name of Mr. Curtis of Revere and that offered by the member from Nantucket (Mr. Fitz-Randolph). They are different modes of applying what may be called a check to a wide open condition, a condition that is wide open in the sense that all the signatures may be obtained in one place. The original resolution says that they must be obtained in four counties. The amendment that has just been passed by the Convention says that they shall be obtained in eight counties. The amendment offered by the gentleman from Nantucket (Mr. Fitz-Randolph) follows a different line. He argues upon the basis that a State wide referendum should have a State wide support, and that if you cannot get a State wide support it should not be allowed to be put before the voters. These are different principles, Mr. President, and it is manifest, as has been said, that, having adopted the amendment of Mr. Curtis, if we still prefer this amendment to the other, there would have to be a readjustment, and that we either should have to abandon the amendment we already have accepted, or modify it in some way to agree. So far as I can see, Mr. President, that is simply a question for every individual in this Convention to vote upon according to what he thinks is the best principle for securing a sufficiently wide interest in the petition to justify it. That principle I think we all agree upon, that there should be a sufficiently wide interest to justify putting a petition before the peo-

ple, to justify the expense, to justify the taking up of the time and effort of the people. Therefore the minority of the committee has to say with regard to this amendment that we have not the slightest objection to every member of this Convention following what seems to him the preferable principle in the matter of securing a sufficiently wide interest in the petition.

Mr. HALE of Boston: It is quite difficult for me to argue this amendment seriously, but I do not believe the Convention is taking it seriously. Of course there are two very fundamental objections to it. One is that the Convention has just gone on record in favor of an amendment which should be repealed if we pass this amendment, because the two are entirely inconsistent, as has been pointed out by the gentleman from Boston in the first division (Mr. Sanford Bates). I do not imagine that the Convention has changed its mind in five minutes and wishes to reverse itself on the amendment it has just adopted, much as I know they like to add amendments to the initiative and referendum. In the second place, let us see just what this amendment actually means. There are 800 voters in the county of Nantucket. It would be just exactly as logical in principle to say that every city and town in the State that has 800 registered voters should have to give four per cent of those voters to an initiative petition in order that it might fairly represent the community throughout the State, as to say that the county of Nantucket should have to give four per cent. I cannot imagine anything more absurd from a common-sense, practical point of view than to say that one county of 800 registered voters should have that privilege, whereas a hundred of the cities and towns throughout the State which have at least 800 voters should not have that privilege. Now, gentlemen, let us use common-sense on this matter and vote accordingly.

The amendment was rejected, by a vote of 56 to 95.

Mr. Albert H. Washburn of Middleborough moved that the resolution (No. 359) be amended by striking out, in lines 136 and 137, the words "fifteen thousand qualified voters of the Commonwealth," and inserting in place thereof the words "five per cent of such qualified voters of the Commonwealth, calculated upon the whole number of votes cast for Governor at the last preceding election."

Mr. WASHBURN: I very much wish that the gentleman from Brookline (Mr. Walker) could find it possible at this stage to accept this amendment as a perfecting one and oppose it, if he must, on the next reading.

Mr. WALKER of Brookline: I should like to ask the gentleman if he knows, in the first place, that his five per cent would amount to increasing the number of signatures required by fifty per cent now, and in future of course there would be a constantly increasing number, and if we had woman suffrage the number would be doubled. And then he asks me to accept that proposition!

Mr. WASHBURN of Middleborough: I do not care so very much about the exact percentage. It is quite true that on the basis of the votes cast for Governor at the last election it would increase somewhat the fixed number of votes as reported by the committee. I place it at five per cent merely because there is no State in the Union which requires a less percentage than five. In the Constitutional Convention

in Ohio in 1912 Mr. Bryan, who addressed that body, advised the members to fix that percentage for referendum petitions. If anybody thinks that number is too high, if that is the general opinion of this Convention, I am perfectly willing to modify it; but I ask: Why should the Commonwealth of Massachusetts put itself on record as favoring a lower percentage than obtains elsewhere? That is my reason for fixing it at five per cent.

Some days ago this Convention adopted the percentage theory with respect to the statutory initiative. This amendment merely extends it to the referendum. Of course at this stage such an amendment cannot be offered with respect to the provision relating to the constitutional initiative. That must come at another stage. During that debate I pointed out what every delegate here knows, that most States require a percentage rather than a fixed number, and I asked the gentleman from Brookline (Mr. Walker) why the committee preferred to follow the example of Mississippi rather than the universal practice which obtains almost everywhere else in the Union. His answer in substance was that to require the fixed number was merely adopting the last word upon this branch of the subject, the last word as to the way and manner in which petitions should be initiated. Why, Mr. President, the State of Maine in 1908 in adopting the statutory initiative required a fixed number of signatures. There, as I pointed out before, the population is almost stationary. No State followed Maine; although there were a number of States, between 1908 and 1914, which adopted the initiative and referendum, no State followed that example until we come to Mississippi in 1914. I prefer to follow the example of Ohio in 1912, the example of Michigan in 1913, and, — yes, — the example of Utah in 1917.

The case of Utah has been referred to in this debate. In 1900 they adopted there a constitutional amendment changing the Constitution so as to authorize the initiative and referendum whenever the Legislature should frame a law providing for the details of such a measure. In other words, what the people of Utah did was to adopt something that was executory in character rather than self-executing. That instance has been referred to as showing the recalcitrancy of legislatures. I do not so construe it. There were 29 per cent of the voters in 1900 voting for Governor who expressed a preference upon that amendment, — only that, — and the amendment placed the whole matter within the discretion of the Legislature, both as to the way and manner and as to the time. I, for one, do not believe that there was any very general demand for legislative action until a more recent period.

It is true in a technical sense only that if we had woman suffrage the number of signatures required to inaugurate the initiative would be doubled. That I say is true only in a technical sense. Practically you would not double the number, because the canvasser calling at a house for signatures would get, under the woman suffrage amendment, two signatures where he formerly got one. It would be quite as easy for him to get his quota under a woman suffrage amendment as it would be without one. I say further that if you retain the provision for a fixed number of voters, in effect, under woman suffrage you would cut in two the requirement for signatures. That would be the effect

of it, because the necessary number of signatures could be obtained then in practically half the time now required.

This amendment cuts both ways. A referendum petition can be invoked by the opponents as well as by the friends of the initiative and referendum. That is obvious. That has been the effect of it in many States. In Ohio, for example, the Legislature, — the last Legislature I believe, — passed what is known as the Reynolds law, authorizing women to vote for presidential electors, and authorizing them to be voted for for presidential electors. Ohio requires six per cent for a referendum petition. That meant about 71,000 voters. As a matter of fact, they got 91,000, and apparently got that number with the greatest ease.

So I say this cuts both ways. It is a safeguard and a protection to both sides. The provision requiring 15,000 voters or 20,000 voters or 25,000 voters, whatever the fixed number may be, must bear some relation of course to the number of registered voters, to the number of those voting at elections, and it ought to bear a fixed relation to them. That is the only fair method, and that is why I think most States from the beginning have preferred the percentage theory. And that is why I believe, in framing such a clause as this, designed to become a part of the organic law, we should adopt a provision which can stand for all time, and which is fair to everybody at all times.

Mr. John L. Kilbon of Springfield moved that the amendment moved by Mr. Washburn be amended by striking out the word "five", and inserting in place thereof the word "four".

Mr. Kilbon: Is there any reason why the Convention, having voted to set a proportion of four per cent on initiative petitions, should vote for a different rate on petitions of this kind? It seems to me that it should be preferable to have the ratio uniform. And inasmuch as four per cent has been taken in the other case, I move that the word "four" be used for "five" in this case.

Mr. Washburn of Middleborough: There is only one reason, and that is that the Convention has not adopted four per cent with reference to the statutory initiative. It was four per cent plus one per cent, following the framework of the resolution as reported by the committee; but I am perfectly willing to accept four per cent, if that be the sense of this Convention, — perfectly willing to do that, — although it is a lower percentage, as I have pointed out, than obtains elsewhere.

Mr. Churchill of Amherst: This proposition, in the first place, is simply a proposition to use a percentage basis for the referendum as the Convention has already voted to do for the initiative. Upon the initiative, as the gentleman has just explained, we have accepted a five per cent basis, — four per cent, and one per cent in addition; so that the five per cent basis for the referendum put the referendum upon precisely the same basis as the initiative. I am unable to see, Mr. President, why that should not be the case. If members who possess the schedule, — I hardly know how to name it, the circular showing the percentage demanded in the various States, — will consult that schedule, they will see that there is no State that demands for its referendum less than five per cent. Some of the States demand

six per cent; 5 per cent, 5 per cent, 10 per cent, 5 per cent, 5 per cent, 5 per cent, 5 per cent, 5 per cent, 5 per cent, 10 per cent, 5 per cent, 6 per cent, 6 per cent, 6 per cent, and so on. In two or three States there is a fixed number. The percentage I think is about the same in the fixed numbers. There are two or three States that require a definite number of votes.

Now, gentlemen, in all these States where the initiative and referendum are in vogue it has been the consensus of opinion that at least 5 per cent ought to be asked for a referendum. For that reason I support the figure which the gentleman from Middleborough (Mr. Washburn) proposes for the referendum. I do not see that the proponents of this measure should ask Massachusetts to accept a smaller figure for the referendum than all these other States have adopted. At the same time, if 5 per cent, the larger figure, is not agreeable to this Convention, four per cent certainly is better than 15,000, which is less than 3 per cent. That is the demand of the resolution as it stands to-day, — 15,000, less than 3 per cent. Why should we vote for such a figure? Upon what basis can the gentlemen fairly ask for so low a figure for the referendum?

I support, therefore, the amendment of the gentleman from Middleborough; and if that amendment be not acceptable to the sense of the Convention, I support the figure of 4 per cent. Fifteen thousand is less than 3 per cent; it certainly ought to be changed.

Mr. Walker of Brookline: There is no reason in principle why any particular per cent should be required. As I have explained to this Convention many times, we allow any one man to petition the Legislature for laws. The Legislature may pass them or not. The right of petition is a thing that Massachusetts statesmen have stood for. We do not compel a lot of men to sign a petition. We allow one man to petition. Why should not one man petition to his fellow-citizens to pass a law? There is no reason in principle, not the slightest. It is purely a practical reason.

What is the practical reason? The practical reason is this: That we do not want to make it too easy to get matters on the ballot, and that is all the reason. There are other reasons; but that is the practical reason. That is clear. I do not care to discuss this further. When you fix a percentage it sounds small. Five per cent does not sound very many, but 5 per cent means 22,500 voters to sign a referendum petition. These must be gotten within sixty days after a law is passed, which makes it very difficult, if not impracticable. Then why does the gentleman suggest 5 per cent? He knew it meant an increase of 50 per cent over what was provided in our resolution, and still he says: "Why, it is what other States have." He says that we ought to have a percentage, it is the right theory. But he increases the number of signatures that we must get under it by 50 per cent.

Now, I say that that is unwise and unnecessary; and I say the best practice, in the opinion of the initiative and referendum men in Washington, is that a fixed number is better and is more logical. Therefore I trust we shall not go from a fixed number to a percentage basis, and certainly not a percentage basis that at the present moment will increase the number and continue to increase the number as the population increases, and double the number when we have woman suffrage.

Mr. Quincy of Boston: My first thought was merely to have a per-

fecting amendment as to the form of words which the gentleman from Middleborough uses. I do not like this language. I do not think it is accurate. I think the intention is to say "qualified voters of the Commonwealth equal in number to," — 4 or 5 per cent, as the case may be, — "of the whole number of votes cast for Governor at the last preceding election." That avoids the objection of saying a certain percentage of qualified voters, and then of saying afterwards that you do not mean that, but do mean the number of votes cast. I will offer that as a substitute, changing "five" to "four," which I understand the gentleman from Middleborough is also agreeable to.

Mr. Josiah Quincy of Boston moved that the amendment moved by Mr. Washburn be amended by striking out the words proposed to be inserted, and inserting in place thereof the words "qualified voters of the Commonwealth equal in number to five per cent of the whole number of votes cast for Governor at the last preceding election."

Mr. Washburn of Middleborough: I rise for the purpose of asking unanimous consent to accept the substitute amendment offered by the gentleman from Boston (Mr. Quincy).

Mr. Churchill: Before that unanimous consent is given, would the Secretary be kind enough to read the amendment?

The Secretary read the amendment.

Mr. Dutch of Winchester: I rise to object because it puts "four" instead of "five." If the gentleman will put "five" we can vote on the proposition.

The amendment moved by Mr. Kilbon was rejected.

Mr. Washburn: I desire to know whether I can accept the amendment offered by the gentleman from Boston (Mr. Quincy), substituting "four" in place of "five," which amendment I believe has the approval of my friend also from Boston (Mr. Hale) sitting at my left here.

The President: Objection is raised; the amendment cannot be thus accepted now.

Mr. Churchill: I should like to ask, Mr. President, if in essence we have not here the situation of the larger and smaller number, — whether the amendment of the gentleman from Boston should not be put second, and Mr. Washburn's first, — so that we may have the vote taken upon the larger number first, and then, if that fails, upon the smaller number? It seems to me that is essentially the situation. I think the members of the Convention ought to have the opportunity to do it.

The President: The Chair does not so understand it. The amendment differs in its entire wording from the original amendment, and is offered as a substitute amendment.

Mr. Churchill: I ask for unanimous consent to insert "five" in place of "four," in the amendment as offered by the gentleman from Boston.

Mr. Walker of Brookline: I object.

The amendment moved by Mr. Quincy was rejected.

The amendment moved by Mr. Washburn of Middleborough was adopted, by a call of the yeas and nays, by a vote of 123 to 121.

Mr. Robert Walcott of Cambridge moved that the resolution (No. 359) be amended by striking out lines 183 to 186, inclusive (as amended), and inserting in place thereof the following paragraph:

Provision for the proper identification and certification of signatures to the petitions hereinbefore referred to, and for penalties for the circulation of petitions for hire or reward, for the signing [A] of any such petition for money or other valuable consideration and for the forgery of signatures thereto shall be made by law.

Mr. Walcott: This amendment, Mr. President, is substantially the amendment I previously moved, on page 9 of the calendar, redrawn so that I understand it meets the approval of Mr. Luce of Waltham, who has moved a similar provision, also on page 9 of the calendar.

The initiative and referendum resolution, as drawn by the committee for a Liberal Constitution, imposed penalties for forgery; it imposed none for the bribery of signers of initiative petitions. Notwithstanding that this committee of twenty had read over all similar bills in the country, and that it had five or six months to most carefully prepare this measure, — which we who were running for the Constitutional Convention were assured was as nearly perfect as any initiative and referendum measure could be made, — by the most careful and intelligent study of careful and intelligent persons, any penalty for purchasing petitions was wholly omitted. Fortunately this has been corrected by a previous amendment introduced by the gentleman from Worcester, and accepted by the chairman of the majority of the committee.

There is one serious lack, however, which the chairman of the committee has refused to accept, and this is that no provision has been inserted in this measure to prevent the circulation of *paid* petitions. Now, it is not any *a priori* guess on my part that this is a bad practice in the circulation of initiative and referendum petitions. It is admitted to be a bad practice by all the text-books on the subject. True, I understand the chairman of the majority of this committee to wave aside text-book authorities, even though written by Professor Holcombe, a member of his own committee of twenty, who drew this nearly perfect measure; or by Mr. Eaton, who has written on the Oregon system the last book on the subject, and he states expressly that the greatest argument against the initiative and referendum, as he has seen it employed in his own State of Oregon, is the thriving trade in the circulation of petitions for hire which makes the system of the initiative and referendum ridiculous in a great many instances.

It is not alone, however, Mr. President and gentlemen, on the text-book writers that we have to rely. We can take the experience of the first State in the Union to adopt the initiative and referendum, the State of South Dakota, which adopted this system in 1898. I will read you the first provision that this State had, in the year 1898. The sworn affidavit at that time read as follows:

State of South Dakota,
County of , ss. .

. . . being duly sworn, on their oaths, respectively, do say that the foregoing petition is made in good faith, and that they verily believe all the signatures thereto to be genuine, and those of duly qualified voters.

Was this sufficient? Not at all. So far from being sufficient, the absence of any further provision led to a public scandal, and in the year 1913, after long and careful debates on this subject, the following

form of affidavit was substituted. I think you will readily note the difference.

STATE OF SOUTH DAKOTA,
COUNTY OF _____, ss.

I, . . . being first duly and solemnly sworn, on my oath state that I am a qualified voter of the State of South Dakota. That I am acquainted with all the persons whose names are affixed to the above and foregoing paper and know that each one of said persons signed said paper personally and added thereto his place of residence, post-office address and date of signing.

There are three elements that do not appear in the earlier affidavit.

That each and all said persons are residents and qualified electors of the county of . . . , State of South Dakota; that each of said persons signed said petition with full knowledge of its contents.

Another addition. And now here comes the final addition, which this amendment to this law is intended to include:

That I have received no compensation whatever or promise of compensation for my services in circulating said petition.

SECTION 2. All acts and parts of acts in conflict with this act are hereby repealed. [*Approved March 13, 1913.*

That is chapter 202 of the Session Laws of South Dakota for 1913.

And there is still more evidence from that State. The gentlemen in favor of the initiative and referendum of the State of South Dakota fortunately were not unwilling to accept perfecting amendments. Their attitude is in striking contrast to the majority of the committee here. I realize that the majority of the committee on the Initiative and Referendum have not very much respect for precedent. Otherwise the last amendment, which we were forced to carry by two votes, would have been accepted, if they had had any respect for tradition, because on the analysis circulated by their paper "Equity," it is clear that all the referendum States except two have a percentage requirement on the referendum.

I understand that the majority of the committee have abandoned Governor Peter Norbeck as a recreant, although he does state in his inaugural address of this year to the Legislature of South Dakota that he still believes in the initiative and referendum. However, there was a time when he enjoyed a very high reputation in the select circles. Now what does he say about this?

Nearly everybody appears to be willing to sign these petitions.

Particularly when the man is paid for soliciting them.

It has become a common practice to pay the solicitor ten cents per signature and the expenditure of from five to six hundred dollars serves the purpose of vetoing or suspending the operation of a law passed by this Commonwealth, for a period of two years, — until the next general election.

And he suggests some remedies.

The only argument against this, Mr. President, that I have heard advanced is that it will be somewhat difficult to obtain signatures if one does not have paid canvassers. But, as the gentleman from Winchester in the first division (Mr. Dutch) has very ably pointed out on various occasions, this resolution contemplates a great public demand for great public improvements, not by any ordinary system of legislation. This is not to take the place of the Legislature. This is to be held back in reserve for great emergencies; and in great emergency we are led to assume by the majority of the committee on the Initia-

tive and Referendum that it will be impossible voluntarily to secure ten thousand signatures. It scarcely seems possible, because the gentleman who sits next me in this division (Mr. Lomasney) has kindly shown me the figures of the vote cast for mayor of Boston in the year 1910. In that somewhat famous election, some gentlemen present may remember that the new charter of Boston required the obtaining of five thousand signatures to nominate a candidate for mayor, and that one of the candidates nominated was George A. Hibbard. How many votes did Mr. George A. Hibbard get in the election? — 1814.

That shows what can be done with paid canvassers. You can get signatures for anything, whether or not the signer has any intention of voting for the man or for the measure. Now, let us at least try to be genuine in this matter, Mr. President. If we are legislating for an emergency, let us assume for the moment that the emergency exists. Because it is possible to pay canvassers to get signatures for some political offices now is no argument for keeping this outworn, ridiculous and corrupt system in the brand-new reform measure which is attempted to be enacted. [Applause.]

Mr. LUCE of Waltham: As the gentleman from Cambridge (Mr. Walcott) has said, his thought in this amendment is quite satisfactory to me, and if it should prevail I will of course not present my own. I will supplement the testimony that he brought by asking you to listen to two brief statements from Governors. Governor Ammons of Colorado told the Governors' Conference of 1913 that his State had the initiative and referendum, and he would sound a note of warning to others. "Be sure, of all things you do, to provide penalties for the securing of names to petitions for pay."

Mr. WALKER of Brookline: I should like to ask the gentleman whether, if such a provision is made, he will be willing to reduce the number of signatures required?

Mr. LUCE: I should be perfectly willing to do so.

Mr. WALKER: I should like to state to the gentleman from Waltham that it is purely a question of the number of signatures required. If one cannot have paid canvassers the number must be materially smaller, or else the resolution is dead.

Mr. LUCE: I should be perfectly willing to have any reasonable number of signatures. The matter of the number of signatures has seemed to me a minor detail, while this seems to me a major detail. I think my friend from Brookline will agree that ever since I have had any share in public life I have tried at every opportunity to lessen, if possible to prevent, the use of money in politics. I believe that paid signatures for nominations ought to be prevented. [Applause.] I believe we never shall get money out of politics until we take it out, until we recognize that it is a function of the State to pay all campaign expenses; and toward that end, as chairman of the committee on Election Laws in the Legislature, I did what little lay within my power. I hope very much that we shall not here, in framing what is to be called a people's measure, invite the disaster of paid canvassers.

I started to read from another Governor. Governor Byrne of South Dakota told the same conference of two instances where "for purely commercial purposes, frankly and openly expressed, without attempting to hide it, interested people referred a law, paying ten cents each

for signers, for the definite purpose of suspending a salutary law for two years, not expecting to defeat it in the end."

If time permitted I could give you instances of where signature-getting has been made the basis of a blackmail system. That is what exposes the initiative and referendum to the worst of possibilities. For the sake of its friends, for the sake of the measure itself, some solution of this question ought to be worked out by which, with a reasonable number of signatures, the use of money will be kept out.

Mr. MONTAGUE of Boston: The gentleman who has charge of this resolution, whose name it bears, referred to me the other day as one of the bitterest opponents of the I. and R. That was not, although I have no doubt he intended it to be so, a correct statement, as his knowledge, if he stopped to think, of what I did in the House here, as House chairman of the committee on Cities, appointed by him, in connection with that kind of I. and R., for two years, should show him. But, Mr. President, there is one feature of the I. and R. on which I plead guilty, to which I am bitterly opposed, and that is the question of obtaining signatures. I still think that my suggestion the other day was a good one, that those who desire to sign these petitions might well go before some city or town official, liberally provided all over the city, or all over the town, if you want, but this is better than nothing. Mr. President, there is no doubt that every man in this Convention who is familiar with politics in the cities, — I will not say about the towns, but in the cities which embrace most of the voters, — knows that he could find a man in his city who would undertake that work, for two or three thousand dollars, who would go out and get a petition of 25,000 signatures. It would be just as easy as rolling off a log, if one only has the money he wants to spend. I know it, every man knows it, we all know it.

Now, Mr. President, I doubt if there is a citizen who wishes the initiative who wants anything of that kind. What comes up in the mind of the citizen who desires it is the high and holy statement that 25,000 or more of the citizens of this Commonwealth desire a certain thing. I admit if there are that number they should receive the strongest consideration. But I reiterate that 25,000 names procured at ten cents apiece do not have the standing, and they should not have the standing, that one petition signed by the gentleman whose name this measure bears, which would at least be intelligent and honest, should have. That is the point at stake.

Now, Mr. President, this talk about reducing signatures, — figure that out. How many voters are there in the average representative district? There are not more than 4,000. Most of them are less; there are not more than 4,000. What is 5 per cent? Two hundred. Now, if the people in a legislative district are rising up and demanding something, for heaven's sake will there not be two hundred who would sign a petition without somebody being paid for it, or would they not go to some central point and sign it? Of course they would, if there is any such rising, — that is the point, — and if there is not, there is not anything to it. It seems to me that, while I think my own proposition is wiser and safer, this would safeguard it to a very large extent, and it would remove to quite an extent my objection to the I. and R.

Mr. BALCH of Boston: This is the most important point, Mr. President, that has come up since the initiative and referendum has

been under debate before this body, and for this reason. The other points have been questions of comparative political wisdom or unwisdom. This is a question, not of political wisdom or conflicting political theories, but of plain right and wrong. It is morally wrong. It will be a blot on the 'scutcheon of Massachusetts, if we deliberately introduce government by money as a feature of our political system, and that is precisely what the initiative and referendum measure in its present form does in disguise. I have been trying repeatedly to bring home to members of this Convention that thought. I have been stating that, instead of this being a "People's Initiative," it was in fact a "Boodle Initiative." That nickname has been justified so far. But if this simple change should be adopted that nickname most assuredly would have to be dropped. It may or may not become a "People's" initiative according as it is here changed or not changed so as to give the people that control of it which they will not have if the present plan is not altered. But it certainly could not be called a "boodle initiative" if this mercenary feature of the petition were gotten rid of at this time. It remains for any one to point out why it should not be gotten rid of. We all know what will be said, — that it will make it difficult to get the petition. It will, in truth, make it somewhat more difficult to get the petition. But who is there bold enough to rise on his feet and state that it is the correct theory and practice that the entire population, the whole voting population, shall be put to the burden of studying questions, and the Commonwealth put to the burden of printing pamphlets and getting out ballots for them, unless there is some real popular demand for it? If there is some real popular demand it will be perfectly easy to obtain the petitions, even though this obvious improvement in the direction of popular morality is adopted.

Mr. GEORGE of Haverhill: I should like to ask the gentleman from Cambridge (Mr. Walcott) if he has observed an amendment which I have given notice I shall offer, and if he would be willing to insert after the word "provision", the words "for carrying the initiative and referendum into effect." If we do that we should adopt in our general provisions all the necessary authority for the Legislature to apply the initiative and referendum, and it is not necessary to have so much red tape and so much language when we already have it in the general provisions. It seems to me that that would aid the matter a great deal. I do not want to interfere with the gentleman's amendment because I am in sympathy with it, but I should like to ask him whether or not he would agree to this.

Mr. WALCOTT: I do not think I gather exactly what the gentleman's amendment is.

Mr. GEORGE: My amendment reads like this: "Provisions for carrying the initiative and referendum into effect, and for the proper collection and certification of signatures," etc. The gentleman from Cambridge offers practically the same language as in the original proposal: "Provision for the proper identification." Now, I propose to insert "Provisions for carrying the initiative and referendum into effect, and for the proper collection and certification of signatures to the petition hereinbefore referred to."

Mr. WALCOTT: In view of the, as it seems to me, very unbending and unyielding attitude of the majority of the committee, and their

often expressed distrust of the Legislature, I think it would be better to try mine first and your broader provision afterwards. I think they would both have a better chance.

Mr. GEORGE: I do not insist upon it, and I very well understand that about 48 per cent of the members of this Convention feel that they have got the whole responsibility for passing this important piece of legislation. I am rather inclined to feel that the other 52 per cent should be allowed to have something to say about it, inasmuch as they are all here on the same basis. But of course this could be amended on the next stage, and I want to say that I am in sympathy with the proposition offered by the gentleman from Cambridge. I think everybody knows now very well that our primary law was created for the purpose of aiding men of small means to become candidates for office. Instead of that it permits men with large means to become candidates for public office, and men with small means have very little, if any, advantage. It is very easy for men to sit in their homes, and expend $1,000, $1,500 or $2,000 to employ agents to go around the country, as they did previously to the first of May, and secure signers to nomination papers. And, mind you, some of these gentlemen who are interested in this reform are not at all interested in obeying the law. I have had occasion to go into the Secretary's office, and I find one of those reformers contributed $1,750 previously to May first, another $3,000, another one $4,300; and the law says that any person who shall contribute more than $1,000 for any cause or amendment to the Constitution or in the interest of any candidate for office is subject to $1,000 fine and a year in jail. Now, there are people who would like to have this thing continue; I am one of those who would like to have it changed.

Mr. QUINCY of Boston: After the statement made by the gentleman from Brookline in the time of the gentleman from Waltham (Mr. Luce), and after the agreement of the gentleman from Waltham that the number of signatures very properly might be reduced if a restriction of this kind were adopted, I desire to propose an amendment to the amendment of the gentleman from Cambridge (Mr. Walcott). This will bring directly before the Convention the question whether it is willing, in order to obtain legislative authority to impose penalties upon those who circulate petitions for hire, to reduce the number of signatures to a figure which will make it possible to get the signatures without hiring canvassers. In other words, the present figures, the present numbers of signatures required, as I think we all know, are calculated upon the basis of no restriction being embodied in the amendment against the employment of agents to obtain those signatures.

Continuing after the recess Mr. Quincy said:

At the time when we were interrupted by the recess I was about to offer an addition to the amendment moved by the gentleman from Cambridge (Mr. Walcott), which brings before the Convention the distinct issue suggested by the interchange of ideas between the gentleman from Waltham (Mr. Luce) and the gentleman from Brookline (Mr. Walker) in charge of this measure. At any rate, it accomplishes the object of giving me an amendment which I can vote for; and if my amendment is adopted I shall be glad to vote for the amendment of

the gentleman from Cambridge (Mr. Walcott), although I believe that he greatly exaggerates the evils of the payment of canvassers.

Now, to bring the issue into concrete form, I desire to move this amendment: To add after the amendment moved by the gentleman from Cambridge, Mr. Walcott, the following words:

Provided that, after the enactment of any law providing penalties for the circulation of petitions for hire or reward, —

Those being his words —

the number of signatures required by this article of amendment shall be reduced by one-half.

That amendment is based upon the ground that the number of signatures as it stands in the measure, is calculated upon allowing the payment of canvassers. There being no prohibition in the amendment as it now stands, the payment of canvassers is allowed. If we now are going to import into the measure a provision against the payment of canvassers, then we ought at the same time, as a part of that action, to reduce the number of signatures required.

Mr. Theller of New Bedford: I want to call to the attention of the Convention that this amendment which is offered provides for a penalty for signing a petition for a consideration or for money, but that it does not provide for a penalty for inducing somebody to withhold his signature from the petition. In other words, a corporation could give a half-holiday or increased pay if the employees would not sign a petition. Therefore I offer an amendment striking out, at [A], the word "of," in the fourth line, and inserting the words "or refusing to sign." I think this will be acceptable to the gentleman from Cambridge, and I think the amendment should be amended in that way.

Mr. Creamer of Lynn: I should like to call the attention of the delegates of this Convention to the fact that if this method, proposed by the delegate from Cambridge (Mr. Walcott), had been in effect in regard to the getting of nominations for office, a good many of the delegates here might not be here, and that it might be almost impossible for us to get sufficient nominations for office in this State. It is a hardship to expect, in many cases, men to go out and get signatures for petitions unless they can be assured of at least as much money as they otherwise would earn in their regular employment. If this amendment is adopted I think we should face this situation: That there would be only certain classes of people in this State who would ever be able to initiate any legislation. I think it is safe to say that, aside from the labor organizations, the Prohibitionists and woman suffragists, and some of our larger corporations, we would have no initiative petitions and no referendum petitions.

Mr. Churchill of Amherst: We have been invited by the gentleman from Boston (Mr. Quincy) to a task which certainly would be agreeable if it were within the scope of our principles to perform it. The gentleman and the other members upon his side admit, though not quite so spontaneously and completely as I wish they would, that we have in the securing of signatures on nomination papers or petitions by paid canvassers an evil. It is an evil. It is a thing that has combined with one or two other factors to break down the effect of that other great popular measure, as it was called and intended to be, the popular primary. Now these gentlemen admit that we ought not

to have in the Commonwealth of Massachusetts such a thing, that it ought to be taken out of our law with regard to nomination papers. They admit that, and then they come to us with the proposition: "We will be good if you will pay us for it; cut down the number of these signatures and we will do the thing we ought to do; we will not ask to renew and continue in the new measure an evil which exists in the old."

Well, now, if the gentlemen want to stand upon that proposition I am glad to see them stand there, for they stand in the open. I regret the position they take. But as for asking us to accept such a price, I refuse, Mr. President, and I hope every man upon this side of the question will refuse. The thing that would do them honor, that would do them credit, would be to stand up here and say: "We will not stand for the continuance of this evil, and we leave it to this Convention to say what, under those conditions, ought to be the number of votes." That is the position they ought to take. They have not taken it. I think the votes of this Convention have shown, Mr. President, not that the Convention will cut down the figures in response to that, but that it will take honestly and fairly into consideration the situation thus created in determining finally, upon another stage, what shall be the number of signatures. That would have been a proud position to take. I submit to the Convention that the other position is not a proud one.

In the next place, in regard to these signatures, there are other considerations, as a matter of fact, to take into account regarding the number of signatures. Every man has a certain point of view about this thing, — of what kind of bill he is willing to have or hopes to have offered, of the number of signatures that he is willing or desires to have set as the figure. It depends largely upon what he wants the result of this measure to be, and we cannot be expected to pay for the virtue of the gentlemen on the other side by overthrowing these other considerations. The whole situation, Mr. President, reminds me very strongly of a remark by one character to another, by Silver to Smollett, in the fable of Robert Louis Stevenson, where he says to his friend: "I wouldn't set no limit on what a virtuous character would call argument."

Now, we have had plenty of warnings, Mr. President, from men engaged in carrying out the measure of an initiative and referendum in their States. We have had some of them quoted. This last year Governor Carlson of Colorado and Governor Milliken of Maine, in their inaugural addresses, have spoken most vehemently and strongly against the allowing of securing of signatures for money. We have had plenty of warning, and the gentlemen on the other side have had warning from their own supporters. Here is an editorial from the Springfield "Republican" which has supported the I. and R. measure. This is what it says in a recent editorial:

> One of the amendments to the present draft of the I. and R. which the Convention will be called upon to consider, will deal with a question to which The Republican has repeatedly called attention; namely, whether payment is to be permitted for the collection of signatures. The present draft neither forbids nor limits such payment.

It goes on to consider the arguments that have been offered against it and comes to the conclusion, — and I am reading the whole conclusion:

All things considered the best solution which the Convention could reach would be to forbid payment for the collection of signatures by a carefully drawn provision and, at the same time, reduce materially the number of signatures required.

We already have reduced materially the number of signatures for the constitutional initiative.

Mr. HALE of Boston: I think it extremely unfortunate that we cannot discuss the amendment without going into the question of the advisability of going back to the old Convention system instead of the direct primary system and without going into the question of general morality. I presume we can take it for granted that every single member of this Convention is against fraud in collecting signatures, — both for nominating officers and in the initiative and referendum, — and that we are going to do the best we can to see that this measure prevents it. I point out that there is a very distinct difference between preventing fraud in getting signatures and prohibiting the use of paid canvassers. I point out that this measure prohibiting the use of paid canvassers in no way will prevent fraud in getting signatures. I have had a great deal of practical experience in getting signatures in the last ten years and I find the inducement for fraud in getting the signatures is directly proportionate to the difficulty in getting signatures. The time when fraud is apt to be committed is in the last twenty-four hours of the time for getting signatures and when one is shy of signatures; then comes the temptation. Now it is perfectly obvious to all of us that the harder it is to get the signatures the greater the temptation; and this matter of prohibiting paid canvassers will in no way prevent or prohibit fraud.

In the second place, this amendment directly encourages evasion of laws. It will fall most heavily upon all independent movements; it will fall least heavily on great existing organizations, like the public service corporations, like the labor-union and like the present political parties.

Let me give you two or three specific instances from my own experience. In 1912 there was the primary fight between Roosevelt and Taft in the Republican party. I had to do with the collecting of signatures for Mr. Roosevelt and I can say of my own knowledge that if we had not been able to employ paid canvassers at that time the Roosevelt delegates would not have appeared on the ticket in this State. The same year Charles Sumner Bird ran for Governor. I was running the campaign at that time. I can say of my own knowledge that Charles Sumner Bird's name would not have appeared on the ballot had we not been able to pay canvassers for their time collecting signatures. No man in this Convention can say there was no real demand at that time for either Roosevelt or Bird. For a contrast, at the present time when we have an organization, I have not had the slightest difficulty in getting my own signatures without paying for them. [Applause.] I want to bring that out because nobody would say that there was a greater demand in this State for me than there was for Mr. Roosevelt or Mr. Bird in 1912. You are not preventing fraud by prohibiting the use of paid canvassers in collecting signatures; you are penalizing the men who have not the organization for the benefit of the men who have the organization, and surely that is not the thing that you want.

Now in regard to the impracticability of it. I want to point out that

in 1909, during the Storrow-Fitzgerald mayoralty campaign, in which Mr. Storrow's candidacy was indorsed by the Boston Finance Commission and by the Good Government Association, of which our member in the first division who talks so much about "boodle initiative" (Mr. Balch of Boston) was a member, and where was certainly a general demand, Mr. Storrow's name would not have appeared on the ballot if we had not been allowed to use paid canvassers. I was appealed to to come in and take charge of getting men to get Storrow signatures in the interest of the Citizens' Municipal League backed by the Good Government Association and by the Boston Finance Commission. Surely those bodies do not stand for "boodle" politics. There is no disgrace in hiring a man to go out and give his time going from one person to another and asking for their signatures. The disgraceful thing, the thing we ought to use every effort to prevent, is to pay a man for his own signature, — the practice of buying signatures; and I hope the Convention will not mix up these two subjects. If you prohibit the employment of paid canvassers you are penalizing the man who has not a big backing behind him for the benefit of a man who has got the labor-unions or a big corporation or an existing political party back of him. Mr. Quincy's amendment is against these principles, is wrong in principle, but is less impracticable than the other one. If we are going to have anything let us have that. I hope we will not have that, but I hope those in favor of the initiative and referendum will vote for Mr. Quincy's amendment rather than for the other.

The amendment moved by Mr. Quincy was rejected, by a vote of 67 to 109.

The amendment moved by Mr. Theller was adopted, by a vote of 130 to 16.

The amendment moved by Mr. Walcott was adopted, by a call of the yeas and nays, by a vote of 123 to 117.

Mr. John L. Thompson of North Attleborough moved that the resolution (No. 359) be amended by adding at the end thereof the following paragraph:

Article XLII of the amendments of the Constitution is hereby repealed.

Mr. Thompson: If the members will turn to page 113 of the Constitution they will see that in repealing this amendment they prohibit the Legislature from referring general legislative matters to the people. If there is a form of initiative and referendum established in this State this legislative referendum will be absolutely useless. It does not prohibit the Legislature from referring Constitutional amendments or referring referendums that are local in their nature, — that refer only to a city or town or a small part of the State. This referendum never has been practical nor popular. There have been very few of the voters who knew what the several referendums meant when they saw them on their ballot. There never has been any publicity connected with any of these referendums that were submitted by the Legislature, and there is no provision in this resolution for any publicity connected with any referendums that are to be submitted by the Legislature, but there is publicity for referendums through the initiative and referendum. If there is a form of initiative and referendum accepted in this State, then you will have a dual form of referendum in this Commonwealth of Massachusetts, and this California ballot (holding up a paper) is an example of what can be and what has been

done in a State where they have the dual form of referendum. I do not believe there is a delegate in this Convention who wishes to have a ballot for Massachusetts conditions similar to this California ballot. It is fully as confusing as last year's Massachusetts income tax report, and I do not believe that we want a ballot that is confusing for our conditions in Massachusetts. The Union for a Progressive Constitution, through this little leaflet which it has presented to each one of us, has called attention to the fact that in the California ballot of 1914 27 out of the 48 articles were submitted by the Legislature, and the gentleman from Brookline (Mr. Walker) twice, I think, during remarks, has called to your attention the fact that one reason for having a large number of signatures was to keep the number of articles on the ballot within reason. If the Legislature should pass a law that did not meet with the approval of the people, why, then the people have the privilege of bringing that law through the initiative and referendum, so the people really do not lose anything. But you do put the responsibility on the Legislature where it belongs and you do simplify the ballot and you do not take anything away from the people. And I believe this is a friendly amendment and believe it should have the approval of the Convention. [Applause.]

Mr. Morrill of Haverhill: This amendment would take away Article 42 of the amendments of the Constitution, if it is approved, and I want to trace the history of that amendment. When I first came to this Legislature I took it for granted, after examining the Constitution of the United States and the Constitution of Massachusetts, that in a republic, while I could not find anything to the contrary, the Legislature voluntarily could submit to the people any proposition when the Constitution specifically says that all power resides in the people and is obtained from them, and that its public servants, whether legislative, executive or judicial, at all times are accountable to them. Having that theory in mind I offered an amendment providing for a referendum to a bill which called for a State finance commission with power to intervene in local affairs as well as to overhaul the books of the State departments. That amendment was adopted by the House by a vote of 160 to 23, — 160 in favor and 23 against. No one thought of stating that it would be unconstitutional for the Legislature voluntarily to submit such a proposition to the people. Did I desire to take time I could quote to you from the official book on the initiative and referendum issued by the commission which compiled the information for this Convention, showing court decisions declaring that it was constitutional. In some States they said such a proposition would be constitutional and courts in other States said it would not be. But the members can examine that book for themselves; I shall not take the time to read it.

The day following the adoption of that amendment a member sprung a surprise on the House of Representatives by quoting a decision rendered by the Massachusetts Supreme Judicial Court about twenty years previous to that time, in which the court stated that State wide referendums were unconstitutional; therefore the House took that amendment off the bill. The year following Senator Tinkham introduced a proposed amendment of the Massachusetts Constitution allowing the Legislature voluntarily to submit State wide referendums. That went through the House by a vote of 142 to 62

and went through the Senate, 27 to 10. In 1913 I introduced that measure the required second time and it passed the House, 206 to 5, and passed the Senate unanimously, 38 to 0. It went to the people at the State election of 1913 and was approved by a vote of nearly three to one: 206,689 in favor and 77,767 opposed.

Now to show whether or not that was a popular amendment of the Constitution, we may quote the vote cast on some propositions submitted to the people thereunder. In 1914 two questions were submitted by the Legislature: First, an Act to make Saturday a half-holiday for laborers employed by the State. That was introduced by the American Federation of Labor. The people approved that by a vote of 248,987 to 128,251.

Mr. BARTLETT of Newburyport: This amendment which it is proposed here to repeal, the forty-second amendment, adopted in 1913, is an amendment which in terms does not even require the Legislature to pass upon a bill, but says it may refer a measure to the people. I have heard it described as the most effective instrument for taking the backbone out of legislators that ever has been invented. Because of that, I introduced a resolution which is Document No. 88, to the same effect as the amendment proposed here by the gentleman from North Attleborough, — annulling this forty-second amendment. I went before the committee on the I. and R. and presented it as a separate measure, and it seems to me that whether it goes as an amendment or as a separate measure, this Convention ought to annul that forty-second amendment. Document No. 88 provided that —

The 42d article of amendment of the Constitution is hereby annulled.

Mr. LEONARD of Boston: I should like to ask the gentleman whether this amendment as now offered repeals the legislative right to submit matters on referendum to towns. I do not mean to a town government or a city government, but will the Legislature be debarred from submitting a local matter to the voters of a city or town?

Mr. BARTLETT: I do not understand that it would be. It always has been the custom to refer matters relating to particular cities or towns to the voters of that city or town, and our court has found no fault with it. In the 160th Mass. the court did say that it is the duty of the Legislature to legislate and not to delegate its general powers to the electorate, and therein they held the law then in question unconstitutional as being a general law. I think it the duty of the Legislature to legislate and the legislators ought not to have open to them any avenue of cowardice through which to avoid responsibility upon any question.

The resolution which I introduced got an unfortunate title, but not from me. It reads: "Resolution Providing for the Referendum by the General Court of Acts and Resolves and Parts thereof." It provides for the abolishing of the referendum by the General Court. I went before the committee and argued this matter briefly. Professor Johnson, a strong advocate of the I. and R., strongly indorsed my proposition, and I heard nothing in opposition. I find an adverse report from the committee. I have it from a member of the committee that he does not remember that they ever considered the resolution. I think they must have considered the title and not the substance. As I said before, I am told by members of past legislatures

that it is a very effective instrument in extracting the backbone from a legislator. It seems to me that if the Legislature is to refer anything to the people it had better wait until asked, and that the forty-second amendment is inconsistent with the principle of the initiative and referendum that we have here, and it is bad in principle and in every way.

Mr. Collins of Amesbury: I have not entered into the discussion of the I. and R. up to the present time and I do not propose to do so after this; and I should not at this time only that this forty-second amendment is a proposition which was put before the Legislature when I was a member and put through the Legislature. The story, Mr. President, was this: We had been told and we had acted upon the supposition, — the Legislature, I mean, — that any legislation which a Legislature sought to put through might have a referendum attached to it if the legislation applied to a city or a town or a county or any subdivision of the State. We had been led to believe that we could pass also legislation State wide in its operation with a referendum attached. We learned from the Supreme Judicial Court, — I think it was the Supreme Judicial Court, — they gave us an opinion guiding our action to the effect that no legislation State wide in its effect with a referendum attached was constitutional. So the Legislature proceeded to put an amendment through two succeeding legislatures, to be ratified by the people, making constitutional a State wide referendum. I do not intend at the present time to criticize the technicality of the proposition, but its direct effect. Its only effect, sir, so far as I know, upon the Legislature was to relieve it of practically all responsibility. I am now speaking from personal experience and observation. On any proposition in the Legislature which was State wide in its provisions and which any member of the Legislature thought might get him in wrong, — I beg you pardon, sir, for the slang, but any proposition which might put the Legislature under a false impression, — they said: "The great cry in this State to-day is for the people to rule. Now here is an opportunity. We will kill two birds with one stone. We will dodge responsibility and we will let the people rule." And I want to say to you, sir, that for an up-to-date, absolutely-on-the-minute surgical operation to relieve the Legislature of any backbone, this had the call. The gentleman who last spoke (Mr. Bartlett) said he had overheard this talk. Sir, he has; he heard it from me if his hearing was good. It is a fact. It should be repealed, absolutely repealed. If your Legislature is going to be anything other than a rubber stamp, if you propose to put men up here who, in the last analysis, should give their time and their thought and their attention to these matters, whether that time and that thought and that attention be good, bad or indifferent, — sir, if you are going to have a legislative form of government you must fix responsibility somewhere; fix it upon your representatives. And I say, sir, I believe this to be the most unfortunate piece of legislation which has gone through under the Sacred Codfish for the last seven years, with which I have been conversant here, and if this Convention does nothing else, if it repeals this proposition and puts the responsibility back on the men who are sent here under their oath to do their duty as they see it, then this amendment should be cut out. [Applause.]

Mr. Morrill of Haverhill: I will continue from where I left off, as there are only three or four more measures to quote.

The bill to abolish party enrollment was submitted to the people in 1914 and approved by a vote of 253,716 to 86,834, over three to one.

In 1916 the bill to make New Year's Day a legal holiday, a bill with which the Legislature had been playing football for several years, and which, to win back the support of a large element of the citizenship that had left and almost disrupted the Republican party, was submitted to referendum with the hope that it might be killed and that the Republican machine nevertheless would obtain credit for giving the people a chance to decide the matter, thus getting those voters back into the fold. What did the people do? They approved that bill by nearly three to one, 312,678 voting yes and 113,142 voting no.

And the same year, Mr. President, an act to restore party enrollment, without that title but with a misleading title intended to deceive the people, to hoax themselves back in the card-index trap again, properly catalogued and ready for delivery by the bosses. It was approved by a vote of 209,624 to 150,050.

Also the act calling this Convention, which was the outcome of a bill introduced by myself and which was revised occasionally by others until finally it went to the people. They ratified it by a vote of 217,293 to 120,979.

Now, Mr. President, the member from Amesbury, my conservative neighbor, has stated that this forty-second amendment simply allows the Legislature to dodge responsibility and have a weak backbone. Now read what this book, compiled by the commission selected to gather information for us, says in relating the reasons given in other States for the adoption of a provision similar to our forty-second amendment:

> The motives for such action were diverse: In some cases, a politic wish to shift responsibility in a difficult situation; in others a democratic deference to the unknown will of the majority; in others, uncertainty as to how the interests of the public would be affected by the measure, or a desire to secure for it the backing of a declared public opinion.

Now, here are four or five reasons for retaining that provision in the Constitution. I hope we shall vote down the suggestion to eliminate it, for whether or not we adopt an initiative and referendum, and whether or not the one we adopt is a real initiative and referendum, this forty-second amendment should remain upon the books. It will not interfere with anything we may do, and I hope that this motion will be voted down, — I should wish unanimously, if that was possible.

Mr. Leonard of Boston: Since I questioned the gentleman in the third division (Mr. Bartlett) I have had occasion to refer to the citation which I quoted, which is 160 Mass., in the supplement, and it seems to me on reading that opinion that if we are going to repeal the forty-second amendment there is going to be another situation here that ought to be cleared up at some time or another. The forty-second amendment, you will see by reference to the manual, was adopted in 1913. The opinion of the Justices was asked upon the question whether or not cities and towns could allow women to vote in their respective cities and towns; that is, whether a city or town might vote to allow women to vote on municipal questions only, and upon that question four of the Justices, in the 160th, — that is, Justices Field, Allen,

Morton and Lathrop, — said no, that that question could not be submitted by the Legislature; it was a delegation of legislative authority. On the other hand, in three separate dissenting opinions, one written by Mr. Justice Holmes and another by Mr. Justice Knowlton and a third by Mr. Justice Barker, it was held that those were questions that the Legislature could submit to the cities and towns and a city or town might vote upon the question whether or not women might vote on municipal affairs. So it seems to me if we are going to repeal the forty-second amendment there still is an indefinite situation as to what matters might be referred to the voters of separate localities. I simply suggest that, as I think it is a matter which would bear consideration in voting on this pending motion.

Mr. CHURCHILL of Amherst: I want to say just one word upon this proposition. I should like to be able to make quite clear the question that I want to raise. Is it not really to the advantage of the working of the initiative and referendum, if we have a popular initiative and referendum, to accept this amendment and place the legislators squarely face to face with the proposition: You must express your opinion in the face of the possibility that the people by initiative or referendum will reconsider and revise your decision? I want to repeat that: Is it not desirable for the purposes of the initiative and referendum that the legislators should have to face this proposition that we must decide for ourselves in the face of the possibility of revision? Now the proposition which remains to us, if this amendment of the gentleman from North Attleborough be not accepted, is, may the legislators be allowed to dodge all their responsibility by saying: "Well, it is quite probable, at least very possible, that this particular law will have an initiative petition against it, that people will call for a referendum, and we can avoid putting ourselves upon record and 'getting in bad' by referring it ourselves"? To vote to submit to the people a certain proposition and to vote to recommend to the people a certain proposition are two very different things, as we have every reason to know in this Convention. We shall vote, perhaps, to submit an initiative and referendum proposition to the people, but that will be a very different thing from putting every man in this Convention on record as recommending that proposition to the people.

Now if you take away the forty-second amendment, providing we have a popular initiative and referendum, we place the responsibility squarely upon the Legislature, where it belongs. We prevent them from dodging responsibility and they have to take the responsibility in the face of the knowledge that if the people do not like what they do there will be a revision. I submit that it is to the advantage of the working of the initiative and referendum, if we have one, that this forty-second amendment should be repealed.

Mr. YOUNGMAN of Boston: It may seem too obvious to some of you, but I wish to call your attention to the fact that if you vote for this amendment offered by the gentleman from North Attleborough and it is passed, and the I. and R. resolution containing it is passed, you will not be abolishing a referendum in this State; you will still have a referendum. If, on the other hand, no I. and R. measure is adopted by the people of this Commonwealth, then this amendment No. 42 to the present Constitution will not have been annulled unless this Convention in a separate action, taking up the resolution offered by the

gentleman in this division (Mr. Bartlett), Document No. 88, makes that recommendation. Therefore gentlemen who wish to preserve the form of the referendum that we now have in case the complete initiative and referendum is not adopted, are not voting against that proposition if they vote for this amendment. And I submit, Mr. President, that the most scientific way to deal with this initiative and referendum in our Constitution, — and you will all agree with me that we have taken long enough time to consider the initiative and referendum to at least deal with it scientifically, — is to have all initiative and all referendum propositions bound up in one amendment to the Constitution. It is a question whether or not the committee on Codification should not suggest some consolidation when the thing got to that stage. I hope, therefore, if you decide, having heard these arguments on the question of pinning the Legislature down to this responsibility, you believe in that, that you will vote for this amendment, and I concur in what the member of our Initiative and Referendum Committee, the last speaker (Mr. Churchill), has just said, that we cannot see in this any damage to an initiative and referendum measure.

Mr. Walker of Brookline: It is perfectly plain, Mr. President, to this Convention that the forty-second amendment simply gives the Legislature the right to pass a law, submit it to the people and say that it shall take effect only if adopted by the people. It has nothing whatever to do with the initiative and referendum; that is, I mean the popular initiative and referendum that we are discussing here. I will say in regard to the report of the committee on Initiative and Referendum that although they reported negatively against this matter, they really reported without prejudice. It was a matter that did not relate to the popular initiative and referendum, and so they really did not intend to prejudice the case at all.

As far as I am concerned personally I do not either favor or disapprove of the proposition to repeal this forty-second amendment. It is a different, distinct proposition. I should say, of course, that when the Legislature under this forty-second amendment refers a thing to the people it is upon the petition of a single person; a single citizen may ask the Legislature to pass a law and the Legislature if it sees fit may submit that law to the people. The I. and R., of course, is different; it requires a certain number of citizens to petition for a law, and if the Legislature does not pass it, it must be submitted. I simply make plain the difference between the provision in the forty-second amendment and the popular initiative and referendum. The committee as such take no position in the matter.

Mr. Morrill of Haverhill: I simply want to state that the gentleman in this division in front (Mr. Youngman) was mistaken when he implied that the provision we are now discussing is in the initiative and referendum resolution before the Convention. It is not. The only thing along that line is that the Legislature may submit an alternative proposition to an initiative measure, but this forty-second amendment is not the initiative and referendum. The forty-second amendment applies to bills introduced in the ordinary way in the Legislature, so that if the Legislature desires to do so it may submit such a bill to a referendum of the whole people. If this motion is adopted and the forty-second amendment is taken out, and if the

initiative and referendum then should be voted down, you will have nothing left by which any proposition might be submitted to a State wide referendum. Thus the forty-second amendment does not conflict with the initiative and referendum and I hope it will be left in the Constitution.

The amendment moved by Mr. Thompson was adopted, by a vote of 95 to 72.

Mr. George B. Churchill of Amherst moved that the resolution (No. 359) be amended by adding after the word "void", in line 155, the words ": *provided*, that no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the highest number of votes cast at such State election."

Mr. CHURCHILL: I offer this amendment which is simply the parallel of one which we already have adopted. Under the head of "Laws", line 67, the provision was adopted that "If a law shall be approved by a majority of the qualified voters voting thereon", — now comes the proviso which was added by amendment: "*provided* that, for any law proposed under this section, the affirmative vote shall not be less than thirty per cent of the highest number of votes cast at such State election." Now that provides that an initiated law shall receive at least thirty per cent of the highest number of votes cast at the State election. If you turn to the referendum, the corollary and correspondent of that proposition is that when a law is negatived, when a law that has been passed by the Legislature has been defeated, the negative vote should be at least thirty per cent of the highest number of votes cast. In other words, it really is the affirmative proposition on the referendum; the people shall not be able to overturn a law of the Legislature unless the negative vote, which must be a majority vote, is at least thirty per cent of the highest number of votes cast at the election. It is exactly the same proposition with regard to the referendum that the other is with regard to the initiated law. On the one side it is affirmative, on the other side it is negative. The people in order to do a thing on the one side must have at least thirty per cent; in order to do the thing on the other side they must have at least thirty per cent. And if the Convention still believes in the principle of establishing a lower limit of total to which the vote should come, at least thirty per cent, it will of course support this amendment in the case of the referendum. The amendment says: "*provided*, that no such law shall be held to be disapproved", — no law to be disapproved on referendum, — "if the negative vote is less than thirty per cent of the highest number of votes passed at such State election."

Mr. WALKER of Brookline: We may be able to shorten this debate a little bit if I state at this time my personal opinion in the matter. Of course I have not had a chance to consult with many of the I. and R. men in regard to it, but I will say that the gentleman from Amherst is quite right; if it is in the other place it belongs in this place. In fact there is a stronger reason for putting it in this place than in the other, because in this case the people are upsetting a decision of the Legislature, and therefore there is a stronger reason for putting the thirty per cent here than there is in the other place. And so I say if it is to be left in the other place it ought to be here and although we did not think it was necessary or wise to put it in the other place we do not propose to oppose putting it in here.

The amendment moved by Mr. Churchill was adopted.

Mr. Samuel W. George of Haverhill moved that the resolution (No. 359) be amended by inserting, before line 183, the following paragraph: —

If a measure made subject to the referendum, by the filing of an initiative and referendum petition, is introduced in the General Court, the same shall be referred to a committee thereof, and the petitioners and all parties in interest shall be duly heard and the measure shall be duly considered and reported upon to the General Court with their reasons therefor in writing. Both the majority and minority reports, if there be such, shall be signed by the majority and minority members of said committee respectively [A]; and the General Court shall consider such reports and act upon the proposed measure on its merits, with a due regard for the public welfare and the rights of all citizens involved in accordance with their oath of office.

Mr. George: The fundamental principles of representative government are as sound now as they were 137 years ago. The fact that some people hold different views now than then does not question the soundness of my statement. There are two or three fundamental features in connection with the initiative and referendum that have not been touched upon by any one as yet, and I think that is involved in the relation that exists, on the one hand, between the members of the General Court and the people, and, on the other, between the petitioners, the men who sign petitions, and the people. For instance, a member of the General Court, under the more recent apportionment, not only represents the 3,200 voters but he represents something like 16,000 other people who have no right to vote. Not only that, Mr. President, but we have in this Commonwealth 657,000 registered voters. We have a population of over 3,100,000 people besides.

Mr. Walker of Brookline: I should like to ask the gentleman if he knows a case where the Legislature has neglected to refer to a committee a substantive matter that was brought to its attention.

Mr. George: I think that the Legislature always has referred matters to a proper committee, but that does not answer my proposition.

Mr. Walker: I should like to ask the gentleman if he thinks it is entirely consistent with the dignity of the Legislature to find in a Constitution instructions that they shall act upon the merits of a question? Is it not supposed that they will act upon the merits of a question? And to say that they must act "with a due regard for the public welfare and the rights of all citizens involved in accordance with their oath of office", — are they not supposed to act according to their oath of office and with due regard to the citizens' rights, and is it necessary in our Constitution to instruct them to do so?

Mr. George: I understand, Mr. President, that that was understood to be so before this new reformation took place. But I have heard nothing from the lips of the gentleman from Brookline that indicates that the Legislature has any standing at all. In fact, they do not trust the Legislature.

Mr. Bennett of Saugus: Although it may be true that the Legislature of Massachusetts always takes this course, is it not true that in a great many States and in Congress they do not take this course and that matters are smothered in committee?

Mr. George: I think that the gentleman from Saugus is quite right and I think I might have called to his attention cases in the Massachusetts Legislature where things have been more or less smothered.

I do not believe in the proposition that is inserted elsewhere

which deals with the emergency measure; in other words, that no measure can be considered unless you decide by a two-thirds vote, or whatever vote it is, that this is an emergency measure. It is not a practical way of disposing of it. I know perfectly well that if any one offered a rule in the Legislature to provide for a hearing and a committee report upon all matters before the Legislature, the Legislature would not adopt it because that is impracticable; that is, in every instance. I suggest here that if a measure is made subject to the referendum it shall be referred to its proper committee. The committee will have a hearing. It will not only hear the petitioners, — I mean the petitioners themselves who are interested for themselves, — but it will hear the representatives of the other three million people who are not in the Legislature and who may not be petitioners and who may have rights in which they are interested. Now I submit that if we fix this in the Constitution the committee of the Legislature will make a report. If there is a divided committee they will have a majority report and a minority report. And then the Legislature is asked to act upon it on its merits, and if it votes against this proposition and there is a referendum petition that asks to have this proposed matter sent to the people, then in another provision which I shall move following this, it provides that when the text of this measure goes out to every voter there shall be sent also a copy of the majority and minority reports of the committee and the votes that have been given in the Legislature upon the measure, so that the voter will have not only the act in question but he will have the reasons for and against it. It seems to me that this is what we are striving to do, to get some sort of basis whereby the voters can determine the question intelligently.

What I was about to say when I was interrupted was this: The relations of the members of the General Court and the people are very different from those of the petitioners and the people. The members of the Legislature, or the Legislature itself, which consists of 240 Representatives and 40 Senators, represents 657,000 registered voters. Not only that, but it represents the interests of three million more people, and our Constitution not only protects the 657,000 voters but it protects all the other people in the Commonwealth, both native-born and alien. I submit, Mr. President, that those bodies are the proper tribunals, and when this result of organized effort, — and it must be by an organized effort, — when this petition goes into the Legislature it goes to a committee and then it is considered as I have suggested. They hear not only the petitioners but they hear all other interests involved. Now what is the petitioner interested in when he goes to the Legislature? He is interested in himself. He does not take any oath of office; he is not obligated to support anybody's interest. He simply goes up there and says: "Mr. Chairman and gentlemen of the committee, we want you to pass this bill, and if you don't pass it we want you to refer it right to the people." And some of them say: "We don't want you to say anything about it; we will take care of the rest."

Now I say it ought to be the duty of some tribunal, and it ought to be the duty of the Legislature of Massachusetts, to pass upon the merits of that bill. If there is any member in the Legislature who is so thin-skinned, as the gentleman from Brookline has suggested, that

he feels that he does not want to sit in the Legislature if he is asked to act honestly and fearlessly, he can retire. He is not obliged to sit in the Legislature. We never have had to resort to the draft to get members of the Legislature in Massachusetts; and if you take all the authority away and all the power away there may be no difficulty in the future; there always will be candidates and there always will be a full quota sitting in the Legislature.

I submit, Mr. President, that this is a practical proposition; that on every proposition that comes in on an initiative and referendum petition we ought to direct the Legislature to act on its merits. Then the general public, the people who want this information, will have that information, because it will be sent out by the Secretary of the Commonwealth with the full text of the measure showing how the Legislature stood on the proposition.

Mr. STOEBER of Adams: If a stranger from another planet was to drop into this Convention chamber and listen for a time to the arguments advanced by some of the opponents of the I. and R., he might go away with the impression that the majority of the people of Massachusetts are a lot of children who constantly must have some one to watch over them to see that they do not swallow something that might give them a stomach ache, or perhaps a lot of fools who would fall for anything that some one should try to put over on them, or perhaps that they do not have intelligence enough to read or to think or to judge for themselves what they want or what they do not want. The fear is expressed constantly by the opponents of the I. and R. that if the people get the initiative and referendum they are going to do something awful, they are going to make so many mistakes that the old Commonwealth of Massachusetts will go to the dogs, — if I may use that expression. Perhaps mistakes will be made; I do not doubt it. If a man who never has been accustomed to handling a gun were to be suddenly placed in the possession of one it might happen that he would shoot it off at half cock once or twice. But that will not happen very often. Mistakes are made under the present system and will continue to be made under all systems. I am fully convinced that if the people of Massachusetts get a good workable initiative and referendum they soon will learn to use it in a manner that will be a credit to themselves and to the Commonwealth of Massachusetts. This amendment of the gentleman from Haverhill simply is another drop in the bucket to cripple the initiative and referendum, and I hope it will not prevail.

Mr. BENNETT of Saugus: I do not so interpret the amendment. I have heard several people say during the past few days that they can take a yea and nay vote blank and they can tell how everybody is going to vote in advance. I think there is a good deal of truth in that, Mr. President. I think we are getting into that position. Under those circumstances where do the common-sense and intelligence lie? Not in the brains of the individual members, but in the brains of some one man. I cannot believe it is possible, Mr. President, that when the world suffers the loss of the gentleman from Brookline (Mr. Walker) and the gentleman from Amherst (Mr. Churchill) wisdom will entirely perish with them. [Applause.]

I understand that in New York State it is the general understanding that matters shall be smothered in committee. If I am wrong I hope

to be corrected, but I understand that is the universal practice in New York State. Now if we have a different method here it is based not upon the Constitution but upon the rules of the House of Representatives and the Senate, which easily may be modified at any time by the Legislature. It does seem to me, without having known much about this, without going very deeply into it, I cannot see, as the gentleman said on the other side of the hall, that it is something inimical to the initiative and referendum. I do not see it. We are preparing what seems to me a very conservative measure here, much more conservative than anybody expected, because, as I understand it, when the initiative and referendum was first proposed the understanding was that it was to do away with representative government. Perhaps I am wrong, but that was my understanding, — that it was to do away with representative government. Now we have produced here, however good or bad it is, a measure which combines the two features of representative government and of pure republicanism. I use the word republicanism, of course, in a broad sense, I am a pure Republican. [Laughter.] I would use some better expression if I could think of it at the moment, but I mean direct action by the people without any intermediaries in the form of representative government.

Now we seem to be combining the two. And of course every gentleman in this gathering is familiar with the experiences of pure republics in the past and of what brought forth the representative government. I think, Mr. President, instead of obstructing or interfering with the view of either side in this discussion, instead of going to an extreme either in one direction or the other, this is a matter upon which both sides very readily and very properly might unite. And I hope that as we go along there will be a little less of such action on the part of the Convention that the gentlemen all around me can say as they do that they can take a yea and nay vote blank and tell in advance how every member is going to vote. That does not show much intelligence or much consideration on the part of the rank and file. That would seem to imply only one or two centers of intelligence on this matter. I hope, Mr. President, that this matter will receive some attention which I think it deserves.

Mr. White of North Brookfield: I should like to ask the gentleman in the fourth division (Mr. George) if he would be willing to drop off the last four lines of his amendment, reading as follows:

and the General Court shall consider such reports and act upon the proposed measure on its merits, with a due regard for the public welfare and the rights of all citizens involved in accordance with their oath of office.

Mr. George: The reason why that was put into this amendment was because under the measure we had before us the Legislature is not obliged to express an opinion. The Legislature will receive an initiative petition, and if they say: "We don't agree with it, we don't want to take the responsibility, we won't pass it," they have a formal hearing and it goes up the chute. I never knew a Legislature, — and I was in six of them — that ever would spend a great amount of time in considering a matter in which they had no voice. Now why not direct this Legislature, — and I had in view what had been said already by my colleague from Amesbury and others in debating that amendment adopted on the motion of the gentleman from North Attleborough, — that the referendum has had a tendency to weaken

the Legislature. They say: "We have got nothing to do with this; we either have got to accept it or let it go to the people"; and the fact is, they let it go to the people. Now I want to see something that shall direct the Legislature to stand up on its mettle and face every public question and face it on its merits.

Whatever they do will have no effect on the passage of the bill. The bill may not pass, the bill may pass, but by their acting upon it and the committee reporting upon it every citizen will have the report of the committee and the action of the Legislature to guide him in considering it. It seems to me it ought to be there. I do not think anybody in the Legislature will feel offended by that. I think that there has been an opinion among people that since they adopted the referendum some years ago there has been a letting down of the bars, and I think it is a cowardly thing for any Legislature to send any matter to the people and not give a word of explanation. The rank and file of the people do not understand. I think I am of ordinary intelligence, but I know when there are matters on the ballot that I do not understand I vote no and I shall not vote yes on a proposition that I do not know anything about. There are matters on the ballot, and have been within the last four or five years, that the Representative who represented me in the Legislature knew a great deal more about than I did, and I did not think I should have them put up to me. Now if he does put them up to me I want him to give me instructions; I want the Legislature to give me the information that they had when they considered these questions. Every committee of the Legislature has all this information to guide them; then why should they not give us the essence of that information in their report to guide us on these matters? That is the reason I put this proposition in there.

Now, Mr. President, I want to ask unanimous consent, while I am on my feet, to strike out the word "both", midway in the fifth line on page 9.

Objection was raised.

Mr. William S. Kinney of Boston: I move to strike out all after the word "respectively", in the seventh line. I do not care to argue it; I do not think it needs argument. It seems to me that the wording after that point is entirely unnecessary.

The discussion was resumed Thursday, November 1.

Mr. George of Haverhill: In view of the fact that there are some new faces here this morning I will say that this proposition is in no way hostile to the initiative and referendum. It simply amends the general provision and it will apply to whatever kind of initiative and referendum may be adopted by this Convention. It provides, first, that all matters made subject to a referendum shall be heard by a legislative committee, reported upon, with the majority and minority reports, if any, duly signed, and that the General Court shall give the voting public the benefit of their judgment upon the matter. I explained yesterday why I thought this was necessary. The 240 members of the House of Representatives and the 40 Senators not only represent the interests of the 657,000 registered voters but they represent the interests of something over three million inhabitants, and it

seems to me that they, representing the broad view, the welfare of the Commonwealth, ought to hear these propositions and give the public the benefit of their judgment.

In considering this subject yesterday the gentleman from Boston in the second division (Mr. Quincy) raised certain objections which I think were sound, and I have prepared a substitute which recognizes his objections and the objections of certain other members of the Convention but which in no way changes the purpose of the provision; and I therefore, Mr. President, move the amendment that is now in the hands of the Secretary as a substitute for the amendment that I moved yesterday.

The modified amendment was to insert before line 183 the following paragraph [for original form of amendment see page 892]: —

If a measure is introduced in the General Court by initiative petition, the same shall be referred to a committee thereof, and the petitioner and all parties in interest shall be duly heard, and the measure shall be duly considered and reported upon to the General Court with the committee's recommendations in writing. The majority and minority reports, if there be such, shall be signed by the majority and minority members of said committee, respectively, and the final action of the General Court upon any such measure shall be taken by a yea and nay vote.

Mr. Churchill of Amherst: May I be allowed to suggest to the mover of the amendment that the word "their", in line 5, is not quite clear in its reference? I believe that the mover intends that to refer to the committee, does he not?, — "and the measure shall be duly considered and reported upon to the General Court with the committee's recommendations in writing." And I suggest, if he will accept it, to substitute for the word "their" the words "the committee's."

Mr. George: I am very glad to accept the amendment suggested by the gentleman from Amherst, and in order to expedite business, if the Convention will give unanimous consent to substitute this for the original motion, then we can proceed to vote on the amendment without delay.

Mr. Washburn of Middleborough: With the general purpose sought to be attained by the gentleman from Haverhill (Mr. George) I have a great deal of sympathy. There is much to be said for it. As I understand, what he seeks to accomplish is publicity and information for the electorate, both very important features. But, Mr. President, I find some difficulty with the phraseology which he employs and, if I may have it, I especially want the attention of the gentleman from Brookline (Mr. Walker) and the gentleman from Amherst (Mr. Churchill) just a moment, as well as the gentleman from Haverhill.

The proposed amendment reads: "If a measure made subject to the referendum by the filing of an initiative and referendum petition." Now the matters which are made subject to the referendum as defined in this resolution No. 359 are measures, as I understand, which are passed or enacted by the Legislature. "Referendum," as defined in the resolution, has a narrower and more technical meaning than the one sought to be given, as I infer it, by the gentleman from Haverhill. That, it seems to me, will lead to confusion. If we are to pass this amendment we ought to put it in a form to correspond with the definitions in the main measure itself.

Mr. Theller of New Bedford: Aside from the merits of the proposed amendment, does the gentleman think that we ought to put into

the Constitution such matters of legislative detail as are included in this proposed amendment?

Mr. GEORGE: First, in answer to the gentleman from Middleborough, when it comes to the question of phraseology, knowing that the gentleman from Middleborough is on that committee, I thought that he would have ample scope to apply his genius, and I know he will when it comes to him, and I know he will correct anything of that sort.

Mr. WASHBURN: To what committee does the gentleman allude?

Mr. GEORGE: I understood, Mr. President, that the gentleman from Middleborough was on the committee that was going through these matters finally very carefully. If I am mistaken I only regret that such is the case.

Mr. WASHBURN: The gentleman is mistaken; I am on no such committee, either officially or unofficially.

Mr. CHURCHILL: I should like first to ask, in view of the objection of the gentleman from Middleborough, whether the mover of the amendment would be willing to accept this change in phraseology: In place of the reading of the first three lines, read as follows:

> If a measure is introduced in the General Court under the provisions of this resolution.

referring to the I. and R. resolution —

> If a measure is introduced in the General Court under the provisions of this resolution.

Mr. WALKER of Brookline: If we are to perfect this measure it seems to me the proper words are these, as you suggest:

> If a measure is introduced in the General Court by initiative petition, etc.

Mr. CHURCHILL: Yes.

Mr. WALKER: I think that is the way it should read if it goes in at all.

Mr. CHURCHILL: I ask unanimous consent for the gentleman to accept that amendment.

Mr. GEORGE: I will accept the amendment.

The PRESIDENT: Will the member from Brookline state the words which he suggested?

Mr. WALKER: Strike out the following words in the first line: "made subject to the referendum by the", and in the next line "filing of an initiative and referendum petition", and insert after the word "Court", in the third line, the words "by initiative petition", so as to read:

> If a measure is introduced in the General Court by initiative petition, the same shall be referred, etc.

The amendment was modified as suggested by Mr. Walker.

Mr. CHURCHILL: I want to say very briefly that the gist of this measure appears to me a good one. What it demands in addition to what has been demanded before is that a committee of the Legislature handling an initiative petition shall not content itself by simply voting, so many in the majority; so many dissenters, if there are any, but that it shall be obliged to give its reasons in writing; that it shall present, if there be two views, a majority and minority report in writing. It will tend to make the committees of the Legislature give more time and attention to the measures laid before them, and that is

what ought to be, and that is the purpose of this resolution. I not only can see no ground for objecting to it, but it seems to me that we on both sides ought to be able to agree that that is desirable, and I hope that the Convention will pass this amendment because of that gain to the Legislature itself. Then in addition we shall have the gain of the presentation of those majority and minority reports both in the General Court and, under the subsequent amendment to be offered by the gentleman from Haverhill, to the public itself. All those things are gains for the information of the public and for the thorough consideration of these popularly initiated measures. I hope that the amendment will pass.

The amendment moved by Mr. George, as modified, was adopted.

Mr. Samuel W. George of Haverhill moved that the resolution (No. 359) be amended by striking out [A] lines 202 to 208, inclusive, and inserting in place thereof the following paragraph: —

The Secretary of the Commonwealth shall cause to be printed and sent to each registered voter in the Commonwealth the full text of every measure to be submitted to the people, together with a copy of the legislative committee's majority and minority reports, if there be such, with the names of the majority and minority members thereon, a statement of the votes of the General Court on the measure, and a description of the measure as it will appear on the ballot.

Mr. George: I have found within the last half dozen years or the last three years since we adopted the referendum which we voted to repeal yesterday, that one of the greatest sources of criticism was from the fact that the Legislature puts up matters to the people without giving the people any information. I think that is one of the weaknesses. I think that the people have a right to know what the Legislature knows. We all know that when a matter goes into the Legislature, under the vote which we just adopted which deals entirely with initiative matters, it must go to a committee; the committee must advertise for a hearing, they must consider all interests concerned. The committee must make their recommendation, and then after that, if the petitioners demand a referendum vote, which they have a right to do, when the measure itself goes out to the public the Secretary of the Commonwealth, under the amendment which I now move, shall include a copy of the majority report and the minority report with the action of the Legislature. And then the people will have before them the knowledge as to why the Legislature did this or why they refused to do this.

It seems to me this is in the interest of intelligent voting. And as I have said before, and I want to repeat now, that it is a cowardly act for the Legislature in considering important questions and having all this information at hand, to then put them up to the people without giving them the benefit of their knowledge in reaching their conclusions. It seems to me so plain that it is not necessary to discuss this matter much further. The English language is plain and I think the gentlemen in this Convention can understand it.

Mr. Churchill: I should like to ask the mover of the amendment if he has any objection to allowing the last word in line 205 and the words in lines 206, 207 and 208 to stand. These last are: "and shall in such manner as may be provided by law, cause to be prepared and sent to the voters information and arguments thereon." That is to say, if you strike out lines 206 to 208 inclusive, if I read the gentle-

man's amendment correctly, you then have left no provision for a pamphlet of general information. We have presented for the information of the voters only the action and report of the General Court. Does the gentleman mean to strike out the furnishing of information in the form of a pamphlet and arguments? I ask, Mr. President, that the gentleman may give me information on that point.

Mr. GEORGE: I had in mind the experience that we had in preparing a recent address in the committee on Rules and the committee on Codification, and I did not know and I do not understand now that they expect the Secretary of the Commonwealth to send out any arguments for or against any bill. I was of the opinion that what information went out would be exact facts, the reasons given why the Legislature refused to do this or why they purposely did the other thing. But, Mr. President, I realize that there is something in the motion of the gentleman from Amherst and I have not the slightest objection and would be willing to accept any amendment of that sort. We are all agreed, I think, on the purpose; there will be no disagreement about that.

Mr. CHURCHILL: I will suggest, then, that the gentleman accept, with the consent of the Convention, this amendment to his motion: That he move to amend by striking out, not lines 202 to 208, inclusive, but lines 202 to 205 to and including the word "ballot", and inserting in place thereof the words which he has moved to insert, thus leaving in the resolution the provision for sending out information to the voters.

Mr. WALKER of Brookline: I have no objection to the George amendment as amended by the gentleman from Amherst. Without the amendment of the gentleman from Amherst it would prevent a publicity pamphlet. With such amendment the General Court shall provide such publicity pamphlet; so as amended I approve of the amendment.

Mr. BENNETT of Saugus: I should like a little further information on the subject. What argument is it that is to be presented, the argument of the affirmative, the argument of the negative, both arguments or what? I should like to understand that, Mr. President. It seems to me this introduces an entirely new feature into this matter which I do not understand. I think we ought to give more time to it. Now when we had the anti-aid matter up here the other day, if this Convention decided anything it decided that it would not send out any *ex-parte* arguments. Now if I had time, Mr. President, I should like to call attention to an episode in the Massachusetts Legislature when I was a member. A gentleman of large public affairs from New York visited the Legislature. He was given a seat beside the Speaker. A very important matter was under consideration. He asked the Speaker how the House was going to vote. "Why," the Speaker said, "I don't know; the argument is not all over yet." The visitor said, "You mean to say you sit here Speaker of this House and you don't know what the House is going to do in advance?" It was something entirely new to him. And I have always been proud of that fact, that while it might be true in New York State that the Speaker knew how the House was going, it never was true in Massachusetts; that the House debated the question and it then came to a conclusion.

Now, Mr. President, there have been many times in the Legislature when great vested interests came up here with reference to a measure which they desired might be killed in committee. And the argument has been made of late, nominally in favor of expediting business by having a committee kill matter in committee. I think it is the glory of this Commonwealth that the most humble petition which comes up here is not only received, — that would not be sufficient, — but it also receives a report of a committee and action is taken by the Legislature. Now, Mr. President, I do not understand the force and scope of this argument business, — sending out the arguments. That is not what we want. What we want is that a committee should act and should report. And does it not seem as though, if you have a committee of the Legislature send out an argument to the people, you are giving them a new duty, — you are giving them the duty of instituting a propaganda of some kind, which is beyond the scope of the Legislature. I hope, Mr. President, that the amendment of the gentleman from Amherst will not prevail and that the amendment of the gentleman from Haverhill will prevail.

The amendment moved by Mr. Churchill was adopted and the amendment moved by Mr. George, as amended, was adopted.

Mr. Churchill of Amherst: The attention of the majority and minority of the committee has been called to the fact that on page 6, in lines 137 and 138, and in line 154, there are two places where the words that we were trying to get rid of on amendment, "or any part thereof," still remain by inadvertence, and it is desirable in the printing, if the measure is passed to its second reading, that it should be cleaned up as much as possible. We have stricken out the words everywhere else, and we supposed, in the hasty amendments offered, that these words had been cut out everywhere, but there are these two cases where they have not. I move therefore, Mr. President, an amendment in the hands of the Secretary, to strike out, in lines 137 and 138, the words "or any part thereof," and in line 154 the words "or part thereof."

The amendments were adopted.

Mr. George of Haverhill: I have given notice of three or four other amendments that I was about to offer, but I find great difficulty in reading the proposal with all its amendments, and I am quite anxious that we should pass this proposal to a second reading, so that when it comes in for a third reading we shall have the resolution as amended so that we can all intelligently understand it, and I venture to say that on the next stage it is going to require extraordinary intelligence to straighten out a great many of these propositions. In fact, I have voted for some things that I may have to vote to strike out. Nevertheless, I am anxious that the resolution shall come in in its new dress, and so I do not propose to offer these amendments at this stage.

Mr. Joseph Walker of Brookline moved that the resolution (No. 359) be amended by inserting before the word "initiative", in the title and in line 3, the word "popular"; and by inserting before the word "referendum", in line 7, the word "popular".

These amendments were adopted.

Mr. Josiah Quincy of Boston moved that the resolution (No. 359) be amended by striking out lines 132 to 135, inclusive (as amended), and inserting in place thereof the following: —

A referendum petition may ask for a referendum to the people upon any law enacted by the General Court which is not an emergency measure as above defined. Such petition shall first be signed by ten qualified voters of the Commonwealth, and shall then be filed with the Secretary of the Commonwealth not later than thirty days after the law which is the subject of the petition has become law and the Secretary of the Commonwealth shall provide blanks for the use of subsequent signers. He shall print at the top of each blank a description of the proposed law as it will appear on the ballot and the names and residences of the first ten signers. If such petition filed as aforesaid is completed by filing with the Secretary of the Commonwealth not later than sixty days after the law which is the subject of the petition has become law the signatures to such petition of not.

Mr. Quincy: This is merely an amendment in form and not in substance. I think it can be classed properly as a perfecting amendment. I have shown it to the representatives both of the majority and of the minority. The effect of it is simply to apply identically the same machinery, as to the filing of the petitions first signed by ten signers, to the referendum which is provided in respect to initiative petitions. As the measure stands the provisions in lines 132 to 135, inclusive, are simpler and less formal than the provisions contained in lines 83 and following in regard to initiative petitions. My amendment provides identically the same procedure in respect to a referendum petition, requires just the same formalities which are provided in respect to an initiative petition.

It has, however, this further advantage: That by compelling the filing first of a petition signed by ten signers, or proposers, and allowing 30 days for that filing, we are able to know in 30 days instead of waiting for 60 days, whether or not there is any movement on foot to suspend the operation of a law passed by the Legislature, and this seems to me to be a desirable result. The ten men certainly can find out within 30 days after a law is passed whether they desire to start a referendum petition; then the full 60 days is allowed as at present for the procuring of the requisite number of signatures. It seems to me that that will be an advantage and is unobjectionable. Otherwise the amendment simply provides identically the same machinery for a referendum petition as for an initiative petition, which seems to me proper.

The amendment was adopted.

Mr. Josiah Quincy of Boston moved that the resolution (No. 359) be amended by adding at the end of the words previously inserted in place of lines 183 to 186, inclusive, the words ", and pending the passage of such legislation all provisions of law relating to the identification and certification of signatures to petitions for the nomination of candidates for State offices or to penalties for the forgery of such signatures shall apply to the signatures to the petitions herein referred to."

Mr. Quincy: In view of the action taken yesterday, we have given the General Court authority to make certain provisions in respect to circulation, identification, and also in respect to payment for signatures; but that will not take effect until the General Court takes action. We do not know when, or indeed whether, the General Court will take action. It seems to me clearly proper that, pending action by the General Court, the same provisions which we now have upon the statute-book in relation to the identification and certification and

the forgery of signatures to nomination papers should be made applicable at once to signatures, and the certification thereof, to initiative and referendum petitions.

Mr. WILLIAM S. KINNEY of Boston: I should like to ask the gentleman from Boston (Mr. Quincy) whether or not the last part of his amendment, printed on Page 10, does not limit the power of the Legislature to the imposition of a penalty not more severe than any penalty which may now exist relating to the securing of signatures on nomination papers?

The PRESIDENT: The Chair understands that part of the amendment has been withdrawn. The only amendment which has been moved is that as far as the word "provided" on Page 10.

The amendment moved by Mr. Quincy was adopted.

Mr. Charles H. Morrill of Haverhill moved that the resolution (No. 359) be amended by striking out, in lines 114, 134 and 159, respectively, the word "sixty", and inserting in place thereof, in each instance, the word "ninety".

Mr. MORRILL: At present the resolution, as reported by the committee, and as it is now before the Convention, allows but sixty days in which to get the thousands of signatures required. Now, this is a great deal less time than that allowed in other States, and we should exercise the greatest caution that we may avoid committing the error for which the Legislature was responsible when it passed the initiative and referendum relating to commission charters for cities in this State. The first commission charter in the east was that given to Haverhill. It was enacted by the Legislature in 1908, nine years ago, and provided that a petition containing a number of names equal to 25 per cent of the votes cast for mayor in the last preceding mayoralty election should be required to refer a measure to the people, after the city government had acted upon it. In Gloucester, Lynn and Lawrence also 25 per cent was specified as the legal requirement; in Lowell the number was placed at 15 per cent. That is the lowest number demanded in any of the five commission city charters so far passed by the Legislature.

It so happens that, although the Haverhill charter has been in operation for nine years, never once has the referendum feature been invoked. There are two reasons for that, — the number of signatures is prohibitive, in the first place, and in the second place, the length of time in which to get them is too short. The Haverhill charter permits but ten days in which to secure the required 25 per cent, or from 1,200 to 1,800 names. It is apparent on the face of things that that is a physical impossibility. The Legislature which enacted that charter permitted its projectors all the time from the third of June, when it became law, until the fifteenth of August, more than 70 days, in which to secure the 1,500 signatures necessary for calling a special election to determine whether or not the charter should be adopted.

Lowell is the only city of the five having this form of charter that has used the referendum, a significant fact, showing, as it does, that an impossible time limit and an impossibly large number of signatures prevent recourse to the initiative and referendum by the people and, in effect, are equal to not passing such a law at all.

The Legislature of 1915 passed an act providing for four different forms of charter so that any city, without petitioning the Legislature,

might choose one suitable to its needs, — our nearest approach to a uniform charter. They placed the number at 12 per cent in that law and increased the time for securing signatures from ten to twenty days. Nevertheless I contend that it is impossible to secure that 12 per cent of signatures in twenty days. In Haverhill, a city of 50,000 population, with more than 9,000 voters, it would be necessary to secure actually at least 1,300 names in twenty days time, making allowance for error and guarding against accident. The same is true in the other cities. A much longer time is allowed to secure the names required to place a candidate for the House of Representatives in nomination, a matter of 10 to 30 names, or to secure the 50 names necessary to become an independent candidate for the same office. That, to my mind, is distressingly inconsistent. I hope this Convention will not repeat the inconsistency.

Speaking of what other States do in matters like this, I shall quote briefly from Bulletin No. 6, called "The Initiative and Referendum," issued by the commission named by the Governor to compile information to assist this Convention. "In the great majority of the States which have adopted the referendum," it says "this interval", — for securing signatures, — "is ninety days from the end of the legislative session in which the act was passed." In the resolution before us only sixty days from the time it becomes law is allowed. This is but one-half the time allowed in the majority of the I. and R. States. Utah prescribes sixty days, but Ohio allows ninety days from the time the Governor approves the act. Utah is the only State I can find which approaches the stringent requirement the committee is seeking to impose upon Massachusetts. I quoted from Page 25 of the Bulletin.

Now, from Page 28 I gather this:

> A dozen of the States allow ninety days after the adjournment of the Legislature by which the measure in question has been enacted. Ohio dates the ninety days from the Governor's filing of the law. Montana extends the time to six months from the end of the Legislature's session.

Now, after the conservatives have insisted upon an extremely large number of signatures, I believe they should at least permit a reasonable time in which to secure them. Maine and Maryland require but ten thousand signatures to invoke the referendum. If we are going to require more than twice as many we should allow at least sufficient time in which to secure them. The resolution, as introduced by the member from Brookline, — the measure known as the Walker resolution, — allowed ninety days after the final enactment of the law to secure signatures. I claim that that is not sufficient, but even that is a month longer than the committee has recommended. All I am seeking to accomplish is to restore the resolution to its original form. I regret that compromise by the I. and R. men, and I hope the amendment offered by me will be adopted.

Mr. CHURCHILL of Amherst: I rise at this time in preference to waiting for the five minutes given to the minority of the committee, in order to hasten debate on this matter. The problem is simply a question of how much time it is proper and reasonable to allow for holding up a law in order that it may be treated by referendum petition, and so on. So far as I know, all members of the I. and R. committee, both the majority and minority members, have been agreed from the start that if we have such a measure the sixty-day provi-

sion is sufficient. I cannot believe that the committee wishes to take a different position at the present time from that which has seemed fair and reasonable to both the majority and minority of the committee, and I trust therefore that this amendment will not be passed.

I wish to say, however, for myself, that while at this stage of the debate I think we should hold to that, I shall not personally be at all unwilling to give thorough consideration to the suggestions and arguments of the gentleman with regard to a change. I do not believe that I shall be able to agree with the gentleman; but what I mean to say is, that upon another stage of this resolution, if there is good foundation for the feeling that sixty days is not enough but that it should be ninety days, I shall take part in some discussion and consideration of that in good faith. The gentleman will not be shut out of his opportunity to offer this and have it thoroughly considered. But in view of the agreement of both sides of the committee, at the present stage in our debate I shall be personally glad, and I think the Convention would, if this might go over to the next stage of our debate.

Mr. WALKER of Brookline: I wish to say that I have a great deal of sympathy for the gentleman from Haverhill (Mr. Morrill) in making this motion, and I may have occasion to remind the gentleman from Amherst (Mr. Churchill) of the remarks which he has just made in regard to the matter at a later time. I wish to state to the Convention why it is that we set sixty days here instead of ninety days. Many States take ninety days; ninety days is none too much. The reason why we fixed upon sixty days was this: The Legislature of Massachusetts seldom sits until the first day of August. It does sit occasionally until the first day of July. In my experience there were some of the biggest measures, that were passed in the Legislature, passed after the first day of July.

Now, the provision is that there shall be sixty days for a referendum, but if thirty days do not intervene between the time the referendum petition is completed and the time for the election, then the matter is held up for another year, and goes over till a year from the next November. That means that if we set ninety days here any law passed after the first day of July might be held up not only until the next election, but until a year from the next election; whereas if we say sixty days, then only laws that are passed by the Legislature after August first can be so held up. We were very desirous of providing that there might be a referendum, but we did not want laws held up unnecessarily long. Now, that is the reason why we set sixty days instead of ninety days.

I proposed the amendment, — or Mr. Quincy did, I have forgotten which, — we proposed the amendment that the Governor, after a law had been held up on petition by private individuals, that the Governor, representing the whole Commonwealth, could say that such law ought to go into effect immediately because the public interest was involved. And yet the gentlemen of the Convention voted that down, and deprived the Governor of the right in the case of emergency, where 15,000 private individuals had held up a law of this Commonwealth, to say that the public interest was involved, and that it ought not to be held up but ought to go into effect immediately. I think that was a mistake; I think some time it ought to be corrected. If that correction is made, then there is no reason in the world why we

should not give ninety days to those who are seeking a referendum petition.

Moreover, let us remember that you have deliberately not only increased the number of signatures on a referendum petition by 50 per cent, — you have increased it from 15,000 to 22,500, — but you have put a percentage in, and that means that the number will increase as the voting population increases, and will continue to increase, so that it will be 25,000 or 30,000 names that are required; and if you get woman suffrage it will be 50,000 names, and then the provision will render the referendum unworkable.

Now, I have tried to accept every amendment that would not make this measure unworkable, and amendments that were not hostile to the principle. I regret that the gentlemen on the other side who say they are trying simply to perfect this measure will do things which obviously make this measure inoperative. I say, with the increased number of signatures, I think that the proper way to deal with this question is to give ninety days and then give the Governor the right, in case of public emergency, to declare that a law shall go into effect although it has been held up by referendum petition.

Mr. Morrill of Haverhill: I want to add that yesterday the resolution was amended by striking out the requirement for 15,000 signatures and making it read five per cent of the vote cast for Governor at the last preceding election, and that means 25,000 signatures. To secure 25,000 signatures that will pass the registrars of voters it will be necessary to secure 30,000 as a minimum; and I ask the delegates to give serious consideration to that feature. Will it be possible to secure 30,000 signatures in sixty days?

Mr. Walker: If there is a minute left, I wish to emphasize the remarks which the gentleman has just made, and also to add that we must remember that we have now forbidden any paid canvassers; they must be all voluntary; and now, if the measure stands as it is, these names must be collected in eight different counties, which in itself is an impossible proposition; for all these reasons the resolution has been amended so that now it is not practicable. I wish to emphasize the gentleman's remarks.

Mr. Morrill: I wish to say that I agree thoroughly with all the remarks of the ex-Speaker of the House (Mr. Walker). I wish to emphasize the fact that in those other States the ninety days follow the end of the legislative session. In this case it is sixty days from the enactment of the bill. Ninety days after the session would be five or six months after the enactment of a bill in some cases. When you specify that the names must be secured within sixty days after an act is signed you are imposing a condition so stringent that it makes the measure ridiculous.

Mr. George of Haverhill: I voted yesterday in favor of the amendment which changed the number of signatures to a petition, but I agree that I had in mind then that the total number of signatures was too many, and I propose at some time to vote to reduce it. I voted for it because I believe it should be on a percentage basis. Furthermore, I believe that the percentage basis should be based on the total number of registered voters as turned in to the Secretary of the Commonwealth's office the year previous. Then we know just what we have got every year. It does not make any difference whether it is

three per cent on 600,000, or five per cent on 450,000. I hope that plan will not be amended at this time, but that we can dispose of this amendment so that we can get the amended resolution before us as soon as possible.

Mr. MONTAGUE of Boston: The amendment offered by the gentleman from Haverhill (Mr. Morrill) and the suggestion made by the gentleman from Brookline whose name the proposal bears, carry out one feature which it seems to me we must be pretty well aware of by this time, and that is this: That the idea is not that there is going to be a large number of people all over the Commonwealth who are going to desire the referendum, but that one small group of eight or ten men are the ones who are going to make objection, if it is a referendum, or bring a petition, if it is the initiative.

Mr. WALKER: The gentleman must know that in the case of all great reforms, even the greatest reform, a few men must push it along or it never gets anywhere.

Mr. MONTAGUE: That is just what this Legislature every year is up against, it is just what this Convention in committee was up against, — the desire of this man and that man to impress upon the whole Commonwealth his idea of a reform.

Mr. BROWN of Brockton: I should like to ask this gentleman if there ever would have been a Revolution in this country if there had not been a Tom Paine.

Mr. MONTAGUE: That is a hard question to answer; I leave the gentleman to answer it at some future time, if he desires.

But, Mr. President, as I understand this initiative and referendum business, it rests on the desire of a large number of the voters of this Commonwealth either to secure some right which they think has been denied, or to protest against something which they think has been enacted. Now, if it is only one man, even a man of the standing of the gentleman from Brookline (Mr. Walker), who thinks that some reform should be enacted, that something has been done that ought not to be done, why should all the people of the Commonwealth be specially interested? That is the idea. There are a thousand men in this Commonwealth who think it should be reformed in one way or another. But if he is the only man why should the Commonwealth be put to all this machinery and trouble, in order to give that one man a chance to impress upon the people of the Commonwealth, if possible, after the expenditure of a lot of money and trouble, and tell them of some wrong that they never really suffered, or never would have thought they suffered unless he had fooled them into believing they had suffered it?

Mr. CHURCHILL of Amherst: I rather regret the intensity of the debate on the motion of the gentleman from Haverhill (Mr. Morrill). I am not going to attempt to reply to the remarks of the gentleman from Brookline (Mr. Walker) as to the obtuseness of our side in offering amendments. I am just going to say that I believe that this Convention would like at this time to bring this measure to a second reading; that I think both sides are anxious for that, provided our rights are preserved. I want to say in all sincerity for myself, and I believe I can speak for our side in general, that, if this matter goes to the next reading, we in good faith shall consider the proposal of the gentleman from Haverhill and the argument used by the leader of the

majority of the committee. I recognize that there is an offer of reasonableness in the question of reconsidering the length of time in relation to the number of signatures required for a petition. I do not believe, however, that at this present minute we can wisely thresh that out. I hope that the gentleman from Haverhill, and that the Convention, will be willing to accept that situation, and handle this matter when we are in a position to give it thorough and sincere consideration. I cannot guarantee any results of that consideration, but the sincere and honest consideration of this proposal I can guarantee, if it is allowed to go over to the next stage; and I hope that it will go over and that we may proceed to the second reading of the resolution.

Mr. UNDERHILL of Somerville: The only way that could be brought about would be by moving the previous question at this time; then the question would come on ordering the resolution to a second reading. If that is agreeable to the gentlemen in the third division, I shall make that motion, and I do make the motion.

There being no objection, Mr. Morrill withdrew his pending amendment and the resolution, as amended, was ordered to a second reading without division.

The resolution as amended and ordered to a second reading was as follows (see Document No. 367):

RESOLUTION

To provide for establishing the Popular Initiative and Referendum.

DEFINITION.

Legislative power shall continue to be vested in the General Court, subject to the provisions of the Constitution; but the people reserve to themselves the popular initiative, which is the power of a certain number of voters to submit laws and amendments to the Constitution to the people for enactment, adoption or rejection at the polls; and the popular referendum, which is the power of a certain number of voters to submit laws, enacted by the General Court, to the people for their ratification or rejection at the polls. The power of initiative and referendum shall be exercised as hereinafter provided.

AMENDMENTS TO THE CONSTITUTION.

If a proposal for a specific amendment of the Constitution is introduced into the General Court by initiative petition signed by not less than twenty-five thousand qualified voters in the manner herein provided, or by recommendation of the Governor by message, or if in case of a proposal for amendment otherwise introduced consideration thereof in joint session is called for by vote of either House, such proposal shall, not later than the second Wednesday in June, be laid before a joint session of the two Houses, at which the President of the Senate shall preside; and if the two Houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all amendments pending, the Governor shall call such joint session or continuance thereof. Final legislative action upon any amendment shall be taken only by call of the yeas and nays, which shall be entered upon the journals of the two Houses; and an unfavorable vote at any legislative stage preceding final action shall be verified by call of

the yeas and nays, to be entered in like manner. An amendment introduced by initiative petition shall be voted upon in the form in which it was introduced, *provided* that such amendment may be amended in any manner not inconsistent with its general purpose by vote of three-quarters of the members voting thereon in joint session. An amendment introduced by recommendation of the Governor shall be voted upon either in the form in which it was originally recommended or in such amended form as the Governor may by message approve or substitute.

An amendment introduced by initiative petition or by the Governor shall be designated an initiative amendment, and an amendment otherwise introduced shall be designated a legislative amendment. At such joint session, if a legislative amendment shall be agreed to by a majority of all the members elected to the General Court, or if an initiative amendment shall receive the affirmative votes of not less than one-quarter of all the members elected to the General Court, in either case such amendment shall be deemed to be referred to the next General Court.

If any legislative amendment shall again be agreed to by a majority of all the members elected to the next General Court, voting in a joint session of the two Houses to be held as aforesaid, it shall then be submitted by the General Court to the people. If any initiative amendment shall again receive in the next General Court the affirmative votes of at least one-quarter of all the members elected, such fact shall be certified by the clerk of such Joint Convention to the Secretary of the Commonwealth and he shall submit the amendment to the people at the next State election. Any amendment so submitted shall be adopted and become part of the Constitution if approved in the case of a legislative amendment by a majority of the voters voting thereon, or if approved in the case of an initiative amendment by voters at least equal in number to thirty per cent of the voters voting at such election and also by a majority of the voters voting on such amendment.

Article IX of the amendments to the Constitution is hereby annulled.

Provided, however, that no amendment annulling, abrogating or repealing the provisions of the Declaration of Rights shall be the subject of an initiative or executive petition.

LAWS.

If an initiative petition for a law is introduced into the General Court in the manner hereinafter provided, signed by not less than four per cent of the qualified voters of the Commonwealth, calculated upon the whole number of votes cast for Governor at the last preceding election, a vote shall be taken by yeas and nays in both branches of such General Court before the first Wednesday of June upon the enactment of such law in the form in which it stands in such initiative petition, and if the General Court into which it is introduced fails to enact such law before the first Wednesday of June; and if such initiative petition is completed by filing with the Secretary of the Commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than one per cent of such qualified voters, calculated upon the whole number of votes cast for Governor at the last preceding election, in addition to

those signing such initiative petition, obtained after the first Wednesday of June aforesaid, then the Secretary of the Commonwealth shall submit such proposed law to the people at the next State election; and if it shall be approved by a majority of the qualified voters voting thereon, *provided* that, for any law proposed under this section, the affirmative vote shall not be less than thirty per cent of the highest number of votes cast at such State election, such proposed law shall become law, and shall take effect in thirty days after such State election or at such time after such election as may be provided in such law: *provided*, that the limitations of the legislative power of the General Court in the Constitution shall extend to the legislative power of the people as exercised hereunder.

The same measure, either in form or essential substance, shall not be made the subject of an initiative petition (either affirmatively or negatively) oftener than once in three years. The Attorney-General shall certify before an initiative petition is filed that the measure petitioned for is not, either in form or in essential substance, either affirmatively or negatively, the same as any measure which has been submitted to the people within three years of such date.

Conflicting and Alternative Measures.

The General Court may by resolve passed by yea and nay vote, either by the two Houses sitting separately, or in the case of a constitutional amendment by a majority of those present and voting thereon in Joint Convention held as herein provided, provide for the submission to the people of a substitute for any measure introduced by initiative petition which has been or may be passed or qualified for submission to the people as herein provided, the same to be designated on the ballot as the legislative substitute for such an initiative measure and to be grouped with the same as an alternative therefor: *provided*, that any such legislative substitute for a constitutional amendment shall be passed as above provided in each of the years in which such constitutional amendment is passed.

In case in any judicial proceeding any provisions of two or more constitutional amendments, or of two or more laws, approved by the people at the same election, are held to be in conflict with each other, then the provisions contained in the constitutional amendment, or in the law, as the case may be, which received the largest number of affirmative votes at such election shall be deemed to govern.

Initiative Petition.

An initiative petition shall set forth the full text of the proposed constitutional amendment or law, hereinafter designated as the measure, which is the subject of the petition. Such petition shall first be signed by ten qualified voters of the Commonwealth and shall then be filed with the Secretary of the Commonwealth, who shall provide blanks for the use of subsequent signers: *provided*, that no initiative petition shall be so filed until it has been submitted to the Attorney-General and the constitutional amendment or law which is the subject of the petition has been certified by the Attorney-General to be in proper form for submission to the people. The Secretary of the Commonwealth shall print at the top of

each blank a description of the proposed measure as it will appear on the ballot and the names and residences of the first ten signers. A filing fee not exceeding one hundred dollars, which shall be returned if and when the petition is completed, may be required by law. All initiative petitions, with the first ten signatures attached, shall be filed with the Secretary of the Commonwealth not earlier than the first Wednesday of the September before the assembling of the General Court into which it is to be introduced, and the remainder of the required signatures shall be filed not later than the first Wednesday of the following December.

If an initiative petition, signed by the required number of qualified voters, has been filed with the Secretary of the Commonwealth as aforesaid, he shall, upon the assembling of the General Court, transmit such petition to the clerk of the House of Representatives, and the proposed measure which is the subject of such petition shall then be deemed to be introduced into that General Court and pending in the House of Representatives.

If the General Court fails to pass a proposed law before the first Wednesday of June, the first ten signers of the initiative petition therefor, or a majority of them, shall have the right, subject to certification by the Attorney-General filed as hereinafter provided, to amend the measure which is the subject of such petition. An amendment so made shall not invalidate any signature attached to the petition. If the measure so amended, signed by such first ten signers or a majority of them, is filed with the Secretary of the Commonwealth before the first Wednesday of the following July, together with a certificate signed by the Attorney-General to the effect that the amendment made by such proposers is in his opinion perfecting in its nature and does not materially change the substance of the measure, then the Secretary of the Commonwealth shall submit the measure to the people in its amended form; in case of failure to file such amended measure, together with such certificate, he shall submit the measure in its original form.

Excluded Matters.

No law, the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the Commonwealth, and no law relating to religion, religious practices or religious institutions, and no law making a specific appropriation of money from the treasury, of the Commonwealth shall be the subject of such initiative petition.

No law or amendment to the Constitution relating to the appointment, qualification, tenure, or removal or compensation of judges; or relating to the recall of judges or judicial decisions; or relating to the powers, creation or abolition of courts, shall be the subject of such initiative petition.

No proposed law shall contain unrelated subjects.

Referendum.

No law passed by the General Court shall take effect earlier than sixty days after it has become a law, excepting laws declared to be emergency measures and laws which may not be made the subject of a referendum petition, as hereinafter provided.

Emergency Measures.

A law declared to be an emergency measure shall contain a preamble setting forth the facts constituting the emergency, and shall contain the statement that such law is necessary for the immediate preservation of the public peace, health, safety or convenience. A separate vote shall be taken on the preamble of such law by a call of the yeas and nays, which shall be recorded, and unless the preamble is adopted by two-thirds of the Senators and two-thirds of the members of the House of Representatives present and voting thereon, the law shall not be an emergency measure: *provided*, that no grant of any franchise or amendment thereof, or renewal or extension thereof for more than one year, shall be declared to be an emergency measure.

Submission upon Referendum.

A referendum petition may ask for a referendum to the people upon any law enacted by the General Court which is not an emergency measure as above defined. Such petition shall first be signed by ten qualified voters of the Commonwealth, and shall then be filed with the Secretary of the Commonwealth not later than thirty days after the law which is the subject of the petition has become law and the Secretary of the Commonwealth shall provide blanks for the use of subsequent signers. He shall print at the top of each blank a description of the proposed law as it will appear on the ballot and the names and residences of the first ten signers. If such petition filed as aforesaid is completed by filing with the Secretary of the Commonwealth not later than sixty days after the law which is the subject of the petition has become law the signatures to such petition of not less than five per cent of such qualified voters of the Commonwealth, calculated upon the whole number of votes cast for Governor at the last preceding election, asking for a referendum on such law, and requesting that the operation of such law be suspended, then the operation of such law shall be suspended, and the Secretary of the Commonwealth shall submit such law to the people at the next State election, if thirty days intervene between the date when such petition is filed with the Secretary of the Commonwealth and the date for holding such State election; if thirty days do not so intervene then such law shall be submitted to the people at the next following State election, unless in the meantime such law shall have been repealed; and if such law shall be approved by a majority of the qualified voters voting thereon, such law shall, subject to the provisions of the Constitution, take effect in thirty days after such election, or at such time after such election as may be provided in such law; if not so approved such law shall be null and void: *provided*, that no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the highest number of votes cast at such State election.

In case of an emergency measure or of a law which takes effect because the referendum petition does not contain a request for suspension, as aforesaid, if, within sixty days after its final enactment, a petition is filed with the Secretary of the Commonwealth, signed by not less than ten thousand qualified voters of the Commonwealth, protesting against such law and asking for a referendum thereon, then the Secretary of the Common-

wealth shall submit such law to the people at the next State election, if thirty days intervene between the date when such petition is filed with the Secretary of the Commonwealth and the date for holding such State election; if thirty days do not so intervene then such law shall be submitted to the people at the next following State election, unless in the meantime such law shall have been repealed; and if such law shall not be approved by a majority of the qualified voters voting thereon, such law shall, at the expiration of thirty days after such election, be thereby repealed.

Excluded Matters.

No law, appropriating money for the current or ordinary expenses of the Commonwealth or for any of its departments, boards, commissions or institutions, and no law relating to religion, religious practices or religious institutions, and no law, the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the Commonwealth, shall be the subject of such referendum petition.

General Provisions.

If a measure is introduced in the General Court by initiative petition, the same shall be referred to a committee thereof, and the petitioner and all parties in interest shall be duly heard, and the measure shall be duly considered and reported upon to the General Court with the committee's recommendations in writing. The majority and minority reports, if there be such, shall be signed by the majority and minority members of said committee, respectively, and the final action of the General Court upon any such measure shall be taken by a yea and nay vote.

Provision for the proper identification and certification of signatures to the petitions hereinbefore referred to, and for penalties for the circulation of petitions for hire or reward, for the signing or refusing to sign any such petition for money or other valuable consideration and for the forgery of signatures thereto shall be made by law, and pending the passage of such legislation all provisions of law relating to the identification and certification of signatures to petitions for the nomination of candidates for State offices or to penalties for the forgery of such signatures shall apply to the signatures to the petitions herein referred to.

Not more than one-eighth of the certified signatures on any petition shall be those of registered voters of any one county.

Each proposed amendment to the Constitution, and each law submitted to the people, shall be described on the ballots by a description to be determined by the Attorney-General, subject to such provision as may be made by law, and the Secretary of the Commonwealth shall give each question a number and cause such question to be printed on the ballot in accordance with the following provisions: —

In the case of an amendment to the Constitution: Shall an amendment to the Constitution (here insert description, and state, in distinctive type, whether approved or disapproved by the General Court, and by what vote thereon) be approved?

YES.	
NO.	

In the case of a law: Shall a law (here insert description, and state, in distinctive type, whether approved or disapproved by the General Court, and by what vote thereon) be approved?

YES.	
NO.	

The Secretary of the Commonwealth shall cause to be printed and sent to each registered voter in the Commonwealth the full text of every measure to be submitted to the people, together with a copy of the legislative committee's majority and minority reports, if there be such, with the names of the majority and minority members thereon, a statement of the votes of the General Court on the measure, and a description of the measure as it will appear on the ballot; and shall, in such manner as may be provided by law, cause to be prepared and sent to the voters information and arguments thereon.

The veto power of the Governor shall not extend to measures approved by the people.

Subject to the veto power of the Governor and to the right of referendum by petition as herein provided, the General Court may amend or repeal a law approved by the people.

This article of amendment to the Constitution is self-executing but legislation not inconsistent with anything herein contained may be enacted to facilitate the operation of its provisions.

Article XLII of the amendments of the Constitution is hereby repealed.

The resolution (No. 367) was read a second time Wednesday, November 7, and discussion of amendments was resumed on that day.

Mr. Robert Luce of Waltham moved that the resolution (No. 367) be amended by inserting after line 111 the following paragraph:

A proposed law shall delegate to an agency therein specified the power of enacting provisions to effect the purpose of such law.

Mr. LUCE of Waltham: This draft is a revision of one previously laid before the Convention, and in that revision, or for the purposes of that revision, much time and thought have been expended. It was a very difficult thing to phrase; and if it does not now meet its purpose, it is not, I assure the Convention, from any lack of industry and application in the attempt to carry out what I think will be the will of a majority of the Convention, if sentiments expressed to me are a good omen. I find that there are in the Convention gentlemen who take my point of view, and who are quite willing, indeed under some circumstances would be glad, to see the people vote on questions of forming policies. These gentlemen are not averse to having people say that they want old age pensions, but they do believe that it is unwise to attempt in this particular manner to get the details of the policy carried out.

In support of their view I would summon the most noteworthy witness this country now affords, the President of the United States. To his achievements as a statesman are to be added previous achievements of no small measure as a student of the fundamentals of political science. I will lay before you the conclusion he voiced in the year 1908, as the best argument that can be presented. Woodrow Wilson then said, in his book on "Constitutional Government":

A government must have organs; it cannot act inorganically, by masses. It must have a law-making body; it can no more make law through its voters than it can make law through its newspapers.

It is well known that Mr. Wilson does not look askance at the initiative and referendum. What he here must have had in mind was the unscientific basis of a system which leaves the details of execution to the preparation of a plebiscite. And so it is urged here that if this measure is to go before the people it shall be in such form that they will have the opportunity to say whether they want old age pensions, or a State University, or anything else that may be brought before them in the way provided, but that the task of furnishing the technique of execution, the task of drafting the bill, the task of providing the administrative details, shall be turned over to some body framed for that particular kind of work. This amendment has been so drawn that the law may turn over these details to the Legislature, if it sees fit, or to the Governor and Council, if that is preferred, to a body specified in the bill, — a commission, for example, to be appointed by the Governor or to be named in the bill. In short, it turns over to those whom the people want to frame the law the details of framing the law.

Mr. Ross of New Bedford: May I ask the gentleman when the extract from President Wilson was printed?

Mr. Luce: In the year 1908, "Constitutional Government in the United States."

Mr. Ross: I want to say that I do not know about that particular book in 1908. That is nine years ago. I do know, however, that the President of the United States has said that he has changed his attitude on some very important economic questions, and has entirely reversed his attitude. I was wondering if this was one of them.

Mr. Luce: I very much doubt if this was a reversal of attitude or if there has been a reversal of attitude, since I understand that the President believes in the initiative and referendum. This statement does not refer to that. This statement, in my judgment, refers, or at least might very well refer, to the drawing of the technical details of law, not the forming of the policy of the law. It may be very true that this scholar and statesman believes now, as always, in that policy.

Mr. Walsh of Fitchburg: I do not think I understand the scope of the proposed amendment. To illustrate by a practical case, — you propose that the people shall decide whether or not they want to adopt the policy, for illustration, of old age pensions, and that in deciding for that policy, they can name the tribunal, either the Legislature or any department or commission of the State, or the Governor, or various individuals, whom they want to draft the form of law providing for old age pensions? Am I correct in that assumption?

Mr. Luce: The gentleman is correct.

Mr. Walsh: So that upon the ballot this question would be presented: Are you in favor of old age pensions, and the adoption of a law to provide for old age pensions in this Commonwealth, and will you intrust the drafting of that law to Governor Bates, ex-Governor Walsh and ex-Lieutenant-Governor Luce, — yes or no?

Mr. Luce: Yes; the gentleman states the situation precisely. It is wholly within the power of the people, as before, to decide who they shall have to do the work; nothing is taken away from their power. It is simply required that they shall designate who shall furnish the technical detail.

Mr. WALSH: To go a step further, do I understand that after this commission named on the ballot has drafted a measure, and they file it with the Secretary of the Commonwealth, that it then becomes a law without any further act by the Governor or Legislature?

Mr. LUCE: It would become a law if the draft so designated, but may I express what I hope would follow? In the case of old age pensions I should hope that the initiators of the petition would draft their law so that the Governor would appoint a commission, of whom our good friend in the front row of this division (Mr. Trefry) would be one, and the Insurance Commissioner another, and various experts to work with them, and that the law would then provide that it should not take effect until approved by the Governor. That would be my desire; but of course the petitioners would frame it as they chose, and the people could approve as they chose; but to my mind the sensible way would be to have the commission and experts draft the law, subject to the future approval of somebody in whom the people had confidence.

Mr. SAWYER of Ware: I should like to ask the gentleman who fathers the proposition why it would not be well to change "shall" to "may"? If it should be "shall" would it not compel the enacting provision to be made by some agent designated, whereas there might be some of the propositions before the people that the people were interested in, and they would not wish to be compelled to do that?

Mr. LUCE: The gentleman raises a point to which I have given many anxious moments; in fact I might say, I trust without immodesty, that as many hours were put into thinking over such possibilities as there are lines, and possibly as there are words, in the measure, because it is of the utmost importance. No proposition connected with the subject is more far-reaching in its consequences than this. I made two or three drafts putting it within the power of the Attorney-General to decide whether there should or should not be this subsequent preparation of detail. I thought of leaving it to the Governor. But after the maturest deliberation and anxious study I came to the conclusion that this was perhaps the only way to reach what I think we all want to reach, — a transfer of making the details to experts; and I thought we could leave it to the petitioners to institute perhaps a practice, which finally would become an institution, under which we should recognize the custom of having details prepared by men whom the people trust and yet who are specially trained for the work. Of course the purpose of it was to avoid putting before the people such measures as I called to the attention of the Convention the other day, a ten-page act, the "blue sky" law, so called, of California. The purpose of it is to secure that this thing shall not be done in that uncertain way, but that it shall be done by those whom the people choose to perfect the work as known experts, subject to such control as the people may designate.

I have forgotten to say that if after all there should be some failure to carry out the popular will, the measure is still open to the referendum and the work can be done over again, if by some remote chance there should have been a worse bill drawn than might have been secured.

Mr. SAWYER: The gentleman has not yet pointed out clearly to me the objection to changing "shall" to "may".

Mr. LUCE: The objection is that unless it is made "shall" it will be undoubtedly the case that some petitioners will present bills of eight, ten or fifteen pages long, and there is no way to control it. Unless you say "shall", you cannot prevent gentlemen who desire to submit old age pensions with some particular form of machinery from drafting the bill themselves and putting it up to the people under circumstances where the people, being anxious to secure the main object of the bill, will swallow obnoxious details. I think that the gentleman from Ware will appreciate the present situation in that very particular. There is in this State a man exceedingly earnest about this matter of old age pensions, and it is sure, if the matter goes before the people, his particular device will be the one to be presented, not the one that has been studied by men carefully selected, judicious and impartial. It is to prevent putting before the people fundamental propositions harnessed up with obnoxious details that this is proposed.

Mr. CREAMER of Lynn: This amendment reads:

> A proposed law shall delegate to an agency therein specified the power of enacting provisions.

Would the gentleman consent to amend that by saying "the power and duty of enacting provisions to effect the purpose of such law"?

Mr. LUCE: I have not the slightest objection to what the gentleman intends to accomplish, but I think it is superfluous. I will explain why that phraseology is used. It is because in the technical language of political science this always is discussed as a delegation of power. The courts are full of decisions using the phrase "delegation of power"; and I cannot conceive that if the people have ordered a commission to draft an old age pension law there would be any need of inserting these other words. It seems to me they are superfluous.

Mr. CREAMER: Is it not a possibility that, if this amendment were adopted, a Legislature or a commission to whom was delegated this power might refuse to use the power? What would be the remedy of the delegate from Waltham in a case of that kind?

Mr. LUCE: The remedy is the only one that democracy ever has, — to cut off the heads of those who refuse to do its business.

Mr. CREAMER: I submit to the attention of this Convention that that is a duty which it is very hard to get performed under our present method of appointment and election. I should like to have the delegate from Waltham accept the proposition or suggestion that I make, and have his amendment read "the power and duty".

Mr. LUCE: I do not feel that to be necessary; and the phraseology has been so carefully considered that unless the gentleman urges it I shall hope that at least until the next stage he will allow a little reflection. Mr. President, I do not like to change these things, which may have the most important significance, on the spur of the moment. My mind does not work quickly enough, I suppose. May I ask that the gentleman delay until the next reading and allow me to talk it over with him?

Mr. CREAMER: I feel that I must urge that change now if the amendment is to have my support. It does not seem to me that that is anything that requires very much consideration. As we all must know, delegated powers sometimes are not used for the purpose, and

if we are going to delegate powers of this kind I think we should see that those powers are properly used.

Mr. LUCE: I will transfer the boot to the other leg, and ask that the consideration before the next stage be made on his form of the amendment rather than on mine. For the sake of having his approval, sir, I will accept with gratitude his suggestion.

The PRESIDENT: The Chair does not understand what suggestion has been accepted.

Mr. LUCE: The suggestion is the insertion of the words "and duty" after the word "power".

Mr. CREAMER: Do I understand that the gentleman from Waltham accepts that now?

The PRESIDENT: The Chair so understands.

Mr. KILBON of Springfield: To recur to the point raised by the gentleman from Ware (Mr. Sawyer) to put in the word "may", or suggesting that the word "may" be put in instead of the word "shall", I should like to ask the gentleman from Waltham (Mr. Luce) if he does not consider that the objection he raised to the form proposed, that it would not exclude laws burdened with technical detail, might not be cured by the arrangement that exists in the previous amendment as to alternative measures, so that in case there was an overburdened law presented there might be put up, as an alternative to it at the same election, a law delegating, after the fashion suggested in the amendment, the drafting of a law which might more perfectly meet the needs of the Commonwealth? If that is borne in mind, would it not open the way to deliverance from the other necessity of ordering people to carry out or make provision for a law which does not need anybody to make provisions for it?

Mr. LUCE: My objection to that suggestion is that I do not think the right of designation ought to be taken away from the petitioners. I think they ought to have the right to say who shall draw their law, and not the Legislature or anybody else; that the petitioners ought to have the right to ask that the Governor shall appoint a commission to draft an old age pension law, that they ought to have the right of way, rather than have the Legislature put up the suggestion that the Legislature itself draw the law.

Mr. REIDY of Boston: In the opening days of this Convention I was led to believe from what was said by a number of delegates that the Legislature of Massachusetts was the best law-making body in the United States of America; and even the very strong friends of the I. and R., notably a former speaker of the House, said that the only purpose of the I. and R. was to have a gun behind the door when occasionally the Legislature would not respond to popular will.

I have been long enough acquainted with the distinguished delegate from Waltham (Mr. Luce) to know that he would relegate the Massachusetts House of Representatives to a position so unimportant in our frame of government that no self-respecting man would care to be a member of it.

Mr. CHURCHILL of Amherst: I am anxious to give as fair an opportunity as possible to as many amendments as possible. This amendment has been well discussed upon both sides; I do not therefore desire to use any time.

Mr. WALKER of Brookline: I would simply say that I do not consider the matter in its present form as practicable or workable. Further than that I have nothing to say.

The amendment moved by Mr. Luce, as modified, was rejected, by a call of the yeas and nays, by a vote of 84 to 169.

Mr. Robert Luce of Waltham moved that the resolution (No. 367) be amended by inserting after line 120 the following paragraph:

If of the measures introduced into the General Court by initiative petition in any one year, more than five fail of enactment by the General Court, and the petitions relating to more than five are duly completed, the five [A] that received the larger votes of the Senate and House of Representatives combined, and no more, shall be submitted to the people at the next State election. The measures not so submitted shall be deemed to be introduced into the next session of the General Court and pending in the House of Representatives.

Mr. LUCE: The reception just given to an amendment of mine would not be exceedingly propitious were it not for the fact that various intimations coming to me lead me to think it possible to reframe the amendment in a form that may be more acceptable on the next stage, and in my desire to comply with the will of the majority it shall be my attempt so to do.

This particular amendment now before you there is no occasion to discuss at length. Already the arguments have been presented. The chief argument, you will remember, is in this California ballot, where 48 measures were submitted to the people at one time. If the Convention desires to guard against that sort of misfortune, the amendment just read to you will secure the result. It would be idle repetition, I think, to go over the ground again, and therefore I shall leave it, without discussion, to the vote of the Convention.

Mr. BENNETT of Saugus: Do I understand the amendment is the second one printed on page 5, "if of the measures introduced into the General Court by initiative petition in any one year, more than five fail of enactment"? Is that the amendment?

The PRESIDING OFFICER: The Chair understands the amendment is the second amendment under the name of Mr. Luce of Waltham on page 5.

Mr. BENNETT: Where I am confused is this: I understood the gentleman to be discussing the "blue sky" law proposition in California. Was that what the gentleman just referred to?

Mr. LUCE: The amendment upon which the Convention has just voted was aimed at preventing the laying before the people of a long measure. This amendment is aimed at avoiding numerous measures. The other one referred to a single measure, trying to prevent the submission of a ten-page law full of technical details. This one tries to avoid the submission of 48 different laws at the same time.

Mr. BENNETT: I voted with the gentleman (Mr. Luce) on the previous amendment, because I think I see the value in intrusting the execution of these matters to the various commissions. I think there was value in that. Now, I do not understand, in regard to this, just where it has reference to that California proposition. When the gentleman from Amherst (Mr. Churchill) brought up that proposition the other day, and referred to it, if he showed anything he showed that a man may live in the rural districts, and be a professor in a fresh water college, and know nothing at all about business propositions.

Now, Mr. President, let me tell you that this is a serious proposition, if it has the bearing which I seem to think. A few years ago the papers used to be loaded with advertising of what were called get-rich-quickly schemes, schemes for the sale of wild-cat securities, and it used to be said that you could not frame legislation to prevent that sort of thing without preventing the legitimate sale of proper stocks and bonds and the promotion of proper companies. It used to be said that that could not be done.

Now, Mr. President, it was done; and at the present time you do not see a one-hundredth part of the advertising in the promotion of wild-cat schemes that you used to see ten years ago. It has been stopped. It was said it could not be stopped in Massachusetts, it could not be stopped anywhere else, because a law could not be framed. Now, it was framed in California. It was the blue sky law, so called, which the gentleman referred to here as though it was a piece of complex legislation, when it was the only possible practical legislation. It was necessary. You could not frame a law saying that improper and profitless securities should not be sold. There was no possible way in which you could frame a law as specific as the gentleman from Waltham proposed, that is, a specific proposition. In order to frame that law, which to-day is a model for all States of the United States, it was necessary to specify the methods of the promotion of the company, how the stocks and bonds were paid in, how the advertising was done, the nature of the advertising, what brokers might and might not do, how the law was to be enforced, and especially how the post-office would treat the proposition. Now, I think that makes it clear that if you should try to have a single specific proposition for a law of that kind you would make the law ineffective. Therefore they framed the kind of law that was necessary, with all of these details.

Mr. CHURCHILL of Amherst: I presume that the gentleman who has just spoken is perfectly correct when he intimates that some professors, at least, in fresh water colleges, are unable to recognize a business proposition when they see it. Some of them certainly have turned down business propositions in favor of things that could not be called business propositions. But I think, Mr. President, generally speaking, when I am in my right mind, I can recognize whether I am offering remarks that are germane to the proposition before the House. [Laughter and applause.]

The amendment before us is an amendment which in essence declares that only five initiative measures shall go upon the ballot at any one time. I have expressed myself already upon this amendment at another time, and I speak at this moment rather than later in order to hasten debate. I simply wish to indicate, as before, that the minority of this committee are in favor of keeping the number upon the ballot so low that we may reasonably expect the people to be able to take an interest in and understand to a large degree the questions upon which they are voting.

Mr. BROWN of Brockton: Would it not simplify these matters if the Legislature was given power to act, rather than cementing our opinions into the Constitution? Would it not be better to have it flexible, which it would be if the Legislature should take care of it?

Mr. CHURCHILL: I would reply to the question, generally, that we are passing a measure here which is full of detail. I entirely agree

with the earlier remarks of the gentleman from Brockton (Mr. Brown), that we might very well confine our action here to a simple amendment establishing the initiative and referendum, and leave to the Legislature the details to put that amendment into effect; but so long as we are proceeding upon an amendment which is full of details, if those details are to remain, it seems to me we should take care of them as well.

Mr. Sanford Bates of Boston moved that the amendment moved by Mr. Luce be amended by striking out, at "A", the words "that received the larger votes of the Senate and House of Representatives combined", and inserting in place thereof the words "on the petitions accompanying which appear the larger number of signatures of registered voters".

Mr. Bates: It seems to me that the consistent way to decide which of the five amendments ought to go on the ballot is to take those in which there is the greatest public interest, and not take those which the Legislature, by their vote, may happen to decide that they personally want to go on the ballot. Therefore I have endeavored to carry out that idea in this amendment. If the amendment retains its present form, assuming that there are fifteen amendments presented to the Legislature, the Legislature by their vote may decide which of those shall go on the ballot. My amendment is designed to let those go on the ballot in which the people have expressed the greatest public interest. And, in addition, this will make it an incentive to those who are collecting signatures to collect as many as they can, in order that they may establish that those particular propositions shall have priority by reason of the greater public interest.

So, apart from the merits of the question in any way, if this amendment is going to be adopted, it seems to me my amendment is the consistent one. It is consistent with the theory of the initiative and referendum and it takes away from the Legislature the right to substitute measures in which they may be interested and leave out measures in which the public may have a real genuine interest.

I want to call attention to another feature of this amendment which must appear from a careful reading, and that is that, if there are any legislative substitutes provided, they may go on the ballot together with the five that are allowed under this amendment. The reading of the Luce amendment says: "of measures which have been introduced under initiative petition". Of course legislative substitutes do not fall within that class, so it may be possible to have ten measures on the ballot even though this amendment was adopted, — the five which have been introduced, and five more substitutes which the Legislature may propose.

I therefore hope that this amendment, which makes it consistent, may be adopted.

Mr. Coleman of Boston: It has been shown innumerable times in this Convention that the number of measures upon the ballot, even when it is in the extreme, in the very first year of the operation of the initiative and referendum, does not bring any disaster at all. It has been shown in the case of California, where there were 47 or 48 measures upon the ballot, that the people handled even an extreme situation like that with just as great intelligence as the Legislature handles 2,000 or 3,000 measures in the course of an annual session.

Mr. Luce: I should like to ask the gentleman from Boston if he

read in this morning's Herald a news item reporting that the cost in California of each one of these things was $7,500?

Mr. COLEMAN: I did not read that item in the Herald, but before I drew any conclusion from such a statement I should want to know what was purchased for that amount. It makes all the difference in the world what you get for what you pay; then you can measure whether your expense is wise or foolish.

I should like to say not only has it been shown repeatedly that where the measures are numerous, as they are apt to be in the first year, the people nevertheless handle them intelligently, but also I want to say that there is a most serious objection to this amendment, in that it makes it possible to have amendments proposed deliberately for the purpose of complicating and confusing the situation. It opens the way for deliberate chicanery, to have measures proposed that are picayune, immaterial, and of very little account, and yet which might get a large majority of the Legislature in their favor because they were so immaterial, and they would be introduced in such numbers as to preclude the possibility of bringing before the people the more serious and weighty matters that the people were waiting to have considered. It seems to me from that point of view alone this amendment ought to be defeated. It opens the way in a certain sense for log-rolling with amendments, and we have all seen the evil of that sort of thing. I realize full well the gentleman who proposes this amendment has no such thought as that in mind, but I ask you in all fairness if the amendment is not open to that objection? Would it not be quite possible, for men who had designs to accomplish, to introduce five or ten fake amendments, that is, amendments that were plausible in their purport, mere changes in phraseology or dealing with some insignificant point, which would receive a large vote in the Legislature and thereby preclude the consideration of some weightier matter upon which the Legislature naturally might be sharply divided? I hope the measure will not pass.

Mr. GEORGE of Haverhill: I should like very much, Mr. President, to vote with the gentleman from Waltham (Mr. Luce), but it seems to me that this Convention already has created a preferred class of delegates this morning. They have been permitted to offer amendments and permitted to discuss them, and after a certain hour, why, we are going to turn everybody else down and proceed to give this proposal a third reading.

Now, it is proposed in this law here to create a preferred class of petitioners. If the initiative is a good thing, why not open it to all? What makes the difference whether there are five questions on the ballot or ten questions on the ballot? I might say that it would be a great deal better if we had only one; but the tenth question, which the petitioners to the extent of 20,000 citizens more or less have proposed, has and should have the same standing as the question of the party who filed the first petition. Who is to say that this set of petitioners, because they happen to spend more money and get in first, are to have the right of way, and some other class of people are going to be ruled out?

I do not believe in creating preferred classes. I know there are some delegates in this Convention who feel that because for various reasons they hold seats here, they belong to a preferred class; but I

do not understand, Mr. President, that because a man has spent from $800 to $1,000 for a seat in this Convention he has any more advantages than another man who has not spent anything. I believe we are here on a level, all of us, and we all have equal rights here. And it is not a question of whether we decide this thing to-morrow at eleven o'clock in the forenoon; because I venture to say, Mr. Chairman, that if this question is not acted upon until next Wednesday morning it will come back from the committee on Phraseology just as quick as though it reaches them Saturday of this week.

Mr. LUMMUS of Lynn: The minority of the committee think the matter has been sufficiently presented, and desire to say nothing more.

Mr. QUINCY of Boston: This matter was fully and thoroughly debated when it was up before. Identically the same amendment was moved on October 30, and after discussion 138 members voted against it and 109 members voted for it, — a substantial majority against it. The only argument I want to dwell upon is this: It is my honest conviction that the practical working of this amendment would be to defeat the operation of the initiative and referendum amendment, because it would put it in the power of special interests, by occupying these five limited places upon the ballot, — perhaps with measures to which no one has much objection and which therefore would command a large vote in the Legislature, — to put off the contentious or threatening measures. I really think that this strikes at the root of the initiative and referendum idea. While there are dangers of over-loading the ballot, as the gentleman from Waltham points out, it is my firm conviction that this remedy, or any other remedy, is far worse than the evil of a multiplicity of measures getting on the ballot in any one year.

The amendment moved by Mr. Bates was rejected and the amendment moved by Mr. Luce was rejected, by a vote of 76 to 100.

Mr. Robert Luce of Waltham moved that the resolution (No. 367) be amended by inserting after line 143 the following paragraph:

If proposed laws contain conflicting provisions, in the opinion of the Attorney-General, only that law which receives the largest vote of the Senate and House of Representatives combined shall be submitted to the voters. If it is rejected, the law that received the second largest number of votes shall be put on the ballot at the succeeding election, and so on until one has been accepted or all have been rejected: *provided, however*, that the initiative petition for each law shall be completed as herein provided.

Mr. LUCE: This amendment is designed to meet an evil the existence of which nobody denies. All sides are agreed that the evil ought to be met. The only difference of opinion has been as to how it should be met or whether it could be met without bringing more harm than it cured. The proposition before you is of itself very simple, — that where two measures conflict the one which gets the more support in the Legislature shall have the first choice and that the two shall go before the people tandem, one each year, instead of going before the people together. I would particularly call the attention of the Convention to the fact that I am about to explain to it the nature of a choice it will make between two methods of meeting an evil, one urged by the gentleman from Boston in the second division (Mr. Quincy) and the other by myself. The first paragraph of the sugges-

tion of the gentleman from Boston is, I think, acceptable generally, but his second paragraph suggests a different way of accomplishing precisely the same result that I have sought in my amendment. And therefore, without repeating previous arguments, for the Convention is familiar with them, all I shall seek to do now is to make it perfectly clear what his method may be and what mine may be. His desire is, — if I may anticipate his explanation, — that both the conflicting measures shall go on the ballot at the same time, and then in the succeeding year that the measure to which the people have given the larger vote shall have the right of way. It is very difficult without a blackboard to explain the complications of this situation, and even then I might be unable to do it; but in a rough way I may explain our difference is this: He says: Let the people decide which is the more important thing and take a year longer to do it. My suggestion is: Let the Legislature decide. Mind you, neither one of us wants conflicting propositions on the ballot. I am not speaking now of alternatives, — that is a proposition in which he is particularly interested and which he may explain; but I am speaking of conflicting measures. For example, there may be two measures changing the form of government, one saying the Lieutenant-Governor shall preside over the Senate, and the other keeping him still independent of the Senate. That kind of conflict might occur accidentally and render nugatory the work of many men interested in reform. Neither of us wants it possible to adopt at the same time two inconsistent propositions. He says: Take the one for which the people give the larger vote, submit it in the following year, therefore add a year to the course of securing these reforms. In a way his proposition is more conservative than mine, and yet it has seemed to me the wiser course is to let the Legislature decide which matter shall have the right of way. I trust this explanation will do the gentleman from Boston justice and at the same time make clear to the Convention the point where we very amicably differ, — simply on a problem of expediency.

Mr. Josiah Quincy of Boston moved that the amendment moved by Mr. Luce be amended by substituting, for the words proposed to be inserted, the following paragraphs:

The provisions of a constitutional amendment approved at any election shall apply to any law approved at the same election in the same manner as if such amendment had been in force prior to such election.

The General Court by resolve passed as aforesaid may provide for grouping and designating upon the ballot either as conflicting measures or as alternative measures, only one of which is to be adopted, any two or more proposed constitutional amendments, or any two or more proposed laws, which have been or may be passed or qualified for submission to the people at any one election, under the provisions of this amendment or otherwise: *provided*, that a proposed constitutional amendment and a proposed law shall not in any case be so grouped, and that the ballot shall afford an opportunity to the voter to vote for each of the measures or for only one of the measures, as may be provided in said resolve, or against each of the measures so grouped as conflicting or as alternatives. In case more than one of the measures so grouped shall receive the vote required for its approval as herein provided, only that one of the same for which the largest affirmative vote was cast shall be deemed to be approved.

Mr. Quincy: The gentleman from Waltham has stated very fairly, and as clearly as is possible in the very limited time allowed to him, the difference between his method of dealing with the difficulty of conflicting measures coming on the ballot and being adopted, and the

method which I now propose. I want to call attention to the fact that my amendment omits the third paragraph printed on page 6 and is confined to the first two paragraphs. I have omitted the third paragraph, or the second which appears on page 6, because that involves some contentious questions, as to which I find that the views of some gentlemen whom I would be glad to have support the proposition and my own views and those of the gentleman from Waltham cannot at present be reconciled. I think the Convention will realize that this is an important subject to deal with. We are liable to have conflicting measures; we may have alternative measures. We have provided already in the measure as it stands for the right of the Legislature to submit alternatives, but that is a very limited provision. It does not deal with the question of a conflict between two initiated measures. There may be two constitutional amendments which are in conflict with each other, each of them initiated by the people; there may be two proposed initiated laws in conflict with each other. I believe the way to deal with that possibility, or indeed probability, is this: To give full and free discretion to the Legislature to group measures as alternatives, only one of which can be adopted, if it sees fit to do so. And I want to call attention to the fact and to emphasize it that my substitute does not require the Legislature to do anything; there is nothing mandatory about it. I want to call attention to the further fact that unless we provide for some authority in the Legislature it will have no power to deal with conflicting measures, to provide that the people shall take one and not the other.

The gentleman from Waltham proposes a method which it seems to me is open to grave objections, in that the largest vote in the Legislature is to govern, and the measures which receive the smaller votes go over. Now I think we shall get more expeditious action, on the whole, under my method of leaving the Legislature the full discretion to group certain measures and to say to the people: "These measures conflict," or "These measures ought to be regarded as alternatives; take whichever you want." If only one is adopted, that ends the question; if there are not enough votes for either measure, then the advocates of both have got to start all over again. I want to emphasize my opinion that the safe way to deal with it is to leave this whole matter of conflicts to the Legislature, with full discretionary power, which my substitute does.

Mr. Washburn of Middleborough: The matter of conflicting and alternative measures is one of the most troublesome with which the framers of a resolution of this character are called upon to deal. If it is left entirely untouched, — and that is the way it was left as the measure was reported originally, — great confusion may result and the courts may be called upon to settle much litigation. I think the substitute amendment proposed by the gentleman from Boston (Mr. Quincy) goes far to eliminate this danger. My attention was drawn originally to these amendments as they appeared under the name of the gentleman from Boston because I saw that, if we adopted a provision of this kind, as reported from the committee, the voters would be enabled to vote for each one of the measures put on the ballot, no matter how conflicting they might be, even although only one of them could become law. In other words, in an indirect way, we would be

providing for a method of preferential voting, which it seemed to me ought to be avoided.

The amendment proposed by the gentleman from Boston in its final form leaves the matter to the discretion of the Legislature, where I think it ought to be left. In most cases I believe it would be very unwise for the voters to vote for, say, five or six conflicting measures, when they should be limited to a choice of one, and yet occasions possibly may arise when preferential voting should be permitted. This is precisely what the proposal of the gentleman from Boston accomplishes. As he says, it leaves the matter wholly within the discretion of the Legislature, and I trust that his substitute amendment will prevail.

Mr. CHURCHILL of Amherst: I should like to ask the gentleman from Boston (Mr. Quincy) whether he considers that his amendment does leave it to the discretion of the Legislature to act if it chooses, in accordance with the mode in the amendment offered by the gentleman from Waltham? In other words, whether the Legislature, under his form of amendment, may decide to put one measure on the ballot, and then, if that is not accepted, put the second one upon the ballot the next year, as provided by the delegate from Waltham? Is that left to the discretion of the Legislature?

Mr. QUINCY: I do not understand that it would be so left to the discretion of the Legislature. Under the amendment that I propose the Legislature could simply say: "Here are measures to be submitted to the people at the next election, two or three of which we regard as conflicting; we shall make the people choose between them this year." I do not understand that the Legislature, under my amendment, could go so far as the gentleman from Waltham suggests with his amendment.

Mr. CHURCHILL: With regard to these two amendments I can offer only a personal opinion. The amendment offered by the gentleman from Boston without the last paragraph, which he has withdrawn, commends itself to me, and I believe it does to the minority of the committee, if we prefer the method of putting two conflicting measures or two alternative measures upon the ballot at the same time. It is quite possible, however, that individual members may prefer the other method suggested by the amendment of the gentleman from Waltham. That is the sole point, really, at issue between the two amendments, and upon this point, Mr. President, I believe that every man should have an opportunity to vote for that method which he prefers. Those who believe in the one method or in the other would vote for that. The two amendments are simply two ways of accomplishing the same general result, and I do not see any reason for controversy between the two sides on either of these measures.

Mr. WALKER of Brookline: I should say that the gentleman from Boston has done many things to help the committee on Initiative and Referendum to perfect this resolution from the standpoint of those who are in favor of the initiative and referendum. As has been said, this is one of the most difficult subjects connected with the matter and the committee on Initiative and Referendum decided to do nothing about it. We decided to allow the conflicts to take place and then let the Legislature deal with the subject after the people had registered their decision. Nevertheless, I believe that the gentleman from Boston has

done a good piece of work, a most difficult piece of work in devising this method of dealing with conflicting measures. I do not believe that it is wise to allow the Legislature, when any one chooses to put in a conflicting measure, to decide that one of these conflicting measures shall not be submitted to the people at all. It seems to me the proper method is the method suggested by the gentleman from Boston, namely, that they shall be grouped as conflicting measures, and let the people take either they see fit. I think that is the proper, natural thing to do, and therefore I approve of the amendment as suggested by the gentleman from Boston.

Mr. Luce: As the gentleman from Brookline has quite unintentionally stated my amendment wrongly, I would state that the amendment is not to the effect that he has represented in saying the people are not to have an opportunity to vote upon the second of the alternative propositions.

Mr. Walker: I should like to say, Mr. President, that I did not intend to mislead the Convention. I think I did. I said that the Legislature could withhold a measure. They could not, of course, ultimately withhold it under his amendment; they could withhold only for one year. But the people would have to decide that year on the first proposition, and they might not know that if they voted it down they would have a chance the following year to vote on the other. His proposition is that the first measure goes to the people the first year and the second measure goes to them the second year if they vote down the first one. It seems to me that is not a wise or intelligible way to put the matter up to the people. I personally much prefer the substitute of the gentleman from Boston.

The substitute amendment offered by Mr. Quincy was adopted, by a vote of 106 to 64, and the amendment of Mr. Luce, as thus amended, was adopted.

Mr. Robert Luce of Waltham moved that the resolution (No. 367) be amended by inserting after the word "Commonwealth", in line 198, the words ", or to an individual, association, or corporation".

Mr. Luce: The situation reminds me of the cowboy. His presence at a dance aroused an altercation, as a result of which he was propelled down a flight of stairs, where a group of anxious friends helped him hurriedly to go down the second flight of stairs, where still another group of men helped him across the sidewalk. When he picked himself up, rubbing his shins, he said: "I begin to think they didn't want me." After having three amendments summarily dispatched in one way or the other, I have my doubts.

Nevertheless, more seriously, Mr. President, I shall take this opportunity to remember the practice of Cato, who ended every speech by saying "*delenda est Carthago*," — Carthage must be destroyed. I should like to begin every speech here by saying "Special legislation must be stopped." This is the amendment to prevent special legislation by the initiative. This Convention may reject this amendment. I remember, sir, how year after year the primary election reform was denounced in this Commonwealth, but presently it came to be accepted and now is commended. Possibly this appeal must go forth, ten, fifteen or twenty years, but still I shall say "*delenda est Carthago*," — Special legislation must be stopped.

The Convention with this amendment may say whether it approves

the view of the gentleman from Lynn in the third division (Mr. Creamer), who desires an opportunity to use the initiative against the Bay State Street Railway, against the Boston Elevated Railway, against the New York, New Haven and Hartford Railroad or any other corporation. I hear the answer to my words coming up the hill. "Corporation interests," it will be said, "throttle the Convention," — "interests, selfish corporate interests!" And yet I say, sir, that justice, not to the corporation, but justice to the people, justice to their law-making organ, the Legislature, justice to the new law-making body you propose to create by your initiative, all require that you shall take out of it the opportunity to oppress, to persecute, the opportunity to deprive some men of their gains in order that other men may profit, the opportunity to indulge prejudice, to indulge rancor, bitterness, or hatred. It will be but repetition if I remind you that the ills which have filled this hall of legislation have come from the attempt to secure special privilege. Here you not only open the door for special privilege, but you open the door also for special rancor, special persecution, special blackmail, if you permit the initiative and referendum to be used in order that some one man, some one individual, one partnership, one association or one corporation, may either profit unduly or may suffer unduly at the hands of those temporarily incensed by some condition they do not understand. I appeal to members of the Convention to consider what might have happened last Tuesday had there been on the ballot some question aimed at a person or corporation at the moment imagined to be injuring the people. Suppose there had been on the ballot some measure aimed at a particular storage warehouse, at a particular purveyor of provisions. Suppose at this particular juncture there were to be put on the ballot a law forbidding the Public Service Commission in this Commonwealth to let the Bay State Street Railway charge a six cent fare. Suppose some demagogue seeking to inject himself into office by playing upon the passions of the people promised to get this or that matter accomplished by the referendum. Do you not know what would happen?

Mr. Brown of Brockton: Would such a law, coming up in that way, be any the less liable or more liable to be passed upon as unconstitutional than one passed by the Legislature? What I am trying to get at is: Would it have more effect if it were passed by the people than if passed by the Legislature, so far as the constitutionality of taking property without rendering an equivalent is concerned?

Mr. Luce: I do not so understand, as the resolution is now drafted.

Mr. Harriman of New Bedford: If this amendment was adopted would it prohibit the question going onto the ballot: Shall the State own and control its street railway system? or questions of like character?

Mr. Luce: Nothing like it, sir. That is not contemplated. What is contemplated is that no special legislation shall be enacted, but everything shall go by general law.

Mr. Harriman: I should like to inquire further if the gentleman means that in that case the State could not vote to take over one particular branch or line in one section of the State, and before it could be done they should have to take over the entire street railway system.

Mr. Luce: That is the purpose of the prohibitions against special

legislation that have been put in the Constitution of nearly every State in this land, because it has been found that venality, graft, corruption, everything which disgraces legislation, follows from the permission to pass that type of law.

Mr. SHERBURNE of West Springfield: Before the introduction of the initiative and referendum in California, the State of California was absolutely under the domination of the Southern Pacific Railroad. I should like to ask the gentleman whether, if this amendment of his had been incorporated in the California initiative, it would have been possible to have freed the State of California from the domination of that railroad.

Mr. LUCE: It would have been completely possible by general law, the only type of law that ought to be passed in such a contingency.

Mr. BENNETT of Saugus: My question is somewhat like the one of the last speaker. We used to have only one telegraph company doing business in Massachusetts, — the Western Union, — and the business was throttled, the general business of the State was throttled, by the Western Union. Fortunately we have two just at present. But take the telephone service. We practically have only one telephone company for all the business. It seems to me that this could just as well be left to the Legislature, and that we ought not to put in the fundamental law of the State that regulation of telephones. Now the public policy of the Commonwealth of Massachusetts seems to be in favor of a single telephone company. I think people generally are opposed to two telephone services, and generally they are in favor of monopoly, but they are in favor of monopoly with regulation, and with the most careful regulation. It does seem to me that this is a very dangerous proposition, and that if the initiative and referendum is going to be good for anything and is going to do what I believe it is, a great service, it is too bad to load it down with any such proposition as this at the present time.

Mr. HARRIMAN: I realize that in this matter there is considerable merit in so far as special legislation has disgraced not only this State perhaps but every other State, but I feel that, as the last speaker has said, it is better out than in, for as I construe the words of the gentleman from Waltham, if it was found advisable for this State to take over the Boston and Maine or the Boston, Revere Beach and Lynn it could not do it unless it took all the steam railroads in this Commonwealth, because there would be other steam railroads in this Commonwealth. If, as I believe, the time will come, and it must come, when the State will control its railroads, which are the very arteries of our government, let me say to you that I believe that it cannot come all at once. I believe that there may come a time in this Commonwealth when the State will extend gradually the public ownership of public utilities, and I believe for that reason, and that reason alone, this amendment should not be adopted, although there is some merit in it in so far as special legislation has wrought a great evil. I believe that with the initiative and referendum there will be an incentive to do away with special legislation; and even if special legislation occurs let me say to you that we must remember always that the welfare of our entire Commonwealth is more paramount than the welfare of any single corporation or class of people who may be in our community,

and whose business and whose dealings may not be for the welfare of the whole State in its entirety.

Mr. CREAMER of Lynn: This is an amendment which was beaten on the other stage, Mr. President. I take exceptions to the argument of the delegate from Waltham (Mr. Luce) that this amendment is intended to stop special legislation. I assert instead that the intention of this amendment is to reserve special legislation as a privilege of the Legislature. It is an amendment intended to preserve log-rolling as a privilege of the Legislature. It is an amendment which exhibits a complete distrust of the people and an abnormal trust of the Legislature. We all of us know the scandals that have grown up and that have existed in this State in the last ten or fifteen years in the handling of such individual corporations as the Boston and Maine and the New York, New Haven and Hartford Railroad. I believe it is healthy that the people should be enabled to initiate legislation in regard to those corporations. I believe that if the people have that power there will be taken away from the Legislature some of the power along those lines that they have abused in the past.

Mr. CHURCHILL: I wish it were possible for me and possible for anybody, Mr. President, in five minutes to deal adequately with this amendment. I can only confess I have not the time to point out all the fallacies in the argument which has been offered by the other side, and ask every member of this Convention really to apply his mind to the effect of this amendment. The argument of my friend on my right is an absolute fallacy. Why? He says that it reserves to the Legislature the right to pass special legislation with regard to individual associations and corporations, but he does not note the fact that this is an amendment to the initiative and not to the referendum. Evil action upon the part of the Legislature, manifest corruption on the part of the Legislature in dealing with individuals, associations and corporations, can be controlled, — and controlled by the people. What is it that this amendment does give? Does it prevent us from meeting the evils done, let us say, by the Hampden Railroad, the New York, New Haven and Hartford Railroad, the Boston and Maine Railroad? Does it prevent the Legislature from meeting those evils, or the people from meeting those evils? No. The one thing that it does accomplish is this: That the people shall not hit an evil except as an evil in itself, that an individual or a body that signs a petition shall not be able to attack an individual as an individual, a corporation as a corporation. The people are left able under this arrangement to say that no railroad or no association or no person shall do so and so, and to place restrictions upon all individuals, upon all associations, upon all corporations, along such lines as are permitted by the Constitution. Let us assume that we have five railroads, four of which have conducted themselves properly, while another railroad has conducted itself improperly. This amendment does not prevent the evil accomplished by the one railroad; it simply says: "You shall not say that the Hampden Railroad shall not do" so and so, or the New York, New Haven and Hartford Railroad, or that such an individual shall not do so and so; it says that you must pass a law which hits that evil wherever it appears, if it does appear anywhere. It says that no individual, no corporation, shall do so and so; and if there is only one that is doing it, it is hit and the evil is prevented.

The argument as presented by the gentleman from Waltham (Mr. Luce), if carefully analyzed, if it was listened to, ought to carry conviction to every mind. If it were true that you could hit these individuals under this amendment the arguments of my friends on the other side would be correct. It is not true. You can hit every one of them; but what this amendment says is that you shall not hit them as individuals, shall not hit only one of them. If you wish to prohibit a certain course of action on the part of an individual, association or corporation, you must prohibit it for all individuals who do that evil. Now, that is advisable. The only thing that is left, Mr. President, that really is to be considered, in my opinion, is the question as to whether it is advisable to give this right, with all the possibilities of misuse, to impulsive and, if you like, partizan petitioners, in order that we may reserve to the people the right to order government ownership of a single corporation. That cannot be done under this amendment. That is the only makeweight against the argument which I have offered, Mr. President, it seems to me, and it seems to me, under present conditions, clearly insufficient.

Mr. WALKER of Brookline: I wish to say that this is a very important question, and I want to begin by saying that the gentleman from Waltham (Mr. Luce) and myself are not so far apart. I believe with him that one of the great evils in legislation is special legislation, and I will go along with him, in so far as it is practicable to do so, to withdraw from the Legislature the right to pass special laws. We have just defeated another amendment of his in which I have a good deal of sympathy, namely, an amendment providing power shall be given to delegate the making of provisions for the administrative details of legislation to an administrative commission or body. I would be glad to coöperate with him in working out that problem in regard to the Legislature. And so we are not in disagreement on the desirability of this thing in general. Now let me point out to him that when we do work out that problem for the Legislature, and restrict the power of the Legislature to pass special laws, we at the same time under this resolution restrict the people from doing the same thing, because we say that the limitations of the legislative power of the General Court in the Constitution shall extend to the legislative power as exercised hereunder. Therefore at any time that the gentleman from Waltham (Mr. Luce) can work out this problem properly, and can apply it to the Legislature, it will be thereby applied to the people.

The gentleman from Amherst (Mr. Churchill) has tried to draw a distinction that he has attempted to draw before, between the initiative and the referendum, a distinction that is not in my judgment sound, for this reason: It is true that whenever the Legislature passes a law we can stop it by referendum petition, but we can stop it only if we succeed in getting such a petition signed. That law will go into operation in sixty days after the Legislature acts, as the measure now stands, not sixty days after it adjourns. If the Legislature passes a law in March the referendum must go into operation within sixty days, and if we should happen by any chance not to get the necessary number of signatures to put the referendum in operation, then the people would have no power whatever in the matter; but if they have the initiative they still have the power, because although they have missed out on the referendum they can then initiate legislation to repeal what

the Legislature has done. Now, I do not believe it is wise that we should permit the Legislature to give franchises to which the people may object, to give special privileges to corporations to which the people may object, to do other things in regard to special legislation for special corporations, and then find that the people are bound hand and foot by the action of their Legislature because they have missed the chance to get it presented to them on the referendum.

Moreover, the gentleman from Amherst (Mr. Churchill) knows perfectly well that he has approved, and that this body following his advice has approved, amendments to this measure which make, in my judgment at least, the referendum inoperative. We have increased the number of signatures from 15,000 to 22,500. New York has just passed woman suffrage. If Massachusetts passes woman suffrage it means 45,000 signatures to be obtained in thirty days, without paid canvassers, and only one-eighth in any one county.

The amendment moved by Mr. Luce was rejected, by a call of the yeas and nays, by a vote of 125 to 132.

A motion to reconsider the rejection of this amendment was debated Friday, November 9.

Mr. Bennett of Saugus: I agree to a certain extent, — to a considerable extent, — with the gentleman from Waltham in regard to special legislation, but I think my friend is becoming obsessed on that subject. These great public service corporations, which are natural monopolies, cannot be treated by general legislation. Take the Southern Pacific Railroad in California. How could that have been treated by general legislation? There might have been a general law to prevent another railroad from building up from Los Angeles, or there might have been a general law to prevent a railroad from building down from the Oregon line, or there might have been a general law to prevent interference with terminal facilities in Oakland or in San Francisco, or there might have been a general law to prevent the maintenance of a lobby, but the Southern Pacific Railroad had to be treated as the Southern Pacific Railroad. Now, coming back into our own State here, take the Boston and Maine Railroad, take the Bay State Street Railway Company, take the New York, New Haven and Hartford Railroad. You cannot generalize in regard to those matters; you have got to treat them specially. How did J. Pierpont Morgan get his prestige and his great wealth? By reorganizations, — by the West Shore reorganization, the Southern Railway reorganization, the Philadelphia and Reading reorganization, and so on; and the man whom we first knew as the second partner in Drexel, Morgan & Co. became the great J. Pierpont Morgan by reorganizations.

Now, Mr. President, a great number of banking houses are waiting in Boston to-day for the privilege of reorganizing the Boston and Maine Railroad, the New York, New Haven and Hartford Railroad, the Bay State Street Railway, the Boston Elevated Railway, and so on, and they are clearly within their rights. That is what a banker is for. The same as a doctor repairs a broken leg, the lawyer a broken will, the minister a broken spirit, so the banker repairs a broken corporation. Now, if we can pass this amendment, this initiative and referendum, free from such amendments as this, I think we can foresee a most wonderful unanimity of action between the people —

The PRESIDENT: The time of the member has expired.

Mr. LUCE of Waltham: I am grateful to my friend from Saugus (Mr. Bennett) for his quite unexpected motion, which gives me the opportunity to lay before the Convention the result of some reflections since yesterday upon the subject of "What hit me." I put in four amendments yesterday, and had the unusual experience of being informed that on every one of the four propositions I was right, and then having the Convention vote down three of the propositions, and substitute an imperfect measure for the fourth. I have been wondering whether my consolation at being assured by the leaders of both sides that I was right repays me for the loss of the vote. I recall an experience when I was a lad traveling alone on a boat, where I had occasion to call for the help of a colored porter. When he had attended to the curtains of my berth I very gratefully thanked him for his courtesy; and he said to me, in a phrase I ever since have remembered: "Dat's all right, boss, but it don't pay for de drinks." [Laughter.] And I am wondering whether I might not say about the approval given to my propositions yesterday: "That's all right, but it doesn't prevent bad legislation."

The great majority of the members of this Convention know and say that special legislation is dangerous; they know and say that it ought to be suppressed; and what is the reason why you are urged not to suppress some of it if you get a chance? You are told, forsooth, that you ought not to suppress it because it is permitted in the Legislature. It is said: "Change your Constitution regarding the Legislature and then come back and change this," as much as to say: "Thou shalt not steal, but so long as thy neighbor steals it is all right." I ask, gentlemen, if that is good logic. Shall we not be told when we reach the legislative branch: "You refused to take away from the people the power to do injustice; until you take it away from the people you ought not to take it away from the Legislature."

Mr. MONTAGUE of Boston: What interests me most in these matters is the practical application they may have. The gentleman from Saugus (Mr. Bennett) has told us what he understands was the practical application of the initiative in California with reference to the Southern Pacific Railroad, and he asks us to draw the inference that by the initiative some matter might be passed in this State which would rehabilitate the Boston and Maine or the New York, New Haven and Hartford or any of the other railroads that are in a bad way.

Now, Mr. President, if that can be done by the initiative, I say God speed the work. But I have not heard pointed out by the gentleman from Saugus or anybody else any measure that actually was brought in California against the Southern Pacific Railroad which did anything at all, either good, bad or indifferent. I do not think it is fair for men to get up and talk about what the initiative did in California to the Southern Pacific Railroad when so far there is not the slightest bit of evidence presented to this Convention that the initiative in California did anything, good, bad or indifferent, against the Southern Pacific Railroad. Now let us have the evidence, if there is any. The gentleman from Saugus did not refer to any act or part of an act or anything of the kind that the people did in California by the initiative, and I have not heard of any, and I have not been able to find any; and it strikes me that it could not be logical that by the initiative petition

the people of this Commonwealth could do what the Legislature and the experts, and those that know something about it, have been trying to do for some years and have not yet arrived at a solution. Perhaps they will. I hope so. But if they do it will be by men who know their business, and not citizens, like most of us, who do not know anything about the details of railroad management or the railroad situation.

That is the way it looks to me; and unless evidence is brought forward that by the initiative the people of California have done something either to or for the Southern Pacific Railroad I do not see where there is any evidence that the people could do it by the initiative here.

Mr. HALE of Boston: The Convention yesterday voted against this amendment. I have not yet heard a new argument given in favor of it, and I hope the Convention will not simply change its mind over night. I yield the rest of my time to the gentleman from Saugus (Mr. Bennett).

Mr. BENNETT of Saugus: The point I desired to make was that the legislation respecting the Southern Pacific Railroad must have been special legislation. I think that point is positive. It must have been. Whether by initiative or not, it must have been special legislation. Now, this amendment proposes that no special legislation shall be the subject of such initiative petition, — no special legislation.

By a vote of 124 to 148, on a call of the yeas and nays, the Convention refused to reconsider the vote by which it had rejected the amendment moved by Mr. Luce.

Mr. Joseph Walker of Brookline moved that the resolution (No. 367) be amended by striking out lines 75 to 78, inclusive.

Mr. GARLAND of Somerville: I trust this motion made by the gentleman from Brookline (Mr. Walker) will prevail.

If the initiative and referendum amendment is passed by this Convention in such form as to exclude from its operation the Declaration of Rights in the Constitution of Massachusetts it will be of little value, because it will take away from the people the right so to amend their Constitution as to make effective much social welfare legislation that under our State Constitution would now be declared unconstitutional. In the very limited time at my disposal I want to call attention to one important and particular danger.

No one questions the desirability of a Workmen's Compensation Act. Nor can it be denied that a really serviceable and useful compensation act must be compulsory. The Workmen's Compensation Act which we have in Massachusetts is not compulsory, but elective. "It is wholly optional with the employer, as it is with the employee, whether he comes under the provisions of the act or stays outside and stands on his legal rights." (Madden's case, 222 Mass. 487, 498.)

While it is true that the Supreme Judicial Court of Massachusetts has not decided the precise question, it is clear from the Opinion of the Justices (209 Mass. 607), and from the language of opinions since delivered, that, if the Massachusetts act had been compulsory, it would have been declared unconstitutional. Our court has drawn a distinction between the compulsory character of the New York act considered by the New York Court of Appeals in Ives *v.* South Buffalo Railroad Company (201 N. Y. 271), and the optional character of the Massachusetts act. Our court has said (Opinion of the Justices, 209

Mass. 607, 612): "Taking into account the non-compulsory character of the proposed act we see nothing in any of these provisions which is not 'in conformity with' the fourteenth amendment of the Federal Constitution, or which infringes upon any provision of our own Constitution in regard to the taking of property 'without due process of law.'"

It has been argued in the Convention by delegate Lummus of Lynn that the exclusion of the Declaration of Rights from the operation of the initiative and referendum is not harmful, because if social welfare legislation is declared void for repugnancy to constitutional guarantees, it will be so declared not because of the constitutional provisions of the Declaration of Rights, but rather because of the inhibition of the fourteenth amendment of the Federal Constitution against the taking of property without due process of law. That argument is unsound.

The first compulsory Compensation Act of New York (1910) was declared unconstitutional by the New York Court of Appeals on the ground that it violated the clauses in the Federal and State Constitutions which prohibit taking of property without due process of law. So far as the decision rests upon the fourteenth amendment of the Federal Constitution it is wrong, because the Supreme Court of the United States, in passing upon the constitutionality of a State statute raising a question identical in principle with that raised by the Workmen's Compensation Act, declared the State statute in question did not violate the fourteenth amendment of the Federal Constitution prohibiting the taking of property without due process of law, — Noble State Bank *v.* Haskell (219 U. S. 104) and Assaria State Bank *v.* Dolley (219 U. S. 121). The New York Court of Appeals in fact recognized that its decision in the Ives case was inconsistent with the decisions of the United States Supreme Court in the Noble State Bank and Assaria cases, as is shown by the following quotation from the New York case: "As to the cases of Noble State Bank *v.* Haskell and Assaria State Bank *v.* Dolley, we have only to say that if they go so far as to hold that any law, whatever its effect, may be upheld because by the 'prevailing morality' or the 'strong, preponderant opinion' it is deemed 'to be greatly and immediately necessary to the public welfare', we cannot recognize them as controlling of our construction of our own Constitution."

After the decision in the Ives case the Constitution of New York was amended so as to provide for the passage of a compulsory compensation act. The constitutionality of this second act (1914) was considered by the New York Court of Appeals in the case of Jensen *v.* Southern Pacific Co. (215 N. Y. 514) and was upheld as a valid exercise of the police power. The conclusion is that the compulsory character of the act did not render it unconstitutional under the fourteenth amendment of the Federal Constitution, but did render it unconstitutional under the provisions of the New York State Constitution before amendment, and all that was required in New York to procure a valid compulsory compensation act was an amendment of the State Constitution.

It is clear, therefore, that a valid compulsory compensation act cannot be passed in Massachusetts without an amendment of our State Constitution. The part of our State Constitution which gives to the Legislature the power to pass laws "for the good and welfare of this Commonwealth" is contained in Chapter I, Section I, Article IV.

This power is limited, however, by these words: "So as the same (laws) be not repugnant or contrary to this Constitution." If a compulsory Workmen's Compensation Act should be held invalid as repugnant or contrary to our State Constitution, the repugnancy would arise under Articles I and X of the Declaration of Rights. This is clear from an examination of the Opinion of the Justices (209 Mass. 607) and all the decisions of our Supreme Judicial Court bearing on the constitutionality of social welfare legislation.

What is true of the Workmen's Compensation Act is true also of other social welfare legislation. If, therefore, the people of Massachusetts are to have the right to pass a compulsory Workmen's Compensation Act, they must do it by the initiative and referendum, and they cannot do it by the initiative and referendum if it is passed in such form as to exclude from its operation the Bill of Rights. I hope, therefore, that the motion of the gentleman from Brookline will prevail, and that this initiative and referendum will be so amended that it will include within the scope of its operation the Declaration of Rights as well as other parts of the Constitution.

Mr. MERRIAM of Framingham: I surely hope that the amendment adopted upon the second reading of the resolution excluding the Declaration of Rights from the scope of any I. and R. petition will be approved and be not stricken from the measure as it stands at this time. The delegate who has just spoken (Mr. Garland) says that unless the Declaration of Rights is made subject to amendments by the I. and R. process we shall not have a serviceable or strong I. and R. resolution. Unless the Declaration of Rights is taken from the scope of any I. and R. petition, we shall fail to have a strong Declaration of Rights; and when it comes to a choice, Mr. President, between a Declaration of Rights of undoubted merit, strong as history has made it strong, and an untried I. and R. resolution, I believe the people of the Commonwealth will prefer a strong Declaration of Rights. Think, for example, of what the Declaration of Rights means. Here it is, as defined by our courts:

> The Declaration of Rights . . . was intended as a general declaration of the great, fixed, and fundamental principles of reason and right which underlie our system of government and are the safeguards of liberty. It declares general principles which are to guide all departments of government in their respective duties of making, executing, and interpreting laws.

That declaration should be preserved, it should be made difficult to amend it. The present method of amendment is still open. If there is any inherent difficulty, or if there is any permanent change of public sentiment in the matter of the Declaration of Rights, it still is possible under our present Constitution to seek an amendment. But those rights are of such a nature, they concern so keenly the personal, individual liberties of our people, that the method of amendment should not be made easier than it is at present. I certainly hope this feature of the resolution as it stands now will be retained, and be there in case any measure of the kind is submitted by this Constitutional Convention to the people; otherwise, these great individual privileges, these great individual liberties, may be subject to the transient will of an apparent majority.

Mr. WHIPPLE of Brookline: I desire to speak for a moment with reference to the first amendment moved by the gentleman from Brook-

line (Mr. Walker), and in order to determine precisely its import I venture to ask permission to read it. It is to strike out this provision, which has been amended into the Walker resolution as originally submitted:

Provided, however, that no amendment annulling, abrogating or repealing the provisions of the Declaration of Rights shall be the subject of an initiative or executive petition.

Now, what does that mean? What is included in the Bill of Rights? What will be the significance, and what will be the result, if that remains in the measure which has been submitted?

The first objection is that it is destructive of the principle which underlies the Walker measure. That principle is that the people of this Commonwealth shall have control, in larger measure, of their own affairs, and here they are restricted. The provision says that as to the things named within the Bill of Rights they shall not have the power directly to express their will. Why not? What does it mean? Fundamentally it means, with regard to certain measures, that on these measures we do not trust the people. That is what it means, nothing more and nothing less. That is the thing that underlies every one of these destructive amendments, — distrust of the people, fear as to what the people will do if they have the chance to do things through the initiative and referendum.

But the special objection is that it eliminates, — I will not say eliminates, but that it impairs, — the possibility of that class of legislation that is so much desired and that means so much to the people at large, the destruction of the special privileges which so many now enjoy, the legislation which we call social welfare legislation, legislation in the interest of the poorer people as against the richer classes. It is intended to affect, to prevent, and to limit that class of legislation, legislation to better the conditions of working people, and it will have that result. While it is not destructive of this measure, it impairs its efficiency and usefulness, and I hope that that provision will be stricken from the measure. [Applause.]

Mr. Dresser of Worcester: I wish for a moment, Mr. President, to speak on the question presented by the speaker who first addressed the Convention, in the fourth division (Mr. Garland), with reference to the Bill of Rights and the impossibility under it of having in this State a compulsory Workmen's Compensation Act. I disagree entirely with his reasoning on that question, and although I have spoken on this subject before I trust I may develop it a little further.

The New York statute which was held unconstitutional was based upon a different theory from any other statute that had been phrased in this country. It was, that coincident and coexisting with the right to recover for damages for negligence at common law, there should exist also at the same time the rights under the compensation act, with power to the injured person to choose which remedy he should follow; so that when an accident occurred a man might select either an action at law for damages or take a certain limited compensation.

Now, that is the case in England. It was so phrased, I think, in Montana, and it was so phrased in New York. The result was that in establishing this new principle of liability the old style remained, and there was no protection, — not only no protection to the employer, but no relief, for all the evils of the old system were retained.

That theory was held unconstitutional by the Montana court, by the New York court and, I am firmly convinced, would be held unconstitutional by every court in this country. That this was the reason for holding the New York statute unconstitutional, was stated by the Sutherland commission in their Federal investigation, and that principle of writing compensation acts was immediately discarded.

Two other theories were then adopted. One is the compulsory act, which now has been held constitutional, so far as the Federal and the State constitutions, where it has been enacted, are concerned; and the other is the elective act. I long have believed, and when our act in Massachusetts was in process of formation I then came to the conclusion, as far as I could, that a compulsory act in Massachusetts was not only constitutional but was wise. I have argued twice to the Judiciary Committee in the Legislature in favor of a compulsory Workmen's Compensation Act. I believe that to be not only wise but I believe it to be thoroughly valid.

Now, the reason I believe it to be valid, if I may take a moment, is this: The reason for any compensation act is that when a man goes into business, a business which, however carefully conducted, causes injury, that business shall be licensed or shall be taxed because it is a harm-causing thing. The element of fault or damages has nothing to do with it. No element of damages is considered in any compensation act. It makes no difference how old the injured man is, what his family conditions are, whether he has suffered greatly or slightly; he is paid merely so much wages, such a percentage; it is a way of fixing a tax. The State might take that tax into its own treasury, and use it for hospitals, for example, rather than give it to the injured workman. The reason is that the payment is a license fee or tax. Being so, it can be handled by a State department, if that is wise, and it does not draw into question the right of trial by jury.

The New York act had one further difficulty, and that was a provision in the New York Constitution which was one of those statutory provisions that sometimes are written into constitutions later to cause trouble, — that there should be no limit on payment for death; and that, if I now remember accurately, had to be changed to allow any kind of an act to be passed, and it was changed. Now, when the amendment was passed by the Legislature of New York to allow their new statute to be adopted, there was the greatest difficulty in drafting it, — the very greatest difficulty in drafting it, — because it was almost impossible so to phrase that amendment that it did not take away the other personal rights and property rights which had nothing to do with social legislation, but which had everything to do with our own daily security; and the result was that the amendment is a most long and clumsy affair, but apparently it had to be so. It is worth noting that when the present New York compensation act was passed it did not follow the theory of the first one, though, because of the constitutional amendment, if I remember, it might have done so.

The difficulty in any question of social legislation, whether it be a Workmen's Compensation Act or anything else, is the haste or uncertainty of phrasing it. There is no bit of social legislation, of which I am aware at any rate, that cannot with care be thrown into a constitutional form under our existing Bill of Rights.

Mr. Harry B. Putnam of Westfield moved that the resolution (No. 367) be amended as follows: By striking out, in lines 16 and 17, the words "or by recommendation of the Governor by message,"; by striking out, in lines 39 to 43, inclusive, the words "An amendment introduced by recommendation of the Governor shall be voted upon either in the form in which it was originally recommended or in such amended form as the Governor may by message approve or substitute,"; and by striking out, in lines 44 and 45, the words "or by the Governor".

Mr. PUTNAM: Several days ago the gentleman from Boston in the second division intimated that he might not press the gubernatorial initiative; but I wish to urge the adoption of this amendment, because I believe that it should be stricken out of the initiative and referendum resolution. I trust that when the vote is taken on Friday that the House will vote to strike it out.

Mr. Augustus P. Loring of Beverly moved that the resolution (No. 367) be amended by striking out, in lines 87, 88 and 89, the words "and if the General Court into which it is introduced fails to enact such law", and inserting in place thereof the words "or as amended by a vote of three-fourths of the members present and voting in each branch. If the combined vote cast in the two Houses in favor of such amendment shall be equivalent to at least one-third of the total number of members elected to the General Court but enactment fails".

Mr. LORING: This amendment is somewhat different from the one that I offered on the second reading of the resolution as to laws initiated by petition. In this amendment the vote, although taken in the Senate and in the House separately, shall be calculated on the total vote of the two Houses; that is to say, that if there is a vote amounting to one-third of the membership, counting the Senate and the House together, then that proposal shall be laid before the people. The object is not to put a check on the initiative of the people; the object is to secure merely a thorough discussion and ventilation of any law that is proposed by the initiative petition, and to have it discussed in both the House and Senate; and then, if the law has sufficient merit to get one-third of the votes of the joint membership, it shall go to the people, be referred to the people, and be voted on. If it cannot get that amount of votes it is not worth being voted on or referred to the people.

Mr. KILBON of Springfield: I wish to ask the gentleman as to the reason why he has set the proportion on laws higher than it was set for constitutional amendments, — the proportions being one-quarter and one-third, — simply a matter of information.

Mr. LORING: The difference in proportion is that, in the case of a constitutional amendment, it would have to go before the assembly twice, and be voted on twice, and it would receive more consideration. This would be considered at only one session of the Legislature, and therefore would have less consideration and less time to be voted on.

Mr. George B. Churchill of Amherst moved that the resolution (No. 367) be amended as follows: By striking out, in line 18, the word "otherwise"; and by inserting after the word "introduced", in the same line, the words "into the General Court without such initiative petition, authority for which mode of introduction is hereby specifically granted and continued,"; and by striking out, in lines 51 and 61, the word "one-quarter", and inserting in place thereof, in each instance, the word "one-third".

Mr. CHURCHILL: I should like to speak to the amendment which I offered, by striking out, in line 18, the word "otherwise"; and by

inserting after the word "introduced", in the same line, the words "into the General Court without such initiative petition, authority for which mode of introduction is hereby specifically granted and continued." Members of the Convention will note that in this provision with regard to amending the Constitution by initiative in lines 73 and 74 we have a provision: "Article IX of the amendments to the Constitution is hereby annulled." That is the article which gives the authority for the introduction of proposed amendments into the Legislature, and then upon an amendment being passed in two successive years by a majority of the Senate and two-thirds of the House it goes to the people for their vote. The reason for annulling this amendment is, of course, that the provision for the vote does not correspond with the provision which is made in this provision for amendments to the Constitution, lines 13 and following. But there remains the case that the mover of the amendment evidently wishes to retain the mode of introducing an amendment into the Legislature and having it handled there by the provisions of the first part of this measure as now amended. But if he annuls Article IX, the only reference really to this mode of introduction of amendment, — what we may call the legislative mode as distinct from the initiative mode, — the only reference thereto which is at all specific, and that is not specific enough in my opinion, is in line 18, where he speaks of an amendment "otherwise", that is, otherwise than by the initiative, introduced, and again, at the top of page 3, in line 46, "and an amendment otherwise introduced shall be designated a legislative amendment." Now, I may be wrong, Mr. President, but it seems to me that if we annul Article IX there ought to be a clear, distinct and specific statement of power to the Legislature to introduce an amendment to the Constitution by the legislative mode. The purpose of my amendment is not at all a controversial one, but simply to make perfectly plain and sure that the courts may not rule that there is left after the annulling of Article IX no specific authority to the Legislature to handle an amendment in that way. And so I have proposed an amendment which will make this read as follows:

or if in case of a proposal for amendment introduced into the General Court without such initiative petition, authority for which mode of introduction is hereby specifically granted and continued . . .

I have added the words "and continued" in order to make perfectly plain that the mode of introduction "hereby granted" is the mode which has been in vogue up to the acceptance of this amendment.

Now, I am not at all certain that the lawyers of this Convention may not be able to word that much better than I, or to find fault with it, but I offer it simply in the expectation that we may thereby make clear and specific beyond all chance of trouble the fact that the Legislature still has power to introduce an amendment by the method prevailing hitherto. The rest of the provisions of this resolution provide how that amendment shall be handled.

The closing arguments, priorly to ordering the resolution (No. 367) to a third reading, were made Friday, November 9.

Mr. Lummus of Lynn: In the brief time that is allotted to the minority I cannot possibly speak even for a moment of many of the

important amendments to this resolution which have been presented. I can state only in a general way the attitude which I hope the Convention will take toward each and every one of these amendments. In the debate upon this matter it seems to me that there has been too much discussion of theory, of so-called principle, and too little discussion of the practical results of different amendments. I myself have offended in that respect, because I often have had occasion to urge that some particular amendment was consistent with this intangible principle of the I. and R. That was a perfectly unprofitable discussion, Mr. President. And, likewise, the discussion on the other side, when we were told that certain amendments were dangerous and deadly and contrary to the true principle of the I. and R., — that was an equally unprofitable discussion.

I submit that what we are here for is not to pass the principle of an I. and R. or the principle of representative government; we are to pass whatever measure in our judgment makes, not for a hasty, snap, popular judgment, but for the expression of that sound and settled popular will, fair to minorities, sane as to its consequences, which in a democracy ought to govern. In some respects it may be that representative government will best express that will; in other respects it may be that the I. and R. will best express that will. But I submit above all things, Mr. President, that we are not here to take any doctrine or dogma, whether representative government or the I. and R., and come to what may be thought its logical conclusion regardless of the consequences. I care personally no more for the principle of the I. and R. than I care for the principle of representative government, — and that is nothing at all. I believe that we are here to "get results," to use the phrase which has been attributed to the gentleman from ward 5 (Mr. Lomasney); and I believe that is what we are here to do, — to get the best practical government for Massachusetts. From my standpoint it makes no difference whether we have representative government upon some things and the I. and R. upon others, or how we arrange it, so long as we get the practical result that the people really want; because they want the practical result of good government, and not adherence to any dogma.

I believe, Mr. President, that we ought to look at these amendments in a horse-sense fashion, using our judgment as to what they actually will do; and if in some respects the I. and R. is not as likely to work a true expression of the popular will as representative government, as to those things let us have representative government alone. If in other respects the I. and R. will be useful, let us have that.

Now, taking these amendments one by one, the first two are the amendments to take out of the initiative measure the Constitution. I mean the first in my view, — the amendments of Messrs. Pillsbury and Hibbard. We shall have a relaxed form of legislative amendment even if the initiative is not applied to the Constitution, and I submit that that relaxed form of legislative amendment will smooth the way for everything that the people want and need. In the early stages of this debate we never heard a word about the absolute necessity of the constitutional initiative. The State of Maine was held up as an example to be followed, not as an example to be shunned, and Maine has no constitutional initiative. It was not until it became apparent that there was doubt of the passage of the constitutional initiative that this

propaganda was started about the absolutely essential character of the constitutional initiative.

But if we must have a constitutional initiative it ought not to be mixed up with the gubernatorial initiative, which never has been argued here, and is a wholly different matter, and the amendment of Mr. Putnam of Westfield I submit ought to prevail. And, also, it ought not to be mixed up with the legislative initiative under the ninth amendment, and the amendment of Mr. Washburn of Middleborough ought to prevail.

The original report of the majority of the committee provided for 50,000 signers for the constitutional initiative, and then, under the Loring amendment, that number was reduced to 25,000, in exchange for a legislative check that there should be one-quarter of the members of the House and Senate in Joint Convention voting for the measure. That check is absolutely useless. I have been through the roll-calls of the House of Representatives in the years 1916 and 1917, and there was not one bill in either year that failed of passage that did not get more than one-quarter of the members. The check is useless, yet we have reduced the number of signatures to one-half what the gentleman from Brookline (Mr. Walker) favored when he reported the resolution. If we are to have any legislative check that amounts to anything the check must be increased surely to one-third, as is provided in an amendment before us.

There is an amendment by the gentleman from Brookline (Mr. Walker) to strike out the exclusion of the Declaration of Rights, and to make that subject to initiative action. The whole argument for striking out that exclusion is founded upon an unjustified fear that our court will refuse to follow the liberal decisions of the United States Supreme Court upon absolutely identical language, and because of that unjustified fear it is proposed to open the whole domain of individual rights to initiative action.

Among the most important amendments to come before us are the two Richardson amendments to prevent the loosening of the initiative by the initiative. The gentleman from Brookline (Mr. Walker) in the earlier stages of this debate indicated that he might accept such an amendment at a later stage. Professor Holcombe of Harvard, the leading authority in favor of the initiative in New England, urges that as essential.

The gentleman from Brookline did not promise to accept it, but intimated that he would at a later stage; and now he does not, I understand. There are men in this Convention who look upon the Walker resolution merely as a stepping-stone to something even more radical, to something absolutely loose, and the gentleman from Brookline, in refusing to adopt either Richardson amendment, seems to me to be catering to those men who seek to destroy the few safeguards that he himself would put into this resolution.

In conclusion, Mr. President, I hope this voting will not be an occasion for the display of mere partizanship, and on that question I wish to read to you from the remarks of a gentleman whom we all admire and respect, although sometimes we differ from him, the gentleman from Brookline (Mr. Walker.) Speaking to the House of Representatives, of which he was Speaker, he said:

It is essential that each member act as a true representative, always with independence and for the public good as he sees it. I believe that the sound public opinion of the Commonwealth will be more truly reflected in legislation if members always seek to do the right rather than the popular thing. (House Journal of 1909, page 1364.)

And on another occasion, speaking about pledges, — and no man here is pledged to vote for or against any of these particular amendments, which are matters of detail, and if it were otherwise the gentleman from Brookline loves the Commonwealth too well, I trust, to urge any man to keep a pledge when that man honestly thinks it against the public interest, — this is what the gentleman from Brookline said about pledges in relation to the public interest:

Each member owes his vote to the Commonwealth. Let him, therefore, never promise it until he has heard the argument. (House Journal of 1911, page 13.)

[Applause.]

The remarks of the gentleman were sound; and what I urge upon this Convention is that no man, whether he call himself conservative or radical, vote on these amendments merely by partizanship, but let him look at the practical results to the Commonwealth, and vote accordingly; and I trust that these amendments will be dealt with in that spirit.

Mr. Morton of Fall River: I had not expected to take part in this debate, because I have felt that there were other gentlemen here who knew very much more than I did about this matter of the initiative and referendum, and who could instruct the Convention very much more satisfactorily than I would be able to do if I attempted to say anything; but I should like to say just a word or two.

The only value, as it seems to me, of the initiative and referendum is as a piece of governmental machinery. It is not, as I understood the gentleman from Brookline (Mr. Walker) to say, a panacea for anything, and the question as it appears to me, when you boil it down to its very essence, is whether the conditions in this State require its adoption to remedy them or to remedy any evil that is existing here. That it seems to me is the gist of the question, when you come to consider the adoption in this State of the initiative and the referendum. And I do not believe, Mr. President, speaking for myself, from all that I have heard upon the floor of this Convention and from all that I have observed outside of this hall and have heard in other ways, that the time has come in the Commonwealth of Massachusetts when the evils are such that they can be remedied only by the adoption of this measure. [Applause.]

Reference has been made to other States, where the initiative and the referendum has been adopted. The gentleman from Boston, Mr. Quincy, I think, referred the other day to California, and it seemed to me from what I have read about the conditions in California and Oregon, and possibly some other States, that he described the conditions in California which led to the adoption of the initiative and referendum there in a very telling phrase. He said that what the people of California desired was nothing less than a political revolution. Now, Mr. President, have things reached such a condition in Massachusetts that the only remedy for them is a political revolution? It does not seem to me that they have, especially in regard to the matter of constitutional amendments. Possibly there may be something to be

said in regard to the matter of initiated laws. That I pass over and pass by. What I say applies to the matter of constitutional amendments and other matters. No such condition of things has been shown here as leads me, — I speak only for myself, — to the conclusion that the initiative mode of amendment should be adopted in this Commonwealth.

So much, Mr. President, for the general question. I should like to say just one word about one of the amendments which has been offered in regard to the Bill of Rights, and I speak of that because I received some days ago, as I suppose almost everybody in the Convention did, a brief signed by some gentlemen headed by Mr. Garland, I think, and two other gentlemen, in which it was stated, referring to an opinion given by the Justices in Mass. 209, which dealt with the Workmen's Compensation Act, — I am referring to the brief, — that if that act had been compulsory the decision of the court would have been that it was unconstitutional, because it would take away a man's property without due process of law. As gentlemen will remember, the opinion did not deal with that phase of the question. The opinion was carefully and most explicitly confined to the statute which was submitted to the Justices for their opinion. I may say that in the absence of the Chief Justice because of illness it fell to me, as the senior acting Justice of the court, to draw up the opinion for the consideration of the other Justices, and after consideration it was adopted by them. If it is attempted to draw any argument from that to support the conclusion that unless this amendment excluding the Bill of Rights from the operation of the initiative is defeated, social legislation, whatever that may mean, some social legislation, will have to be declared unconstitutional, it is wholly fallacious, as it seems to me. I think, therefore, that so far as the Bill of Rights is concerned, and so far as this brief is concerned, it contains no argument which shows to my mind that the Bill of Rights should not be excluded from the operation of any initiative that may be adopted.

I think that is all, Mr. President. [Applause.]

Mr. WALKER of Brookline: I wish to say, in the first place, that an impression seems to have gone abroad in this Convention to the effect that the initiative and referendum measure as submitted by the committee on Initiative and Referendum has been so cut up and mixed up as to be now worthless. I wish to relieve the Convention of any such idea. The amendments that have been adopted to the measure as reported by the committee have been very carefully drawn. They are clear. They are explicit. They do exactly what the men who drew them intended that they should do, and nothing else. As a matter of draftsmanship they are good. The resolution is not mixed up. The resolution is not a hodgepodge. The first six amendments are amendments which I have offered. I say to you, Mr. President, that in my judgment if those six amendments are adopted we shall have a perfectly good, clear, workable initiative and referendum, a well drafted resolution. It will contain some provisions that I myself would not have written into it, but I intended from the first, Mr. President, as I have said to this Convention, to accept the work of this Convention just so far as I could and still leave a workable initiative and referendum measure. I consider that it will be most unfortunate if we submit to the people of Massachusetts an initiative and referendum meas-

ure which, when adopted, they will find to be unworkable. I do not believe this Convention intends to do that thing, and so I ask this Convention at least to accept these six amendments and make the resolution workable, and then if in its last stage you do not believe in the initiative and referendum on principle you can vote against the perfected measure; but do not submit to the people a resolution in which they will find only disappointment if they adopt it.

I especially urge this Convention, Mr. President, not to touch the Loring amendment. That amendment was proposed by a conservative who has the confidence of this Convention, a broad-minded, liberal man. It was accepted by us in the spirit in which it was offered. It has some things in it that I would not write into it. It has some things in it that I wish especially. Do not cut out the gubernatorial initiative from that part of our Constitution. If we are to give to twenty-five thousand voters the right to submit constitutional amendments to the people, shall we not give to the representative of all the people, elected by the people, an equal right? Certainly that is not unwise. Do not cut out from that the legislative initiative as it there appears. If we are to give twenty-five thousand voters the right to submit constitutional amendments to the people, shall we not give to a majority of the General Court, representing all the people, at least as much authority? I urge you therefore to stand solidly for the Loring amendment just as it is. I think it is a wise and a very sane, sensible way of providing for amendment of our Constitution.

There are two subjects upon which I have no advice to give this Convention. One is the religious subject, and the other is the question of the judiciary. Every man in this Convention has his own opinion on these subjects, and I do not presume to give any man in this Convention any advice whatever as to how he shall vote on these two matters.

There remains simply the Declaration of Rights for me to speak of. Our honored Justice (Mr. Justice Morton) has suggested that it is unwise to allow the people to amend through initiative petition their own Declaration of Rights. At this time, and for the last time, I shall read from the Declaration of Rights itself:

> Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

I let the Declaration of Rights speak, and not myself.

I have but one word more to say in this connection. The Declaration of Rights protects the liberty and the property of citizens, and therefore the question immediately occurs to you: Why then should we allow the people to interfere with the liberty of the citizen and his property? Mr. President, we cannot live in a civilized society unless the liberty of the individual is interfered with for the benefit of the whole community. Our Declaration of Rights is simply a broad statement that men have a right to liberty. How much liberty, and who will determine it? To-day the courts, and the courts alone, determine the sphere of the liberty of the individual, and the courts in other States have said, and they may say here, that people shall not interfere with the right of an employer to contract with his employees, they shall not interfere with his right to employ women and children as long as he pleases and for such wages as he pleases, that to do that is

interfering with the freedom of the individual and the right of free contract. I say that the people should choose to interfere with that. Yet, as the matter now stands, the courts, and the courts alone, determine how far they shall go. Shall the people have anything to say about this matter, or shall the courts determine finally the limits of the liberty of the individual? The courts determine when the police power is exercised as to whether it interferes with such rights, and it is well that the courts do. The court must determine this question. But the court is bound by precedents, as the honorable Justice well knows; and when a line of precedents coming from the past is consistent in a State the courts feel as much bound by those precedents as they would by a statutory provision and although they might not make a certain decision if it were a matter to be considered *de novo*, they frequently are bound by their own precedents extending into the past. And now, since this great industrial development has taken place, since now we have a factory system, since now we are gathered in great cities, we must pass laws which years ago would be considered to be an unjustifiable interference with the liberty of the citizen. As time goes on, and our civilization develops, we must have the free right, when the courts have fixed the limits of the police power of the Commonwealth by their decision, to appeal to the people to remove those restrictions from time to time, that the people may have such laws as they determine to be for the public interest and in their own interest. And therefore I say it is fatal to the initiative and referendum, it is inconsistent with its fundamental purpose, it is inconsistent with the words of the Declaration of Rights itself, if you deny the people their right to have such social welfare laws as their social condition may demand from year to year. [Applause.]

I ask this Convention, therefore, to vote for the first six amendments, not because I present them, but because I believe they are necessary to a satisfactory initiative and referendum measure, and I urge you to vote against all the other hostile amendments. I do not speak about religion and the judiciary.

Mr. WALSH of Fitchburg: I have listened, as you all have, with exceeding great interest to the words of the honored ex-Justice of the Supreme Judicial Court. If I follow his argument correctly it leads to this conclusion: "I am not opposed to the principle of the initiative and referendum, but I have failed to find conditions in Massachusetts that make its adoption necessary as one of our forms of government." The answer to that position is: If it is not bad in itself, if it is not a dangerous principle, what harm can come from letting the people of Massachusetts have it, even if conditions here do not make it necessary to use it? What harm can come if the principle itself is sound?

Let us review very briefly just what has been going on in our country. We have been sent here as delegates to open our eyes, not to close them, and if possible to see what changes have taken place in Massachusetts in the last sixty years. We have found one change. We have found one force, — one evil influence in our government. It is an evil that our forefathers never had to contend with. In the past governments have had to battle against the evil influences of individual selfishness, but we have discovered in the last sixty years the development in our State and Nation of organized human selfishness, great organizations, financial, social and political, more powerful, and

even richer than the very State itself. We have found that in our legislative bodies these organized human selfish forces were very powerful and, indeed, at times were able to thwart the will and judgment of the majority. The public official might well be expected to resist successfully individual selfishness, but where is there the official who alone can stand up always against the demands of great organized selfish forces, financial, social and political, — stand steadfastly in great crises with the people against these powerful influences? We have found that representative government has broken down where these forces are at work in our government and this initiative and referendum amendment to our Constitution is suggested to *strengthen*, — and I want these words carefully noted, — to strengthen and support representative government, and to guarantee to the people an additional protection for the preservation of their inalienable rights and the promotion of the public welfare. [Applause.]

We are not opposed to representative government, but when organized human selfishness controls representative government then we demand the right of appeal to the people for the judgment of a majority of the citizens of the State. That is our position. As an additional protection, as another safeguard to our inalienable rights, when we are deserted or betrayed by our public officials we will rest content and satisfied only with the verdict of a majority of our fellow-citizens. [Applause.] What is fairer? What is more just? What is more secure in the last analysis of any question of government than a verdict of the majority? Every man must accept the judgment of the people in the election of public officials. Why not consent to a majority decision by all our fellow-citizens in great crises, when important principles are at stake?

And now, again, it is proposed by the opposition that we strike out of this amendment the Bill of Rights and the provisions for changing the Constitution. Who proposes this? What is the reason that has been advocated here for striking it out or for exempting the Bill of Rights from the provisions of this constitutional amendment? The reason that has been advanced here is the only one that can be advanced, — first and last it is because you believe that the people cannot be trusted. This argument is presented not only by the people who are against the principle itself but also by those who say, "If the initiative and referendum has got to come then we will restrict all we possibly can the powers of the people; we will trust them with determining the terms of office of their Governor, with determining the form and machinery of their government, but with the larger matters relating to the protection of their inalienable rights we refuse to trust them." In other words, when one receives a charter from the Legislature defining his rights to do business, and he later wants to increase his rights, he shall not have the right to go to the Legislature to expand or extend his original charter, — he never can have changed his first defined purposes or plans. Are the people to be prevented from ever changing their original purposes and functions of government? We demand that the people be protected and trusted with every feature of their government, in every particular. When you begin to exempt religious questions or the judiciary or the Bill of Rights from this constitutional amendment you begin to say: "I will not trust a majority of my fellow-citizens to define or protect my

rights as a citizen of this government." You have got to recognize and approve this fundamental principle, it seems to me, and learn to rely first and last in a democracy upon this principle, that in all matters of government, whatever they may be, small or great, an American citizen must be willing to abide by, trust and rely upon the sound, common-sense, honest, and fair judgment of a majority of his fellow-citizens. [Applause.]

Debate on this stage of the resolution (No. 367) closed Friday, November 9, and the ensuing sessions of the Convention, until Wednesday, November 14, were devoted to action on the pending amendments.

The amendment previously moved by Mr. Joseph Walker of Brookline, — to strike out, in lines 75 to 78, inclusive, the following words: "*Provided, however*, that no amendment annulling, abrogating or repealing the provisions of the Declaration of Rights shall be the subject of an initiative or executive petition,", — was adopted, by a call of the yeas and nays, by a vote of 147 to 137.

Mr. Walker moved that the resolution be amended by striking out, in line 81, the words "four per cent of the", and inserting in place thereof the words "twenty thousand"; by striking out, in lines 82, 83 and 84, the words "calculated upon the whole number of votes cast for Governor at the last preceding election,"; by striking out, in line 94, the words "one per cent", and inserting in place thereof the words "five thousand signatures"; and by striking out, in lines 95 and 96, the words "calculated upon the whole number of votes cast for Governor at the last preceding election,".

These amendments were adopted, by a call of the yeas and nays, by a vote of 144 to 138.

Mr. Walker moved that the resolution be amended by adding after the word "petition", in line 202, the words ": *provided*, that, if a law approved by the people is not repealed, the General Court shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect".

This amendment was adopted.

Mr. Walker moved that the resolution be amended by striking out, in lines 211, 243 and 271, respectively, the word "sixty", and inserting in place thereof, in each instance, the word "ninety".

These amendments were adopted, by a vote of 144 to 93.

Mr. Walker moved that the resolution be amended by inserting after the word "*provided*", in line 225, the words ", that the Governor may, at any time before the election at which it is to be submitted to the people on referendum, declare any law to be an emergency measure hereunder by filing with the Secretary of the Commonwealth a statement setting forth the facts constituting the emergency, and that in his opinion the immediate preservation of the public peace, health, safety or convenience requires that such law should go into operation forthwith, then such law, if not previously suspended as hereinafter provided, shall take effect without suspension, or if such law has been so suspended such suspension shall thereupon terminate and such law shall thereupon go into effect: and *provided, further*".

This amendment was adopted.

Mr. Walker moved that the resolution be amended by striking out, in lines 309 and 310, the words "and for penalties for the circulation of petitions for hire or reward,"; and by adding after the word "to", in line 318, the words "The General Court may provide by law that no copartnership or corporation shall circulate petitions for hire or reward, may require individuals to be licensed

and may make other reasonable regulations to prevent abuses arising from the circulation of petitions for hire or reward."

These amendments were adopted, by a call of the yeas and nays, by a vote of 163 to 119.

Mr. Walker moved that the resolution be amended by striking out, in line 319, the word "one-eighth", and inserting in place thereof the word "one-fourth".

This amendment was adopted, by a call of the yeas and nays, by a vote of 140 to 128.

The following pending amendments previously moved by Mr. Harry B. Putnam of Westfield, were adopted, by a call of the yeas and nays, by a vote of 147 to 132, to wit: striking out, in lines 16 and 17, the words "or by recommendation of the Governor by message,"; striking out, in lines 39 to 43, inclusive, the words "An amendment introduced by recommendation of the Governor shall be voted upon either in the form in which it was originally recommended or in such amended form as the Governor may by message approve or substitute."; and striking out, in lines 44 and 45, the words "or by the Governor".

The following pending amendment, previously moved by Mr. Augustus P. Loring of Beverly, was rejected, by a call of the yeas and nays, by a vote of 134 to 147, to wit: Striking out, in lines 87, 88 and 89, the words "and if the General Court into which it is introduced fails to enact such law", and inserting in place thereof the words "or as amended by a vote of three-fourths of the members present and voting in each branch. If the combined vote cast in the two Houses in favor of such law shall be equivalent to at least one-third of the total number of members elected to the General Court but enactment fails".

The following pending amendments, previously moved by Mr. George B. Churchill of Amherst, were adopted, to wit: Striking out, in line 18, the word "otherwise"; and inserting after the word "introduced", in the same line, the words "into the General Court without such initiative petition, authority for which mode of introduction is hereby specifically granted and continued,".

The following pending amendments, previously moved by Mr. Churchill, were rejected, by a call of the yeas and nays, by a vote of 142 to 143, to wit: Striking out, in lines 51 and 61, respectively, the word "one-quarter", and inserting in place thereof, in each instance, the word "one-third".

Mr. Paul R. Blackmur of Quincy moved that the resolution be amended by striking out, in lines 15 and 16, the words "twenty-five thousand qualified voters", and inserting in place thereof the words "five per cent of the qualified voters of the Commonwealth, calculated upon the whole number of votes cast for Governor at the last preceding election,".

This amendment was rejected, by a call of the yeas and nays, by a vote of 139 to 146.

Mr. Charles E. Hibbard of Pittsfield moved that the resolution be amended by striking out, in lines 5 and 6, the words "and amendments to the Constitution"; and by striking out lines 13 to 78, inclusive.

These amendments were rejected, by a call of the yeas and nays, by a vote of 130 to 152.

Mr. Charles O. Bailey of Newbury moved that the resolution be amended by striking out, in line 273, the words "ten thousand", and inserting in place thereof the words "five per cent of"; and by inserting, in line 274, after the word "Commonwealth", the words ", calculated upon the whole number of votes cast for Governor at the last preceding election".

These amendments were rejected, by a call of the yeas and nays, by a vote of 126 to 144.

Mr. Albert E. Pillsbury of Wellesley moved that the resolution be amended as follows: By striking out, in lines 5 and 6, the words "and amendments to the

Constitution"; by striking out lines 13 to 74, inclusive; by inserting after the word "rights", in line 77, the words ", or inconsistent therewith,"; by striking out, in line 122, the word "either"; by striking out, in lines 122 to 125, inclusive, the words "or in the case of a constitutional amendment by a majority of those present and voting thereon in Joint Convention held as herein provided,"; by striking out lines 132 to 135, inclusive; by striking out, in line 137, the words "two or more constitutional amendments, or of"; by striking out, in lines 140 and 141, the words "in the constitutional amendment, or"; by striking out, in line 141, the words ", as the case may be,"; by striking out, in lines 145 and 153, the words "constitutional amendment or"; by striking out, in line 322, the words "proposed amendment to the Constitution, and each"; by striking out lines 330 to 335, inclusive; and by striking out, in line 336, the words "In the case of a law:".

Mr. Walker of Brookline raised the point of order that the amendments striking out, in lines 5 and 6, the words "and amendments to the constitution"; and striking out lines 13 to 74, inclusive, were not properly before the Convention, being identical with the amendments moved by Mr. Hibbard and rejected.

The president declared the point of order well taken.

Mr. Pillsbury then withdrew the remaining pending amendments moved by him, there being no objection.

Mr. Arthur H. Wellman of Topsfield moved that the resolution be amended by adding after line 295 the following paragraph:

No law relating to the appointment, qualification, tenure or removal or compensation of judges, or relating to the powers, creation or abolition of courts, shall be the subject of such referendum petition.

This amendment was adopted, by a call of the yeas and nays, by a vote of 158 to 123.

Mr. Henry Parkman of Boston moved that the resolution be amended by striking out, in lines 87 and 88, the words "and if", and inserting in place thereof the words "or as amended by a vote of three-quarters of the members present and voting in each branch, and if of the members present and voting one-third of the House and one-fourth of the Senate vote for such enactment, but".

This amendment was rejected, by a call of the yeas and nays, by a vote of 128 to 148.

Mr. Albert H. Washburn of Middleborough moved that the resolution be amended as follows: By striking out, in lines 17 and 18, the words "or if in case of a proposal for amendment otherwise introduced"; by striking out, in lines 46 and 47, the words ", and an amendment otherwise introduced shall be designated a legislative amendment"; by striking out, in lines 48, 49 and 50, the words "if a legislative amendment shall be agreed to by a majority of all the members elected to the General Court, or"; by striking out, in line 52, the words "in either case"; by striking out, in lines 55 to 59, inclusive, the words "If any legislative amendment shall again be agreed to by a majority of all the members elected to the next General Court, voting in a joint session of the two Houses to be held as aforesaid, it shall then be submitted by the General Court to the people."; by striking out, in lines 67 and 68, the words "if approved in the case of a legislative amendment by a majority of the voters voting thereon, or"; and by striking out, in lines 73 and 74, the paragraph "Article IX of the amendments to the Constitution is hereby annulled."

These amendments were withdrawn.

Mr. James P. Richardson of Newton moved that the resolution be amended by inserting after line 78 the following paragraph:

No part of the Constitution which provides for the establishment of the popular initiative and referendum shall be the subject of an initiative petition.

This amendment was rejected, by a call of the yeas and nays, by a vote of 137 to 140.

Mr. Richardson moved that the resolution be amended by inserting after line 78 the following paragraph:

No part of the Constitution specifically excluding any matter from the operation of the popular initiative and referendum shall be the subject of an initiative petition.

This amendment was adopted, by a call of the yeas and nays, by a vote of 145 to 128.

Mr. William A. Burns of Pittsfield moved that the resolution be amended by adding after the word "repealed", in line 286, the words ": *provided*, that no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the highest number of votes cast at such State election".

This amendment was adopted.

Mr. Louis Swig of Taunton moved that the resolution be amended by adding after line 74 the following paragraph:

Provided, however, that no amendment to the Constitution relating to religion, religious practices or religious institutions shall be the subject of an initiative petition.

This amendment was adopted, by a call of the yeas and nays, by a vote of 184 to 89.

Mr. Samuel W. George of Haverhill moved that the resolution be amended as follows: By striking out lines 75 to 78, inclusive, lines 196 to 209, inclusive, and lines 287 to 295, inclusive; and by inserting before line 296 the following paragraph:

No measure annulling, abrogating or repealing the provisions of the Declaration of Rights, or inconsistent therewith, and no measure relating to or affecting the judiciary; and no measure protecting the public health, and public safety; and no law making a specific appropriation of money from the treasury of the Commonwealth, and no law appropriating money for the current or ordinary expenses of the Commonwealth, or any of its departments, boards, commissions or institutions, and no law the operation of which is restricted to a distinct section of the Commonwealth, unless such law involve financial obligations on the part of the Commonwealth; and no law containing unrelated subjects, shall be the subject of an initiative and referendum petition as herein provided.

By inserting after the word "Provision", in line 307, the words "for carrying the initiative and referendum into effect, and".

These amendments were withdrawn.

Mr. George moved that the resolution be amended by inserting after the word "recommendations", in line 301, the words ", with the reason therefor,".

This amendment was adopted.

Mr. William H. Sullivan of Boston moved that the resolution be amended by striking out, in line 206, the word "powers,".

This amendment was rejected.

Mr. Dennis D. Driscoll of Boston moved that the resolution be amended by striking out, in lines 199 and 200, and in lines 289, 290 and 291, the words "and no law relating to religion, religious practices or religious institutions,".

These amendments were withdrawn.

Mr. Joseph F. O'Connell of Boston moved that the resolution be amended by striking out, in lines 203 to 208, inclusive, the following paragraph:

No law or amendment to the Constitution relating to the appointment, qualification, tenure, or removal or compensation of judges; or relating to the recall of judges or judicial decisions; or relating to the powers, creation or abolition of courts, shall be the subject of such initiative petition.

In requesting the privilege of withdrawing the amendment Mr. O'Connell said:

This amendment that my motion seeks to strike out is the amendment inserted in the resolution on the motion of the gentleman from

Fall River (Mr. Cummings). It is a very important subject, as the Convention well knows. After months of debate on the question of the initiative and referendum this amendment was adopted with less than thirty minutes' debate, of which time the gentleman from Fall River used about twenty minutes. I believe the members of the Convention are not at all familiar with the far-reaching effect of the subject itself and all that it carries with it. It is something that ought to be more specifically explained and discussed by the Convention, so that we all may know what we really are voting upon. I believe that many men voted out of pure compliment to the mover (Mr. Cummings) and, in a measure, ignorant of what the amendment really carried with it. On the motion to reconsider only ten minutes' debate was allowed under the rules, so that on this, one of the two important exceptions to the initiative and referendum as recommended by the committee, there has been practically no discussion of the subject. It seems useless to me to urge my motion, or to ask for a roll-call on a subject that has not been considered by the members, because there can be no sufficient information before them to justify their vote whether in favor of or against the amendment. I therefore shall ask unanimous consent to withdraw my amendment at the present time, and serve notice that on the next stage of the resolution I shall move the amendment and address myself to the House on the subject, for the purpose of laying before the members what I think ought to be understood by them in order that they may vote understandingly upon the measure.

Objection being made to the withdrawal of the amendment, it was rejected, by a vote of 66 to 140.

On the 14th day of November the resolution, as amended, was ordered to a third reading, by a call of the yeas and nays, by a vote of 165 to 111.

The resolution, as amended, and as revised by the committee on Form and Phraseology (see Document No. 370), was as follows:

RESOLUTION

To provide for establishing the Popular Initiative and Referendum, and of Legislative Initiative of Specific Amendments of the Constitution.

I. Definition.

Legislative power shall continue to be vested in the General Court; but the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments to the people for approval or rejection; and the popular referendum, which is the power of a specified number of voters to submit laws, enacted by the General Court, to the people for their ratification or rejection.

THE INITIATIVE.

II. Initiative Petitions.

Section 1. *Contents.* — An initiative petition shall set forth the full text of the constitutional amendment or law, hereinafter designated as the measure, which is proposed by the petition.

Section 2. *Excluded Matters.* — No measure that relates to religion, religious practices or religious institu-

tions; or to the appointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the Commonwealth; or that makes a specific appropriation of money from the treasury of the Commonwealth, shall be proposed by an initiative petition; but if a law approved by the people is not repealed, the General Court shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect.

No part of the Constitution specifically excluding any matter from the operation of the popular initiative and referendum shall be the subject of an initiative petition.

The limitations on the legislative power of the General Court in the Constitution shall extend to the legislative power of the people as exercised hereunder.

Section 3. *Mode of Originating.* — Such petition shall first be signed by ten qualified voters of the Commonwealth and shall then be submitted to the Attorney-General, and if he shall certify that the measure is in proper form for submission to the people, and that it is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people within three years of the succeeding first Wednesday in December and that it contains only subjects which are related or which are mutually dependent, it may then be filed with the Secretary of the Commonwealth. A filing fee not exceeding one hundred dollars, which shall be returned if and when the petition is completed, may be required by law. The Secretary of the Commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed measure as such description will appear on the ballot together with the names and residences of the first ten signers. All initiative petitions, with the first ten signatures attached, shall be filed with the Secretary of the Commonwealth not earlier than the first Wednesday of the September before the assembling of the General Court into which they are to be introduced, and the remainder of the required signatures shall be filed not later than the first Wednesday of the following December.

Section 4. *Transmission to the General Court.* — If an initiative petition, signed by the required number of qualified voters, has been filed as aforesaid, the Secretary of the Commonwealth shall, upon the assembling of the General Court, transmit it to the clerk of the House of Representatives, and the proposed measure shall then be deemed to be introduced and pending.

III. Legislative Action. General Provisions.

Section 1. *Reference to Committee.* —If a measure is introduced into the General Court by initiative petition, it shall be referred to a committee thereof, and the petitioners and all parties in interest shall be heard, and the measure shall be considered and reported upon to the General Court with the committee's recommendations, and the reasons therefor, in writing. Majority and minority reports shall be signed by the members of said committee.

SECTION 2. *Legislative Substitutes.*—The General Court may, by resolve passed by yea and nay vote, either by the two Houses separately, or in the case of a constitutional amendment by a majority of those voting thereon in joint session in each of two years as hereinafter provided, submit to the people a substitute for any measure introduced by initiative petition, such substitute to be designated on the ballot as the legislative substitute for such an initiative measure and to be grouped with it as an alternative therefor.

IV. LEGISLATIVE ACTION ON PROPOSED CONSTITUTIONAL AMENDMENTS.

SECTION 1. *Definition.* — A proposal for amendment to the Constitution introduced by initiative petition shall be designated an initiative amendment, and an amendment otherwise introduced shall be designated a legislative substitute or a legislative amendment.

SECTION 2. *Joint Sessions.* — If a proposal for a specific amendment of the Constitution is introduced into the General Court by initiative petition signed by not less than twenty-five thousand qualified voters, or if in case of a proposal for amendment introduced into the General Court without such initiative petition, authority for which mode of introduction is hereby specifically confirmed and continued, consideration thereof in joint session is called for by vote of either House, such proposal shall, not later than the second Wednesday in June, be laid before a joint session of the two Houses, at which the President of the Senate shall preside; and if the two Houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all amendments pending, the Governor shall call such joint session or continuance thereof.

SECTION 3. *Amendment of Proposed Amendments.* — A proposal for an amendment to the Constitution introduced by initiative petition shall be voted upon in the form in which it was introduced, but such amendment may be amended in any manner not inconsistent with its general purpose by vote of three-fourths of the members voting thereon in joint session.

SECTION 4. *Legislative Action.* — Final legislative action in the joint session upon any amendment shall be taken only by call of the yeas and nays, which shall be entered upon the journals of the two Houses; and an unfavorable vote at any stage preceding final action shall be verified by call of the yeas and nays, to be entered in like manner. At such joint session a legislative amendment receiving the affirmative votes of a majority of all the members elected, or an initiative amendment receiving the affirmative votes of not less than one-fourth of all the members elected, shall be referred to the next General Court.

SECTION 5. *Submission to the People.* — If in the next General Court a legislative amendment shall again be agreed to in joint session by a majority of all the members elected, or if an initiative amendment shall again receive the affirmative votes of at least one-fourth of all the members elected, such fact shall be certified by the clerk of such joint session to the Secretary of the Commonwealth, who shall submit the amendment to the

people at the next State election. Such amendment shall become part of the Constitution if approved, in the case of a legislative amendment, by a majority of the voters voting thereon, or in the case of an initiative amendment or a legislative substitute, if approved by voters equal in number to at least thirty per cent of the total number of ballots cast at such State election and also by a majority of the voters voting on such amendment.

V. Legislative Action on Proposed Laws.

Section 1. *Legislative Procedure.* — If an initiative petition for a law is introduced into the General Court, signed by not less than twenty thousand qualified voters, a vote shall be taken by yeas and nays in both Houses before the first Wednesday of June upon the enactment of such law in the form in which it stands in such petition. If the General Court fails to enact such law before the first Wednesday of June, and if such petition is completed by filing with the Secretary of the Commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than five thousand signatures of qualified voters, in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of June aforesaid, then the Secretary of the Commonwealth shall submit such proposed law to the people at the next State election. If it shall be approved by voters equal in number to at least thirty per cent of the total number of ballots cast at such State election and also by a majority of the voters voting on such law, it shall become law, and shall take effect in thirty days after such State election or at such time after such election as may be provided in such law.

Section 2. *Amendment by Petitioners.* — If the General Court fails to pass a proposed law before the first Wednesday of June, a majority of the first ten signers of the initiative petition therefor shall have the right, subject to certification by the Attorney-General filed as hereinafter provided, to amend the measure which is the subject of such petition. An amendment so made shall not invalidate any signature attached to the petition. If the measure so amended, signed by a majority of the first ten signers, is filed with the Secretary of the Commonwealth before the first Wednesday of the following July, together with a certificate signed by the Attorney-General to the effect that the amendment made by such proposers is in his opinion perfecting in its nature and does not materially change the substance of the measure, and if such petition is completed by filing with the Secretary of the Commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than five thousand signatures of qualified voters, in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of June aforesaid, then the Secretary of the Commonwealth shall submit the measure to the people in its amended form.

VI. Conflicting and Alternative Measures.

If in any judicial proceeding, provisions of constitutional amendments or of laws approved by the people at the same election are held to be in conflict, then the

provisions that received the largest number of affirmative votes at such election shall govern.

A constitutional amendment approved at any election shall govern any law approved at the same election.

The General Court, by resolve passed as hereinbefore set forth, may provide for grouping and designating upon the ballot as conflicting measures or as alternative measures, only one of which is to be adopted, any two or more proposed constitutional amendments or laws which have been or may be passed or qualified for submission to the people at any one election: *provided*, that a proposed constitutional amendment and a proposed law shall not be so grouped, and that the ballot shall afford an opportunity to the voter to vote for each of the measures or for only one of the measures, as may be provided in said resolve, or against each of the measures so grouped as conflicting or as alternative. In case more than one of the measures so grouped shall receive the vote required for its approval as herein provided, only that one for which the largest affirmative vote was cast shall be deemed to be approved.

THE REFERENDUM.

I. When Statutes shall take Effect.

No law passed by the General Court shall take effect earlier than ninety days after it has become a law, excepting laws declared to be emergency laws and laws which may not be made the subject of a referendum petition, as herein provided.

II. Emergency Measures.

A law declared to be an emergency law shall contain a preamble setting forth the facts constituting the emergency, and shall contain the statement that such law is necessary for the immediate preservation of the public peace, health, safety or convenience. A separate vote shall be taken on the preamble by call of the yeas and nays, which shall be recorded, and unless the preamble is adopted by two-thirds of the members of each House voting thereon, the law shall not be an emergency law; but if the Governor, at any time before the election at which it is to be submitted to the people on referendum, files with the Secretary of the Commonwealth a statement declaring that in his opinion the immediate preservation of the public peace, health, safety or convenience requires that such law should take effect forthwith and that it is an emergency law and setting forth the facts constituting the emergency, then such law, if not previously suspended as hereinafter provided, shall take effect without suspension, or if such law has been so suspended such suspension shall thereupon terminate and such law shall thereupon take effect: but no grant of any franchise or amendment thereof, or renewal or extension thereof for more than one year shall be declared to be an emergency law.

III. Referendum Petitions.

Section 1. *Contents.* — A referendum petition may ask for a referendum to the people upon any law enacted by the General Court which is not herein expressly excluded.

Section 2. *Excluded Matters.* — No law that relates to religion, religious practices or religious institutions; or

to the appointment, qualification, tenure, removal or compensation of judges; or to the powers, creation or abolition of courts, or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the Commonwealth, or that appropriates money for the current or ordinary expenses of the Commonwealth or for any of its departments, boards, commissions or institutions shall be the subject of a referendum petition.

SECTION 3. *Mode of Petitioning for the Suspension of a Law and a Referendum thereon.* — A petition asking for a referendum on a law, and requesting that the operation of such law be suspended, shall first be signed by ten qualified voters and shall then be filed with the Secretary of the Commonwealth not later than thirty days after the law that is the subject of the petition has become law. The Secretary of the Commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed law as such description will appear on the ballot together with the names and residences of the first ten signers. If such petition is completed by filing with the Secretary of the Commonwealth not later than ninety days after the law which is the subject of the petition has become law the signatures of not less than five per cent of the qualified voters of the Commonwealth, calculated upon the whole number of votes cast for Governor at the last preceding election, then the operation of such law shall be suspended, and the Secretary of the Commonwealth shall submit such law to the people at the next State election, if thirty days intervene between the date when such petition is filed with the Secretary of the Commonwealth and the date for holding such State election; if thirty days do not so intervene, then such law shall be submitted to the people at the next following State election, unless in the meantime it shall have been repealed; and if it shall be approved by a majority of the qualified voters voting thereon, such law shall, subject to the provisions of the Constitution, take effect in thirty days after such election, or at such time after such election as may be provided in such law; if not so approved such law shall be null and void; but no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the total number of ballots cast at such State election.

SECTION 4. *Petitions for Referendum on an Emergency Law or a Law the Suspension of which is not asked for.* — A referendum petition may ask for the repeal of an emergency law or of a law which takes effect because the referendum petition does not contain a request for suspension, as aforesaid. Such petition shall first be signed by ten qualified voters of the Commonwealth, and shall then be filed with the Secretary of the Commonwealth not later than thirty days after the law which is the subject of the petition has become law. The Secretary of the Commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed law as such description will appear on the ballot together with the names and residences of the first ten signers. If such petition filed as aforesaid is completed by filing with the Secretary of the Commonwealth not later than ninety days after the law which is the subject of the

petition has become law the signatures of not less than ten thousand qualified voters of the Commonwealth protesting against such law and asking for a referendum thereon, then the Secretary of the Commonwealth shall submit such law to the people at the next State election, if thirty days intervene between the date when such petition is filed with the Secretary of the Commonwealth and the date for holding such State election. If thirty days do not so intervene, then it shall be submitted to the people at the next following State election, unless in the meantime it shall have been repealed; and if it shall not be approved by a majority of the qualified voters voting thereon, it shall, at the expiration of thirty days after such election, be thereby repealed; but no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the total number of ballots cast at such State election.

GENERAL PROVISIONS.

I. Identification and Certification of Signatures.

Provision shall be made by law for the proper identification and certification of signatures to the petitions hereinbefore referred to, and for penalties for signing any such petition, or refusing to sign it, for money or other valuable consideration, and for the forgery of signatures thereto. Pending the passage of such legislation all provisions of law relating to the identification and certification of signatures to petitions for the nomination of candidates for State offices or to penalties for the forgery of such signatures shall apply to the signatures to the petitions herein referred to. The General Court may provide by law that no copartnership or corporation shall undertake for hire or reward to circulate petitions, may require individuals who circulate petitions for hire or reward to be licensed, and may make other reasonable regulations to prevent abuses arising from the circulation of petitions for hire or reward.

II. Limitation on Signatures.

Not more than one-fourth of the certified signatures on any petition shall be those of registered voters of any one county.

III. Form of Ballot.

Each proposed amendment to the Constitution, and each law submitted to the people, shall be described on the ballots by a description to be determined by the Attorney-General, subject to such provision as may be made by law, and the Secretary of the Commonwealth shall give each question a number and cause such question to be printed on the ballot in the following form: —

In the case of an amendment to the Constitution: Shall an amendment to the Constitution (here insert description, and state, in distinctive type, whether approved or disapproved by the General Court, and by what vote thereon) be approved?

YES.	
NO.	

In the case of a law: Shall a law (here insert description, and state, in distinctive type, whether approved or disapproved by the General Court, and by what vote thereon) be approved?

YES.	
NO.	

IV. Information for Voters.

The Secretary of the Commonwealth shall cause to be printed and sent to each registered voter in the Commonwealth the full text of every measure to be submitted to the people, together with a copy of the legislative committee's majority and minority reports, if there be such, with the names of the majority and minority members thereon, a statement of the votes of the General Court on the measure, and a description of the measure as such description will appear on the ballot; and shall, in such manner as may be provided by law, cause to be prepared and sent to the voters other information and arguments for and against the measure.

V. The Veto Power of the Governor.

The veto power of the Governor shall not extend to measures approved by the people.

VI. The General Court's Power of Repeal.

Subject to the veto power of the Governor and to the right of referendum by petition as herein provided, the General Court may amend or repeal a law approved by the people.

VII. Amendment declared to be Self-executing.

This article of amendment to the Constitution is self-executing, but legislation not inconsistent with anything herein contained may be enacted to facilitate the operation of its provisions.

VIII. Articles IX and XLII of Amendments of the Constitution annulled.

Article IX and Article XLII of the amendments of the Constitution are hereby annulled.

Debate was resumed Wednesday, November 21, the question being on passing the resolution (No. 370) to be engrossed. Numerous amendments were proposed and they were acted upon in the numerical order of the lines involved, the voting being continued until Tuesday, November 27.

Mr. Loring of Beverly: The committee on Form and Phraseology has reported Document No. 370, which is a revision of Document No. 369. The Convention excused the committee from complying with the former order that every detailed change should be set forth in the report of the committee. This would have been an exceedingly onerous matter, because the changes to be made were so many. As the Convention will see by referring to Document No. 370, the changes from No. 369 are very numerous. The text of the document has been cut down about 15 per cent; that is to say, there are about six hundred words omitted in the redraft. No change has been made in the document that affects its meaning one way or the other. The committee has executed its duty perfectly impartially and without any regard whatever to the personal feelings of the members of the committee. It has redrafted the document so that the committee believes it means precisely what it meant when it came into its hands. There is no change in meaning. It was necessary, however, that the document might be a properly built-up document, one that should be intelligible

and that could be used properly in the courts or in other places by those who have to pass upon it, that it should be rearranged. The provisions of No. 369 were all mixed in. Provisions as to the initiative and as to the referendum and as to other matters appeared just as they were put in by the Convention from time to time and without any reference to logical order. The consequence was that when the committee arranged the matters in logical order there was a great deal of repetition which could be cut out and was cut out. This necessitated many changes in the language of the resolution. Unnecessary words were cut out, though not in every case. Where there seemed any possibility of the two words describing, not more accurately, but more plainly, what was the intended meaning, the two words were used rather than the one word, because the committee wished the document to be perfectly plain in every statement that was made, even at the sacrifice of brevity.

In two places the committee made radical changes in the wording to carry out what it believed to be the intention of the Convention. On page 9, for instance, at the top of the page, the original document specified "thirty per cent of the voters voting". The question of what "voters voting at an election" meant had been the subject of litigation in Oklahoma, and it had been decided there that "voters voting" meant every one who cast a ballot, and it seemed to the committee that it was better not to leave any ambiguity; so, instead of "voters voting", it placed the words "ballots cast", and that seems to settle the exact meaning and put it beyond the question of a doubt.

Again, there was a provision that unrelated matters should be excluded from an initiative law or petition. This was a provision that it was obvious that the Attorney-General ought to pass on; and therefore the committee took it from an isolated position and put it into lines 42 and 43 among the other matters to be passed upon by the Attorney-General.

I believe I have enumerated now all the changes which come anywhere near being substantial changes, but they were made purely and simply to carry out what the committee believed to be the wishes of the Convention. This document, perhaps, is not as perfect as it might be, but it has received the unremitting attention of the committee from the time of adjournment on Tuesday up to early this morning. Either the committee or the printers have been at work at it all the time, and the committee wishes to acknowledge very gratefully the assistance, not only of Mr. Evans, the adviser of the Constitutional Convention, but of the members of the Convention who have helped the committee so much in its work. I refer to the gentleman from Brookline in the third division (Mr. Walker), the author of the measure; to the gentleman from Amherst (Mr. Churchill); to the gentleman from Waltham (Mr. Luce), and the gentleman from Boston in this division (Mr. Quincy), all of whom have given the committee a great deal of assistance. And in closing I would say that the committee appreciates the wonderful work that the State printer has done and the accuracy and efficiency of his office. [Applause.]

Mr. Hobbs of Worcester: I desire to call the attention of the Convention to one obvious error that is contained in Document 370, in the fourth line, and ask unanimous consent to correct it. It reads: "the power of a specified number of voters to submit constitutional

amendments." It should read "constitutional amendments and laws." I ask unanimous consent to make the change.

The new draft was modified as suggested by Mr. Hobbs.

Mr. Albert E. Pillsbury of Wellesley moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by the substitution of the following: —

RESOLUTION TO PROVIDE FOR ESTABLISHING THE POPULAR INITIATIVE AND REFERENDUM.

The Legislature shall provide for the enactment and repeal of statutes by the method known as the popular initiative and referendum, under such conditions and forms of procedure as it may prescribe.

[Mr. Pillsbury's speech in support of his amendment and upon the general subject of the initiative and referendum will be found on page 604.]

The amendment moved by Mr. Pillsbury was rejected, by a call of the yeas and nays, by a vote of 123 to 156.

Mr. BROWN of Brockton: I desire to call the attention of the Convention, which has listened to the gentleman from Wellesley (Mr. Pillsbury) first to the fact that he did me the honor to suggest that it was one of my inspirations that provoked this brilliant effort. But I particularly desire to call your attention to this fact: That his amendment does not fully express the inspiration, as he calls it. If this Convention was disposed to vote for this amendment its work on the I. and R. would be finished. If, however, we proceed to add legislative details and to try to perfect all of these details, I fail to see why the gentleman from Brookline should expect that we were going through like a machine to vote on these details one after the other. There are many reasons why we could give consideration to the action suggested by the amendment offered by the gentleman from Wellesley (Mr. Pillsbury); as I have said it is only a part of my inspiration, and because he moved it, I shall feel compelled to offer an amendment or substitute which will be the fullness of the inspiration, in order that when the time comes, if there is going to be a vote taken upon that proposition, we shall have an opportunity to take this larger measure rather than his smaller one. I had contemplated offering it if I should find that the measure which is to be offered as the initiative and referendum should be so loaded with hostile details that it would be defeated because of those details.

I assert that no one can challenge my allegiance to the initiative and referendum. It first made its appearance in American politics in 1892, and was carried to a national convention by Massachusetts delegates. It was adopted by the People's Party at Omaha, Neb., July 4, 1892, as a resolution, in addition to the platform of principles which had been adopted by the labor convention at St. Louis, February, 1892. It read: "We commend to the attention of the reform press and the people the principle of legislation known as *ab initio ad referendum*, or, with a loose translation, from the initiative to the referendum, an arc, as you might say, uniting the pillar of the initiative on one side to the referendum on the other. In 1895 I was a candidate of the People's Party for Governor and the initiative and referendum was in my platform; therefore I may be presumed to know something as to what was intended by that proposition in Massachusetts.

I would say first to those who have been on the opposite side that if you are disposed to be fair on this proposition it should not be limited to

the narrow amendment, as suggested by the gentleman from Wellesley (Mr. Pillsbury). If he argues in the one breath that the people are not to be trusted, and that the introduction of the initiative and referendum is to destroy our representative government, then what can he say in defence of his introduction of his amendment? Does he offer it in good faith in one moment and then in the next moment destroy it entirely by his argument that follows? Does he want to have the people have an opportunity to vote upon this principle of the initiative and referendum? Does the opposition to the pending measure want to send the Pillsbury amendment to the people?

I suggest to the friends of the measure that it is possible that you may send down to the people the principle of the initiative and referendum, plus the details that you may work out here, and your principle will be defeated because of the details, in which case you have lost both the principle and the details. For instance, there is the detail of the exemption of the judges. People will object to the pending measure, some because it is in and some because they think it ought not to be there. Suppose it is the number of signatures. Some people will think that that is entirely too conservative, others that it is too radical and votes will be cast against it for these reasons.

Now, I am not attempting to influence a vote here, except so far as it may appeal to the reason of the one who casts it. I believe that every advocate of the I. and R. is just as conscientious and devoted a friend of the initiative and referendum as I am, and I want to be rendered the same tribute. I want to present these opinions. I want to present them particularly to the labor section that is here, for it is the labor section as much as any other that will need this form of bringing their views to the attention of the people when this war is closed. No labor man could have read the attitude of the American Federation of Labor now sitting in Buffalo without discovering that it is reaching out even now to have a place at the council table when the terms of peace are to be decided. One may think that Utopian. It will not be so Utopian when Labor presents as the basis for peace the democracy of love to take the place of democracy by force that has prevailed for the past one hundred and thirty years.

Ah, you may not trust the people, Mr. Gentleman from Wellesley, when they are actuated only by force to resist force and by greed to match greed; you may well despair of the Republic when you see greed protected not only in what it has got but in its attempts to get more. All men desire by nature that they may live, that they may have the freedom that was guaranteed to them by the corner-stone principle of the Republic which says they have a natural right to life and to liberty, to enjoy happiness and to acquire property. Greed encouraged by the democracy of force, — there is your danger. Never need you fear the people who are actuated by the democracy engendered by love. I should not fear all of the people coming out of the gentleman's church, people that he associates with. I should not expect, if they had the very largest liberty, that they would take away property from him or from others. I would fear a hungry mob, that believes it is prevented from getting the life that belongs to it; people who have appealed to the law again and again and have not been able to get redress. Some years ago in this country the tobacco trust had agents assigned to various parts of the tobacco black belt.

The farmer could sell only to the agent of the trust who was assigned to his section. There was no relief under the law. But there came a time when out in the night rode the night-riders, as they were called, and the trust company's warehouse filled with tobacco was burned. Diligently in the morning did the officers of the law go out with their authority to find themselves, for they were in person or in sympathy with the night-riders. The men who were on the side, as you might say, of the law were powerless against public opinion in that section. There was no law, but the trust evil was cured. I cite these incidents because I am trying to show the difference between a people who are animated by love and a people who are driven to whatever they may do by force, because they are victims of circumstances.

On this principle of the initiative I again suggest to the people who are in favor of it: First, is it not better, — and again I say I am not seeking to direct your action; I am reasoning with you and with myself, — is it not better to have the full expression of the people upon the one distinct principle? Do you want the last word in legislation cemented into your Constitution? I ask you this: Will not the Yes vote which will come up in response to the question on the principle alone be larger than any Yes for any measure with legislative details that you may get out of this Convention? I ask you to think that over. Every amendment that is offered here makes this resolution more objectionable to some voters. If some such amendments as are now offered as substitutes are to be adopted all the time which you give in discussing the pending resolution will be almost thrown away. I say "almost", because whatever you do here will be for the instruction of the Legislature if it should be instructed to enact details.

Now, what is the objection? And I admit, — I admit, — that it is a valid objection. I admit that it is that objection that causes me to be in an honest quandary at this very moment as to how I shall use my voice and vote. It is: What would the Legislature do? Can we trust the Legislature? I admit there is room for doubt. What do I put opposite that? The fact that you are going to put into the Constitution that which will take a long time to get out if a mistake is discovered. Again conditions will so far change that if the Legislature had the power they could make the details more elastic and adapt them to the people's will. I appeal to the gentleman from Brookline (Mr. Walker) who introduces the measure. I want the attention of the gentleman from Brookline. I have not wavered in my allegiance to his votes. Usually I have stood up with him, but I have given a great deal of thought to this measure. It was a long time before I arrived at the conclusion to say on this floor what I have now said, and the gentleman from Wellesley (Mr. Pillsbury) has taken a long, long time before he got round to debating the question of whether or not we should send down the principle alone instead of sending down the details that modify, qualify and almost destroy the largest possibilities of that principle.

Mr. Walker of Brookline: I should like to ask the gentleman if he realizes that it is utterly impossible to send down the bare principle to the people. The Legislature, if it passes an initiative and referendum measure, must submit it to the people with such details as the Legislature may see fit to put in.

Mr. Brown: I should say in answer to the gentleman, in order that

I may not be misunderstood, that the principle which I would suggest to be sent down would be this: That on and after the passage of this amendment, meaning the simple amendment proposed by him or by others, the Legislature, by statute law, and thereafter as occasion may require, shall enact such laws as will enable the people to review all the acts which have been or may be committed, or to recall or modify or extend powers which have been or may be delegated, and also to provide whereby the people may send up a legislative measure or a constitutional measure and have it go back for direct action to the people. Now, there is the principle. It stops right there. And then comes up to the Legislature the demand for legislative provisions whereby the powers in the principle may be exercised by the people. Either the people do want it, or they do not want it.

Let us not be discouraged if we are divided as we are now divided here. The Convention in Massachusetts, called to act upon the acceptance of the Federal Constitution, so important a measure as that, stood 187 to 169. There were honest men there on both sides. They had their fears, — those who were opposed to it. Chief Justice Sergeant turned out three or four pages of the finest print that you ever read, predicting what was going to happen if that Constitution was adopted; but the predictions were not realized. Therefore cannot we see that we are honest here? I cannot conceive that a man can be dishonest with himself in this Convention when he is acting upon the destinies of all the people. I cannot conceive, Mr. President and members of this Convention, that even personal inconvenience will prevent attendance of the advocates of the I. and R. if they are devoted to this principle of the initiative and referendum. If it is not worth standing here valiantly and fighting for, then it is of little value.

I say let us consider the fundamental principle, not its details in application. Will they give us on the other side the broader proposition? Let us test our opponents on that first. I want to test the gentleman from Wellesley (Mr. Pillsbury). If he believes the people are not competent to enact legislative details, does he believe they are competent to act on the principles which underly all legislation and to empower the Legislature to provide methods? If the gentleman on the opposite side will not send down the full principle then we well may send down the details that we can get. Let us discover what is the real attitude of our opponents. I know their attitude against details, but what is their attitude on the fundamental principle?

I want just for a moment to refer to what the gentleman has said about organized labor. We are pointed at as a sort of bandit crowd, as if we seek only the opportunity to rush out to destroy property or to take it over unto ourselves. Organized labor is seeking to give to the humblest individual the living to which he is entitled. It feels that he ought to have it under the law. It feels that he does not get it, because law is privileged, because law helps privilege. It believes with the gentleman from Wellesley (Mr. Pillsbury) as to the power of property and of so-called vested rights. And therefore labor sees, and it does not need an agitator to show it, that while they work and produce, the product of the labor of the many rests with a few. Have you not discovered that already the farmers in North Dakota are sending out their appeal, and have spoken in the National Convention of Labor at Buffalo to point out how labor has been hoodwinked and de-

ceived by the men who stood between labor and the farmer? That to the farmer they said: "You get only your small amount for your product because Labor is getting everything," and to Labor they say: "You are paying your high price for food because the farmer gets everything." The farmers declare that while they raise grain and other food in the shape of cattle, the price they receive is not enough to give them an adequate profit. What they produce by employing themselves and their family, barely keeps the farm in their hands. That is the situation in Massachusetts. On the other hand, they come to the wage-worker and they tell the wage-worker that the reason he gets small wages is because the remainder is absolutely essential to support the farmer. That is the story privilege tells both sides, while it absorbs from both sides. Therefore there will be a coming together, as there was in October, a non-partizan movement of those who believe that the government is responsible for the wretched distribution, — not the unequal, but the inequitable, distribution whereby privilege fattens on the producers' toil. That is the trouble to-day and it will produce its remedy.

I propose to amend and broaden the amendment of the gentleman from Wellesley (Mr. Pillsbury). It is right as a principle, and the principle is that the people have the last word, that they have a right to instruct their representatives and to call them to account and to change generally. Four parts of government always have been in the Constitution, the Executive, the Legislative, the Judiciary, and the People, — the source of all sovereignty. It always has been there, and as I once said it formerly was exercised through the town-meeting; but now for a large part that is lost. The I. and R. is asking that you provide some substitute method whereby the people may give expression to their opinion: First, as to what legislation is necessary; second, what constitutional changes, if any, are necessary; third, that, when legislation is passed that they do not want, they may have a chance to review it. That is the principle. That is all that is in the pending measure of the majority. Where is there any new power there? The people to-day have a right through the individual to initiate legislation. Why not, then, the whole of them? Why not any part of them? There is nothing new. The question now raised is: Would we not prefer that there should go down to the people a resolution supported by three-quarters or four-fifths of this Convention than to send down the pending measure?

Do you tell me, you who are friendly to the initiative, that you will stay here for days and debate a detail, and the people will swallow it whole without debating? Do you tell me that all those who do not agree with your details are going to support the principle on which the details are based? I say there is danger. If it is defeated, on whose head will be the responsibility for having lost the principle of the initiative and referendum? On those who lead. It will be on the gentleman from Brookline (Mr. Walker) who introduced this measure [applause], because he holds tenaciously to the idea that we have got to have this resolution and such of its details as we can get through this Convention.

I am in a very peculiar position, as I call it. I am recognized as being a strong friend of the initiative and referendum, and I have been earnestly asked not to put in this amendment; but I appeal to

you, will you take the chance of what may happen to the amendment of the gentleman from Wellesley (Mr. Pillsbury)? Or shall we test it first on an amendment favorable to us? The real principle, however, is this: Are we not stronger on the principle of the initiative and referendum stripped of all its details than we are with the details in it? Shall we gain more by the tremendous vote which will be cast for the plain principle, or shall we make greater progress by adding these details? If this Convention divides at one time so that there is only one majority and divides at another time so that there is twenty majority, are not the people going to follow along the same lines? If you get an amendment which the people will adopt with a big majority, is not that amendment going to force the Legislature to enact more favorable details than we get here? Will these details now cause the people to reject your whole measure? There is the danger. The opponents will hammer the weakness of the detail. We are putting into the Constitution a lot of details longer than the Constitution itself. Some of those very details have been so easily disposed of here that the leading gentleman on either side will rise and say: "I have got no objection. The rest may do as they please," or "This is a dangerous amendment and ought to be defeated," or "This ought to be accepted." A friend of the initiative comes forward with a restrictive or conservative amendment, and he carries enough with him over on the other side so that that amendment goes in, in spite of the protest of the friends of the measure. I ask: Can we afford to send such a measure down with such restrictions? I say now if it comes to a vote I am going to vote for it, but I am on record here now as to what my judgment is. I am on record here for the labor men as to what my judgment is, as to how it is going to affect labor.

Why, gentleman from Wellesley, you are voicing the very fears that were voiced at the foundation of this government! Some asked for a monarchy, and the ones who asked for a monarchy had no other reason except that the people, the great masses, by their voting privilege would take away the wealth from the few. Macaulay prophesied the downfall of the Republic on this thought, forgetting that it depends upon the education of the majority. It will not happen if the majority are educated up to the true brotherhood. The labor movement recognizes neither race nor creed. It has one object, the betterment of humanity, the betterment first of those immediately organized, and thereby indirectly the benefit of others. Is it not conceivable that the whole people could be animated in such a way that they would not take away anything that would belong to anybody else?

And when we come to organized labor I want to call the attention of the gentleman from Wellesley (Mr. Pillsbury) and others in this Convention, — and I say it not with any class distinction, and I say it because of what some members have said in this Convention against labor, — that there is an organized judiciary. You have got an organized judiciary which is not so much interested in its own members as it is interested in their own profits and the profits of those who hire them. I do not reflect upon individuals. But lawyers are subject to hire, and the patron who pays the lawyer gets the best of his ability, whether the lawyer believes in the cause or not. We in this Republic are the victims of a system or privilege which has grown strong and is growing stronger. It hires the best lawyers, gets them into their ranks,

and takes from the people something for which no adequate equivalent is rendered. Everything taken from the people without an equivalent is robbery. The Supreme Court has said that in speaking of the tariff. You may call it anything you please, but any legislation that takes from the hand of one man and puts it into the hand of another man is robbery, no matter under what name it is effected. More could be said of an organized judiciary in contrast with organized labor.

I cannot sit quiet and see you throw your darts at organized labor, which I know fundamentally is organized for practical religion. It is out for every-day Christianity. The injury of one is the concern of the whole. That is the motto of organized labor, and is a good motto for any Legislature. The injury of one is the concern of the whole. This Republic cannot stand on the injustice of taking from one who produces without rendering an equivalent. It is the property of the producer. The court says labor is property, and therefore when you permit privilege to take away from labor anything without rendering an equivalent you are permitting privilege to confiscate property. I challenge contradiction, that, under our prevailing system, the wealth created by the many is taken from them without an adequate equivalent and transferred into the hands of the few who exercise the taxing power by law to take it to themselves.

I offer an amendment to the motion introduced by the gentleman from Wellesley (Mr. Pillsbury). He having given me the credit for the inspiration, I want to try the Convention out on the full dose of the inspiration instead of some homeopathic, diluted, one to one-thousandth part. I would ask, Mr. Chairman, that I may close by reading the amendment as it is.

[Reading].

The Legislature shall by statute law at the session following the acceptance of this amendment and thereafter as occasion may require make provisions whereby the people may exercise the rights reserved to and by and for the people in the Bill of Rights, especially Articles V, VII, VIII and XIX, including the right to initiate and control legislation as hereinafter required, and to revise, amend or otherwise alter the acts of its servants committed or to be committed in the exercise of the functions, or powers heretofore delegated or that may hereafter be delegated by the people. Such statute shall also make provision as to the number of signatures required, the form and conditions under which they shall be obtained and presented for a demand for legislative action upon any proposal thus submitted: and provision by law shall also be made whereby legislative acts may be submitted for review by the people by direct action at the polls, exercising their powers herein and otherwise reserved.

Mr. Brackett of Arlington: I ask the attention of the Convention for a few minutes in order that I may present a few considerations, not upon any of these pending amendments to the main proposal, but upon the main proposal itself. In doing so, permit me to repeat what I said when this matter was in Committee of the Whole, that I came to this Convention entirely unfettered by pledges as to what my action would be upon this or upon any other subject. I came without any prejudice against this proposition, but, on the contrary, prepossessed in its favor, because from what little I knew about it I thought it was a measure in the interest of the people. As the discussion proceeded, however, I became convinced that my original impression was erroneous, and I believe that a great many of the people of Massachusetts who think favorably of the I. and R. are laboring under a similar mistaken impression. Some of them apparently have been led by the

arguments of the advocates of the proposition to imagine that the Legislature of Massachusetts is a despotism forced upon them by some foreign authority and that this measure is going to emancipate them from it; that under it they can get any law they want; that, as you sometimes see in a store the sign "If you don't see what you want, ask for it," so if they look in the statute-books and do not find there the law they want, all they will have to do is to ask for it under the initiative and referendum, and they will get it.

Since the question was under discussion in the Committee of the Whole, I have given a great deal of attention to the subject. I have not been influenced so much by the debate as by my own careful study of the resolution itself. This has confirmed my opinion that it is not a measure for the benefit of the people of Massachusetts.

I speak to-day in no partizan spirit. I do not regard myself as belonging to one of two hostile armies, each of which is endeavoring to obtain a victory over the other upon this issue. I am not anxious to beat any man or any number of men in this Convention. I am anxious only that the Commonwealth shall suffer no detriment from the action of the Convention, and I am convinced that if this proposition is adopted the Commonwealth will suffer detriment from it. I believe that it will not reform, but on the contrary will deform, the Constitution.

Permit me to call your attention to what strikes me as one of the most potent arguments against this proposition, and that is an argument furnished by my friend from Brookline (Mr. Walker), who reported this measure from the committee, whose name it bears, and who is its leading champion on the floor of the Convention. This may seem a strange remark, but I weigh my words in making it. That argument is furnished in this official document, which is the calendar of the Convention for Friday, October 5, 1917. In that calendar, under the heading of "The Establishment of the Initiative and Referendum," appears this entry: "Mr. Walker of Brookline gives notice that he will move to amend as follows." Then follow upon the first page six amendments proposed by him, on the second page eleven, and on succeeding pages others, making in all, if I have made a correct count, twenty-two amendments offered by the gentleman from Brookline. Do not misunderstand me. I am not criticizing my friend for moving these amendments. He deserves commendation rather than criticism for so doing, because when any man is responsible for a measure and he discovers defects in it, of course it is his duty to remedy them if they can be remedied by amendment. But the argument is this. This proposition emanated from a committee of fifteen members, and I think you will agree with me when I say that it is one of the strongest committees in this Convention. That committee divided upon the proposition eight to seven. It is interesting by the way to recall in this connection another tribunal of fifteen members which also divided eight to seven, and that was the Electoral Commission in the celebrated Hayes and Tilden presidential contest forty years ago.

It is reasonable to suppose that the eight gentlemen who joined in that report made the resolution as perfect as they were capable of making it, and if any body of men were capable of making such a measure perfect these gentlemen were, for I do not overrate the eight when I say that they are among the ablest members of this Conven-

tion. But after all their work in perfecting it, so as to disarm opposition when it came before the Convention, here they themselves discover twenty-two defects requiring amendment.

Now, if that is true of a proposition coming from a committee of this character and caliber, what can you expect of a proposition which comes, not from a committee selected with the care, fairness and excellent judgment shown by the President of the Convention in appointing this committee, but from some little group of ten persons representing nobody, responsible to nobody, selected by nobody but themselves. That is where any measure under the initiative is to come from, — a group of ten self-appointed persons. What can you expect of them? Will not their measures require amendments? They surely will. And yet "the people" who under the initiative are to enact laws will have no opportunity whatever to amend them, because they do not come together to consider and act upon them as a law-making body, but all that each individual voter can do is to go into a voting-booth and mark "Yes" or "No" upon a bill prepared by others, and in framing which he took no part. This is one of the vital objections to this whole proposition, that laws are not considered by a body of men having the power to debate them and to amend them, if necessary, before enactment. You cannot secure sane and satisfactory legislation in that way.

The relation of the voters to the Legislature is somewhat analogous to that of the stockholders of a corporation to its board of directors. The directors of a corporation often make mistakes, the same as legislatures do. We have seen an example of this in Massachusetts in two of our great railroad systems. My honored friend, the distinguished gentleman from Brookline, — Mr. President, will you permit me to mention his name, because there are so many distinguished gentlemen from Brookline in the Convention that this is not a sufficient designation, — I mean Mr. Whipple, I understand, has brought a suit against the directors of the New York, New Haven and Hartford Railroad to recover for the stockholders some of the money lost on account of the acts of that board of directors; and I trust he will prevail in that suit, as he usually does in his suits. But, Mr. President, I do not believe that my friend ever advised his clients in that case to hold a stockholders' meeting and amend the constitution and by-laws of the corporation so as to enable the stockholders to act directly upon every matter of detail in the management of that railroad.

The directors of a bank often make mistakes. They loan money upon insufficient security, or are guilty of negligence or other fault by which their stockholders suffer losses. But do you think it would be wise for the bank to hold a stockholders' meeting every week, or oftener, to pass upon every application for a loan; or, rather, to make the case more like that under the initiative and referendum, to have copies of every application for a loan made out and sent, one to each stockholder, with a request that he write "Yes" or "No" upon the question whether the loan should be made, without any chance to confer with his associates, or to learn all the facts in the matter? I think you will agree with me that a bank that should attempt to conduct its affairs in that way would do very little business and would very soon be in the hands of a receiver.

To take an illustration nearer home, this Convention proposes to

adjourn within a few days to next summer. Now, why not apply the principle of the initiative and referendum to the Convention itself? Why go to the trouble and the expense of coming back here next summer? Why not let every proposal for an amendment to the Constitution be sent to each member of the Convention for him to write "Yes" or "No" upon it, and then send his reply back to the Secretary of the Convention, who shall report the number of votes *pro* and *con* to the Secretary of the Commonwealth, who thereupon shall announce whether the amendment is to be submitted to the people. You will say that this is all nonsense, and I agree with you, but it is no greater nonsense than is the proposition to have laws enacted by the people at large without coming together to consider them, but who, each acting by himself, are simply to write "Yes" or "No" upon them without any opportunity for obtaining that light which can be derived only from a full and free discussion of a measure by a body of men assembled in one place.

It is charged that we who oppose this measure do not trust the people. We do trust the people. We trust them to act in every matter directly where this is practicable, as in elections, and we trust them to elect competent legislators to do the things which they cannot do directly. One of these things is the enactment of laws. This, from the nature of things, must be done by a representative body. The town-meeting is often cited as a proof of the feasibility of direct action by the people upon public affairs. But in the town-meeting the voters of the town all assemble in one place, where they can hear each other's arguments, compare views, make amendments, if necessary, to proposed measures, and then decide upon them. But when the population of the town becomes so large that the town hall is too small to hold all the citizens who are entitled to attend a town-meeting it becomes necessary for them to establish a city government and to delegate their powers to a representative body of men. And likewise, as all the voters of the State cannot meet in a body to consider legislation, the only practicable way for them to legislate is through the agency of representatives chosen by them. [Applause.]

Mr. Joseph F. O'Connell of Boston moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in lines 15 to 18, inclusive, the words "or to the appointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts;" and by striking out, in lines 251 to 254, inclusive, the words "or to the appointment, qualification, tenure, removal or compensation of judges; or to the powers, creation or abolition of courts."

Mr. O'Connell: These amendments which I have offered will strike out the sections that were introduced into the resolution on its second reading on the motion of the gentleman from Fall River (Mr. Cummings). This very important feature of this measure was introduced and voted upon with little or no debate, late one afternoon when many of the members of the Convention were out of the chamber, and when, under the rules, debate was cut off, without affording an adequate opportunity either to understand the wide scope of the amendment, or to realize what a revolutionary departure from the principle involved in the initiative and referendum the doctrine advanced by the gentleman from Fall River carried with it. The committee on Initiative and Referendum

did not report this feature and it was not discussed at all during the general debate on the subject, and surely no exception of this broad nature should be written into this measure without a more precise understanding of its import. It seeks, in a word, to exclude from the operation of the initiative and referendum one of the principal branches of our government. All other departments of government are included within the scope and operation of this measure, but by one, single, sudden blow, with no fair opportunity to dispute the wisdom of the amendment, we find the judiciary and everything connected with it, exempted from the operation of the initiative and referendum.

If there is any logic in the principle involved in the adoption of the initiative and referendum as a whole by this State, then there can be no logical reason that would exempt the judiciary from its operation. Why, in Massachusetts above all States in the Union where the initiative and referendum is adopted, should the judiciary be exempted, and why should the people of this Commonwealth be denied the right of expressing themselves about their servants, the judges, or anything in connection with them? What is there so holy about our judiciary that our people should be denied the right to discuss them through the machinery and safeguards of a popular initiative and referendum? Why this halo about our judges and courts, that would deny the people the privilege of expressing their wishes or their displeasure at the misconduct or shortcomings or unfitness or inefficiency of our judges? What have our judiciary accomplished that they should have this preëminent exemption from responsibility to their masters, the people? Why should they be fortified more than they are at present? Gentlemen of this Convention,—and more than 150 of you are lawyers,—you cannot gainsay me, when I call your attention to the fact that the judiciary of Massachusetts already are more strongly fortified and protected in office than the judges of any State in the world. I deliberately go beyond this country, and I say that they are more strongly intrenched in their tenure of office here in Massachusetts than in any civilized State in the whole world. And yet the gentleman from Fall River (Mr. Cummings), through the instrumentality of his amendment which has been inserted in this measure, endeavors to give them more power and to remove them further from the people. Forsooth, why? What argument has he advanced? If I could understand his reasoning at all, it resolved itself into one thought, namely, that because there may be weak members upon our bench, it is necessary to protect those weak members by keeping them away from the people in whose favor they possibly might be tempted to decide in certain cases. This argument goes too far if it means anything, and the mere statement of it is an all-satisfying reason why his amendment should be stricken out of this measure. We should have no weak judges on our bench. The bench is no place for a weak judge, and if Massachusetts is obliged to suffer from weak judges on account of her system of appointment, then there ought to be some way of getting rid of a weak judge as soon as possible. Can any member of the Convention imagine a weak judge becoming stronger because he is made wholly independent of the people? Rather, would not that same weakness lead to arrogance that is so common among those who do not possess an even balance when in a position of responsibility?

I, for one, cannot understand the purpose that excludes the judi-

ciary, other than by keeping in mind the thought that the judiciary are a good deal like the grave, — "they never give up anything."

History has a strange way of repeating itself, and we find in the Convention of 1820, where the selfsame proposition in another form was presented to the Convention, a counterpart of this movement to give the judiciary greater power. Most of you know that under the provision of our Constitution, judges cannot be removed except by an address on the part of a majority of both Houses of the Legislature and with the consent of the Governor and Council. This requires four distinct movements, and, to the ordinary mind, would seem sufficient. Yet we find the Judiciary Committee of the Convention of 1820 acted practically as did the Judiciary Committee of this Convention of 1917, reporting every measure possible in favor of the judiciary and culminating it all by bringing in a recommendation that would change the Constitution and make it necessary to get a two-thirds vote in the House and in the Senate before a judge could be removed. And strangely enough, that motion was led in that day, as in this, by a distinguished lawyer and a favorite of the bench, the great Daniel Webster himself. The resolution was reported out by a Justice of the Supreme Judicial Court, Joseph Story, who was then a member of that Convention and Chairman of its Judiciary Committee, and it was seconded and pleaded for by another judge of wide renown, Lemuel Shaw.

The burden of their argument in pleading for this change, that would insure the judges from the practical possibility of any removal, was that the judges ought to be excluded from any possible suggestion of successful attempt at removal. My own judgment, from the history of the times, however, is that the judges had in mind the experience of Shays's Rebellion, where the battle-cry was "Close the Courts" because of the failure of the courts to check infamous practices on the part of unscrupulous lawyers. The reforms which followed Shays's Rebellion in Massachusetts could have been secured just as easily without such a manifestation of popular discontent, if the courts of that day had not been so arrogant and indifferent to the wrongs that were being committed through the instrumentality of the courts. The Convention of 1820 discussed the subject at length, and decisively defeated the proposition by a vote of almost two to one, indicating conclusively that the people of Massachusetts, when they understand this subject, are not willing to increase the powers of the judges or to make them more independent of the people, and that they are not in accord with the desire of the judges who always seek to increase their power in order that their "independence" may be more pronounced.

That brings me to a point in the address made by the gentleman from Wellesley (Mr. Pillsbury) this morning. He said: "We should have an independent judiciary." Oh, yes, we must have an independent judiciary, but let us not resort to sophistry in a Convention such as this. We ought to have an independent judiciary, but that does not mean a judiciary that is independent of the people, but rather a judiciary that will be independent enough to do that which is right whenever it is called upon to do so.

What is the history and the theory of the appointment of judges for life in this Commonwealth? The theory of the appointment of judges for life which we have in our State comes down from the English system, where it had been invoked because prior to this system the

judges were subject to the pleasure of the King alone, and it was found that under such a system the judges were doing what the King wanted, because they were afraid of incurring his displeasure. Then it was that there was written into the commission of judges the principle that their tenure should be made "*quamdiu se bene gesserit*," — "during good behavior," — in contradistinction to the custom that had prevailed before that by which judges held office during the pleasure of the King.

The English Parliament made the distinction for the protection of the people. It was done to protect the people and to keep the judges near the people, to assure the people that the judges would act for them in the protection of their rights as against the King or his friends in the government. This new doctrine at that time was not invoked for the purpose of making judges independent of the people, but to make the judges independent only to such a degree that they would not yield to might as against right. It never was intended that the judges were to be independent of the people.

It is almost an elementary proposition in our Republican form of government that the judicial department of the State shall be separate from, and independent of, legislative and executive powers. All students of our form of government delight in reaffirming this doctrine, and gentlemen have arisen in the Convention, in discussing proposed amendments, and they frequently have reminded us that we have the three familiar "checks and balances" in our form of government, — the judiciary balances the executive and legislative, and the legislative serves as a check upon the executive and the judiciary, and so on, — every one of the three balancing and checking the other so that we have a perfect equilibrium.

Yet whilst this may be the theory of our system, what have we as a matter of fact? Is not our judiciary absolutely dependent upon the favor of the Governor for appointment? Where is the independence of the branches when you start with such an admission? Where is the separation at that time? Rather is there not a direct and undeniable connection between the executive and the judiciary?

Under our system one man, a Governor elected for one year and responsible only during that time, can bring together secretly five members of his Council and appoint a man, and with the aid of his five friends in the Council have him confirmed, and that man must be kept in office for life or as long as he does not commit some scandalous wrong, no matter how inefficient or weak he may be. He must be kept in that office and the people cannot be rid of an unsatisfactory judge, whether it is in the highest or the lowest court, so long as that man so conducts himself that he does not himself bring down the censure of the people at large because of gross misconduct. His weakness in the office and his inability to perform the high duties always will be excused in one way or another, and in the absence of widest public indignation it is practically impossible to free the judiciary from such a judge. Do you gentlemen think that such a state of affairs ever was contemplated or intended when this feature was written into the Constitution in 1780? It does not seem so to me, and can any gentleman in this Convention, with this in mind, deliberately go forward and make it even more difficult for the people to rid themselves of inefficient officials?

Again I repeat, if the initiative and referendum has any logic to invoke its application, then there can be no logic in excluding the judiciary from its scope and operation. Members ask: "How is it possible that Massachusetts could have written such a doctrine into its Constitution?" Personally there is one reason that satisfies me. At the Convention of 1780 all the judges in the Colony of Massachusetts Bay were delegates to the Convention, and they were very prominent in its affairs. They, of course, were holding office for life under the English system which then was prevailing, and besides there were in the Convention a great number of professional men, ministers and doctors. The real strong men, the farmers, the mechanics, the merchants and the fishermen, were at the front with Washington or in attendance at the Continental Congress sitting in Philadelphia. The original draft of the Constitution was drawn by John Adams, who had been appointed Chief Justice shortly before the Constitution was drafted, although, as a matter of fact, he never sat.

Under these influences and this leadership, it is not at all strange that these gentlemen, although they talked about the separation of the departments of State, yet could find themselves adopting an extreme exception to the doctrine itself, in so far as it pertained to themselves. According to Chief Justice Shaw, it was adopted only as an experiment; and although Massachusetts wrote the first Constitution still in force, she is the only State in this Republic to-day that has this all-important and anomalous situation which violates one of the fundamental principles of our government.

Thus we are confronted with a contradiction of the axiom of government in this country that the people are the source of all political power, and that to them should their officers and rulers be responsible for the faithful performance and discharge of their duties. While the people are permitted to elect their officials for the executive and legislative branches of our government, they are wholly deprived of it as far as the judiciary is concerned. The important and almost sacred privilege of choosing men who shall sit in judgment upon the lives, liberty and rights of property is denied to the people of this State, thereby violating the fundamental principle of our government by the people.

Our judicial power should be a distinct and coequal department and should be wholly independent of the executive and legislative. It never should be dependent upon executive whim or caprice or prejudice. If the people of Massachusetts who accepted our first Constitution could have foreseen how well the 42 States of this Union that elect their judges are guided and how well the law is enforced, does any man in this Convention think they ever would have permitted the doctrine of an appointive judiciary for life to have been foisted upon them? I for one never will believe that they would have.

Oh, but some members may say, true, our system is not like the other States, but it is like the Federal system. I must differ with these gentlemen and call their attention to the fact that our system is radically different. Under the Federal system a man is appointed by the President, it is true, but he must be confirmed by a majority of the United States Senate. This means that each of the Senators from the 48 States in the Union, who themselves are responsible to the people, has something to say as to whether or not the appointment shall be con-

firmed. Here only five men, in secret session, can confirm the appointment; but under the Federal system 96 Senators sit in open session, and only after searching investigations and hearings are men confirmed to judicial positions.

Every one of us is familiar with the careful, thorough and painstaking manner in which the United States Senate investigated the qualifications of Mr. Justice Brandeis before he was confirmed. Compare that, if you will, with the appointment very recently of a judge to our Superior Court who is not known to ten men in this Convention. What influences brought about his appointment? He may turn out to be a good judge or an unsatisfactory one. If he is good, it is a pure accident as far as the people are concerned or as far as they are informed. If he is unsatisfactory there will be no way of getting rid of him. Do you gentlemen, in this year of grace, believe that such a system as ours is either scientific or appropriate or necessary? Why should there be any secrecy or hidden practices or unfamiliar methods about the appointment of judges? Is it to insure such practices that the gentleman from Fall River wishes to have the present system made more impregnable, and does this serve to convince men in this Convention that they should vote to except the judiciary from the provisions of the initiative and referendum?

Let me impress upon the members of this Convention that no other State in the Union has such a system as we have. We appoint in Massachusetts for life. No other State in the Union follows us to-day, although we adopted the first Constitution still in force. Some of them did follow us, it is true, but in each and every case they have abandoned the doctrine of appointing judges for life. New Hampshire comes the nearest to us, where judges are appointed until they are 70 years of age. Even New Hampshire could not stand for the doctrine of having men enfeebled by age or sickness enforced upon them after the age of 70. We make no provisions that are certain to insure us from the infirmities of age or disease.

Let me give the list of the States in this Union, as quickly and as briefly as I may, where judges are elected:

Alabama.	Maryland.	Ohio.
Arizona.	Michigan.	Oklahoma.
Arkansas.	Minnesota.	Oregon.
California.	Mississippi.	Pennsylvania.
Colorado.	Missouri.	South Dakota.
Georgia.	Montana.	Tennessee.
Idaho.	Nebraska.	Texas.
Illinois.	Nevada.	Utah.
Indiana.	New Mexico.	Washington.
Iowa.	New York.	West Virginia.
Kansas.	North Carolina.	Wisconsin.
Kentucky.	North Dakota.	Wyoming.
Louisiana.		

In the following States many of the judges are elected by the people:

Connecticut.	Maine.	Vermont.
Florida.	South Carolina.	

In other words, 42 of the States in the Union have adopted the doctrine of electing their judges.

In the following States the judges are selected by the Legislature for a limited tenure:

Connecticut.	South Carolina.	Virginia.
Rhode Island.	Vermont.	

The only States in the Union where appointment by the Governor exists outside of Massachusetts are:

Delaware.	New Hampshire.
Maine.	New Jersey.

and in these States the appointment is for a limited number of years, as follows: Delaware, where the appointment is for 12 years; Maine, where it is for 7 years; New Jersey, where it is for 7 years; and New Hampshire, where the appointment lasts until the appointee has reached the age of 70 years.

In other words, in every State in the Union, outside of New Hampshire and Massachusetts, the tenure of all judges is for a limited number of years, whether they are elected by the people or appointed by the Governor or selected by the Legislature, and who is there bold enough in this Convention to say that the people in the other 46 States of this Union are not a law-abiding people or that justice is not ably administered through their courts? It must be remembered also that these States comprise all sections of this country, with the great diversity of interests which the various States present.

Let us not forget also that many of the original 13 States which followed our system shortly abandoned the system of appointing judges for life, notably the great Commonwealth of Pennsylvania and the great Empire State of New York, the two leading States of this Union, both of which found that the appointive system was very bad in practice. Since New York changed in 1847 and Pennsylvania in 1853, there has been no desire for change in either of those States. In fact there is no State in the Union which had an appointive system and then changed to an elective system, which ever has thought seriously of returning to the appointive system. The great Empire State of New York held a Constitutional Convention two years ago which was presided over by Elihu Root, accepted as the leading member of the American Bar. The chairman of the Judiciary Committee in that Convention was George W. Wickersham, a former Attorney-General of the United States under President Taft, and the committee itself was composed of great lawyers. I have talked with many of the members of the Judiciary Committee of that Convention, and they all told me there was no demand for a change from their elective system, and some of them went so far as to say that no lawyer in New York even cared to suggest changing the system by giving back to the Governor the power of appointing judges. Every lawyer of experience knows that the New York Court of Appeals, which is their highest court of appellate jurisdiction and which has no original jurisdiction, has in its membership men of exceptional ability and character, and they are all chosen by the people. Will men in this Convention believe that great public figures like Elihu Root, George W. Wickersham, Edgar T. Brackett, Joseph H. Choate, and other great leaders of the American and New York Bar, would not have engaged actively in any movement that would help to better their courts, if they had felt that

by changing from the elective to the appointive system they could accomplish any improvement?

Let it not be forgotten that of all the great States of the Union which have held constitutional conventions in late years, not one of them has thought seriously of going back to the system of appointing judges. Does not that convince you gentlemen here in Massachusetts that wherever the people have a chance to elect their judges, they are perfectly satisfied with that method, and that they would not give it up? The net result, all over the Union, of the elective or appointive system for a tenure of years has been, that good judges almost invariably have been reëlected and reappointed, whereas likewise weak or bad judges have failed invariably of reëlection or reappointment, with the result that the people in these other States possess a judiciary that always does its very best, knowing that it is responsible to the people, and that the people will not tolerate a weak, inefficient, vicious or tyrannical judiciary.

Are you men in this Convention at this time going to say to the rest of this great Union that they have not law-abiding citizens, honorable judges and wise men whose decisions represent the best that can be obtained? Pick up your last recent Law Reports, you lawyers here who follow the advance sheets, and see how many times the decisions in those States in which judges are elected are cited as precedents to justify our courts in decisions sent down to us. Then go to the reports of other States in the Union and pick up the advance sheets and find out how seldom Massachusetts is now followed, and you will be surprised to learn that the States in which judges are elected are followed as authorities far oftener than Massachusetts, where our judges are appointed. Glance, if you will, at the United States Reports for the last ten or fifteen years, and tell me if you are not surprised at the very few instances in which the decisions in this State are cited now as authority, and confess to me also that you are surprised at the great number of citations from the other States of the Union, that the Supreme Court of the United States sends forth to the world as authorities in law, which justify our august court in its final decisions.

Oh, but some people say: "Politics would come into the courts." Well, if they can bring any more politics into the election of judges than is already in vogue here in Massachusetts in the appointment of our judges, I should like to know just what kind of politics it possibly would be. I cannot conceive of it being any worse. Here we have a system of appointments that is based on secret, hidden, unseen, political manœuvring. The appointments to our judiciary from the very beginning have been reflections upon the people of this Commonwealth in the manner in which they have been obtained. It is true we have had many good judges, but this has been due more to the integrity of the men who have been appointed than to any merit of the system by which they have been appointed.

At the Convention in 1853, Henry Wilson, then Vice President of the United States, from the Commonwealth of Massachusetts, said that from 1780 down to that day, 1853, only two men had been appointed to the courts in Massachusetts who were not Federalists, and violent Federalists at that. He ridiculed the idea that politics was not considered in the appointment of our judges, and pointed out that the first consideration was whether or not a man was acceptable to the

leaders of the Federalist party. From the beginning of the Commonwealth down to the days of Governor Foss (1911) no Irish Catholic ever was appointed on our Supreme Judicial Court because of the secret religious cabal that always surrounded that office whenever judicial appointments were to be considered, and which always succeeded in preventing the consideration of any Irish Catholic member of the Bar, no matter how well qualified he might be. Up to twenty years ago no Irish Catholic ever sat on our Superior bench, and since that time down to the days of Governor Foss only one at a time (and totaling but four in all), was permitted. If it had not been for the splendid courage of Governor Foss who broke all precedent and cast the judgment of these intriguers aside by appointing a Roman Catholic of Irish extraction to the Supreme Judicial Court, and by appointing several of the same kind to the Superior Court, all of whom have given eminent satisfaction, I tell you gentlemen here to-day that the people of the Commonwealth of Massachusetts would be so aroused that an elective judiciary would be their fondest hope and their greatest achievement. It would be absolutely impossible for this Convention to leave here without adopting a resolution for an elective judiciary, and it would be accepted by an enormous majority at the polls.

What system really prevails as to appointing judges here in Massachusetts? What reasons are advanced? In the first place, a man must be politically strong to win the confidence and support of some man who is strong with the Governor, and after this has been determined upon, the candidate then gets an indorsement from some committee of some bar association, and the people are deceived by a statement that the bar association of some city or county indorses the man to the Governor, when as a matter of fact it is a small committee who never consult anybody else in the particular Bar Association. Can members possibly urge that we are receiving thereby the best service that could be given to us? I believe that the judicial systems, whether elective or appointive, in other States, which produce lawyers like Charles E. Hughes, Alton D. Parker, Elihu Root and Joseph H. Choate, and the great leader of the bar who has just died, John G. Johnson of Philadelphia, and all the great galaxy of names that has come down from the early days of the Republic to the present time, stand forth as a most convincing argument that the best lawyers and the best judges are developed under systems different from ours.

But then you will hear friends of the judges say: "Oh, we must not touch the courts." They used that same old argument, gentlemen, when, in the Convention of 1853, they resisted the movement from the people to take the district attorneys and sheriffs away from the appointive power of the Governor and make them elective. "Oh, you cannot have clerks of courts in politics," they said. "You cannot have the district attorney in politics. You cannot have the sheriff in politics. The unholy hand of politics will tear down our temples of justice if these servants of the people are considered in a political way." Massachusetts would not stand for that argument and the people soon after accepted the recommendation of electing these officials and gave up forever the system of appointing district attorneys and sheriffs and clerks of courts and registrars of deeds and probate, and the people would not change back to-day, as you all very well know, because Massachusetts is satisfied that her elected district attorneys, her elected clerks of court, her

elected registrars of probate and deeds, do perform their duties just as honestly, just as intelligently, just as faithfully, and just as well as any man who might be appointed by any Governor at the suggestion of the Governor's political associates. [Applause.]

Now, I am not at this time urging the election of judges or the appointment of judges. I am calling your attention to some of the reasons and arguments that ought to influence men in this Convention to pause before they write into this initiative and referendum resolution an all-sweeping clause and exception that would exempt from its operation all questions concerning the appointment, qualification, tenure, removal or compensation of judges, or the powers, creation or abolition of courts. I have mentioned briefly some points that to my mind are convincing that there may be good reasons at some time for wanting to change our system. The question of whether we shall have an elective judiciary or an appointive judiciary is not before the Convention at this time. It will come up when we reconvene next summer. All that I am insisting upon at this time is that it is an insult to the people to take from the operation of any law which they wish to make a whole branch of our government. All power comes from the people, and any attempt to deny them is a violation of the principles of our Republican form of government, and this Convention will do them a grave wrong when it attempts to deny the people such rights.

This resolution as it came from the committee originally, as set forth in Document No. 335, had as the only excluded matter the following: 'No law, the operation of which is restricted to a town, city or other political division of the Commonwealth, shall be subject to such initiative petition." This Convention, all through its general debate and through the first reading, never dreamt that this all-sweeping exception introduced by the gentleman from Fall River ever would be inserted, and in all fairness, I protest that, in the closing days of the Convention, to suddenly insert this extremely important exception is unfair to the friends of the initiative and referendum, and no true friend of this doctrine can stand logically for such an exception, and I call upon them to vote to strike it out of the measure.

The courts of this Commonwealth are of paramount importance to the people. People of this Commonwealth are more jealous of their courts than of any other department of our government. They want the very best obtainable. They do not wish to be handicapped by any law which does not insure the very best.

I want a judiciary that always will be the very highest in this Union. I want a bench that has no weak members. I want men of the highest possible judicial attainments; and it is only to make our bench stronger and better that I urge you not to write into this measure an exception that will make our judges more independent of the people and thereby invite them to become arrogant. I believe, with John Adams, that a Republic is a government "in which the people have an essential share in the sovereignty." I cannot forget the thought of the best beloved exponent of Democracy ever produced in this Commonwealth, Samuel Adams, who said in a letter to John Adams on October 4th, 1790: "The best formed Constitutions that have yet been construed by the wit of man have and will come to an end because the kingdoms of earth have not been governed by reason."

With these thoughts in mind can men deliberately act for the pur-

pose of making it practically impossible to improve or correct or readjust our judicial system?

I call upon you gentlemen here to-day who believe in the principle of the initiative and referendum to stand up in your manhood and proclaim that the judiciary shall not be excluded from this measure. Let us have the initiative and referendum, if we will, but let us have it in such a form that it shall be full of meaning. Do not go back on your honest convictions at this time. Let us forget the fact that there are 151 lawyers in this Convention. Let us forget the fact that one-tenth of those at least are judges themselves who are voting in their own favor when they vote to exclude judges from the operation of this measure. Forget the fact that there are judges on the bench who possibly may not like what you and I may do to-day, but stand up like men of Massachusetts and as lawyers who are faithful to our oath, vote as our conscience and our judgment and our intelligence dictate.

Many lawyers in this Convention have talked with me in the last few weeks, and they have confessed to me that they believed it was wrong to except the judiciary, but declared that they were afraid to vote because they feared that some judge might punish them for doing so. Remember that the curse of great leaders is the sycophancy of courtiers, and the weakness of our judges is the flattery and subservience of lawyers. Let me call upon you men with such thoughts and fears to stand by the principles in which you believe, and to vote according to your belief and your conscience; and since so many of you well know that the elective system of 42 States and the appointive system of the remaining States of the Union have proven successful and beneficial and satisfactory in those States, and if you believe that our judiciary ought to be modified now or ought to be held duly responsible at some time in the future, then vote to carry out, through the operation of this resolution, the Democratic principle of the separation of the powers of the three great departments of our government, and make the judiciary, as it should be, amenable to the people whenever the people desire to have it so. [Applause.]

Mr. HARRIMAN of New Bedford: I had thought perhaps that I would not speak in this Convention again, and I shall weary you but a few moments; but I believe that a duty devolves upon me, and I want you men to listen as you listened to the address of the gentleman from Wellesley (Mr. Pillsbury) when he rose and said that the most powerful force in this Commonwealth was the labor movement. He told the truth, but the deduction that he drew from that I want to rebuke. I want to say that the labor movement never has asked for class legislation, that the labor movement has come before the Legislature and asked for better working conditions, for shorter hours of labor. We have not asked those privileges alone for those who were organized, but we have asked them for every man and woman and child within the confines of the Commonwealth. How different that has been from those men who have come and asked special privileges from this same Legislature that he talks about!

He has criticized the labor movement. I offer no apology for it; it needs none, and I am proud to belong to it. And now who is called upon? The labor movement is requested to come into the councils of the government. And yet there are men in this Convention

who will abuse and vilify the cause of the worker at every opportunity and say that this is class legislation. Let me say to you now that I may not speak during this session again but if I do, it will be to defend the right of the workers to organize and to have protection after they are organized. Let me say that they have made mistakes, but they are studying this, and to-day, as the gentleman from Wellesley well says, there is no power to which the politician bows as he bows to the labor movement, for the labor movement is the people themselves. The politicians recognize in the voice of the labor movement the voice of the people, and they know that when organized labor or any other body of men come here representing labor they voice the hopes and they voice the needs and the aspirations of the great majority of the people of this Commonwealth. I for one am proud to belong to that class, and I hope that the time never will come when I shall fail to raise my voice in the defence of the labor movement and in answer to those whose life has been spent not in trying to win shorter hours and better conditions, but whose life has been spent in opposing the very interest of the workers, whom the workers have been obliged to fight that they might enjoy reasonable conditions of labor and the benefits of shorter hours. And that is the labor movement.

With that, Mr. President, I close, only to state that it is easy for these men to say what they have said this morning, but it is hard to prove. When they state that the labor movement is the most powerful force in this Commonwealth, they state the truth. When they say that it is the most dangerous they state something that is not true, because let me tell you now that the strength of a Nation is not measured in its buildings, in its money, or in anything but the happy homes and the contented condition of the working class, which make up the labor movement and which are the salt of this Commonwealth and the bone and sinew of the Nation. They are the only force that will and can save this Nation and perpetuate democracy. [Applause.]

Mr. Edwin U. Curtis of Boston: I desire to move the amendment printed under my name on page 3 of the Calendar, and to explain why I make this motion.

On page 12 of the initiative and referendum resolution (Doc. No. 370), under the heading "Excluded Matters," are the following words: "No law that relates to religion, religious practices or religious institutions . . . shall be subject of a referendum petition."

This provision renders immune from the operation of the initiative and referendum that part of the new eighteenth amendment stating that no grant or appropriation shall be made to a school wherein a denominational doctrine is inculcated. The remainder of the eighteenth amendment, prohibiting appropriations to non-sectarian schools and institutions not under public control, is not affected.

The committee on Bill of Rights in framing the anti-aid amendment attempted to treat all institutions alike. Is it fair to apply the initiative and referendum to one class and place the rest beyond its reach?

There are two religious colleges in this State, Boston College and Holy Cross College in Worcester. As the resolution stands, appropriations for these institutions never could be made possible by modification of the eighteenth amendment by initiative and referendum methods. On the other hand, if the remainder of the eighteenth amendment were set aside, appropriations might be made in aid of the

Boston Eye and Ear Infirmary, for instance. I make this statement to call the attention of the Convention to what it has done, and in order to state the position of the committee on Bill of Rights, in which position I heartily concur.

I was born in Boston and number among my friends and acquaintances many Catholics, priests and laymen. I have grown up with them, attended school with them, and have done business with the church and its laymen for years. I always have found them upright and honorable. I would not be a party to placing in the Constitution anything that would discriminate against the Catholic church or its institutions. If the Convention wishes to exclude the entire eighteenth amendment, let it do so, but it should not exclude a part and leave the rest subject to the initiative and referendum.

My interpretation of the vote on election day is that the people wished to settle once for all the entire question of public aid to private institutions. Treat all institutions alike. I trust you will not leave the initiative and referendum resolution in such condition that it is applicable to one class of institutions and inapplicable to all others.

Mr. Pelletier of Boston: I rise simply to second what has been said by the gentleman from Boston. I voted against the amendment that he has just read, offered by the gentleman from Taunton (Mr. Swig), namely, the one that says that no law that relates to religion, religious practices or religious institutions shall be subject to initiative or referendum. I voted against that the other day for several reasons. One reason was that it leaves open to debate what you are meaning by religion, by religious practices, or by religious institutions. That was the great trouble our committee on Bill of Rights had. Every once in a while somebody had a brilliant thought, but prominent in that thought would be the word "sectarian", "religious", or something of the kind, which would mean that afterwards some one would have to construe it, some court would have to say what is religion and what is not, what is a religious practice and what is not, and you know how we all differ on those matters. I think that psalm-singing is a religious practice, and you do not, and we never can agree on it. Therefore that amendment that we passed the other day, against which I voted, leaves that matter still open for construction and for debate. Various institutions which many people think have religious practices would come in and ask the benefit of the initiative and referendum on the ground that they do not think they have religious practices, and then you have your old trouble and your old discussion. That I think is a vital defect in that amendment. Then, further, I do not believe it was contemplated but the fact is that it splits the anti-aid proposition, and it says things that are religious shall not be operative under the initiative and referendum, — things that are religious shall not be operative, — but things that are not religious may be operative. Again you are dividing up into classes. And what do you mean by these words? What is religion and what is a religious practice? The amendment which this Convention adopted the other day was not debated; it was not discussed, as I remember it, because I wanted to speak on it. I think it went through without debate and everybody had the best feeling in regard to it. There was a very large vote, I remember, in the majority, and the thought was: "Well, this takes this anti-aid business away from a little group of people under the initiative and referendum

bringing up this religious question every five minutes." I think that was on your minds, if I may be allowed to interpret how it seemed to me, voting on the other side. But it was not brought up.

Now the gentleman from Boston (Mr. Edwin U. Curtis) asks you to strike out those words and say this: Initiative and referendum shall not pertain to the eighteenth amendment as passed by this Convention; that is, no amendment may be reached through the initiative and referendum, whether it is religious or anti-religious, or half-religious or quasi-religious. Clean that up, and simply say the anti-aid amendment shall not be affected through the initiative and referendum. Now, we all understand what that means. No court or no tribunal has got to say: "Well, what do you mean?" because the words "religion" and "religious interests" do not occur there. It appears to be absolutely fair.

As I judge the temper of the people of this Commonwealth from the vote on election day, as I judge the temper of this Convention by the large vote the other day, I believe that this is the desire, and I am willing to vote for this new amendment, because it is complete, because it is full, because it is thoroughgoing and leaves nothing open. It is not cutting one class out and favoring the other, but it applies to the whole measure just the way the people voted for it on election day. For that reason I am going to change my vote, which was against the half-way amendment which was passed a week ago, and I am going to vote, and I ask everybody who favors this, everybody who has followed the history of this whole anti-aid, those whose hearts are in the proposition, I ask them to vote for the amendment now proposed by the gentleman from Boston (Mr. Edwin U. Curtis).

Mr. Scott Adams of Springfield moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in line 4 (as changed), the words "constitutional amendments and"; and by striking out all of the resolution after the word "rejection", in line 8, and inserting in place thereof the following paragraph:

The initiative and referendum shall be exercised as the General Court may determine.

Mr. Adams: I do not know that the Convention is now in a temper to consider a proposition of this kind. I believe it should have been considered before, and perhaps it is not now too late to discuss it. I wish it would bear with me for a moment while I briefly attempt to describe the end sought to be reached by my amendment. For two months, — for more than two months, — this Convention has busied itself with a consideration of the question of the initiative and referendum. Its progress has been slow, — possibly even no progress has been made; and I respectfully suggest that a reason, perhaps the sufficient reason, lies in the fact that the Convention has considered two separate propositions. First, a proposition of the fundamental law of the land, whether or not we should recognize the principle of the initiative and referendum; and, second, whether or not, having recognized it or leaving it in abeyance, we should prescribe the method by which it should be worked out.

It seems to me that the latter consideration is a consideration decidedly of legislative practice, and that the Legislature should be intrusted to take up that phase of the situation. There are now before

us three or four amendments looking to the fulfilment of this object. All of them are nearly alike. If I might read mine, so that the Convention might understand what is meant, I would read it as follows:

Legislative power shall continue to be vested in the General Court; but the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit laws to the people for approval or rejection; and the popular referendum, which is the power of a specified number of voters to submit laws, enacted by the General Court, to the people for their ratification or rejection. The initiative and referendum shall be exercised as the General Court may determine.

That, Mr. President, comprises my amendment as it is printed. There is still another phase of the situation which I think should be considered, and that is the question of amending the Constitution. I have prepared and move a further amendment which I should like to offer as a second section of the amendment printed, and that further section I desire, if I may, to read:

If at any time hereafter any specific and particular amendment or amendments to the Constitution be proposed in the General Court and agreed to by a majority of the Senators and Representatives, such proposed amendment or amendments shall be entered on the journals of the two Houses, with the yeas and nays taken thereon, and shall be published; then it shall be the duty of the General Court to submit such proposed amendment or amendments to the people; and if they shall be approved and ratified by a majority of the qualified voters voting at meetings legally warned and holden for that purpose, they shall become part of the Constitution of this Commonwealth.

The ninth article of amendment to the Constitution is hereby repealed.

I do not wish to make an argument, or an extended statement, on this question. I do wish, if I may, to make these points: The machinery of the initiative and referendum is essentially legislative machinery. We have worked on it now for over two months and I do not think that we have evolved a proposition which meets with the approval of either side, and for the very good reason that in considering the machinery we always have mixed up the principle with the means. The next reason is this: If the principle of the initiative and referendum is adopted it should be elastic. We may not have done the right thing in the things we have tried to do.

The time allowed to Mr. Adams for debate having expired, the Convention voted, 79 to 66, to grant him an additional period of five minutes.

Mr. Adams: I thank this Convention heartily for the courtesy it has shown me. When I suspended a moment ago I was pointing or attempting to point to the fact —

Mr. Batchelder of Salem: The gentleman's last sentence was that in considering the machinery we had mixed up the principle. I should like to ask him if he thinks in considering the machinery the principle should not be considered at all.

Mr. Adams: In the Constitution of Massachusetts I think we should first define our principle; afterwards I think the General Court should carry our principle into operation. I was making this suggestion, — that elasticity would be gained. If the principle is adopted constitutionally the Legislature might do this year those things which it thought necessary; next year finding that it had not done all it should do, or that it had done things it should not do, it might change the machinery; it might do and ought to be able to do anything and everything necessary to put into effect the operation of the legislative initiative and referendum in the Commonwealth of Massachusetts, and

it should do that unhampered by any restrictions whatsoever except the Constitution as we now have it.

Next, if I may speak a moment upon the question of the amendment of the Constitution, there has been complaint, perhaps well-founded, that our Constitution was not elastic, that it could not be easily amended. When the present method of amending it was adopted the facilities for disseminating information were not those which now exist. Then it took longer for that purpose; perhaps the time of two years was required. Now we all may be informed, and well-informed, within a much shorter time. For that reason I think perhaps that one year for the whole matter may suffice. But I do think, Mr. President, that when the Constitution is amended it should be amended by a majority of the people of this Commonwealth, acting directly through themselves, and indirectly through their representatives.

Coming back for just one moment more to the form of the amendment, I simply suggest this. It may not be as good as others suggested, but it does incorporate the principle which we have been discussing here for these two months as a definitive proposition. It defines the initiative, and it defines the referendum, and those should be the subjects of constitutional definition. Further than that, it makes everything that might be the subject of legislative action open and free to the General Court, with the power to change its rules when, after formulating them, it finds a change is necessary; and it makes the amendment of the Constitution still a majority proposition but one easy of attainment.

Another thing, perhaps beside the mark: If the Convention should see fit to adopt this, or any of its kindred amendments, as the proper proposition to bring into effect the initiative and referendum, we might be spared many days or weeks of consideration of purely legislative matters, which fact, to my mind, proves the contention that I try to make, that the initiative and referendum machinery is a matter not of constitutional but of legislative action.

Mr. Churchill of Amherst: I do not desire to take any time, except to say that we have here one of the fundamental propositions contained in these amendments. It is a question very plainly of how far the initiative and referendum ought to be applied; what safeguards we should put upon possible attacks upon the Constitution of Massachusetts; whether in the last analysis we want in Massachusetts a certainty of having a real Constitution or, in place of it, a wide-open opportunity to turn the Constitution into nothing more than a series of laws, the permanency of which nobody can guarantee even from year to year.

Mr. Walker of Brookline: I wish to say, first, that the measure which after six months we have developed is, in my judgment, an excellent measure, a measure which Massachusetts well might be proud to pass. Make no mistake. This is an initiative and referendum measure, and a good one. Moreover, Mr. President, I wish to congratulate the committee on Form and Phraseology for the excellent work which that committee has done. This measure is consistent, it is well worded, it is clear; and, Mr. President, there is not one word in it that can be left out and still have a carefully thought-out, written-out, initiative and referendum.

We speak about detail. If we are to have an initiative and referendum measure it must contain detail, whether that measure is made by the Legislature or whether it is made by this Convention. The Legislature, if they were to do what we are now doing, namely, write an initiative and referendum measure, must put in such details as we have put in, and they must submit them to the people, as we propose to submit them to the people.

Now, Mr. President, this Convention was called by the people of Massachusetts to suggest amendments to the Constitution, and we have worked months and months over the problems committed to our charge. We have worked months over this particular measure. I do not believe that this Convention, either the majority or the minority, are a set of quitters or slackers. We have been given a job to do, we have been working on it for months, we have got to the point of completion. Now you wish to throw over our whole work and say to the Legislature: "You do that which the people have told us to do." Are you conservatives going to vote for that proposition? I do not believe it for a minute. I believe that what we should do is to proceed as we now are proceeding, consider these amendments and decide upon them; and if we vote down the hostile amendments which have been proposed again we shall have, I believe, the best initiative and referendum measure of any State in the Union. I speak advisedly; it is an extremely good measure.

Of course, I again say that I do not refer to the religious question at all. I withdraw from that proposition. I allow those who are interested especially in that matter to deal with that question. I take no responsibility, as leader of the initiative and referendum forces, on that question. The gentleman from Boston (Mr. Curtis) has proposed an amendment to the religious proposition. Let him argue it; let us consider it; then let us vote as we see fit. There are amendments to be made on the judicial proposition. Let those who make the amendments argue them; let us vote as we see fit. To exclude those matters from the initiative and referendum is inconsistent with the principle of initiative and referendum, but I bow to the decision of this Convention. But do not think that we have not a good measure even with those matters excluded. We have a very carefully devised measure, a very well safeguarded measure, a measure that is in harmony with the principle of the initiative and referendum, and a measure that is not loaded with unworkable provisions, nor with provisions which the Legislature would not put in if they in good faith should submit to the people an initiative and referendum measure.

Now, are we not going to give the people of Massachusetts a chance to decide this question? By a vote of 165 to 111 we passed this measure to a third reading. A majority of this Convention, of course, is in favor of an initiative and referendum measure when we are all here to vote on the question. We are not deciding the question, we are simply submitting it to the people. It has been said that the people are not interested, that we give a false impression in saying there is a demand for it. Let us submit the matter to the people in the form in which we have now developed it and see whether the people want it or not. It seems to me that is the fair and right thing to do.

The amendment of the amendment moved by Mr. Adams was adopted, by a vote of 108 to 101. The amendment, as amended, was rejected, by a call of the yeas and nays, by a vote of 125 to 153.

Mr. Robert Luce of Waltham moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by inserting, after line 12, the following paragraph:

The measure may delegate to an agency of government existing or to be created, as may therein be specified, the power of making provisions to effect the purpose of such measure; and, before certifying that such law is in proper form for submission to the people, the Attorney-General may require that the power of making such provisions shall be so delegated therein.

Mr. Luce: I was about to assure the Convention of the pleasure I shall take in retiring into obscurity as soon as I shall finish my remarks. This amendment when discussed at its previous stage met objections which were well-founded. At that time I gave the Convention assurance that I should try to redraw the amendment so that it would meet those objections, for various gentlemen came to me and said if the objections could be met they should approve the proposal by reason of its fundamental purpose.

The brevity of my time makes it wise to use a concrete illustration to show just what we are driving at. I have taken the position that the people may well be trusted to say whether or not they want an old age pension law but that the preparation of the details of that law ought to be intrusted by the people to some agency of experts who may carry out the will of the people in the matter of detail. It might well be that after the people have decided that they want old age pensions and perhaps have decided whether they want them contributory or non-contributory, then experts ought to say whether the payments should be made at the rate of five, eight or ten dollars a month, whether the age should be sixty-five, seventy or seventy-five; in other words, that the details of the law very wisely might be intrusted to somebody in whom the people had confidence. The objection raised the other day was that my amendment in its form then submitted was mandatory, and it was urged that it should be made permissive. The importance of accepting at least the permissive form lies in the fact that it is very doubtful whether the court would sustain an initiated law delegating authority without a constitutional change having been made to warrant the delegation. Therefore it is that some friends of the measure have seen the desirability of making it clear that the people may delegate these matters of detail to such instruments as they choose. It then becomes important to decide whether there should be any power at all for decision in the case of such a long measure as might be submitted in the shape of a "blue-sky law" or an old age pension bill. Somebody must make the decision, and inasmuch as we have seen fit to intrust the Attorney-General with powers of decision in some of these particulars it did not seem inappropriate that he should say whether the measure did contemplate such an amount of administrative detail that it ought to be worked out by experts, to whom the matters should be committed. Here, then, lies a summary of the problem: Shall we authorize the people, if they want to, to trust experts to frame the details of measures? And shall we allow the Attorney-General to say that, in his judgment, a measure requires expert construction, and to ask that the

law as submitted to the people contain a provision to that end? This matter is an important matter. Manifestly it is suggested with no hostility to the measure. It is suggested in order that the resolution may accomplish precisely what its framers designed. It is submitted in the hope that we may take a step toward better statute making.

Mr. CHURCHILL of Amherst: Anything that I have to say on this amendment of the gentleman from Waltham must be largely repetition of what he has said in the early stages. I hope it is clear to the members of this Convention that, in the first place, this is not a hostile amendment to the resolution; that, in the second place, it is an attempt toward securing what we must secure in this Commonwealth if we are to improve our government toward an expert administration of the desires and will of the people as expressed in a law of the Legislature or a direct law of the people if the resolution passes, namely, that a proper and competent agency shall be provided for administering that will. In the next place, I want to call attention to the fact that the provision that the Attorney-General may require that the power of such administration shall be so delegated therein comes at a time in the process of introducing the bill when, if the ten signers have not made such provision, there is plenty of time left them to make it. In other words, there is no opportunity through this provision for a hostile Attorney-General to hold up a bill at a point where it is too late for the petitioners to comply with his demand. For these reasons, Mr. President, I am in favor of this amendment.

Mr. WALKER of Brookline: I am beginning to feel sometimes that I am getting to be pretty radical. I used to think of myself as somewhat of a conservative. I consider the initiative and referendum a conservative measure, but none of my conservative friends seems to think so, so I suppose I shall have to admit that I am a radical. But I am not radical enough to support the proposition of the gentleman from Waltham. Why, what does this mean? These petitioners have been said to be irresponsible men. They are volunteers, — the first ten men who write the measures, — and then they get a lot of signatures. Of course they are not responsible. Under the initiative and referendum and for the purposes for which they use it they do not have to be responsible. But what a power do we give them here! We give them power to write out a bill in brief, incorporating a principle, then we give them the power to set up a commission, giving it such membership as they see fit, and then we give them the power, as the gentleman has illustrated in the case of an old age pension law, to determine, — those irresponsible men, — to determine whether, under their old age pension, the beneficiaries shall have five dollars or eight dollars or ten dollars. I cannot understand how a man, if I understand him properly, with the general conservative tendencies of the gentleman from Waltham, can put such a proposal before this Convention.

Mr. LUCE: May I ask my friend if there is anything whatever in his measure as now drafted to prevent this very thing?

Mr. WALKER: There is, namely, the final decision of the people on the question, that they can —

Mr. LUCE: Will the gentleman further elucidate as to how it differs in that regard from this proposal?

Mr. WALKER: I will state that the difference is this: These men,

according to the proposition of the gentleman from Waltham, may provide for the delegation of power. We say in our resolution that the powers of the people as exercised hereunder are subject to the limitations of the power of the Legislature; and let me say that the Legislature cannot delegate to a commission the powers for the delegation of which the gentleman's amendment provides.

Mr. LUCE: The point to which my friend calls attention has received my very earnest consideration. The provision in his law, if I may so call it, speaks of the limitations of the Constitution on the Legislature. I do not think he can find in the Constitution any limit on the delegation of authority. It is a common law principle and not a constitutional limitation. Therefore, sir, I fail to see why his proposal and mine are not in this matter on all fours. If mine is defective, then his is defective.

Mr. WALKER: I do not think I need to go into a discussion as to the power of the Legislature to delegate this power. The General Court is limited by the Constitution. The people are not limited in their right to delegate power under the proposition of the gentleman from Waltham; that is perfectly clear. Moreover, he goes on to say, in the second place, that the Attorney-General, if you please, may compel the petitioners to delegate power. I do not care to discuss the matter further.

The amendment moved by Mr. Luce was rejected, by a vote of 94 to 106.

Mr. Roland D. Sawyer of Ware moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in line 13, the word "measure", and inserting in place thereof the word "law".

This amendment was rejected.

Mr. John W. Cummings of Fall River moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in line 17, the word "powers,", and inserting in place thereof the words "power of the court to decide a law unconstitutional, or to the".

Mr. CUMMINGS: The amendment excluding the judiciary, or, as I stated it at the time it was before the Convention for discussion, the judicial field, from the operation of the initiative and referendum, when offered by me did not have the word "powers" in it. In the course of the debate, in the development of the argument, it seemed necessary to add some word to the amendment that should secure the authority of the courts to declare a law unconstitutional, and I was asked by the gentleman from Winchester in the first division (Mr. Dutch) if I would accept an amendment which should make provision for protecting that authority. He suggested the word "powers" and I accepted his suggestion; but when I came to re-read the amendment, it was evident that the word "powers" limited the scope of the initiative and referendum more than I had intended. I intended to exclude the creation and the abolition of courts, the appointment, the tenure and the compensation of judges, the recall of decisions and the recall of judges, but I did not intend to deny the people under the initiative and referendum the right, for example, to limit the power of the courts to grant injunctions. I meant to leave that power with the people. I did not intend to deny their right to increase or diminish the jurisdiction of the courts. Take a commission like the Industrial Accident

Board that decides workmen's compensation cases. If the people decided that on the whole the functions of that body were essentially judicial and desired, therefore, to transfer the jurisdiction of compensation cases to the courts, I believe that they should have the power by means of the initiative to do so. I am obliged to admit that I do not know what meaning may be given to the word "powers" as it is used in this amendment, and I ask the members of the Convention who were influenced by anything I said in support of the amendment to strike out the word "powers" and remove that qualification.

Mr. Churchill of Amherst: I wish to say for the minority of the committee simply that I am opposed to this amendment, and yield my time to Mr. Dutch of Winchester.

Mr. Dutch of Winchester: On short notice I desire to present some considerations which I think will lead the Convention to leave this entire clause undisturbed in any particular.

In the first place, — on a narrow ground. It is attempted by this amendment to leave the power of the court to declare an act unconstitutional, but I believe it will be seen that these words are merely shadow and not the substance, because these words still permit by the initiative a tampering with the judiciary, so that a unanimous court would be required in order to declare an act unconstitutional. The mover of the motion, as he stated in conversation with me yesterday, admits that that is so, and is willing to abide by that result, but I do not believe that you are willing to abide by that result. This Convention threw down such suggestions by overwhelming vote. So I say that on that narrow point this amendment is delusive, it is disguised, because you have the form without the substance, in that if you could put in the requirement of a unanimous court it would upset the whole system, it would make it unworkable, and you would not have real protection of the guarantee of your constitutional rights.

But the matter goes even further. If we admit it should be amended so as to take care of that situation I believe there are other very important matters which are involved here, — again matters of substance. What good to protect the form of our judiciary, what good to protect their election, what good to protect the court in form, in the machinery of it, if you can tamper with the powers of the court? When you want your life, your liberty, your property protected, you are bringing substantive matters to that court, and its jurisdiction is what you want guaranteed. Now, once admit the principle that you are going to exclude these matters because you do not want them tampered with in this fashion, but you do want a more solemn method of dealing with them, — and we are not now discussing that fundamental matter, because it has been passed upon overwhelmingly, — I submit you must have the substance of that exclusion from this resolution and not the shadow; you must have the powers of the court protected and not merely the form of the court. I do not believe that the students of judiciary and of good government here believe or desire that the people should deal directly with matters of transfer of jurisdiction, of criminal jurisdiction, of civil jurisdiction, of equity jurisdiction, or that we should have initiative petitions which will agitate up and down the State matters of injunctions and that sort of proposition.

Therefore I say if you mean anything by this provision, if the over-

whelming vote by which this exclusion provision was put into this measure means anything, you will leave it as it is, and not take shadow for substance by modifying it either in this way or in the more thoroughgoing way suggested by the next proposal.

Mr. Cummings of Fall River: Perhaps the Convention, after having listened intently to the earnest address of the gentleman from Winchester (Mr. Dutch), now knows what is meant by the word "powers". I confess I do not. It means more than jurisdiction. Powers is a broader word. Jurisdiction as lawyers understand it relates to the authority of a court to take cognizance of and decide a case. Powers relates to the ability or the right to do anything. The thing that was sought by my amendment and that should be secured is the independence and the integrity of the courts, not the scope of their authority. The gentleman from Winchester (Mr. Dutch) knows, — at least I assume he does, because I have been free enough in expressing my views about the matter, — that I do not favor changing our policy which allows a majority of the court to declare a law unconstitutional. It is true, however, that the power of the court to declare a law unconstitutional is an extraordinary power. It seems to subordinate the legislative and executive departments of government to the judicial, whose decision on the validity of legislative enactments, including acts which relate solely to the courts, is final. It was because of that fact, because an interested party had the power in the last analysis to decide in favor of itself, that the doctrine of the recall of opinions and the recall of judges spread as it did. But notwithstanding this criticism, it is the opinion of careful students of our governmental system that it is better to continue our policy, — the American policy, — and leave the courts this extraordinary power.

The word "powers", however, is not necessary to secure this authority.

The amendment moved by Mr. Cummings was rejected, by a call of the yeas and nays, by a vote of 123 to 155.

Mr. William H. Sullivan of Boston moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in lines 17 and 253, respectively, the word "powers,".

Mr. William H. Sullivan: The judicial machine is working too smoothly for me to insist seriously upon the passing of this amendment, but the five minutes to which I am limited will enable me to say that for some weeks I have mentally urged this amendment. It has been on the calendar for some time, and I never have had an opportunity to say a word about it. Of that I am not complaining, because I realized from the second or third week of this Convention, when the line-up came, that words would have little weight on this and similar amendments.

I might also comment briefly upon what the people are losing if this amendment does not prevail. Of course now the people have no right to initiate a measure which will protect them from punishment for contempt of court, — a serious proposition. A working-man cannot seek to protect himself by the initiative from an arbitrary use of injunctions. The working-man also is prevented from enlarging the powers of the Superior Court with reference to the Workmen's Compensation Act. Despite any contention to the contrary in the opera-

tion of the Workmen's Compensation Act, the Superior Court is a mere automaton. And no one ever will discover the errors in this compensation law, or seek to relieve them, except the workmen or those committed to the workmen's cause. By inserting the word "powers" the friends of the working-men, the common people, are prevented from amending the Workmen's Compensation Act.

This word "powers" was surreptitiously inserted in this resolution by the gentleman from Winchester (Mr. Dutch). At the time of the primary debate upon this amendment the gentleman from Fall River (Mr. Cummings) who was so solicitous about the courts, had something put over on him, because in the utmost good faith he acquiesced when the gentleman from Winchester (Mr. Dutch), in his suave and calculating manner, suggested that they ought to put in the word "powers". Never anticipating such a trap he assented, and now he has been unable to extricate himself and his friends from the trap.

I am glad that I have been allowed this opportunity to speak (the first time for many days), because I feared that I was becoming invisible to the naked eye, as the presiding officer has had so much difficulty in recognizing me; but, having made this amendment, I suppose it was impossible to deny me five minutes.

I do not expect this amendment to be taken seriously. I know the judges have so many friends in this Convention that any measure which, by any possibility, can reach them, their powers, their salaries or their pensions will be defeated with enthusiasm. In this Convention there are about 151 lawyers, some of whom are judges, and with few exceptions they will rush to the protection of the judiciary, hoping for reciprocity on the part of the judges and fearful of unjust discrimination if they oppose them. To me this seems like an insult to the judiciary. I always have acted fearlessly; have insisted upon what I believed to be my rights; yet, notwithstanding this course of action, I always have received fair treatment. I do not expect you to pass this amendment. I am not going to withdraw it, but it is a matter of almost insolent indifference to me what you do with it.

The amendment moved by Mr. Sullivan was rejected.

Mr. George B. Churchill of Amherst moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by inserting, after line 27, the following paragraph:

No amendment of the Constitution annulling, abrogating or repealing any of the provisions of the Declaration of Rights, or inconsistent therewith, shall be proposed by an initiative petition.

Mr. Churchill: We have here an amendment which has once been placed in the resolution by a vote of the Convention, and which subsequently has been stricken out by vote of the Convention. What is at issue in this amendment is perfectly plain, I think, to all of us, though we may not be quite certain as to the value of arguments offered upon it on each side.

Why should the proponents of this measure object to this amendment? Their answer has been, very plainly, because there are two articles, Article 1 and Article 10, where there is a certain provision that may prevent the passage by initiative of one particular act. The provision that no man's property shall be taken away from him without due process of law is conceived, in my opinion entirely mistakenly,

though I am not a lawyer, to stand in the way of a compulsory Workmen's Compensation Act; and it is, if I understand the proposition rightly, because of that situation that objection to this amendment is made.

You will find on the next page of the calendar, page 3, an amendment offered by Mr. Merriam of Framingham, which does not provide for the preservation of that phrase. The proposition has been made to me to accept the proposition of the delegate from Framingham and withdraw my own, and that the other side might then be minded also to agree to that proposition. That makes plainer than ever, gentlemen, the exact point at issue.

Now, I am not going to argue the legal point as to whether you can or cannot pass a compulsory Workmen's Compensation Act if you leave to the citizens of Massachusetts the right that their property shall not be taken away without due process of law. I am not going to argue that, but I urge the Convention to support this amendment on this ground, if upon no other, that we have no business to do what repeatedly we have been tempted to do and urged to do, — settle the principles of action in this Commonwealth according to the way those principles seem to be likely to work upon a given measure of which we are in favor or to which we are opposed. To my mind that has been one of the worst features of the argument offered the Convention upon the other side; that men have been unwilling to look at the situation and say: "Are these rights proper rights and should they be preserved," but that they say: "What happens to my bill if I accept or if I reject this principle?" and according to their belief of what is going to happen to their bill decide whether the principle is a good one or a bad one.

Mr. President, I maintain that that is something this Convention should not do. Whether or not I want a compulsory Workmen's Compensation Act, I have no business to consider the question as to what rights shall be maintained upon the basis of what I want about a particular bill. There is just one proper way for gentlemen to act who want to change that right or its wording, or to make exceptions to it, or to make provision that this shall not be construed as preventing a compulsory Workmen's Compensation Act. The only right thing for them to do is to take that article of the Constitution and offer in this Convention an amendment to that article which will prevent its being construed as preventing a compulsory compensation act. That is the place to attack it, instead of proceeding upon the basis of these individual bills to say: We will stand upon this principle or not because it affects the prohibition amendment or it does not, because it affects the anti-aid amendment or it does not, because it affects the compulsory Workmen's Compensation Act or it does not.

I ask the gentlemen of the Convention to consider in all honesty whether they want to go before the people of the Commonwealth when this measure is put before them, and say: We have stood for the abrogating of the provision that no man's property shall be taken away from him without due process of law.

The opposition to this resolution consistently, from the start, has pursued the method of trying to make this measure, from its point of view, as good a resolution, as acceptable to the people of Massachusetts, as they could make it. Gentlemen upon the other side of course have not the same point of view as to the advisability of our amend-

ments. But the common purpose has been, not to try to make this measure a bad measure against which we could argue to the people: "Defeat it because it is bad here, because it is bad there," but, assuming its acceptance by the people, to make it as good as possible. We have proceeded upon that basis. Now, I suggest to the gentlemen upon the other side that there is no place where they can make their resolution so bad, and awaken the antagonism of the average property owner of the State so easily, as to abrogate the Bill of Rights by initiative, or refuse to prevent that being done. The amendment offered by the gentleman from Framingham (Mr. Merriam), Mr. President, is not offered by him as a substitute for my motion. It is offered so that in case the Convention does not agree to this amendment we may ask the Convention to preserve from the effect of the initiative all the rights that we can preserve. But I ask the gentlemen of this Convention to vote for this amendment, and then, if they think that this particular right that is being attacked should not be in the Bill of Rights, to produce an amendment in this Convention next summer and vote for it. That will be acting rightly and righteously, and that will secure what you want to secure by a straightforward method and not by a sidelong method.

Mr. LUMMUS of Lynn: The Merriam amendment does not touch or protect at all the great rights, the rights of life, liberty and property. The attack upon the Declaration of Rights has been directed exclusively against the right of property, but the desires of the gentlemen on the other side are to open the entire field of the Declaration of Rights to initiative action. That attack has been founded upon the theory that although the language of our Declaration of Rights in regard to property and the language of the Federal Constitution found in the fourteenth amendment are identically the same in spirit and meaning, as has been determined time and time again by the courts, (as in Davidson *v.* New Orleans, 96 U. S. 97, 101), nevertheless our court will adopt some narrow and strained construction of the language, instead of adopting the broad and liberal construction of the United States Supreme Court, as illustrated in those very recent workmen's compensation cases of New York Central Railroad Co. *v.* White, 243 U. S. 188, and Mountain Timber Co. *v.* Washington, 243 U. S. 219.

The gentleman from Fall River (Mr. Morton), formerly a member of our highest tribunal, said to you, a few days ago, that in the workmen's compensation opinion (209 Mass. 607), which he wrote for all the Justices, he intended to use no language which should prevent our court from adopting the doctrines since announced by the United States Supreme Court in the cases cited. There is no reason whatever for the fear that our court will be narrow. There is no reason for fearing that our court will not adopt the liberal construction of the United States Supreme Court; and if it does adopt that construction the whole argument fails, because the argument of the gentleman from Somerville (Mr. Garland), who presented the brief on this matter, was that our court is bound to a narrow construction. That argument failing, — that argument which related only to one particular bill, namely, the Workmen's Compensation Act, — there is absolutely nothing in the contention that we cannot rely upon our court to be as liberal as the United States Supreme Court.

Mr. Walker of Brookline: I intend to yield almost all my time. I simply wish to say that the gentlemen who have preceded me have entirely misconceived the argument. We do not want merely to provide for a compulsory Workmen's Compensation Act. We say that the whole social welfare program, including the minimum wage, including hours of labor, — we merely illustrate by the Workmen's Compensation Act, — the whole social welfare program is in danger if this amendment goes through.

Mr. Pelletier of Boston: It must seem to all of us in the matter of the discussion affecting the Declaration of Rights that there is a great deal of law, and what will the poor people do? Have you heard as much discussion as to decisions and opinions on any subject as you have heard for the last ten minutes? And if that be so, this great tabernacle of the people's rights, the declaration of plain principle, looking to their happiness, must be in sore need of something, and these gentlemen would keep the people from dealing with the one thing that they ought to be able to deal with, and that is the thing that looks to health and to happiness. There may be reason, — I cannot agree with it, — for saying that the people should not have to do with some part of the Constitution; but if there is anything that we have been taught to believe and must believe that the people ought to know about, and ought to be able to deal with, it is the Declaration of Rights. There is no talk here, there is no "dare" here, abrogating any particular measure. The gentleman from Amherst (Mr. Churchill) is absolutely wrong when he says that unless this is passed according to his will, we shall go out to the people and say that we are abrogating certain sections. Of course that was not the notion.

The gentleman from Lynn (Mr. Lummus) says that a justice of our court assures us that our court will not follow the New York court, but rather will follow the Supreme Court. Well, gentlemen, when we have such an easy remedy here, to say to the people: "If you are concerned over whether women shall work, whether children shall work, whether you can buy labor, and buy with it body and blood and soul," why not say to the people: "If you are interested in that proposition, you may have a right to deal with the Bill of Rights"? Because, after all, as the gentleman from Brookline (Mr. Walker) just said, this whole proposition goes to the whole program of social welfare. That is all that is asked. If you are going to leave the people anything by the initiative and referendum, leave them their Bill of Rights.

The gentleman from Winchester (Mr. Dutch) was talking this morning about empty form and absence of the real matter. Take this away from the people, to operate the initiative and referendum on the Bill of Rights, and you really will leave them little but an empty form. This is their most important, their most sacred right; let it be their most sacred function to deal with it, and not depend upon your guess and my guess as to what the court is going to do, when we have before us already an illustration of how great and powerful courts differ on these very questions.

Mr. Washburn of Middleborough: I think I am as solicitous as any man in this Convention to protect always minority rights, and I propose to support the amendment offered by the gentleman from Framingham (Mr. Merriam); but, sir, I have not been able to give my sup-

port to this particular amendment, and I base my opposition largely on the New York decisions. In that first case, — the Ives case, — the court construed a provision in the New York Bill of Rights which was closely analogous to the Massachusetts due process of law provision; and the court held that the compulsory compensation act there construed was void because it did deprive the citizen of his property and give it to another without due process. That was in 1911. In 1913 the New York Constitution was amended; and thereafter, in a subsequent case, which is reported in the 215th New York, the court said that under the amended provision the statute there construed was a valid exercise of the police power.

Now, at best, this question is involved in some doubt; and because of this fact, if for no other, I propose to resolve the doubt by voting against the pending amendment.

The amendment moved by Mr. Churchill was rejected, by a call of the yeas and nays, by a vote of 129 to 150.

Mr. James A. Lowell of Newton moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in lines 28 and 29, the words "specifically excluding any matter from the operation", and inserting in place thereof the words "providing for the establishment".

This amendment was withdrawn.

Mr. Edwin U. Curtis of Boston moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by inserting, after line 30, the following paragraph:

The eighteenth amendment of the Constitution, as approved and ratified to take effect the first day of October in the year nineteen hundred and eighteen, shall not be the subject of an initiative amendment.

Mr. Asa P. French of Randolph moved that the above amendment be amended by striking out the paragraph proposed to be inserted, and inserting in place thereof the following:

Neither the eighteenth amendment of the Constitution, as approved and ratified to take effect on the first day of October in the year nineteen hundred and eighteen, nor this provision for its protection, shall be the subject of an initiative amendment.

The amendment moved by Mr. French was accepted by Mr. Curtis.

Mr. French: This amendment is very easily explained; indeed, it seems to be almost self-explanatory. The provision of the member from Boston (Mr. Curtis) protects the eighteenth amendment from direct attack by the initiative, but it fails to protect it from indirect action by the initiative against the provision itself; in other words, the substitute which I have offered incorporates into the amendment of the gentleman from Boston the element of self-protection.

Mr. Edwin U. Curtis of Boston: I have no objection to the amendment. When I made the statement yesterday in explanation of why I had offered the amendment, I perhaps used some terms or phrases that were a little strong, and I have been asked by members of the Convention to make the statement over again. This final statement is reduced to writing, and I will read it as I have written it:

The resolution to provide for establishing the popular initiative and referendum, as it stands at this moment, provides that no law relating to religion, religious practices or religious institutions shall be proposed by initiative petition or be the subject of a referendum petition.

It will preclude from amendment by initiative and referendum methods that portion of the eighteenth amendment of the Constitution, as recently adopted by the people, stating that "no appropriation shall be made to an institution wherein any denominational doctrine is inculcated." However, the remainder, relating to non-sectarian institutions not under public control, is still subject to the initiative and referendum.

This situation is inconsistent with the theory that all institutions should be placed on the same plane and treated alike, on which theory the committee on Bill of Rights proceeded.

My opinion is that any institution wherein a denominational doctrine is taught would be barred from relief by amendment of the eighteenth amendment by initiative and referendum methods, and I fear that Boston College and Holy Cross might be so affected, although I do not state this as a matter of fact. It is a question for the courts to decide. It would require, of course, a study of the charters of these institutions to determine the matter absolutely, and I do not wish to make any statement which would preclude these institutions from any benefits enjoyed by others.

I say this in fairness to the Convention, the members of the committee on Bill of Rights and myself.

Gentlemen, that is the formal statement. I wish to add simply this. The people of Massachusetts voted on this amendment some two weeks ago, and you know their decision. If the members of this Convention desire to place a part of the so-called anti-aid amendment beyond the reach of the initiative and referendum they will vote No on my amendment; if they desire to place the whole of the eighteenth amendment beyond the reach of the initiative and referendum they will vote Yes.

The amendment moved by Mr. Curtis, as modified by the language suggested by Mr. French, was adopted, by a call of the yeas and nays, by a vote of 175 to 106.

Mr. James P. Richardson of Newton moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by adding after the word "petition", in line 30, the words "; nor shall this section be the subject of such a petition".

Mr. Richardson: This amendment is intended to carry to the entire provisions of section 2 of Document No. 370 the principle of self-protection which a large majority of the Convention has just incorporated into that section by way of the Curtis amendment which has just been adopted. The working of the amendment is this: You have put into section 2 certain excluded matters. Take the first of them, for the purposes of illustration:

> No measure that relates to religion, religious practices or religious institutions . . . shall be proposed by an initiative petition.

You also have put in this sentence:

> No part of the Constitution specifically excluding any matter from the operation of the popular initiative and referendum shall be the subject of an initiative petition.

Unless that sentence is amplified by the addition of the words now proposed, "nor shall this section be the subject of such a petition", it is perfectly possible to bring an initiative petition directed against lines

28 to 30 of section 2 as it now stands in the printed form. In other words, an initiative petition can be introduced to strike out from the Constitution, as it will stand if this measure passes, lines 28 to 30. If that carries at the polls the next step will be, or may be, an initiative petition to strike out the religious exemption, which then will be wholly without protection. That is to say, unless the language of the section as it now stands is amplified by adding the words proposed in my amendment, you can strike the religious exemption out of the Constitution, except that it will take you four years instead of two to accomplish that result. Now if my understanding of the mental attitude of the majority of this Convention is at all correct, it is that they want to put the religious matters, — using them again solely by way of illustration, — wholly out of the reach of this initiative proposition for all time so far as that is now possible. If that be true, this amendment certainly ought to be adopted. If you leave the matter as it is the protection clause as it stands is a good deal of a "joker", and is not worth much without this amendment which I now have proposed.

Mr. Brown of Brockton: I want to ask, if we adopt this amendment will it place the matter so that the initiative and referendum cannot be repealed if it should be so desired? Will the matter then be left so that if anybody thinks the initiative and referendum is not working as it ought to and may desire to repeal the whole proposition it cannot be done?

Mr. Richardson: The answer to that question is, in my opinion, No, not by this amendment. If the amendment which is printed under my name later in the calendar, and which I shall urge later at the proper time, is adopted, that might be the result of that amendment, but it would not be the result of the adoption of the amendment now under consideration. This, Mr. President, is solely, — to use the language of the gentleman from Brookline that he used earlier in the proceedings, — the purpose of this amendment is solely to "freeze in" or to clinch the exemption of the matters which you have voted to exclude in section 2.

Mr. Lummus of Lynn: In dealing with this amendment and many others we must remember that the initiative method of altering the Constitution is by no means the only method that we are to have. We shall have under this very resolution a method of legislative amendment of the Constitution subject to the approval of the people, which will be very much easier than the present legislative method; so that no part of the Constitution will be beyond change even though we do not permit certain matters to be changed through the popular initiative method. That being so, this Convention has adopted by overwhelming votes the proposal that religion, the judiciary, and one or two other matters, shall not be subject to constitutional amendment by the popular initiative, but that if amendment shall be necessary in those matters it shall take the legislative course. The Convention adopted those exclusions by overwhelming votes in the belief and the confidence that the provision specifically excluding those matters would not be the subject of any initiative petition. It now appears that the amendment which was adopted before, providing that no part of the Constitution specifically excluding any matter from the operation of the popular initiative and referendum shall be

the subject of an initiative petition, still leaves open the possibility of an indirect attack through the signature method upon the excluded matters. Therefore this amendment merely expresses what the Convention in its former votes intended to do and thought it had done. It simply makes sure that the vote of this Convention shall have the effect that the Convention intended it to have. I submit, Mr. President, that pursuant to the policies to which the Convention already has committed itself, this amendment ought to be adopted.

Mr. WALKER of Brookline: I wish to point out to the Convention that there is a vital difference between the proposition now presented by the gentleman from Newton (Mr. Richardson) and the proposition that he presented before and succeeded in getting into the resolution. The first proposition was directed against petitioners; it said that no excluded matter shall be the subject of a petition. This amendment is aimed at nothing less than the people themselves, because it says that if a petition were presented to exclude this section the people would have to vote to exclude it before they could get at the religious question or the judiciary, and he proposes to say now that although the people believe that their judiciary system should be changed, for instance, the people would have no chance to vote to exclude the excluding clause.

Now that goes farther than is necessary. I believe that if the people are so dissatisfied with the way the matter is left in regard to their judiciary, for instance, and they choose deliberately to exclude the excluding clause, they should have that opportunity. The provision as it now stands compels the people themselves to vote twice on the proposition, and I say that that is going too far.

Mr. RICHARDSON: Do I understand, Mr. President, the gentleman from Brookline to take the position that he is willing that the judiciary and these religious questions shall be excluded from the operation of the initiative and referendum for two years, but that he desires the time limit then to expire, and that he is willing that they may be put within the operation of the initiative within four years?

Mr. WALKER: Yes, the people could not touch the subject without two votes as the matter now stands. They have got deliberately to vote to abolish the exclusion clause first before they can vote on the proposition. Now I say that that is going far enough, — to compel them to make those two deliberate decisions, and if you adopt this amendment they cannot do it even with two deliberate decisions.

Mr. QUINCY of Boston: I can add very little to what the gentleman from Brookline has said. Of course this proposal of the gentleman from Newton goes further than the general provision as it stands, otherwise he would not offer it. I do not regard it as a mere perfecting amendment to carry out the obvious intention; I agree with the gentleman from Brookline that it is distinctly taking a step forward. You say to the people: "You shall not initiate a petition on a certain subject". When you add: "You shall not change the provision of the Constitution which says you shall not do this," it certainly is going further. Perhaps I speak under a disadvantage, as I was opposed to the clause as it went in; I am opposed still further to the extension of this clause as now proposed by the gentleman from Newton. I think the Convention fully understands what it is voting on.

The amendment moved by Mr. Richardson was adopted, by a call of the yeas and nays, by a vote of 142 to 139.

Mr. John M. Merriam of Framingham moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by inserting, after line 30, the following paragraph:

No proposition inconsistent with any one of the following rights of the individual, as at present declared in the Declaration of Rights, shall be the subject of an initiative or referendum petition: The right to receive compensation for private property appropriated to public use; the right of access to and protection in courts of justice; the right of trial by jury; protection from unreasonable search, unreasonable bail and the law martial; freedom of the press; freedom of speech; freedom of elections; and the right of peaceable assembly.

Mr. MERRIAM: I shall not take the time to read this proposed amendment inasmuch as it is in print before each one of us. I have taken as the substance of this amendment the concrete definite individual rights contained in the Declaration of Rights, and I ask if this measure, the initiative and referendum, is presented to the people, that these individual rights enumerated in my amendment shall be excluded from its operation.

I have not offered this amendment as a substitute in any way for the amendment offered by the gentleman from Amherst, which in a way was my own amendment, at an earlier stage of this matter and which I wish might be adopted. I believe, however, that this proposition, in the form in which I now present it, may now be considered, as the larger proposition has been defeated, so that these concrete individual rights may be excluded, on the principle of law which I shall state.

From the beginning of constitutional law there have been two different schools. The school represented to-day by the great German Empire would teach us that there is no constitutional authority upon a sovereign State; that a State in its sovereignty knows no limitations of its power; that it has jurisdiction of its own jurisdiction and can do whatever in its might it sees fit to do. If I understood the address of our popular ex-Governor, the delegate from Fitchburg (Mr. Walsh), upon this measure, he would belong to that school at the present time, for in his advocacy of this measure he went so far as to ask us to permit no exclusions whatever from its scope, but to leave it wide open for the people, or an alleged majority of the people, to deal with any subject whatever under the legal and constitutional heaven. To my mind he would believe in a governmental tyrant which possibly might be just as extreme as the Kaiser or the Czar of Russia in his former exercise of power. He merely would substitute for the will of a monarch the will of a majority.

Judge Taney many years ago, referring to the history of the colored race in America, said that the black man had had no rights which the white man was bound to respect. Without twisting the speech of the delegate from Fitchburg from its natural purport, it would seem to me that in his address he argued that the minority has no rights which the majority is bound to respect. I cannot agree to that proposition. I believe, in keeping with the French and American schools, that even a sovereign Nation is limited in the exercise of its power; that we all have natural rights which even a sovereign Nation in its sovereignty must recognize. It is stated in the Constitution that these rights are "natural", that they are "essential", that they are "unalienable".

Now if that is so there must be a corresponding obligation upon the State to recognize them, otherwise they cannot be "rights". I have enumerated these rights in terms, taking those concretely stated in the Bill of Rights from the beginning to the end. I have omitted nothing, as I understand it. The protection over property, that it cannot be taken "except by due process of law," is an article in the Federal Constitution. That phrase in those words is not found in the Massachusetts Constitution. That principle still would prevail as the law of the land beyond the power of any initiative petition to reach it, by virtue of the Federal Constitution.

Now I cannot imagine any sound argument against this proposal. These are individual rights; the majority should respect them. It may be said that this amendment is unnecessary. There is just as much necessity for this amendment to-day as there was in the beginning when these rights were put into the Constitution.

Mr. CHURCHILL of Amherst: Here is a proposition which is partly the same amendment as that which I offered in a previous amendment and was defeated. We are in the position of asking this Convention to preserve from the action of the initiative and referendum, not to preserve from the efforts of the people through their representatives, certain rights of the people; not so many rights as are covered in the whole Declaration of Rights and which the Convention has refused to preserve from attack, but a certain number of them. What I had to say with regard to preserving from the initiative and referendum all the rights applies to any of these rights, and of course the minority of the committee is in favor of this amendment.

I just want to take the opportunity to deny what was suggested by a speaker upon the other amendment (Mr. Pelletier), that the people will be prevented from amending the Bill of Rights if they have not the power to do so by the initiative. The same gentleman who made that statement very shortly afterwards was arguing to us that we should preserve from the people a certain specific amendment in which he was interested; and it did not bother him in the least, then, to suggest to us that certain things which have been done by this Convention should be preserved from the power of the people, as he put it, to change them by initiative. Of all the inconsistent arguments and attitudes that we have seen in this Convention, that to my mind is the worst. I can only hope, Mr. President, that the attitude which was indicated by this gentleman and by most of the leaders upon the other side this morning has not suffered a "sea change" in consequence of the defeat of my earlier amendment.

Mr. WALKER of Brookline: I suppose, Mr. President, this is a part of the Bill of Rights which no set of petitioners ever would think of questioning. I suppose if we excluded these matters we could do so without endangering any social welfare program, and that is the point in which it differs from the exclusion of the Bill of Rights as a whole. I do not think it is necessary to exclude even this part of the Bill of Rights. I do not think it is wise to exclude it.

Mr. HART of Cambridge: Against the amendment when it was presented in a different form in an earlier stage I took the floor, and I object to the amendment as thus presented, for two reasons: The first is the reason inherent in the words placed in connection with the Bill of Rights. The words, or rather the ideas which have been restated in

these words offered in this amendment, are already in the Constitution. This Convention is not called upon to reënact phrases which have been there for many years, and against which not a single member of this Convention has brought a hostile amendment. The rights enumerated in this amendment are in no danger from any source. Furthermore, why should we select out of the protection which is proposed a certain assortment, a small number of phrases, leaving many other parts of the Bill of Rights untouched? For instance, it is provided in the Bill of Rights that the people shall have the right to alter their own form of government. Why is not that also protected? Because it is not necessary. The amendment is superfluous. Being superfluous, Mr. President, it goes into the same category as a very large number of the propositions which have been brought here, upon which we have been painfully voting from day to day. They are brought not to improve the measure, not to make it more efficient, but as far as may be to take out the pith of it, and why? The underlying idea in this amendment and in the multitude of others that have been offered and still are pending is that the initiative and referendum is an unallowable method of government, that it is an abnormal method, that it is undemocratic, and that is why we hear such phrases as we have heard in the debate to-day. [Applause.]

The gentleman from Winchester (Mr. Dutch) spoke of tampering with the Constitution through the initiative. If the initiative is adopted by the people of Massachusetts, it is their method. There can be no tampering through their sovereign act. [Applause.]

Again, the gentleman from Newton (Mr. Richardson) has called upon us to protect certain clauses of the Constitution. To protect them from whom? From those who make the Constitution, and who alone have the right. I protest, Mr. President, against the idea that there is any need of protection against a system of amendment which springs from initiative petition, which does not apply equally to amendments which spring from the Legislature under the new plan that is now proposed. We need no protection. The initiative and referendum has just as good a right to be made the method of legislation, or a method, in this Commonwealth, as the present legislative method. We have reason to suppose from the experience of other communities that it will be as safe a method as that which we now have. We have reason to believe that the initiative and referendum will do what the legislative method does not do. We had presented to us the other day a statute-book with only eighteen hundred pages of statutes, and they are all good. There was not anything in that remark about the eighteen hundred pages of statutes that perhaps might have been there and were not there. The object of the initiative and referendum is to replace those defects.

We heard yesterday a very eloquent speech, certainly one of the most effective speeches delivered in this Convention, and a good speech, because it completely revealed the point of view of the speaker and of a considerable number of this Convention. The speaker took the ground, practically, that we had a perfect system of government in Massachusetts. Everybody knows that the gentleman from Wellesley (Mr. Pillsbury) would make no change whatever in our Constitution if he could prevent it. [Applause.] Everybody knows that he and his friends are satisfied with the present arrangement. [Applause.]

The amendment moved by Mr. Merriam was adopted, by a vote of 107 to 66.

Mr. Henry T. Lummus of Lynn moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by adding after the word "petition", in line 30, the words "; nor shall this provision be the subject of an initiative petition".

Mr. Richardson of Newton raised the point of order that the amendment was not properly before the Convention, being essentially the same as an amendment previously adopted.

The President declared the point of order well taken.

Mr. James P. Richardson of Newton moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out lines 28, 29 and 30 (as amended), and inserting in place thereof the following paragraph:

No part of the Constitution which provides for the establishment of a popular initiative and referendum, including this sentence, shall be the subject of an initiative petition.

Mr. RICHARDSON: I return to the charge, upon this amendment, undismayed by any previous reverses, in the consciousness that the amendment as offered is logical, is consistent and is necessary to attach to this measure to make it an instrument of good government. At all other previous occasions when the amendment has been offered the leader of the initiative and referendum forces has pointed with his magnificent gesture to the future as the proper time for consideration of it, and he has intimated, at earlier stages of this debate at least, that if a clear and workable form of the initiative was before the Convention and likely to be adopted this might be a proper amendment to "freeze" into it at the last stage of the debate. I now call upon him either to make good on that intimation or to retract it and take a definite position in this matter.

Mr. WALKER of Brookline: I should like to ask the gentleman whether he and his friends will withdraw the rest of the amendments that are now on the calendar.

Mr. RICHARDSON: I have no such power, Mr. President, over the other members of this Convention, as my friend in the third division is accustomed to exercise. [Applause.]

Mr. WALKER: I wish I had the power which the gentleman attributes to me, which I have not. As he has addressed me directly, I wish to ask him how he thinks I know whether or not the constitutional amendment, the initiative and referendum amendment, is to be satisfactory until we have passed on the rest of these amendments. I do not wish to mislead him, however. I do not believe in his proposition anyway.

Mr. RICHARDSON: The object of the question has been obtained. The gentleman has placed himself, as I expected he would place himself, squarely and fairly on record now as being opposed to this proposition. That was the purpose of my question, and I thank the gentleman for frankly answering it.

The gentleman from Brookline (Mr. Walker) has said, and did say on the third reading of this resolution, that if the amendments which he then introduced were adopted we should have a clear and workable initiative and referendum; and the amendments which were then pending under his name were each and every one adopted. That makes at least a *prima facie* case that he believes that we now have a clear

and workable initiative. But, gentlemen and Mr. President, the echoes of his voice this morning have scarcely died away in this hall, when he pronounces his gracious benediction upon this measure as it comes from the committee on Form and Phraseology, and says that it will be the best measure of any State in the Union if it passes. The question is, does this Convention want to preserve this measure in its integrity, in all its features, the result of the patient weeks and months of deliberation which we have spent upon it, or does it want to subject to rejection, modification or repeal, upon the first turn of the governmental machinery which this measure puts into operation, the features which have procured the assent of a majority of this body?

At an early stage of this debate, Mr. President, the gentleman from Boston, the lieutenant of the gentleman from Brookline, — I will mention his name solely for the purpose of designation, Mr. Hale, — took the position that we were not changing the method of constitutional amendment so very much. He bore down with emphasis upon the safeguards by which the Walker resolution surrounded the process of amending the Constitution through the initiative method. I call upon that gentleman and his supporters now to give us this covenant which is asked for by this amendment, that those safeguards shall remain.

The time has come now when this amendment is either to be "frozen" into this measure, to again refer to the language of the gentleman from Brookline, or it is to be treated to the opposite process, which is known to every good American, I take it, as "freezing out." I call upon a majority of this Convention to stand by the votes which they have passed in approving the restrictive features of this measure, and to vote to clinch them by adopting this amendment. At its last stage this amendment was defeated by a roll-call vote of 137 to 140. I now ask the men, for example, who have insisted that a thirty per cent minimum should be required for the adoption of a constitutional amendment at the polls to make good on that vote and to fix this measure so that it will not be possible within two years by the operation of this very machinery to reduce that thirty per cent to ten per cent, or five per cent, or one per cent, if you want to imagine an extreme case. I call upon the gentlemen who have favored the so-called Loring amendment, who have seen in the minority check in the Legislature sitting in Joint Convention a safeguard, to make good on that proposition, and now to vote for this amendment, so that the one-fourth of the Legislature required to approve a measure before it is submitted to the people shall not be capable of being struck down and out by the operation of this very machinery.

It cannot be gainsaid by either the gentleman from Brookline (Mr. Walker) or the learned professor from Harvard (Mr. Hart), who spoke a few moments ago, that they have parted company from their friend and mentor, Professor Holcombe, whom I quote as at least an equal authority upon this subject with the learned professor whose colleague he is. Book and page Professor Holcombe insists upon this feature as a necessity in a workable initiative measure. He says, Mr. President, and I repeat these words because they are important, although they have been read once before:

> It is natural for all persons, voters as well as those in more conspicuous places of authority, to strive for greater power. The electorate if permitted to define its own

powers cannot be expected to resist the temptation unduly to enlarge them. The electorate is not the people, and under our system of government it is just as improper for the electorate directly to define its own powers as for the Legislature or the courts to define their own powers. The right of the Legislature or courts to define their own powers is checked and balanced by the right of the other organs of government to do likewise. The same should be the rule for the electorate.

The professor from Harvard in the fourth division (Mr. Hart) has said in effect that I asked that the Constitution be protected against the people. I ask for no such thing, Mr. President. The gentleman in making that statement betrays a surprising ignorance, it seems to me, of what a Constitution really is and of what the function of this body really is. This body is the people of Massachusetts at the present time. There is no other body which has the legal and the political power to amend this Constitution in its whole structure, except this body. This is the people of Massachusetts within the four walls of this room.

The gentleman from Wellesley (Mr. Pillsbury) said yesterday with truth that a Constitution is an ordinance. I give to the Convention another definition of what a Constitution is. A Constitution, I submit, is a declaration of trust set forth by the sovereign people in solemn form for the purpose of announcing the manner in which and the terms upon which they propose to exercise the power of government. If that is what a Constitution is, and I think that the definition cannot be successfully challenged, this is the body which must exercise the principle of self-restraint which the gentleman from Brookline no doubt will advert to in reply to me. A so-called "self-restraint" which does not appear as an integral part of the Constitution is no self-restraint at all. The true doctrine of self-restraint is that which ought to be announced by the sovereign people acting through this Convention, a pledge to every inhabitant of Massachusetts and to all the strangers who may be within her borders that the people have restrained themselves, through this Convention, from altering without the action of a deliberative body the form of government which they have adopted in this way.

The summing up of the situation is this: Every safeguard, every restriction, every figure, every principle, every per cent that is put into this measure to make it reasonably safe, reasonably workable, reasonably proper, is a man of straw, a puppet, the crackling of thorns under a pot, unless this amendment shall be added to all the rest.

Mr. QUINCY of Boston: I cannot understand why the gentleman from Newton (Mr. Richardson) limits his amendment to striking out lines 28 and 30. His proposition should involve the striking out of the whole section above, lines 13 to 27, upon which at various times this Convention has spent so much labor. We have made a list of excluded matters. Now the gentleman from Newton (Mr. Richardson) proposes to exclude the whole of this constitutional amendment, if I understand him, except the portion which relates to the legislative method of amending the Constitution. His language certainly cannot bear any other construction. We are dealing with an amendment which is entitled "to provide for establishing the popular initiative and referendum." That is the first subject. The second subject is the legislative initiative of specific amendments. Now, his amendment proposes to exclude from the popular initiative all provisions of the Constitution which provide for the establishment of the popular initiative and

referendum. It seems to me that the whole of this article of amendment, upon which we have spent so much time, with the exception probably of the method of legislative amendment, does relate to the establishment of the popular initiative and referendum; and we therefore seem to be undoing all of our labors in making a list of matters which we want to exclude, as we are excluding this whole amendment from the operation of the popular initiative. I do not believe that this Convention wants to do anything of that sort. I merely want to make the issue perfectly clear.

Mr. RICHARDSON: Will the gentleman allow me to ask him a question, and to make an explanation in asking him the question?

Mr. QUINCY: Certainly.

Mr. RICHARDSON: Does not the gentleman see that unless you put the religious exemption into the measure and exclude that from the operation of the initiative, my proposed amendment would have no bearing whatever upon that issue, either *pro* or *con?*

Mr. QUINCY: I do not see it. The language used is very broad and general. I will ask the gentleman how he construes it. His language is no "part of the Constitution which provides for the establishment of a popular initiative and referendum." To my mind the part of the Constitution which provides for the initiative and referendum is the whole of this amendment which we have been discussing here, every bit of it, including the exclusion clauses, over which we have spent so much time, — all of it, with the probable exception of the legislative amendment provision.

Mr. RICHARDSON: The gentleman took the position a moment ago that we should be undoing some of the work which we had done if we were to adopt this amendment. Permit me to explain that such is not the case, and to answer his question by so doing. If this initiative and referendum measure contained no mention of the judiciary, then my proposed amendment, if adopted, would not exclude from the operation of the initiative and referendum any part of the Constitution which related to the judiciary. I should like to inquire if I make myself clear.

Mr. QUINCY: I understand the words which the gentleman uses, but I do not agree with him. I should ask the gentleman, Mr. President, how he defines the words, how he construes the words "provide for the establishment of a popular initiative and referendum." Do not all of these provisions relate directly or indirectly to the establishment of the initiative and referendum?

The amendment moved by Mr. Richardson was rejected, by a call of the yeas and nays, by a vote of 123 to 141.

Mr. Arthur N. Harriman of New Bedford moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out lines 28, 29 and 30 (as amended).

Mr. HARRIMAN: Whatever discussion has taken place regarding this measure, the principle involved always has been that the people at any and all times had a right, under certain restrictions perhaps, to alter, change or amend their Constitution and their laws as the majority of the people of the Commonwealth saw fit, and if you exclude in this measure any of these things which are vital to the people let me assure you now that you are making a mistake. There are men

here who have built up around our judiciary a fence. Let me say to you that with the industrial unrest that is taking place, with the decision that must and will come in regard to injunctions and to the matter of workmen's compensation, and with the working-class gradually extending the police power that it may protect itself and make a better condition in society, labor will find itself aligned against the intrenched interests of the great money powers of this Commonwealth, and those problems necessarily must come within the courts, which you have sought to exclude. Let me say to you that the safety of this Commonwealth lies not in a bulwark built around a special department of the government, but in the ability of the people to make their expression known. I want the people to have the initiative and referendum; I want them to use it as they see fit, not as I or some other man who is opposed to it may for the moment consider just and wise. And let me say to you that this measure may be used against what I believe to be for the best interests of the people as well as it may be used for the things that I personally may believe to be right.

I submit to this Convention that we have no right to exempt anything from the people under our organic law; and if in this Convention, our own body here, in our wisdom it has seemed wise by the majority to exclude certain things, let me assure my friends that there is a higher authority than the majority of this Convention, or the minority of it, and it is the people, and sooner or later the people themselves may say that they want to change even the things that perhaps the majority of this Convention in its wisdom thought not wise to trust to the people. I say now, if you want to encourage, if you have any idea of encouraging, popular conscience in any arm of our government, build around it no hedge which is a dare, if you want to use that word, for the people, saying that here is something they cannot touch. And why? The answer is: Because there are certain forces in the Commonwealth who fear the organized power of the people. If it were put into our organic law that we cannot do certain things, it is only from the fear that the people at some time may do those things.

I ask, Mr. President, is there a man who will deny, even opposed as he may be to this measure, that fundamentally the people of this Commonwealth are the rulers of themselves? When we say, and you must agree with me, that the police power of the people is going to be extended, to be effective and to be just it must be extended by the people themselves over the people themselves. In fixing this piece of legislation which may become the organic law of the Commonwealth I have no desire, and I think it is unwise, to fix it or have it in any way arranged so that the people themselves cannot change it, or any part of it, at any time when they see fit, and when the majority of the citizens of this Commonwealth so desire.

So, Mr. President, I trust that these lines will be stricken from the measure, and that it will go to the people with the consciousness that we trust them; we trust them to abide by our judgment, but if not by our judgment we will not tie them up to any particular phase of it, but simply say: "Here is a piece of machinery for you to use to govern yourselves, and we feel it not incumbent upon us to say that you shall not touch this, that or the other, for fundamentally every part of our government is of as much interest to the working-man and to the working woman and to every one as to any one, and there should be

no class, no arm of our government, no machinery, no law, that is exempt from being placed before the people for their sanction or their rejection or their change if they in their wisdom may so desire." [Applause.]

Mr. CHURCHILL of Amherst: There is scarcely any member of this Convention whom I personally dislike to oppose more than the author of this amendment. He has seemed to me absolutely sincere and thoroughly devoted to the interests of those whom he represents. He has been absolutely consistent with his principles in his votes upon the various amendments, so far as I have observed, and he has been unmoved therein by any thought of whether standing by the principles upon which he is acting will bring or lose votes. Any proposition from him, Mr. President, must be treated with respect.

But, Mr. President, unfortunately the gentleman has a foundation principle and attitude, which, though it has been asserted by others in this Convention as well as himself, manifests in its very extremest form the fundamental fallacy of gentlemen who are advocating the initiative and referendum resolution. The gentleman maintains that the people ought to be trusted and can wisely be trusted to vote at any time upon any proposition for the amendment of the Constitution or for statutes without any check or hindrance whatever. He asserts that really a majority of the electorate can be trusted to do this in the place of the people, and he really asserts still further that not merely a majority of the electorate may be trusted to do this, not merely a majority of the men who vote upon a certain election, but that a majority of those who vote upon a single proposition can be trusted, even though they be a minority of the electorate, which in itself is only one-fifth of the people, — that this minority of a minority ought to be trusted and can wisely be trusted, without any check or hindrance or limitation, to vote upon a constitutional amendment or a statute. Even if the gentleman's proposition that the people can be trusted were true, it is plain that he is making that fundamentally fallacious assumption, that the number of men who may be in the majority upon a single question, voting for an amendment or a statute, can be so trusted. Now, there is the extreme form of argument upon which the gentleman depends in his advocacy of his amendment.

However far we may be willing to trust the people or trust the electorate, a majority of this Convention at no time has taken the attitude of the proposer of this amendment. A majority of this Convention has taken the attitude that under the conditions under which the electorate must act it is unwise to trust that number of men solely, to take away every possible guarantee of any permanency or regularity of conduct on the part of the electorate, and the majority of this Convention has voted to make certain conditions and limitations under which the power of the initiative and referendum should be exercised, and to exclude from the power of the initiative certain matters. No man who has voted to exempt the judiciary, to exempt the anti-aid amendment, to exempt religious matters or any other matter can vote consistently for this amendment. There is no exclusion if you vote for this amendment. I cannot believe that the majority of this Convention is going to throw to the winds all that it has insisted upon up to this time.

Mr. HARRIMAN: There is no doubt in my mind that the amendment

which I offer should be adopted. The gentleman from Amherst (Mr. Churchill) says it imposes a fallacy. It imposes a fallacy on those men who do not believe in the principle of the initiative and referendum, for if fundamentally they do not believe in this, as they say they do not, then they do not believe that the people should have a right to organize or to control their government in all its particular divisions and subdivisions. I challenge upon this floor any man to say that because he believes, perchance, that a certain form of electorate should be required, — I challenge him to say here, — the people of this Commonwealth have not the right to say what shall be the rule as to the tenure of any particular arm of the government. The gentleman has paid me some compliments. He says that I am consistent, and I want to say that I try to be consistent. I believe that in presenting this amendment I simply am doing my duty as I see it, believing in it fundamentally. Men have come to me in this Convention and said it is expedient that, for the time being, perchance, we exempt something in this form of initiative and referendum. I stand here now and say that a Constitutional Convention has no right to deal with expediency. A Constitutional Convention should deal with principle and allow a body like our Legislature, elected from year to year, to handle those things which may become expedient from time to time. And I say now that any man in this Convention who votes for anything based upon expediency is striking a vital blow at any part of the machinery which will become the organic law of our government.

I believe that if a majority of this Convention think in their wisdom that something should be cut out, it is wrong fundamentally to say that after they have cut it out, after they have excluded it, they should not provide some means whereby the people may be able to change it, for I say now that if any man believes thoroughly in the initiative and referendum, if he believes in the principle that the people have a right to do these things, then he must vote to exclude these three lines that I ask you to exclude, and not place any impediment, not put any barriers around any arm or any section of our government. For that reason, Mr. President, I trust that my amendment will be adopted and then will go to the people, and even with those exemptions it will not go with the threat: "You have got to take what we give you; there is no other alternative, no other process," — and I have heard this Convention criticized on this, — "before you can change the measure which we now present as a panacea for many of your industrial and social evils."

The amendment moved by Mr. Harriman was rejected, by a vote of 68 to 135.

Mr. Roland D. Sawyer of Ware moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out lines 28, 29 and 30 (as amended), and inserting in place thereof the following paragraph:

An initiative petition to repeal, alter or amend any of the specific exemptions from the operation of the constitutional initiative in the foregoing paragraph, shall not be deemed referred to the next General Court unless it shall be agreed to by a majority of those present and voting in joint session, nor shall it be deemed referred to the people by a second General Court unless it be agreed to by a majority of those present and voting in joint session. Nor shall anything in the foregoing sentence be the subject of an initiative petition.

Mr. SAWYER: This amendment is a compromise between the Richardson amendment adopted yesterday and the position urged by the gentleman from New Bedford (Mr. Harriman) which has just been voted down. Our action yesterday in passing the Richardson amendment it appears to me was supremely conceited. We have in the Bill of Rights the wisdom of the framers of the Constitution, which we refused to exclude from the initiative and referendum operation. We admit that the people are competent to pass upon the wisdom of those men, and yet we undertook to say that we were wise enough to look into the future and to say that we could make an excluded section of this Constitution upon which the people forever should have no chance to base their initiative and referendum. Upon what intellectual meat, Mr. President, have we in this Convention fed, that we have grown so great that we can look into the future, and that we can set aside an excluded section which forever shall be beyond the reach of the people? That position is contrary to the initiative and referendum. The amendment that I offer here is a compromise against which no man in this Convention can vote if he will be consistent with his previous votes, for this amendment trusts the people, and those who believe in the initiative and referendum must vote for it if they are consistent, and this amendment trusts the Legislature, and those who have been against the initiative and referendum have asked us to have confidence in the Legislature, and they cannot vote against it if they would be consistent.

Now, Mr. President, we accept this situation: That there are certain sections of the organic law that should not be too easily changed, and this amendment would make them twice as hard to reach as the rest of the sections. Is not that sufficient? In an ordinary part of the initiative and referendum resolution the people, by an initiative petition for a constitutional amendment, may have it sent from one Legislature to another and to the people by a one-fourth vote. My amendment would cause it to be sent from one Legislature to the other and from them to the people by a majority vote. Thus this excluded section, this anti-aid matter, the Swig amendment, the matter in regard to the judiciary, is doubly protected. It would require double the vote in the Legislature to send it to the people that it does the ordinary section of the initiative resolution. Now, Mr. President, ought we to go any further? If we have confidence in our Legislature we may believe that the majority of the Legislature will protect us in bringing up that question. If we have confidence in the people we certainly ought to allow this excluded section to have that right.

There is no joker in this amendment. It keeps faith with the Bill of Rights Committee, who have been so earnest about their anti-aid amendment. It keeps faith with those conservative members who have been so anxious about the judiciary, for it provides that the provision itself shall not be a subject of initiative petition. It is a little softer, a compromise between the unswerving "freeze in" position that we voted yesterday afternoon, — and that by a margin of only three votes, Mr. President, — it is a compromise between that and the position that we have voted down this morning.

I cannot see why we should exclude these matters forever from the reach of the people, if we believe in the initiative and referendum; and I cannot see why we cannot leave it to the Legislature, if we be-

lieve in the integrity and the earnestness and the intelligence of the Legislature, to stand between us and those who would bring undesired questions before the people. In order that we may be consistent with the votes that we have taken previously, in order that we may not go before the people saying that we will open up the Bill of Rights and all previous matters to the people, but we will ourselves in our supreme wisdom make an excluded section that the people shall not touch, in order that we may be saved from that position, I hope, Mr. President, that this amendment may be adopted.

Mr. CHURCHILL of Amherst: I should like to ask the gentleman who just spoke a question, if he will be kind enough to answer it. I am not quite sure that I understand the purport of the gentleman's amendment. What I want to ask him, for the information of us all is: Why is this amendment necessary to accomplish the end that he desires? If I may explain my question, we have at present in the resolution the power of the Legislature by a legislative amendment passed by a majority, according to the provisions of this suggested amendment, in two successive years, — the power of the Legislature by legislative amendment, — under these same conditions to deal with all the matters that we have excluded. We have not excluded those matters from the action of the Legislature, but only from the action of the initiative. Now is it not true that the only thing that this amendment would do would be to give a man the opportunity, if he chose to avail himself of it, of getting 25,000 signatures for such a procedure, when all he needs to do is, — he, one single man, — to petition the Legislature for such an amendment and have it introduced in the Legislature? Who will take the far harder method? Is it not true that the present resolution by legislative amendment does exactly what the gentleman calls for by this amendment?

Mr. SAWYER: The situation is not exactly the same. My amendment provides that a majority of those voting in the Legislature shall act upon it, whereas the provision in the Constitution to which the gentleman from Amherst (Mr. Churchill) refers requires a majority of all those elected. Secondly, Mr. President, the initiative petition is excluded in the original provision to which the gentleman refers. Thus any petition that would come before the Legislature would have the same status as a petition from an individual or a number of individuals. In the Legislature it would be referred to a committee, and in that committee might be smothered, never heard from, whereas if the petition be allowed according to my amendment, and any one goes to the bother of getting up the petition, it must be acted upon by the Legislature in a joint session, and the Legislature go on record. So there is quite a distinction in the working-out and there is a great distinction in the matter of principle.

Mr. CHURCHILL: We have a provision on page 7 of the resolution, in lines 78 and 79, as follows: "or in the case of a constitutional amendment by a majority of those voting thereon in joint session in each of two years as hereinafter provided," the Legislature may "submit to the people a substitute for any measure introduced by initiative petition." There is "a majority of those voting thereon." Whereas in the case to which the gentleman refers, in lines 121 and 122 we have: "a legislative amendment receiving the affirmative votes of a majority of all the members elected." The gentleman makes the point

that in case of the initiative amendment it is a majority of those voting thereon, in case of the legislative amendment it is a majority of all the members elected. Now, that is true. There is that distinction that the gentleman points out. The only question is whether we want to go through, for the sake of the difference between the majority of those elected and the majority voting thereon, all this attempt to get 25,000 votes, when if we could get a majority of those elected we could pass this thing as a legislative amendment. It seems to me that if not entirely unnecessary, as I suggested first, it certainly never will be made use of, because of the difficulties for very slight return.

Mr. SAWYER: If the matter would not be made use of what harm can there be in entering it into the resolution? It is better to give the people that which perhaps they would not make use of but have a right to have, than to say in their faces: "You cannot have what you feel that you have the right to have." In order to make this initiative and referendum resolution consistent with itself we ought to strike out the Richardson amendment and insert this in its place. This will do what the Richardson amendment sought to do in other particulars, and will make the resolution that we are passing a consistent resolution.

Mr. MONTAGUE of Boston: I understood the gentleman to say when he spoke a moment before that a constitutional amendment introduced into the Legislature might be referred to a committee and never heard from. I wish the gentleman would explain to the Convention, if he meant that, what ground he has for saying it, and if he did not mean it explain to the Convention how it could be possible.

Mr. SAWYER: I am very glad that the gentleman has given me a chance to clear up that point. The Legislature, having 2,500 or 3,000 petitions for legislation relative to all sorts of subjects, has to refer them to committees, and the result is that generally adverse reports from committees are accepted without lengthy debate, or else the Legislature never would get through. So, Mr. President, any petition that came in from an individual or a number of individuals, unless there was a dissenting member on the committee, probably would be accepted by the Legislature without dissent and without discussion.

Mr. MONTAGUE: I should like to ask the gentleman if, under this resolution, if it is adopted, a legislative constitutional provision does not have to come before the Legislature, and have a vote taken by the Yeas and Nays.

Mr. SAWYER: That is just what I seek to accomplish by putting this in. Unless this is in that is not so. That is the excluded section. Any individual or group of individuals, even 20,000, could not bring it before the Legislature necessarily on a Yea and Nay vote unless this amendment is put in. But with this amendment in, why, that large petition, if any one would get it, would bring it before the people.

Mr. RICHARDSON of Newton: In lines 13 *et al.*, we have provided that no measure that relates to religion, etc., shall be even *proposed* by an initiative petition. The gentleman's amendment says an initiative petition to repeal any of the specific exemptions shall not be "deemed referred to the next General Court," etc. I should like to ask the gentleman if that, in his opinion, is not a flat contradiction of what we already have done.

Mr. SAWYER: Of course it is, or else we should not be introducing it.

It is an amendment to the first section that the gentleman just read. It is another method, the same as we often pass laws and then add the qualifying clause, "*provided, however,*" and making some qualifications of the foregoing paragraph. That is exactly what we seek to do here, that, should there arise any contingency whereby a large group of people wanted to call the attention of the Legislature to some of the things in the excluded matter, they might do it by the initiative proposal, but they could not get through by the ordinary one-fourth vote, but would require a majority vote.

I want to call attention to just one thing. How do we know what the future will bring forth in regard to this excluded section? The State of Maine, for instance, had a group of religious fanatics who went through the State, and the State in its Legislature had to take legislative action. How do we know that religion always will bring together groups of sane men? How do we know but what there may arise some such contingency in this State, where people in one section of the State shall require the attention of the Legislature to keep from suffering and want people who had been deluded dupes in the name of religion? And, Mr. President, here is this drastic exclusion, that no law affecting a city or locality of the Commonwealth, or particular district, ever shall be the subject of an initiative petition.

The amendment moved by Mr. Sawyer was rejected, by a vote of 34 to 126.

Mr. Horace I. Bartlett of Newburyport moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by inserting after the word "subjects", in line 43, the words "not excluded from the popular initiative and".

Mr. Bartlett: This is purely a perfecting amendment and needs only to be explained. In section 3, page 5, it is provided that the Attorney-General shall certify that the measure is in proper form, that it is not the same as any which has been submitted within three years, and that the subjects are related. This amendment requires that he shall certify also that the subjects do not include excluded matter. This amendment is accepted and approved by the chairman of the committee on the Initiative and Referendum.

Mr. Walker of Brookline: If I may say so, I should be very glad, as far as I am concerned, to accept this amendment, which I think is a very good one.

The amendment was adopted.

Mr. Samuel W. George of Haverhill moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in lines 55 and 56, the words "first Wednesday of the September", and inserting in place thereof the words "second Wednesday of the November";

Mr. George: Turning to page 6, we find that the first ten signatures attached to any initiative petition shall be filed with the Secretary of the Commonwealth not earlier than the first Wednesday of September, and the balance of the signatures not later than the first Wednesday in December. It seems to me that the logical effect of this proposition is this: That any ten men can file an initiative petition with the Secretary of the Commonwealth on the first Wednesday in September; then every candidate for the General Court at the primaries, which take place about the 20th of September, will be bom-

barded with various letters asking if he favors this particular petition that has been signed by ten gentlemen and filed with the Secretary of the Commonwealth. The result will be this: It will be possible to have a sufficient number of candidates for the Legislature pledge themselves to this particular measure, and finally be selected or elected to the General Court, with no other consideration except that they are in favor of this particular proposition. And therefore it will not be necessary to secure the remaining signatures on this petition, but the Legislature, having pledged itself in advance, can pass a proposed law or a proposed amendment without referring it to the people.

It seems to me that we are going to weaken the Legislature, and I have made a motion to amend by making the first day upon which a petition can be filed the second Wednesday in November, and extending three weeks for filing the balance, so that a petition which has gone into the General Court must be filed not earlier than the second Wednesday in November and not later than the last Wednesday in December.

It seems to me that it is a very bad public policy to invite the substitution of a third House in the persons of ten self-appointed men. Any ten men can propose an initiative petition, file it with the Secretary of the Commonwealth, which gives it a sort of legal standing; and you will find that your Legislature will be chosen upon no other consideration than whether or no they are in favor of that particular petition. I do not think this Convention intends to do that. I think that we ought to remove the date of filing until after the election; and there is no necessity for introducing an initiative petition or filing it with the Secretary of the Commonwealth in September, because it will not be presented to the next General Court until the following January. And unless that is the purpose of this particular clause, this Convention ought to adopt this amendment, so that members of the Legislature may be elected, not because they favor some particular question, but on the broad ground that they are to represent the Commonwealth and their respective communities upon all great questions which come before them. That is the reason why I offer this amendment. It does not invalidate or destroy the initiative and referendum, but it simply takes away that process of weakening the membership of the General Court.

It is a question of whether this Convention wants to create a third House. They are not all highly moral men who are going to sign these initiative petitions, Mr. President; they are going to represent all sorts of interests. It seems to me we should remove that danger, and elect our legislatures the same as we always have, not being bound by any one particular question.

Mr. WALKER of Brookline: As the member representing the minority of the committee has not pressed this amendment, I simply will explain the meaning of it to the Convention.

It means that the petition, in the first place, will not be completed and presented to the Secretary of the Commonwealth until the last day of the year. The Legislature comes in about a week later. There may be a number of petitions, not only one, but a number of petitions, presented to the Secretary on the last day of the year, and then he will have to proceed to verify the names, do all the incidental work, and get the matter into the Legislature as soon as he can. After the

Legislature has met the Secretary of the Commonwealth always is a very busy man. It will delay the matter in getting before the Legislature, and it will cause confusion in the office of the Secretary of the Commonwealth. We purposely fixed upon the first of December, so as to give the Secretary plenty of time during that month to prepare for the meeting of the Legislature, and to give the Legislature the whole of its session up to June 1st to deal with these matters.

Moreover, it is a very small matter. The first ten men may sign their petition, even if they cannot file it before election. They may advertise it, may make their campaign upon it, and pledge members of the Legislature if they choose to, just the same. To file it with the Secretary is a mere clerical act. They must get the rest of the signatures afterwards. So it seems to me it really is unimportant, even from the standpoint of the gentleman from Haverhill (Mr. George), and it seems to me it simply would cause friction and trouble in the office of the Secretary, and would cut off somewhat, probably a month, of deliberation in the Legislature.

The amendment moved by Mr. George was rejected, by a call of the yeas and nays, by a vote of 140 to 140.

Subsequently, Mr. George, in moving that this vote be reconsidered, said:

I regret very much that the gentleman from Brookline (Mr. Walker) and other members should have taken up the time of this Convention on matters of little or no consequence this forenoon. Now there is a disagreement. The gentleman from Brookline said this is of no particular consequence, and he recited instances whereby it might make more work, or that the Secretary of the Commonwealth might not have time to submit these petitions to the General Court.

There were some members of this Convention who thought that it curtailed the time for circulating petitions. Now, they can begin to circulate petitions any time they see fit, but the time of filing the first ten, the ten men who are asking for this legislation, — the time of filing is deferred until the second Wednesday in November, rather than the first Wednesday of September. It gives them more time. And then it extends the time, also, for completing it, to the last Wednesday of December rather than the first Wednesday of December.

I think, Mr. President, that the matter should be reconsidered; I think that this Convention should pass this amendment. I do not believe this Convention intends to allow any ten men, whether they represent one vested interest or another vested interest, or any other propaganda, to hold a club over the election of the 280 members in the General Court, from the first day of September until the day of the election. I hope this matter will be reconsidered, and that the Convention will act on its merits.

Mr. WALKER: When this motion was put this morning I do not believe all the members of this Convention understood it. If they had understood it I believe it would have been voted down by a much larger vote than it was. As it was, it was a tie vote.

Now, what does this amendment mean? Let us remember that this question was divided, and that we were voting this morning on the first part of it, and if that vote had carried I do not exaggerate when I say that the initiative and referendum would be dead, — practically dead, — for this reason: Under an initiative petition, as it is provided

now, the petitioners have three months in which to get their 25,000 names. If this proposition had gone through they would have had three weeks only. Now, that makes it impossible. The gentleman knows what he is doing. It is not the same motion that we argued this morning at all, because the question was divided, and now we are asked to cut off two months and a half of the time in which petitions can be signed.

Now, Mr. President, if this matter is reconsidered it will recur on that question, as to whether the time in which the signatures may be secured shall be cut down from three months to three weeks; and that is all there is to the proposition.

Mr. GEORGE: If the initiative and referendum is adopted and becomes a part of our Constitution, is there anything in the initiative that prevents anybody from going out in July and August and securing signatures to a petition to be presented to the next General Court if he wants to?

Mr. WALKER: The provision is that the first ten signers shall file their petition, and that the Secretary of the Commonwealth shall furnish the blanks. I take it that the Secretary of the Commonwealth would have no authority to furnish blanks until after the petition had been filed by the first ten signers, and that then he would have authority to issue blanks. Therefore, if my interpretation of the measure is right, and I think it is, under the proposed amendment no blank for any subsequent signers could be obtained until after the second week in November, and then it would have to be completed and filed by the first Wednesday in December. I do not believe this Convention, even the conservatives, would try to do that sort of thing. I believe the gentlemen on the minority could not consider that a perfecting amendment by any stretch of the imagination.

Mr. GEORGE: I should like to repeat my question. Is there anything in the initiative and referendum that forbids any number of persons from starting an initiative petition in July or August of any year, if they want to? Now, in addition to this question, I want to suggest, Mr. President, that anybody can go out in April and secure nomination papers if he sees fit, and when the Secretary of the Commonwealth has these blanks on hand we have a right to go there for them. He does not say we have got to wait until the first of July or the first of August. We can get those blanks at any time. Now, I want an answer to this question: Is there anything in the I. and R. that prevents or forbids any person or persons from circulating a petition for signatures for initiative legislation or amendment to the Constitution previously to the first of September?

Mr. WALKER: According to my interpretation of the measure there is in effect such a prohibition. I do not believe it can be done.

Mr. GEORGE: May I ask the gentleman from Brookline to read the prohibition?

Mr. W. H. SULLIVAN of Boston: The question is on reconsideration. We are proceding on a schedule that limits debate. This morning some of our members from the western part of the State besought us to permit them to go home for Thanksgiving. We are sitting here this afternoon instead of adjourning at one o'clock, as is customary, and we are coming in Monday, to the great inconvenience and discomfort of the western members. And here we have our brother member from

Haverhill (Mr. George), who wants us to have another roll-call, to spend another half hour on this question, and the only new suggestion he has made is that we vote on the merits. Is that a convincing argument to the western members, who are opposing this proposition, and who always vote on the merits of a question to favor reconsideration?

Mr. CHURCHILL of Amherst: As a western member I should be pleased to answer "Yes." If there is any better ground for a reconsideration than to have more opportunity to consider on the basis of its real merits a measure upon which we have had a tie vote, I do not know it. I do not wish to speak upon the merits of the proposition itself at the present time. The question simply is whether, after we have carefully helped along the debate on these amendments in every way possible, and when an amendment offered by an individual member of this Convention has received a tie vote, and certainly involves an important proposition, as is evidenced by the remarks of the gentleman from Brookline (Mr. Walker), — whether this Convention, under those circumstances, is willing to take the time to consider for fifteen minutes longer the merits of that proposition. If there is anything that can fairly ask for reconsideration, whatever the attitude on the proposition may be, I think this measure can fairly ask it.

The motion to reconsider was negatived, by a call of the yeas and nays, by a vote of 121 to 142.

Mr. George moved that the resolution (No. 370) be amended by striking out, in line 59, the word "first", and inserting in place thereof the word "last".

This amendment was rejected, by a vote of 37 to 83.

Mr. James T. Moriarty of Boston moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in lines 45, 46 and 47, the words "A filing fee not exceeding one hundred dollars, which shall be returned if and when the petition is completed, may be required by law."

Mr. MORIARTY of Boston: My object in introducing the amendment is because I feel that it is going to be a hardship on individuals who may want to file a petition. We have a situation in different parts of the State where nomination papers have to be taken out in order to be a candidate for public office. Any individual in the State may take out those nomination papers. Nobody has to pay, as an individual; but to take out an initiative petition, he would have to pay. I believe that is a hardship on the average petitioner.

As far as the people whom I in part represent are concerned, they will have no trouble on any initiative for which they seek to get the names; but to some individual who has no organization, it is going to be a hardship; and because he is not in a position to go out and get a sufficient number of signatures, because he is unable to do that, you are going to make him pay $100.

Now, I do not think that we should put in anything here that is going to give these results. There is hardly a corporation in this Commonwealth that might want to move a petition that could not go out and get a sufficient number of men, — there is hardly an organization; but when it comes to an individual, who may get nine other men in his locality to sign a petition, just because he would be able to go there and get out a petition, that man may have to put up the $100 himself. He may have to go out and do all of the work himself. He

may not be in a position to pay some solicitor to go out and get names, and he would have to forfeit that $100.

So I do not believe it is a fair proposition for the individual citizen of this Commonwealth. A man may have an idea, it may be one of the best ever suggested; and because he is unable to get a sufficient number of men he will be taxed $100 for not being able to get that number of signatures. I believe that part should be stricken out.

Mr. Churchill of Amherst: When this amendment was offered originally there was no intention on the part of the mover, and I am quite sure no intention on the part of any man on this side of the question, to impose an unreasonable demand. The purpose of this amendment was simply to secure the Commonwealth against the expenditure of time and of money over propositions which never would and never could come before the people, because they were not of sufficient interest.

Now, it may be true, I am perfectly ready to grant, that an individual with a very strong belief in a measure that he wants to put up to the people may find this an inconvenience, may regard it possibly sometimes as an injustice, and I should like to avoid that. But, on the other hand, we have the question whether it is not for the general advantage of the community, for the protection of the general public in the matter of taxes for expense in the carrying out of this great measure, that there should be imposed a certain restriction which a man must overcome by proving that his petition is of sufficient interest to go before the people.

Now, the fact remains that the only persons who really are hit by this amendment, are those who put up a measure which is not of sufficient interest to secure the necessary number of signatures, and anybody who does secure the necessary amount of signatures gets his money back again. If there is anything like a united support of a bill it is unlikely that an individual will have to put up the $100 in the first place or that he will have to bear all the loss. The loss would come upon a certain number of men, and where the number of men is at all considerable, so that the number of signatures is obtained, there is no loss to anybody.

Now, Mr. President, when this amendment was offered and discussed it was accepted by the leader of the other side. It was considered by him a reasonable amendment and was accepted. I do not see that the unreasonableness of it has been proved to us by any subsequent argument or action.

Mr. Walker of Brookline: I want to say to the Convention that I am sorry I accepted the amendment. I do not think it is fair. I think this provision simply is annoying, and I trust that the Convention will see fit to take it out. The reason why I was led to accept it was this: You will remember that the original proposition was to give the Legislature power to fix the fee of $100, and then it was changed, and actually moved in such form that the Legislature should have a right to fix an unlimited fee. That was the animus back of the thing, to fix an unlimited fee. It was one of those hostile amendments intended to throw the I. and R. into the control of the Legislature. Then finally the gentleman, I think, accepted an amendment to fix the limit at $100. Then I think I did not oppose it; I presume I accepted it absolutely, — I have no doubt of it.

Mr. CHURCHILL: Will the gentleman yield for a slight correction?

Mr. WALKER: I certainly will, yes.

Mr. CHURCHILL: I wish to call attention to the fact that I myself offered the change which the gentleman has called hostile, and introduced the words "which shall be returned if and when the petition is completed."

Mr. WALKER: The gentleman in this respect, as in every other respect, intends to be fair, and I am not criticizing him at all; but he will remember an attempt was made to get an unlimited fee. Now, it is too small, it is too petty, it puts an expense on the right to petition, and I think it is common-sense to strike out this annoying provision.

Mr. HALE of Boston: It amuses me a good deal to hear this request for the $100 filing fee. All through this debate the opponents of the I. and R. have taken the ground that our petitions would not represent public sentiment, but represent only the power to put up a certain amount of money; and here they attempt to put onto the I. and R. resolution an amendment which adopts that very principle in a minor degree. I think it is extremely unfortunate that a poor man who may think there is public sentiment, and be wrong about it, is penalized, and the rich crank, who wants to start an I. and R. petition, is not penalized. I hope sincerely that this amendment will be carried, because I think it does the very thing that we do not want to do, and which the opponents of the initiative and referendum have been talking most strongly against.

The amendment moved by Mr. Moriarty was adopted, by a call of the yeas and nays, by a vote of 142 to 134.

Mr. Josiah Quincy moved certain amendments (see page 1046) and, by a vote of 127 to 57, the further consideration thereof, except the amendment of lines 112, 113 and 114, was postponed until action had been taken on all other amendments, except amendments proposing substitute resolutions.

After offering the amendments Mr. Quincy, in support of his motion that the consideration thereof be postponed, said:

I labor under the great difficulty that it is impossible to say in five minutes one-quarter of what ought to be said, from my standpoint, about this proposal. My excuse, however, for presenting such an elaborate proposition to the Convention at this time is that I am not bringing it forward individually, or as an initiative and referendum proposition, made by friends of that measure; I merely have taken the principal part as draftsman and have coöperated with other gentlemen, some of them members of the committee on the Initiative and Referendum, some on the majority side and some on the minority side, to see if it were not possible, even at this late stage, to incorporate in our Massachusetts initiative and referendum measure, — which is to be a more perfected, safeguarded and elaborate form of the initiative and referendum than ever has been adopted elsewhere, — some improvement over the comparatively crude system of obtaining signatures which prevails elsewhere.

If gentlemen will read my amendment they will see that it contains somewhat lengthy but I think perfectly clear provisions for substituting for the signature system as it now prevails, — which we all admit, on both sides of the House, to be open to some objections, — a system which some of us believe to be a far better system, because of its being

much more orderly, more deliberate, more consistent with the performance of an act by the citizen. The support of these initiative petitions is an act of the citizen; only the voter has a right to join in that act. The main idea is to throw around that initial act of the voter as much deliberation, as many safeguards, as much formality as is possible without making it too difficult to obtain the required signatures.

Now those of us who support this amendment, after careful deliberation, conference and drafting, extending over the last week or more, are agreed that the proposal now before us does present a better system of securing the support of the citizen for the initiative petition than is now embodied in the measure. I hope, therefore, late as the stage is, that the Convention will be willing to take the statement of the gentlemen who join me in advocating this proposal, that it has been carefully considered, that the use of all these words is for the purpose of making the meaning clear, that it leaves no opening to the Legislature, — and I say this from an initiative and referendum standpoint, — to block the operation of the system, but that it provides methods which are preferable from the standpoint of good citizenship, from every standpoint, to the somewhat crude method which now exists of having the voters sign a petition.

We have here three alternative methods which the parties interested in qualifying a petition can choose. One method which may be resorted to, a method which I think will be largely resorted to, we have called the official mailing card. We have moved back the stage of official action to the beginning of the proceeding, instead of having it begin only with the filing of the completed petition; we say that the Secretary of the Commonwealth shall mail these official signature cards, on payment of the expense of mailing, to any list of voters which may be furnished to him by any signer of an initiative petition. The voter gets that card by mail. He decides deliberately whether he wants to sign it or not. If he does, he deposits it either with his city or town clerk or with the Secretary of the Commonwealth, by mail or personally, and his act as a citizen is performed.

The second method is what may be called a private signature card, which may be printed and circulated by the parties interested in the petition, only in this case there is a little more formality required. The voter must express in his own handwriting his desire to be recorded in favor of such and such a petition, and his signature must be witnessed. This is the unofficial card. By either of these methods we have a system based on one signature to a card, in contrast with the system of getting fifty or more signatures on one long blank, — some from Boston, some from Lynn, wherever we may find men whom we ask to sign. I say this is a more orderly system, a more deliberate system, a better working system, and that it eliminates some of the objections which we all admit to apply to the present method of circulating petitions by paid canvassers, which is allowed under the measure as it stands, — under which the voter may be told, "Please sign this; let me go on to the next man," thus destroying the deliberation which should attach to the performance of an important act of citizenship.

Mr. LUMMUS of Lynn: I have had some conferences with the gentleman who has just spoken (Mr. Quincy) and with other gentlemen relative to this matter. I started with the proposition that nothing could be

worse than the system of collecting signatures proposed by the original resolution before us, — a system which a gentleman in the first division (Mr. Balch) has characterized correctly as the "boodle initiative," because it certainly means that anybody with the money to hire canvassers can get the necessary signatures in such ways that they signify nothing as to the convictions of anybody.

It may be said that the methods provided by the present amendment are not sufficiently restricted. It may be said that we ought to require more signatures. I agree. But in my opinion, the method provided by this amendment is immeasurably superior to the method provided by the resolution. Let us see.

There are three methods provided by this amendment. One is, that the voter may go to the clerk's office in his own city or town and sign the petition there. That, of course, will indicate a considerable degree of interest and conviction on the part of the voter.

The second method provided is that the voter may sign an individual paper in which, in his own handwriting, — he must do more than sign his name, — he must write a complete expression of his desire to sign a certain initiative petition. The voter, before doing that, will think about the measure a bit. He will not be absolutely under the dictation of a signature canvasser who shoves the petition under his nose and says: "Sign here." There will be some degree of reflection. To guard against forgery, — and forgery of a longer document like this is much less likely than the forgery of signatures on printed blanks like our present notorious nomination papers, — the amendment requires the name and address of a witness. It seems to me that is much better than the petition method.

The third method is what the gentleman (Mr. Quincy) calls the official signature card. The petitioners, by making a deposit to cover the expenses, may have the cards mailed directly from the Secretary of the Commonwealth to individual voters, so that the recipient of a card and no one else, if he wishes, may send it back to the Secretary of the Commonwealth or to the city clerk with his signature. As a check upon that method, in order to give the opposition to the measure a chance to oppose it at that stage, it is provided that the opponents of the measure, if they will contribute to the cost of mailing, may have inclosed with the card an appeal to the voter not to sign the card.

It seems to me that these three methods, each and every one of them, provide a better way for the expression of the voter's opinion than the petition method, and that is all that it is necessary, it seems to me, for this Convention to believe in order to pass this amendment. You may think it is all too loose, you may think it does not sufficiently represent public sentiment, you may think the number of signatures ought to be much greater; but if this provision is better than the method of collecting signatures by canvassers who simply go around in their usual haunts and pick up signatures upon long petition blanks, as they can without the slightest deliberation on the part of the signers, then it seems to me we ought to vote for this amendment.

Mr. Walker of Brookline: I feel almost a physical relief when I see the opponents and the proponents of this measure getting together on any proposition. And in order not to disturb the harmony of the occasion I will give the rest of my time to the gentleman from Boston (Mr. Hale).

Mr. HALE of Boston: I feel a great deal of hesitation about bringing this up at this time, because it looks much more complicated than it really is. I want to say, in the first place, in regard to my advocacy of it, that I was not guilty of suggesting any new methods of initiative and referendum without careful consideration with the man whom all of us in favor of the initiative and referendum consider the great authority on the subject; that is Professor Johnson. This matter has been gone over very, very carefully by him and meets with his approval.

Mr. O'CONNELL of Boston: I should like to know if any other State has adopted this method, and if it has, what has been the result of it; has it been successful or unsuccessful, or has it been satisfactory?

Mr. HALE: This exact method, Mr. President, has not been used in any other State. A method almost identical, Professor Johnson tells me, has been introduced in various western cities and is working satisfactorily. The main differences between this and the present method are two: First, that under this method you can use the mails instead of personal conversation; and, second, that you have got to have one signature on one card instead of a number of signatures on one piece of paper.

Now our reasons for favoring this method which has these two differences are that we feel, in the first place, that it will make it more difficult to get fake expression of public opinion; in the second place, because we think it will make it easier to get a real *bona fide* expression of public opinion. Our reasons for thinking it will be easier to get a real expression of public opinion are the following: First, we can use the mail, which saves a great deal of time. Second, — and this is a very important matter, particularly where signatures are intended to be got at meetings, — under the individual card system each man gets his own card and can sign his own name to the card regardless of where he lives, and it goes to the Secretary of the Commonwealth and is counted. Under the present system, as you all know, where you go before a large meeting with men coming from different cities and towns, a large per cent of the signatures are ruled out because the papers on which those signatures appear have to go before the registrars of one town and the voters of the other towns are not counted, thus losing a great many perfectly *bona fide* signatures. In the third place, this allows for volunteer signatures. In other words, a farmer or a man who never has been out but who is interested in any particular subject can write a letter to the Secretary of the Commonwealth and say: "I am extremely interested in this public question and I should like to be recorded as a signer of the petition." And in that way it has the advantage of encouraging the men whom you cannot reach by the use of canvassers and who cannot attend public meetings. In other words, it brings to the individual house of the individual voter a chance to deal with these public questions. And finally, it gives the same opportunity of using the canvasser system as we have it in the present resolution. Instead of a big sheet of paper it would require a big bundle of cards, and the canvasser could go from house to house or any way he wished. In other words, it seems to me to have the advantage of being a more businesslike method of ascertaining real public sentiment and less likely to give us a system that does not amount to anything. And for those reasons we favor it.

Mr. Churchill of Amherst: Before we adjourn I should like to ask the gentleman from Boston (Mr. Quincy) if those paragraphs of his amendment, page 7, with the words "Strike out lines 152 to 158, inclusive" and "Strike out lines 184 to 190, inclusive, and insert" certain words in place, — whether those amendments do or do not cut out the provision already in the measure that additional signatures shall be procured after a certain date. I note that it is said here that the petition shall be completed by filing so many signatures in addition, but I do not see the provision already in the resolution that those signatures shall be procured after the original signatures. Am I right in supposing that that original provision is cut out by your amendment?

Mr. Quincy: It is not the intention of those who drafted this proposal to make any change in the respect referred to. Perhaps if I may have leave to do so I could answer the question to the gentleman's satisfaction during the recess and avoid taking up the time of the Convention.

Mr. Churchill: I raised the question because I did not think the gentleman intended to cut it out, and I ask unanimous consent, or will ask him personally to ask unanimous consent, to insert the provision which he did not intend to go out.

Mr. Quincy: If the matter may go over until we meet again I have no doubt I can agree with the gentleman from Amherst as to what can be done to make the provision perfectly clear.

Mr. Sanford Bates of Boston moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by inserting, after line 85, the following paragraph:

If, of the measures introduced into the General Court by initiative petition in any one year, more than five fail of enactment by the General Court, and the petitions relating to more than five are duly completed, the five on the petitions accompanying which appear the largest number of signatures of registered voters, and no more, shall be submitted to the people at the next State election. The measures not so submitted shall be deemed to be introduced into the next session of the General Court and pending in the House of Representatives.

Mr. Bates of Boston: Unlike the last matter, this is an amendment which very readily can be understood by any member of this Convention. It also is true, Mr. President, that this matter in its present form has the distinction of not having been presented and debated before. I think a simple reference to the amendment as printed will show a material difference between this amendment and the amendment which was proposed by the gentleman from Waltham (Mr. Luce) on another reading. This, it is true, is a restrictive amendment. If every amendment to the initiative and referendum which restricts its operation is to be considered a hostile amendment, then I suppose this is a hostile amendment. I think one of the greatest arguments that has been used against the initiative and referendum is the California ballot, which has been shown here, and the argument therefrom to the effect that the voter will be so confused by the large number of issues that he will not be able to give any one of them proper attention. Now, this amendment, Mr. President, is to attempt to confine the operation of the initiative and referendum in a way that its friends think it ought to be confined, namely, to those questions

which every year are large questions of public policy, which the public thinks demand a settlement. I have not put it in the hands of the Legislature to say which of these amendments shall be tried out. I have said that those five amendments which have the greatest public support, which have the largest number of signatures on them, shall be put on the ballot in each year. Although I voted, and shall vote, to pass the initiative and referendum measure, it is difficult to conceive of a public emergency in which the people would suffer if they did not have an opportunity to put more than five questions on the ballot. It seems to me that the advantages far outweigh the disadvantages.

Mr. WASHBURN of Middleborough: My attention is directed to the word "measures" which I find in the gentleman's amendment. The word is defined in the resolution itself, and includes both a constitutional amendment and a law. I am wondering whether that was the intention of the gentleman. There is some internal evidence that it was not his intention, because he says "if more than five measures fail of enactment". Now, a constitutional amendment is not *enacted* by the Legislature; under our Constitution it is *agreed to*. I thought perhaps the gentleman would explain to us what his purpose was, and possibly clarify his amendment.

Mr. BATES: Well, Mr. President, of course under this resolution as it stands now, constitutional amendments may get on the ballot without an initiative petition. I think I am perfectly willing to have it stand "measures", and have that include both laws and constitutional amendments, provided they are initiated. This amendment of course would not exclude constitutional amendments which were initiated by the Legislature and not by petition. In other words, I should like to have some restriction on the number of measures on which the people shall be called upon to vote. It will not be five, it may be ten or fifteen, because in addition to five measures which have been initiated there may be some legislative substitutes and there may be some constitutional amendments which have been initiated by the Legislature, if I read the present resolution correctly; but this amendment is designed solely to limit the number of measures, whether constitutional amendments or laws, which can be put through by the initiative process.

Mr. CHURCHILL of Amherst: I have no desire to take the time of the Convention to repeat at length arguments which already I have offered upon this and similar amendments. The situation, however, is exactly this: Those who feel that an initiative and referendum is desirable, but that it is desirable only when one can, so far as possible, assure himself that the people will have a genuine opportunity to take an interest in and to obtain an understanding of what they are doing, — any such man will desire to have the number of measures upon the ballot limited. It may be said, Mr. President, and I think it is true, that the passing of such an amendment as this will be an assistance to the passage of the resolution by the people, and that therefore one who is opposed to the initiative and referendum and desires to see it defeated by the people should not be anxious to have this amendment passed. I think the statement is correct, but the conclusion I have not been able to follow. We have pursued, Mr. President, so far as the minority of the committee is concerned, consistently the policy, — because we believe it to be the right policy and proper

policy for us as citizens, — to make this measure from our point of view as good as possible, even if thereby we assist to pass it.

It is upon that basis, Mr. President, that I support this amendment. I believe it is perfectly plain to everybody that if we have an initiative and referendum, a ballot on which the number of measures is limited is certain to be very much more successful, and to accomplish the end which the proponents of this measure wish it to accomplish, than if we allow the ballot to be loaded up with any number of measures that may be offered. I therefore support this amendment.

Mr. WALKER of Brookline: I ask the Convention to consider carefully with me just what the effect of this amendment will be. I think you will consider the remedy is worse than the disease. Of course this matter has been discussed before, but, as the gentleman says, this particular proposition has not been put before the Convention. This proposition is that five measures only shall go on the ballot. Now, what five? Those that get the highest number of signatures. Do you not see, Mr. President, that that will create immediately a competition among petitioners to get signatures, for they know that when they have the required number of signatures there is no assurance whatever that their measure will then go on the ballot, because it must have more signatures than the other fellow's measure; and so we shall have signature collectors going up and down this State from the time the petition is started until the Legislature meets or the day when it must be filed, getting as many signatures as possible, hiring many men, as we permit hired canvassers, in all the cities and towns, so that they may get not 25,000, but 50,000 or 75,000 names, in order to be sure that their measure goes on the ballot, or to keep some other measure off the ballot.

Does this Convention really think that such a situation is desirable, or that such a proposition is a perfecting amendment? Think of the situation in the office of the Secretary of the Commonwealth. He would have to count not only the 25,000 names and certify them on each petition, but he would have to count all the names and certify them all, first, and then determine which petition had the most.

Mr. BATES: I want to ask the gentleman if I understand him in his argument to attack the idea of collecting signatures as a way of arriving at the question of whether there is a public demand for a thing or not?

Mr. WALKER: I do not think I need answer the question. It seems to me that it is not pertinent. What I want to point out is the practical difficulty of this proposition, and I am sure it is obvious to every one of you.

Now, I do not want too many matters on the ballot. I do not believe under this initiative and referendum that too many will be on the ballot. As our own committee on collecting data and information for this Convention has said, that evil is curing itself. The average number of measures on the ballot in all the initiative and referendum States from the beginning has been less than five. It is only once in a while, when they have a revolution, a political revolution, such as they had in California, that a great number appear on the ballot. That is not quite true, because in some States, particularly Oregon, they have the habit of putting a good many on, but it is an exception. In Massachusetts everything must go before the Legislature first. That

is not true in Oregon or California. Here, where things must come before the Legislature, — and I think we have the best system proposed in any State, — I do not believe too many measures will get on the ballot. If it is so it will be in years of great excitement, and then the people will give attention to things. But this proposition simply is not practical. I am sorry to say it, because the gentleman is a good friend of the initiative and referendum, but it is not practical.

Mr. CHURCHILL: You have said that you do not want too many measures on the ballot. Will you answer the question as to what you regard as too many?

Mr. WALKER: I do not think a reply to that would be enlightening to the Convention.

The amendment moved by Mr. Bates was rejected, by a call of the yeas and nays, by a vote of 106 to 153.

Mr. Albert H. Washburn of Middleborough moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended as follows: By inserting after the word "introduced", in line 89, the words "as herein provided"; by striking out, in line 90, the words "or a legislative amendment"; by striking out, in lines 94 and 95, the words "for amendment", and inserting in place thereof the words "of a legislative substitute"; by striking out, in line 97, the words "and continued"; by striking out, in lines 121 and 122, and in line 128, respectively, the word "amendment", and inserting in place thereof, in each instance, the word "substitute"; by striking out, in line 134, the words "the amendment", and inserting in place thereof the words "such substitute or amendment"; by striking out, in line 135, the word "amendment", and inserting in place thereof the words "legislative substitute or initiative amendment"; by striking out, in lines 136 to 139, inclusive, the words ", in the case of a legislative amendment, by a majority of the voters voting thereon, or in the case of an initiative amendment or a legislative substitute, if approved"; by inserting, in line 142, after the word "such", the words "substitute or"; by striking out, in line 393, the words "Article IX and"; and by striking out, in line 394, the word "are", and inserting in place thereof the word "is".

Mr. WASHBURN: The measure originally reported by the committee on the Initiative and Referendum was a measure establishing the popular initiative and referendum, and nothing else. In the condition in which we now find it, it has become something else, and that is due to the incorporation of what is known as the Loring amendment. Whatever merits this amendment may have, it is a hybrid in some respects. First of all, it established the popular initiative in initiating constitutional amendments. Secondly, it provided for the executive initiative, and finally it provided for the legislative initiative, that is to say, the annulling of the present ninth article under which we have existed since 1820, and the incorporation of a radically different substitute provision. This Convention already has stricken out the clause relating to the executive initiative, doubtless because it believed that the executive initiative was no part of the popular initiative. Following the same reasoning I now ask the Convention to strike out the provision for the legislative initiative and to restore for the time being the ninth article of amendment, leaving that article to be dealt with at the proper time when we shall reach it.

We are dealing with a most important provision. Of all the States which have adopted the I. and R. there is not one that has under-

taken to harness up the legislative initiative with the popular initiative. There are a great many different methods of amending the Constitution by the Legislature. We have not considered a single one of them. For example, some of the States require that two-thirds of all the members elected, — not present and voting, — two-thirds of all the members elected to each House shall submit an amendment through legislative action. That is the provision which obtains in the State of California, I think. There are other States which require that three-fifths of all the members elected to each House shall sanction an amendment before it can be submitted to the people. That is the provision which obtains in States like Ohio and Nebraska, I. and R. States. There are certain other States which require a majority of each House before an amendment can be submitted to the people, — a majority of the members elected to each House. That is the provision which they have in great States like New York and Pennsylvania. There are still other States which propose an amendment by the Legislature and then after an election require the Legislature itself to readopt an amendment, and thereupon it becomes a part of the organic law. That is the provision in the State of Tennessee, for example. There you have representative government in its purest essence. I say all these provisions obtain in the organic laws of the different States. We have not discussed them in any detail.

The committee on Amendment and Codification, to which I have the honor to belong, considered this matter with great care. We had before us various members of the Convention who were interested, among them the gentleman from New Bedford in the second division (Mr. Ross). He pointed out that the present ninth article which we have had since 1820, which was so largely the work of Mr. Webster, required that two-thirds of the House and a majority of the Senate should be necessary for two successive years. He argued that that provision ought to be liberalized. The committee was disposed to agree with him and they reported a provision by which a majority of each House for two successive years shall be required before an amendment can be submitted. I express no opinion at this moment as to which one of these widely differing methods ought to be adopted; but this provision, sir, which is tied up here with the section as we now find it, permits a unicameral body, namely, the two Houses sitting in joint session, to propose amendments for submission to the people. I say, sir, that this matter is too important to be disposed of in any such fashion, and I urge this Convention, without regard to its view as to what finally ought to be done, to strike out this particular clause, leaving the resolution as it was reported originally as, namely, a popular initiative. Let us deal with this question of the legislative initiative at the proper time and in the proper place.

Mr. Lummus of Lynn: I agree heartily with the remarks of the gentleman who has preceded me (Mr. Washburn). There are three measures that have been presented to this Convention which at one time or another have been worked into this initiative and referendum resolution. There is, first, the measure for the popular initiative and referendum, the matter with which this resolution legitimately deals, upon a report by the Initiative and Referendum Committee. Then we have, or did have once, the gubernatorial initiative, which in one form has been reported by one of our committees and with which the

Convention will have to deal at a later time when that report comes up. Then, third, we have the legislative method of amending the Constitution, which has been reported in a relaxed and liberalized form by still another committee of this Convention and with which we shall have to deal, if we adopt a due and orderly procedure, when that report comes up. Instead of an orderly discussion of these three separate and independent measures which no one, when this Convention met, ever dreamed of combining, we find what? We find that in a popular initiative and referendum resolution there have been inserted not only the gubernatorial initiative but also the legislative method of amending the Constitution. The good sense of the Convention a few days ago struck out the gubernatorial initiative from this resolution; but it is still a medley, and the motion of the gentleman from Middleborough (Mr. Washburn) to strike out the legislative method of changing the Constitution, which ought to have no place in this resolution, will leave this resolution what it purports to be, a popular initiative and referendum measure. The other questions can be determined in an orderly fashion when they arise.

I wish to remind the majority of our committee and the gentleman in charge of this measure (Mr. Walker) that last spring he and his associates were very insistent that the questions coming from this Convention should go to the people separately, that there should be no tying them up together, no carrying or defeating one change under the cover of another, but that the people should have a right to pass on each separate question by itself. I agree with that proposition; I have agreed with him on that from the start. That was one principle in the pernicious pledging campaign that he and his associates made which I accepted without the slightest doubt or qualification. Now what do we find? We find that he himself proposes to cast that principle of separate submission aside, to tie two distinct things up together, and to put through a new method of legislative change in the Constitution under a measure that is now entitled: "A Resolution to Provide for Establishing the Popular Initiative and Referendum." I call upon the member representing the majority of our committee on Initiative and Referendum (Mr. Walker) to abide by his own sound principle of separate submission, to cast out this extraneous matter from the resolution, and to let the legislative amendment of the Constitution be settled on its merits after proper debate when it comes up in due course upon the report of the committee that has recommended it in a liberalized form.

Mr. Walker of Brookline: I wish to say that when the compromise was made between the liberal and conservative elements over the Loring amendment, in good faith we accepted the Loring amendment and I have stood by it so far and I intend to stand by that understanding, and I think we all ought to do the same. You have struck out the gubernatorial initiative, and you made a great mistake, in my judgment, in doing so. I do not know why, if 25,000 private citizens have the right to submit a proposition to the people, the Governor, representing all the people and elected by them, should not have the same right. Now, again, I do not know why, if 25,000 private citizens have a right to submit an amendment to the people, a majority of a Joint Convention, elected by all the people, should not have equal standing in this matter. You question the wisdom of considering

constitutional amendments in a unicameral body. What is this Convention but a unicameral body? A Constitutional Convention is usually, — always, in fact, — a unicameral body. It is proper that constitutional amendments should be considered in a unicameral body.

Mr. Walsh of Fitchburg: As I understand the proposition before us, this amendment seeks to strike out so much of the Loring amendment as was friendly to the progressive element in this Convention. The Loring amendment was a compromise made by the majority members of the committee on Initiative and Referendum with some representatives of the conservative element in this Convention. Their agreement provided for two things: First, that no popular constitutional initiative should be submitted to the people until it first was submitted to the Legislature and received the approval of one-fourth of all the members elected to the Legislature in two successive years. That was a very great concession to make upon the part of those who believe in the popular initiative, especially those who believe that the initiative and referendum should be a form in our government to be used by the people exclusively, independently of the Legislature. It is proposed now that what was yielded by the members who favored the initiative and referendum should stand. In return, certain conservative members of this Convention agreed that there should be a change made in the manner of amending the Constitution upon the part of the Legislature; that instead of requiring a two-thirds vote upon the part of the House and a majority vote of the Senate two years in succession, only a majority vote of both branches sitting jointly should be required two years in succession. Now this amendment proposes to strike out this later provision of the agreement, and what is the reason given? One reason given is that in another committee of this Convention this proposition is before them and they are coming before us later with a divided report, asking not for this identical change in the Constitution, but for a change which provides that the Legislature can amend the Constitution only by a majority vote in the House and a majority vote in the Senate instead of action by a joint session. Who knows what this Convention will do with that committee report? We do know this, that there is a tremendous difference between a majority vote of the House and Senate sitting jointly and a majority vote of the House and a majority vote of the Senate sitting separately, and that fact is very important. This concession made and advocated and presented in the name of the conservative member from Beverly sought to bring about a change in the very thing that has led to this initiative and referendum agitation. Had the Constitution of Massachusetts permitted the people to amend their Constitution by a majority vote of the Legislature we would not be here now discussing the initiative and referendum. [Applause.]

Mr. Churchill: There have been statements made by the last two speakers which I do not think misstate the case, but which I do not think are thoroughly understood by the Convention, with regard to the situation upon the Loring amendment, and I desire to make perfectly plain what that situation was.

Mr. Walsh: I should like to ask the gentleman if he was a party, — I was not, — to the Loring amendment agreement?

Mr. Churchill: I was not.

Mr. WALSH: Then I will say that whatever I had to say dealt with the gentlemen who had to do with the Loring amendment agreement.

Mr. CHURCHILL: I am not criticizing the statement of either gentleman. I am somewhat afraid, however, that it may not be quite clear that we did not have here the case of an agreement in any sense between the two sides. What we actually did have was an agreement among a few individuals who cannot be called representatives of the conservative side in the sense that they were in that matter representing the conservative side. They made this agreement, it was agreeable to them, but to the very large majority of the opponents of the I. and R. it not only was not agreeable but was an entire surprise. It should be understood, therefore, by this Convention that there has been no agreement in this matter by which the conservatives, if we choose to call them so, are bound to stand as regards Mr. Washburn's amendment; they are perfectly free, except those individuals who were concerned in the acceptance of the Loring amendment.

Mr. QUINCY of Boston: I desire to ask the gentleman from Amherst, —as we are all trying to get the exact truth about this amendment before the Convention, — whether it is not a fact that the so-called Loring amendment was agreed to by the gentleman from Waltham, and supported upon the floor by him, at a time when he was recognized, I do not know by what appointment, as the leader of the conservative forces in this Convention? [Applause.]

Mr. CHURCHILL: That is true. But to complete my answer, Mr. President, to the question, that fact does not in the slightest degree alter the truth of what I have said.

The amendment moved by Mr. Washburn of Middleborough was rejected, by a call of the yeas and nays, by a vote of 107 to 127.

Mr. Albert H. Washburn of Middleborough moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in lines 93 and 94, the words "twenty-five thousand qualified voters", and inserting in place thereof the words "five per cent of the qualified voters, calculated upon the whole number of votes cast for Governor at the last preceding election".

Mr. WASHBURN: This amendment raises for the final decision of the Convention, at least so far as the constitutional provision is concerned, the issue between a percentage and a fixed number on the I. and R. petitions. It cannot be distorted into anything else. I have voted frankly during the past week for some so-called conservative amendments which it seemed to me were proper safeguards to a measure which all of us concede to affect so vitally the welfare of the Commonwealth. I make no apology for this attitude, but I am utterly unable to see how this particular amendment, by any stretch of the imagination, can be called conservative. The five per cent which is here proposed is a lower percentage than obtains anywhere else, as I already have pointed out, with the single exception of the State of Missouri; and in that State the flat five per cent provision is coupled with a requirement under which a certain percentage of the electors is required in two-thirds of the congressional districts of the State, — which amounts to a very considerable geographical distribution.

In most of the States the percentage fixed is from eight to fifteen, eight being the lowest with the exception that I have just noted.

Now, Mr. President, I have observed in a printed statement which has come to me, — and it contains the summary of the argument made by those who urge a fixed number, — the assertion that the percentage system is archaic, the assertion that it is unsound, and the further assertion that because South Dakota and Oregon, in their pioneering days, adopted the percentage system, this is no reason why we here in Massachusetts should follow this lead.

Let us examine this contention for just a moment. The State of Oregon adopted its I. and R. amendment in 1907. The State of Maine, which has the statutory initiative, adopted the fixed number requirement in 1908. Between 1908 and 1914, when the State of Mississippi followed the lead of the State of Maine, and this is the only State to do it, twelve other States, adopting the I. and R., preferred the percentage requirement. It does not look as if this provision were archaic. Since when has the State of Mississippi come to be held up as the palladium and citadel of our popular liberties?

Mr. Bryan, as I had occasion to observe some days ago, addressed the Ohio Convention in 1912. I am not a political follower of Mr. Bryan, but I think it will be conceded generally that he is up to date in advocating liberal, not to say radical, reforms. May I read just a word to show what his view was with respect to the percentage theory at that time? He said:

> Some difference of opinion exists among the friends of the I. and R. as to the percentage that ought to be required for the petitions which start the machinery through which the people act.

After stating that he was in favor of a low percentage as against a high one, Mr. Bryan went on to say:

> Eight per cent for the initiating of ordinary measures and twelve per cent on constitutional amendments is not unreasonably low. Neither is five per cent too low for a referendum vote.

I say, again, that this five per cent provision which I here suggest is one of extreme moderation. I am quite aware that the argument is made that if we have woman suffrage, — and this seems to appeal to some of the delegates, — that with a percentage system the number of names to be obtained will be doubled. That is quite true. But I point out that it would be practically as easy to get this double number because canvassers would get two names where now they get one. On the other hand, as I tried to say some days ago, and said it badly, — the vice of trying to cover too many points in five minutes, — if you have the fixed number system, under woman suffrage the canvasser's labors will be cut almost in half, and for the same reason.

Mr. CHURCHILL of Amherst: We have had urged upon us by the leaders on the other side that we should pass a workable measure, and in the efforts to make this measure workable, to enable the getting of the signatures with sufficient ease, these gentlemen have abandoned, it seems to me, a number of cautions, and some pretty strong opinions, offered by men who, like themselves, are in favor of an initiative and referendum.

Now, we have here the proposal in this amendment to change the number of 25,000 to a percentage, — five per cent, — and the question at once comes to us, and has been brought to us before, upon what

basis will this be opposed? It is opposed upon the basis of a theory offered by gentlemen who are urging this resolution in Massachusetts. It is their theory that the number of signatures required should be sufficient to form a certain obstacle which must be overcome before a measure can be initiated and put on the ballot; in order, if I understand their argument, to keep down the number of measures on the ballot and to keep out trivial measures. But that, Mr. President, is not the theory upon which most of the advocates of an initiative and referendum have proceeded, nor is it the theory which I think the majority of this Convention really hold.

Why the requirement of these signatures? They should be required, a certain number of them, as an evidence of good faith. They should be required still more as a guarantee that there are a sufficient number of voters interested in the proposition to warrant the expense and the bother of the procedure required to initiate a measure and put it on the ballot. How about the size of the figure upon the basis of that last theory? The gentleman who has spoken for his amendment has read you some testimony to the fact that five per cent is a low figure; he has shown you that it is the lowest figure offered in any State. I want to read just a word from another advocate of the I. and R., whose judgment has been taken perhaps in some things in this resolution but very clearly not in others. Says Professor Holcombe, in his book on State Government in the United States:

> When the number of signatures is fixed at a low figure, say five per cent of the total electorate —

And that is higher than the five per cent demanded here —

> When the number of signatures is fixed at a low figure, say five per cent of the total electorate, the requirement apparently has not kept many measures off the ballot which opponents were determined should go to the voters.

Now, he is speaking directly of the referendum. What applies to the referendum applies with even greater truth to an initiated measure; and that is the judgment of one of the soundest of the advocates of the I. and R. If we vote for a fixed figure of 25,000 we are abandoning what seems to me the proper theory, and we are setting this at a figure below what is the lowest figure anywhere else, below what is a low figure in the estimate of Professor Holcombe; and we have therefore no reason, unless it be a desire to make it as easy as possible to get a petition, to lower the figure or to change the figure, or to have a fixed figure instead of a percentage.

Mr. WALKER of Brookline: The gentleman from Amherst has referred again to Professor Holcombe. He and I, together with others, decided that 25,000 signatures were as many as we ought to require on an initiative petition for a constitutional amendment. Professor Holcombe and I decided also that a fixed number was very much better than a percentage; and in this we are in entire agreement with those in favor of the initiative and referendum in all the initiative and referendum States. They had a conference in Washington not long ago in which they discussed the matter thoroughly, and came to the conclusion that the percentage was awkward and was wrong, especially as when the States went woman suffrage the number of required signatures on the percentage basis was doubled without any good reason therefor. And so deliberately, when Mississippi, — she was the

last State to adopt the initiative and referendum, — was preparing her initiative and referendum law, citizens from Mississippi went to Washington to get advice and help of the National Popular Government League, of which Mr. King is the secretary; and in response to the general sentiment, if not the unanimous sentiment, of those in favor of the initiative and referendum, a fixed number was decided upon, and the number that was decided upon, if I remember rightly, is 7,000 for that State. I will ask Mr. Washburn to correct me if I am wrong in that; I have forgotten.

Mr. WASHBURN: Seven thousand is correct.

Mr. WALKER: Seven thousand. Seven thousand for the referendum; and 7,000 for the initiative, he tells me, was the number that was fixed for that State.

Now, I hope this will not be changed at this late day. We already have discussed this thing again and again, and when we had a full Convention we succeeded in changing back to a fixed number in two instances, and I trust you will change back in the only instance left. We have a fixed number in every case except one, as the resolution now stands. It was an oversight on my part or we should have changed that when we changed the others. I believe that it is better to be definite, that the number of signatures is quite sufficient, and that if we double the number of signatures on the percentage basis if we enfranchise women we accomplish no good object, and place a heavy burden upon those collecting signatures and upon our various officers, including the Secretary of the Commonwealth, in counting them, verifying them, etc. I do not believe, Mr. President, that it will keep a single matter off the ballot. No, — that is an extreme statement. It may keep off a few. But I think that any group of citizens who set out to get a large number of signatures will get them if they make it their business to do it, so it will not keep many matters off the ballot. We have determined on this number, it is a part of the Loring amendment. This again is an attempt to change the Loring amendment, — a compromise that was agreed upon by us. I do not mean by the gentleman from Amherst (Mr. Churchill); I mean by Mr. Loring and Mr. Luce and others. They determined on 25,000 signatures, and that was one of the great considerations that induced me to take it, because I believe 50,000 is impracticable without the greatest effort. I think it can be done, but it is too difficult, too expensive, and so we urged 25,000 as a concession in consideration of concessions on our part.

Now, I trust this House will stick to the fixed number, and stick to this particular fixed number of 25,000 in this case.

The amendment moved by Mr. Washburn was rejected, by a call of the yeas and nays, by a vote of 109 to 136.

Mr. Henry T. Lummus of Lynn moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in line 93, the word "twenty-five", and inserting in place thereof the word "forty".

Mr. LUMMUS: The amendment before the Convention is designed to increase the number of signatures from 25,000 to 40,000 for constitutional amendments only. It has no application whatever to ordinary legislation. The majority of the committee on the Initiative

and Referendum held a conference just before they filed their majority report, and in that conference they determined upon the number of signatures that should be required for an initiative petition as to constitutional amendments. They set the figure themselves, without any action by the minority at all, at 40,000 names in the first place and 10,000 more later, in order to secure submission to the people, a total of 50,000 in all. That was their deliberate judgment at the time, without any interference from the minority whatever. The proposition which I now offer is simply to build up the number of signatures to 40,000, which still will be 10,000 less than the number fixed by the deliberate judgment of the majority of our committee at the time they made the report. I am simply trying to have the Convention compel the majority of our committee to live up to the principles which they have declared and favored. I admit that it is difficult to appeal upon a question of principle to those leaders who last spring were insistent upon the right of the people to the separate submission of constitutional questions, but who now declare in this Convention that that right of the people to separate submission may be bartered away by a conference and "compromise" of a few men, and who now desire to submit to the people in this resolution a forced combination of legislative constitutional amendment and popular initiative. Those leaders have carried consistency to absurdity in adherence to what they call the "true principle of the I. and R.," but their other political principles yield easily to political opportunism, and so I make my appeal to the members of the Convention. It is said that the present provision for only 25,000 names is a part of the sacrosanct Loring amendment, a "compromise," as it is called, — a compromise by which, in return for a large bundle of concessions, the radicals gave but one concession, and that was a legislative check requiring a one-fourth vote. The gentleman from Brookline (Mr. Walker) knows as well as I do that a legislative check of one-quarter is nothing; that you always can get a quarter of the Legislature for any bill on any roll-call; that there has not been a roll-call in the House of Representatives in the last two years, where a bill has been lost, that did not show a quarter of the members in favor of the bill. The gentleman knows that that check is worthless, and I call upon the Convention to protest it and to insist that the gentleman from Brookline give back what he got, as he will not deny, in exchange for that worthless check. I ask the Convention not to take the view of any conservative as to the number of signatures that ought to be required for a constitutional amendment, but to take the deliberate judgment of the majority of our committee when they acted alone, with the minority excluded, and reported to this Convention that 50,000 names, — 40,000 plus 10,000 later, — was the proper number.

Mr. CHURCHILL of Amherst: I am aware that it is not advisable under present circumstances, to take the time of the Convention with an attempt at argument. It is manifest that we have a belief on the part of certain gentlemen, and a sufficient number of votes to back their belief, that we have here what has been called by the gentleman who is largely the author of it, — "the best initiative and referendum measure ever offered." All the experience of other States, we were told a few moments ago, — that is the conclusion that I draw from the gentleman's statement, — may safely be disregarded when the asser-

tion is made by the proponents of this measure that in this respect the result of all this experience is in favor of the proposition which he lays before us.

I was about to call the attention of the Convention to the fact that out of 14 States with the constitutional initiative, 7 of them have a larger demand, sometimes considerably larger, in the way of signatures for a constitutional amendment as distinct from signatures for a law initiated, and we already have called attention to the fact that in no State save one is the proportion less than 5 per cent, and in that State I do not know what the proportion is, — the State of Mississippi, — though I imagine it is about 5 per cent there. And yet of what value are these facts and the result of an experience extending from 1898 to the present time on the part of these other States, some 22 of them all together, if the Convention is ready to accept absolutely the word of the gentleman who proposes this resolution that in whatever respect his measure differs from the combined experience of the other States, we may be perfectly certain it is the best form that has been submitted? But we are entitled to raise the question, to say the least, as to why the gentleman, after his careful study, should wobble so in his consideration of what is best. Twenty-five thousand one minute; then the majority of the committee, including himself, say 40,000 and 10,000, and now back to 25,000. And if the mind of the proposer of this measure changes so often, what guarantee have we that this will be considered at some future time as anything else than a "scrap of paper" and that "the best measure" then will not be one which he for one reason or another may then adopt on further amendments suggested either by his own mind or by the minds of others?

Mr. WALKER of Brookline: I do not quite understand the changed tone of the gentleman from Amherst and his attempt to make this Convention believe that this is *my* resolution and that *I* am trying to force something on the Convention that the Convention does not want. This is not my resolution. It is the resolution, I believe, of the majority of this Convention, and I simply am trying, as the task has been imposed upon me, to carry out the will of the majority of this Convention. And when it is demonstrated, in vote after vote, that it is the will of the majority of this Convention, how can gentlemen say that *I* am trying to dictate to this Convention? Of course that is absurd talk.

Mr. CHURCHILL: Will the gentleman yield to allow me to say that I never have said or suggested that the gentleman wished to dictate to this Convention. The Convention is entirely able to judge that for itself.

Mr. WALKER: Now, Mr. President, in regard to the 25,000. The gentleman says that I am wobbling. I have the resolution that was sent out to the voters before this Convention was held, and they were told: "This is what we mean when we talk of the initiative and referendum; not this particular measure, but the principle contained in it. This is what we mean. Read it so that you may know before you vote for these men, and vote intelligently as to what the initiative and referendum is." And we pointed out the jokers that we have been trying to prevent and so far, Mr. President, have succeeded in preventing in this Convention. We told them: "These are the hostile amendments that will be offered," and lo and behold, they have been

offered in this Convention. There never was a body of men more frank than we were in presenting to the voters just what we meant by the initiative and referendum before we asked them to vote, and in that proposition the number of names required for a constitutional amendment is 25,000, just the same as under the Loring amendment. The committee on the Initiative and Referendum at the very last moment, the very last day, yielded to the 50,000 because we thought we were yielding something to the conservative side. But every time we have yielded anything to the conservative side they have taken all we yielded and have demanded other things which they knew would kill the initiative and referendum. I am very glad that we have got back to the 25,000 again. That number of signatures is quite enough. Fifty thousand is an absurdly large number; 40,000 is nearly as bad. Now let us have our 25,000 as we originally planned, — the number we stipulated when we asked the voters of Massachusetts to endorse this proposition. Let us stick to the old number.

The amendment moved by Mr. Lummus was rejected, by a call of the yeas and nays, by a vote of 106 to 141.

Mr. E. Gerry Brown of Brockton moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by inserting after the word "House", in line 99, the words ", or if neither House shall call for such joint session".

Mr. Brown: A short horse, soon curried. I invite the attention of the schoolmasters and professors and all others in the Convention to the "English as she is spoke" in this fearfully made and wonderfully incomplete section which is under consideration. Originally it was a trinity, and now the gubernatorial initiative has been taken out and we have the dual propositions of the people's initiative and the legislative initiative. Look at line 91; it says: "If a proposal". Then follow some qualifying phrases until we get to the ninety-fourth line, and we have: "or if in case of a proposal for amendment". Then following that context we get down to line 98, which says: "consideration thereof in joint session is called for by vote of either House," and following that same context we come to line 102, which says: "if the two Houses fail to agree" then the Governor is going to act. I hold, and I think that those who are following me will agree in my contention, that the suggestion of an agreement presupposes a contention, and therefore the word "agree" in there presupposes that there has been a contention and there has been a failure to agree. The context shows that is exactly the force of the sentence, because the sentence says if consideration is called for by one of the Houses. It manifestly follows that if consideration is not called for there can be no charge of a failure to agree, and therefore if the Governor does not approve the proposition it will rest easily then and there. But that does not contain all of the proposition. I ask those who are so friendly to the initiative how we ever get a legislative proposition down to the people. We can get it in. It says there in line 94 or line 99 "such proposal". Which proposal? It must be the proposal that is nearest to that context, and therefore the proposal referred to in "if a proposal" or in "if in case of a proposal for amendment introduced into the General Court without such initiative petition". But there is not a word said there as to what becomes of a petition

introduced by the initiative. I do not wonder that the other side were so ready to introduce this, but I do wonder that it was accepted with open arms here, and I do think that the dust of the gubernatorial initiative obscured entirely the vision as to what was conceived. Some may say that such is not the intention. Whether it is or not, it is my intention to bring this matter up at this time and have it stated as to what is the meaning of this section. My amendment was on the calendar in the last stage. I did not move it because I thought it was unnecessary. I brought it to the attention of the chairman of the committee on Form and Phraseology. I brought it to the attention of the chairman of the committee on our side. Still there is that section standing there. To my mind it is fearfully incomplete, because it is wonderfully made, and I think by the time we get through reading this resolution we may find there are other sections just as uncertain as this one. Certainly I think that section calls for some sort of fixing. I can see, for instance, that we can fix it up in some other way. The word "agree" might be changed to "act". But the first challenge that came to me was this: "or if neither House shall call for such" action, then the initiative thing falls. And even then I have not amended the word "proposal"; it still stands a single proposal, and we have to discover which proposal we refer to, the first or the second. However, my amendment is now before the Convention, and it will perfect a part of it at least, and is to this extent: "or if neither House shall call for such" action. I suppose if that does not perfect that section that, with the attention of those of the committee on Form and Phraseology favorable to it, it can be so perfected. I think I have made my meaning plain, that this is one of those perfecting amendments that is perfectly harmless and that should be accepted by both sides, both in the case of euphony and also for the purpose of having it understood what we are driving at.

Mr. Churchill of Amherst: I am not quite sure that I have accurately followed all that the gentleman has said, but I think I am quite clear with regard to the situation in the resolution, and I think I am clear as to the effect of the gentleman's proposal. We have, in accordance with this section, two means of introducing amendments to the people. One of them is a proposal introduced by initiative petition; the other is a proposal introduced in the legislative manner, the legislative amendment. Now, we have, if the gentleman will follow me in the resolution, and I think that is the only way to see it clearly, a statement that if a proposal for an initiative amendment is offered, such proposal shall be made before a joint session of the two Houses, "or if", — and now comes the case of the legislative amendment, — "if in case of a proposal for amendment introduced into the General Court without such initiative petition", — that is, the legislative amendment, — if in that case a joint session is called for by either House, then that too shall be handled in joint session and submitted. "Such proposal" refers to both classes of proposals, — "if a proposal", etc., "or if in case" of the other kind of proposal. There cannot be any question grammatically that "such proposal" refers to both. The only difference between the two is that in the case of the second proposal, the legislative amendment, that shall not go to the joint session unless one of the two Houses calls for it. Now, the effect of the gentleman's amendment is to change the purport of this section.

The purport of the section was that there always should be a joint session in the case of an initiative amendment, and that there should be a joint session in the case of a legislative amendment if either House called for it. If neither House cared to do that it would not be required. It is entirely possible that gentlemen might like to vote that there should be a joint session even if the two Houses did not care for a joint session on a legislative amendment, and the gentleman's amendment would accomplish that; but it would accomplish that in an extremely awkward way to say in this language: "if in case of a proposal for amendment . . . consideration by a joint session is called for by vote of either House," and then add the words "or if neither House shall call for such joint session." If it is called for, if either House calls for it, the wording is much better left as it was left by the committee on Form and Phraseology in proper fashion, making a joint session. But the question still remains as to whether we want to compel the Legislature, in case of a legislative amendment, to meet in joint session when either House cares to do so, that is all. I think we had better leave it exactly as it is.

Mr. Brown: I will say that already I have accomplished my purpose, because of course the court would look to our statements to show that that was the intent; but will you please tell me how, without the intervening portion of the sentence there concerning the legislative initiative, a proposal could get down? "If a proposal for a specific amendment of the Constitution is introduced", etc. Now, where will you go next? Leaving out all reference to legislative measures, where next will you go?

Mr. Churchill: If you will cut out line 94, from "or", down to line 99, the words "such proposal", that will give you your connection, and it will then read in the case of the first, or initiative amendment: "If a proposal for a specific amendment of the Constitution is introduced into the General Court by initiative petition signed by not less than twenty-five thousand qualified voters such proposal shall". And we then have the second case: "or if in case of a proposal introduced into the General Court" by the legislative method a joint session is called for, etc., then "such proposal". If the words "such proposal" are not quite clear, the words "the proposed amendment" might possibly make it clearer, but that the reference is exact to both I think there can be no question.

Mr. Walker of Brookline: The gentleman from Amherst (Mr. Churchill) has made this matter so clear that it seems to be unnecessary to say anything further. I might add just one word to point out the reason why we require that either one House or the other shall ask for a joint session. It is this: An individual member may put in a proposition for a constitutional amendment which has no support whatever except his own vote. He might even put in an absurd amendment for a constituent, which would not have even his own support. Now, we do not care to have the House and the Senate get together in a joint session for the mere purpose of disposing of amendments which no one in either House cares for, — no large number in either House. Therefore it seems to me that it is a wise provision that we should not require a joint session to be held unless one or the other House should ask for it.

Mr. Brown: I should like to ask the gentleman if he is perfectly satisfied with the section as it is.

Mr. Walker: I agree with the gentleman from Brockton that the language is rather awkward. I do not think it is very good language, but it seems to me reasonably clear. The committee on Form and Phraseology wrestled with the subject, and they had some other language which did not seem to mean just the same. Now the meaning is clear. The meaning is what we want. The sentence I admit is a little awkward, but I think we had better leave it as it is than attempt to change it.

Mr. Brown asked unanimous consent to withdraw his amendment, but, objection being made, it was voted upon and rejected.

Mr. Michael A. Sullivan of Lawrence moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370), be amended as follows: By inserting after the word "introduced", in line 87, the words "into the General Court"; by striking out, in line 89, the word "otherwise"; by inserting after the word "introduced", in line 89, the words "by a member of either House"; and by striking out, in lines 95, 96 and 97, the words "without such initiative petition, authority for which mode of introduction is hereby specifically confirmed and continued,", and inserting in place thereof the words "by a member of either House".

Mr. Sullivan: The substitute which I have offered differs from that as printed in the calendar in that I do not ask the Convention to alter the method of acting upon a legislative amendment by requiring the two Houses of the Legislature to go into joint session without a vote of either House. I have made this change after conferring with the gentleman from Brookline (Mr. Walker), who pointed out that it would not be desirable to require a joint session without a vote, in the case, for instance, of a petition for an amendment introduced by a member at the request of somebody who had no support except his own, and which no member of either House desired to consider favorably. I may say, to use words that are entirely original, that this is a "mere perfecting amendment" and makes no change in substance. The desire that I have in offering this amendment is to set forth specifically the method of legislative amendment, and not to have it incorporated merely by reference as it now appears in this section. The section now reads, with reference to a legislative amendment: "If a proposal for a specific amendment of the Constitution is introduced into the General Court" . . . "without such initiative petition, authority for which mode of introduction is hereby specifically confirmed and continued." Those words do not say what the method is. We who have given some study to the Constitution know that they refer to the method set forth in Article IX of the present amendments to the Constitution. To any student of history, of course, when he reads this provision in the Constitution, there will not be any doubt about its meaning, but it will be the cause of great difficulty to one who is approaching the Constitution for the first time, especially as Article IX is stricken out by this very resolution. It will be increasingly difficult if the Constitution is codified and the ninth amendment is no longer printed with it. I therefore make this suggestion to obtain greater clearness, so that the Constitution shall contain words which show exactly what the legislative method is. If my amendment is

adopted, this part of the section under discussion will read as follows: "If a proposal for a specific amendment of the Constitution is introduced into the General Court . . . by a member of either House."

Mr. WALKER of Brookline: Perhaps we can save time if I say that as far as I am concerned I approve of that amendment, and I understand that the other side approves of it, as a perfecting amendment. It improves the resolution and we are glad to accept it.

Mr. CHURCHILL of Amherst: I may say exactly the same thing. The form of the original amendment offered by the gentleman had left us with a joint session. This present form leaves the "if" clause and leaves it therefore as before, but it does change the order of the wording in a way which I think gives us a much better form.

The amendments moved by Mr. Sullivan were adopted.

Mr. Josiah Quincy of Boston moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in lines 111 to 114, inclusive, the words "but such amendment may be amended in any manner not inconsistent with its general purpose by vote of three-fourths of the members voting thereon in joint session", and inserting in place thereof the words "unless such amendment is amended by vote of three-fourths of the members voting thereon in joint session, which vote shall be taken by call of the yeas and nays if called for by any member".

Mr. QUINCY: I desire to ask leave to substitute for this amendment a re-wording of its form which has been made at the suggestion of the representatives of the minority of the committee and which expresses the object a little more clearly. Briefly stated the chief object of this amendment is to do away with the words "not inconsistent with its general purpose", because of the fear that they might raise a legal question. I think we should stand upon the usual parliamentary law. If an amendment is not germane, the presiding officer will rule it out. If it is germane, it should be voted upon, and if three-quarters of the members present vote for it it should go in. The present wording is objectionable merely because it might be construed to raise a legal question for a court to decide, rather than a parliamentary question for the presiding officer to decide. I understand that the representatives of both the majority and the minority of the committee are agreeable to the amendment in the form which I ask leave to substitute for the form as printed.

Mr. CHURCHILL of Amherst: The minority of the committee entirely agree with the phrase submitted. I should like at this time, however, Mr. President, to call the attention of the committee on Form and Phraseology to the fact that after adopting these amendments we still are left, if the resolution stands in exactly the shape it is now, in my opinion, without any provision for the submission of the legislative amendment to the people. I shall just call their attention to that fact. That is, in dealing with the whole process of submission, if I understand the situation that we have arrived at, there is not a clear provision for the submission of the legislative amendment to the people after the particular vote required. I just call attention to that, that it may be looked into when the committee handles this form.

Mr. LORING of Beverly: The committee on Form and Phraseology does not think that a correction of the provisions of the resolution comes within its province; that is to say, its business is merely to

revise the language of the resolution, and not the provisions, and that seems to be a provision of the measure, as it seems to me.

Mr. WALKER of Brookline: I shall be very glad to consult with the gentleman from Amherst, but I do not quite catch his point. My recollection of the wording is that in case of an initiative petition for a constitutional amendment these things are required: It goes before the first Legislature, and then before the second, and then it is certified to the Secretary of the Commonwealth and the Secretary of the Commonwealth has it printed on the ballot. In case of a legislative initiative, the Legislature itself places the measure on the ballot, and if it has got a majority of the votes of the Legislature to carry it through it can be placed on the ballot.

Mr. CHURCHILL: If the gentleman will allow me, Mr. President, in my haste not to take too much time I did not make myself clear. We have now two possibilities in the case of the legislative amendment: One is a legislative amendment where a joint session has been called; the other is a legislative amendment where no joint session is called. If the gentleman will refer to section 5, "Submission to the People," page 8, beginning line 127, he will see that the provisions are: "If in the next General Court a legislative amendment shall again be agreed to in joint session by a majority of all the members elected, or if an initiative amendment shall again receive the affirmative votes", etc., "such fact shall be certified . . . to the Secretary of the Commonwealth, who shall submit the amendment to the people at the next State election." Now, the point I wished to make was that if we cut out Article IX, as in effect we have cut it out partly in the resolution itself as well as by the provision to cut out Article IX, we have no method stated in this resolution or anywhere else in the Constitution for the submission of a legislative amendment not passed in joint session. I wonder if I have made that clear.

Mr. QUINCY: Where is any provision left for any legislative amendment not adopted in joint session? How can there be one?

Mr. CHURCHILL: We have the case of a legislative amendment, with which we were dealing a moment ago, which said: "if in case of a proposal for amendment introduced into the General Court", etc. That has been amended to "a proposal introduced into the General Court by a member thereof", but we still have the option of a joint session if either House calls for it, or no joint session if neither House calls for it. We have, then, three possibilities: Initiative amendment, — its course is clear; legislative amendment by joint session, — its course is clear. But in this section providing for the submission of the amendments it does not provide for the submission of an amendment which has been passed by the Legislature, a legislative amendment, but not in joint session. The intent of the resolution of course is clear, and that is why I suggested, in hope to save time, that the committee on Form and Phraseology might introduce the words which plainly were intended but which are not there, just as they have done in some other cases in the form of the resolution which is before us. But I think we can take care of this, Mr. President, later, upon consultation, and that I ought not to take any more time of the Convention on that point. I agree to the amendment offered by the gentleman from Boston.

The amendment moved by Mr. Quincy was adopted.

Mr. George B. Churchill of Amherst moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in line 124, the word "one-fourth", and inserting in place thereof the word "one-third".

Mr. CHURCHILL: I want to take only a minute of the Convention's time. We have debated this matter before. I want to take a minute simply for the sake of emphasis.

The check which was offered as a makeweight against certain concessions of the Loring amendment was that an initiated bill should have to receive one-fourth of the votes of the legislators if it was going to the people, — only one-fourth. We have made sufficiently plain, I think, earlier this afternoon and earlier in the Convention, that if we adopt the idea of any check at all, any barrier which a proposed initiated bill should be obliged to pass before we are justified in asking the people to vote upon it, we should have what is a real check. Now, we have offered testimony in this Convention that it has been proved by experience that one-fourth is not any check at all. Careful examination of the journals of the two Houses for the last two years shows, as already stated, that in the House no roll-call deciding the fate of a bill showed less than one-quarter voting on the minority side, and in the case of the Senate for those same two years, 1916 and 1917, only two decisive roll-calls showed one-quarter or less than that voting in the minority. Now, that is a fact. That means one-quarter is not a check for anything but the most absurd and trivial proposal. The question for the members of this Convention to settle, and I do not want to argue upon that further, is whether, having adopted as wise a proposal which gave certain checks on one side or the other, or attempted to do so, we ought not to adopt something which will not stand in the way of any bill that really is worthy our attention and worthy the attention of the Legislature, and have a check that will make it certain that such is the case. Now, one-third is a very small number, but one-third may act as a slight check. One-fourth will act as no check at all. I therefore suggest to the Convention that if it really accepted the idea of the Loring amendment in good faith, and desires some slight check, not to go anything beyond what is reasonable, but a check that shall be an assurance that a bill ought to be considered by the people, this Convention ought to adopt the check of one-third rather than the no-check of one-fourth.

Mr. LUMMUS of Lynn: I desire to add but a few words to the remarks of the gentleman from Amherst (Mr. Churchill). We have been told in this Convention that if we are to have an initiative and referendum measure at all we must have a workable measure, and that an unworkable measure is a joker. Now, the Convention has adopted as a part of an initiative and referendum resolution as to constitutional amendments the principle of a legislative check. It has been demonstrated that a legislative check of one-quarter is no real check at all, but only an illusory and unworkable check which is a mere joker. The records of the House and Senate in recent years show that conclusively. I submit to the Convention that, having adopted the principle that there should be for constitutional amendments some reasonable legislative check, in view of the small number of signatures now required, twenty-five thousand in place of fifty thousand, surely the Convention should make that legislative check a workable check,

a real check, and not a mere joker, as a one-quarter check is. To carry out the principle of the Loring amendment by which the signatures were reduced by one-half, we surely ought to have the check made the more real and yet not large check of one-third. If the gentleman from Brookline (Mr. Walker) insists upon the Loring amendment being carried out as a "compromise", he should be willing to carry out the spirit of that "compromise", instead of inquiring: "Is it so nominated in the bond?"

Mr. Walker of Brookline: This of course is another attempt to change the terms of the Loring amendment. We have not changed any of the terms as yet, except the one striking out the gubernatorial initiative, and I sincerely hope that this change will not be made. It has been called a joker, and no check at all. I assure the gentleman that it is a check, and that it is no joker. Let us remember in the first place that it is not one-fourth of those present and voting, it is one-fourth of those elected to the General Court, and that will mean always more than one-fourth of those present and voting, frequently as many as one-third, or even more than one-third, of those present and voting. I trust therefore, Mr. President, that this part of the Loring amendment will not be changed.

The amendment moved by Mr. Churchill was rejected, by a call of the yeas and nays, by a vote of 115 to 134.

Mr. Henry H. Bosworth of Springfield moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in lines 140, 162, 295 and 331, respectively, the word "thirty", and inserting in place thereof, in each instance, the word "forty-five".

These amendments were rejected, by a vote of 78 to 114.

Mr. James M. Morton of Fall River moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by adding, at the end of line 143, the words ": *provided*, that nothing herein contained shall be deemed to impair or to authorize the impairment of the right of the subject to life, liberty, security, property and character, the liberty of the press, and the freedom of debate in each House of the Legislature, as declared in the Bill of Rights".

Mr. Morton: In view of the adoption a day or two ago, — last Friday, I think, — of the amendment offered by the gentleman from Framingham (Mr. Merriam), I have hesitated somewhat whether to press this amendment offered by me; but it seems to me that it is a little better than the amendment offered by Mr. Merriam, and for that reason I have submitted it.

At the same time I want to say, in justice to Mr. Merriam, that he generously offered to ask leave of the Convention to substitute this amendment for his amendment, but I did not feel quite equal at the moment to addressing the Convention and therefore I declined. I think that the arguments on the question were fully presented by Mr. Merriam to the Convention and are understood by everybody, and it seems to me that the reasons for the adoption of this amendment, as well as the reasons for the adoption of Mr. Merriam's amendment, are so obvious, — must be so obvious to everybody, as it seems to me, — that they do not require any particular discussion. And therefore, Mr.

President, so far as I am concerned, I submit the matter to the Convention without anything further.

The amendment moved by Mr. Morton was rejected, by a call of the yeas and nays, by a vote of 113 to 134.

Mr. Albert H. Washburn of Middleborough moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in line 146, the words "twenty thousand qualified voters", and inserting in place thereof the words "four per cent of the qualified voters, calculated upon the whole number of votes cast for Governor at the last preceding election".

This amendment was rejected, by a call of the yeas and nays, by a vote of 101 to 138.

Mr. Albert H. Washburn of Middleborough moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in lines 155 and 156, the words "five thousand signatures of qualified voters", and inserting in place thereof the words "one per cent of the qualified voters, calculated upon the whole number of votes cast for Governor at the last preceding election".

This amendment was rejected, by a call of the yeas and nays, by a vote of 95 to 135.

Mr. Roland D. Sawyer of Ware moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in line 155, the word "August", and inserting in place thereof the word "September".

This amendment was rejected.

Mr. J. Franklin Knotts of Somerville moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by adding, after line 249, the following paragraphs:

Every signature to a referendum petition shall be affixed in the presence of the clerk of the city or town in which the signer is a registered voter, or one of his assistants, or in the presence of such other city or town official as may be designated by law, except as herein otherwise provided.

Any such voter may, by a paper in his own handwriting, signed by him, and attested by a witness, express his desire to become a signer of such petition, and such paper, when received by such clerk or official, shall amount to a signature to such petition. Such clerk or official shall put the name of such voter upon such petition, and shall transmit such paper with the petition as hereinafter provided.

The petition or part thereof, with signatures thereon, shall remain in the custody of such clerk or official until the time for signing shall expire; and at such expiration such clerk or official shall transmit it to the Secretary of the Commonwealth.

Mr. Lummus of Lynn asked unanimous consent to move an amendment of the amendment. Objection was made.

The amendment moved by Mr. Knotts was then rejected, by a vote of 51 to 97.

Mr. Joseph F. O'Connell of Boston moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in lines 15 to 18, inclusive, the words "or to the appointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts;"; and by striking out, in lines 251 to 254, inclusive, the words "or to the appointment, qualification, tenure, removal, or compensation of judges; or to the powers, creation or abolition of courts,".

These amendments were rejected, by a call of the yeas and nays, by a vote of 98 to 159.

Mr. Charles H. Morrill of Haverhill moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in line 277, the words "five per cent", and inserting in place thereof the words "twelve thousand"; and by striking out, in lines 278 and 279, the words "calculated upon the whole number of votes cast for Governor at the last preceding election,".

These amendments were rejected.

Mr. Joseph Walker of Brookline moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in line 277, the words "five per cent of the", and inserting in place thereof the words "fifteen thousand"; and by striking out, in lines 278 and 279, the words ", calculated upon the whole number of votes cast for Governor at the last preceding election,".

These amendments were adopted, by a call of the yeas and nays, by a vote of 137 to 128.

Mr. George B. Churchill of Amherst moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in line 317, the words "ten thousand", and inserting in place thereof the words "five per cent of the"; and inserting after the word "Commonwealth", in the same line, the words ", calculated upon the whole number of votes cast for Governor at the last preceding election,".

These amendments were rejected, by a call of the yeas and nays, by a vote of 125 to 143.

Mr. Albert H. Washburn of Middleborough moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in line 317, the words "ten thousand qualified voters of the Commonwealth", and inserting in place thereof the words "two per cent of the qualified voters of the Commonwealth, calculated upon the whole number of votes cast for Governor at the last preceding election".

This amendment was rejected.

Mr. Samuel Ross of New Bedford moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out lines 333 to 349, inclusive, and inserting in place thereof the following paragraph:

In carrying out the provisions of this article, the Secretary of the Commonwealth and all other public officers shall be guided, where other provision is not specified herein, by the laws relating to elections, in so far as applicable, and any initiative or referendum petition coming within the provisions hereof shall be signed and certified as to signatures in the manner provided by law relative to nomination papers of candidates for the General Court. And the penalties for forgery or fraud provided in the laws relative to elections shall apply with equal force to initiative or referendum petitions herein specified.

This amendment was rejected, by a vote of 44 to 99.

Mr. Arthur B. Curtis of Revere moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in line 350, the word "one-fourth", and inserting in place thereof the word "one-eighth".

This amendment was rejected, by a call of the yeas and nays, by a vote of 132 to 140.

Mr. Charles H. Morrill of Haverhill moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out lines 350, 351 and 352, and inserting in place thereof the following paragraph:

Not more than fifty per cent of the certified signatures on any petition shall be those of registered voters of the city of Boston or of any one county.

This amendment was rejected, by a vote of 18 to 80.

Mr. Albert H. Washburn of Middleborough moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by inserting, at the beginning of line 360, the words "Except as otherwise herein provided,"; and by inserting, at the beginning of line 366, the words "Except as otherwise herein provided,".

These amendments were adopted, by a vote of 131 to 3.

Mr. Frank E. Lyman of Easthampton moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in line 365, and in lines 369 and 370, respectively, the word "approved", and inserting in place thereof, in each instance, the word "rejected".

These amendments were rejected, by a vote of 73 to 89.

Mr. Arthur N. Harriman of New Bedford moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out lines 383 to 388, inclusive, and inserting in place thereof the following paragraph:

The veto power of the Governor shall not extend to measures voted on by the people under the provisions of this article; and no constitutional amendment or law which is adopted by the exercise of the initiative or referendum shall be altered, amended or repealed except by the exercise of the initiative and referendum in the same manner as the law or constitutional amendment in question shall have been adopted.

This amendment was withdrawn.

Mr. Charles H. Morrill of Haverhill moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out lines 385 to 388, inclusive, and inserting in place thereof the following paragraph:

The General Court may amend or repeal a law approved by the voters: *provided*, that such amendment or repeal shall be submitted by the Secretary of the Commonwealth to the voters and shall not go into effect until and unless approved by a majority of the voters voting thereon.

This amendment was rejected.

Mr. Arthur N. Harriman of New Bedford moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by striking out, in line 393, the words "and Article XLII"; and by striking out, in line 394, the word "are", and inserting in place thereof the word "is".

These amendments were rejected.

Mr. Josiah Quincy of Boston moved that the resolution proposed as a substitute by the committee on Form and Phraseology (No. 370) be amended as follows: —

By inserting after line 59 the following paragraphs:

The signatures to initiative petitions hereby required, with the exception of the first ten signers, shall be made and filed as follows: The Secretary of the Commonwealth shall print individual signature cards upon which any registered voter receiving the same as herein provided may personally make his signature, followed by his address as it appears upon the voting list, in favor of any initiative petition which he desires to support. Each such card shall identify by number or otherwise the initiative petition for which the signature is to be given, shall bear the seal of the Commonwealth printed thereon, or other identifying mark, and shall be used only for official transmission by mail as herein provided. Any registered voter may sign one such signature card in favor of each initiative petition which he desires to support, but each signature card shall only be signed by one voter and for one petition.

The Secretary of the Commonwealth shall procure and keep on file the latest printed copies of the voting lists of all cities and towns, and he shall at the request of any original signer of an initiative petition duly filed cause one of such signature cards to be

mailed to any list or lists of voters which may from time to time be specified or furnished by any such signer, provided that all expenses connected with such mailing, other than the expense of printing such signature cards and such initiative measure, shall be deposited in advance. A copy of the full text of such initiative measure shall be printed by the Secretary of the Commonwealth and enclosed with each signature card, together with any printed argument in support of the same, and any addressed return envelopes which may be furnished him for mailing therewith. Provision shall be made by law to regulate the length of any such argument and for allowing opponents of such initiative measure an opportunity, by depositing one-half of the expense of mailing as aforesaid, exclusive of the expense of furnishing such addressed return envelopes, to have printed arguments in opposition to such measure enclosed with such signature cards. Instead of mailing such cards the Secretary of the Commonwealth shall, at the request of any such original signer, furnish and send to any clerk of a city or town a sufficient number of signature cards for the registered voters of such city or town, and such clerk shall, upon the deposit of the expenses aforesaid, thereupon have the same duty in respect to the mailing of such signature cards and other printed matter as herein provided in respect to said Secretary.

As an additional method of giving his signature and support to any initiative petition, any registered voter may express in his own handwriting upon a paper or card personally signed by him, with his address as aforesaid, and bearing the signature and address of a witness, his desire to sign in favor of any one initiative petition designated therein by number or other sufficient description, and such paper or card when received by the clerk of the city or town in which such voter is registered as a voter shall constitute a signature to such petition; and any such voter may sign one such paper or card in favor of each initiative petition which he desires to support.

In addition to the two methods of signing initiative petitions above provided, any registered voter may give his signature therefor in the presence of the clerk of the city or town in which he is a registered voter, or of any assistant in his office, and the Secretary of the Commonwealth shall furnish to every city or town clerk an official blank for such signatures.

Any such official signature card or unofficial paper or card when executed as herein provided may be delivered by mail or otherwise either to the Secretary of the Commonwealth or to the clerk of the city or town in which the signer of the same is a registered voter, and when so received shall be open for public inspection. If the name and residence signed to any such card or paper corresponds to the name and residence of a registered voter, and if such card or paper appears to be executed as herein required, the same shall be placed on file, otherwise it shall be rejected. If the officer with whom such card or paper is filed believes, from evidence offered to him, that there is substantial reason to doubt the genuineness of the signature to any such card or paper he may reject the same unless satisfactory evidence to establish such genuineness is furnished. The name of each signer of any such card or paper or blank shall be checked on the voting list so that the same voter shall not be counted more than once in support of any one petition.

When the time for filing signatures as fixed herein shall expire each city or town clerk with whom any such official signature cards or any such unofficial papers or cards have been filed, or who has in his office any of the petition blanks furnished as aforesaid with signatures of voters thereon, shall transmit all of the same to the Secretary of the Commonwealth, who shall proceed to examine the same and count all signatures which appear to be in conformity herewith, and if the number of such signatures to any petition, together with the number of signatures thereto filed directly with the Secretary of the Commonwealth, equals the number of signatures required to complete such petition as herein provided, then such petition shall be transmitted to the General Court or submitted to the people, as the case may be, as hereinafter provided.;

By inserting after the word "shall", in line 48, the words "give the petition a number and shall"; by striking out, in lines 60, 61 and 62, the words "If an initiative petition, signed by the required number of qualified voters, has been filed as aforesaid", and inserting in place thereof the words "If the required number of signatures to an initiative petition has been filed with the Secretary of the Commonwealth as herein provided"; by striking out lines 152 to 158, inclusive, and inserting in place thereof the words "is completed by filing after the first Wednesday in June aforesaid, and before the first Wednesday of the following August, not less than five thousand signatures of qualified voters, in addition to those filed before the introduction of such initiative petition, which

signatures must have been obtained after the first Wednesday of June aforesaid, then"; and by striking out lines 184 to 190, inclusive, and inserting in place thereof the words "by filing after the first Wednesday in June aforesaid, and before the first Wednesday of the following August, not less than five thousand signatures of qualified voters, in addition to those filed before the introduction of such initiative petition, which signatures must have been obtained after the first Wednesday of June aforesaid, then the".

Mr. Churchill of Amherst asked unanimous consent to move to amend the amendments by striking out the words "paper or" and "or paper", wherever they occur. Objection was made.

Mr. Richardson of Newton moved that the amendment be divided so that the third paragraph of the first amendment might be put separately; and this motion was negatived, by a vote of 66 to 103.

Mr. Quincy asked unanimous consent to move to amend the amendment by striking out the words "paper or" and "or paper", wherever they occur. Objection was made.

The amendments moved by Mr. Quincy were rejected, by a call of the yeas and nays, by a vote of 76 to 196.

Mr. Quincy moved that the same new draft be amended by striking out lines 168 to 192, inclusive, and inserting in place thereof the following paragraph:

The General Court may, upon petition signed by a majority of the first ten signers of an initiative petition for a law, make any amendment or amendments therein, by vote taken by the yeas and nays, which are specifically asked for in such petition, and such proposed law shall then be voted upon by the General Court, and submitted to the people if qualified for submission as herein provided, in such amended form.

This amendment was withdrawn.

Mr. Albert E. Pillsbury of Wellesley moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by the substitution of the following:

Resolution to provide for establishing the Popular Initiative and Referendum.

The Legislature shall provide for the enactment and repeal of statutes by the method known as the popular initiative and referendum, under such conditions and forms of procedure as it may prescribe.

This amendment was rejected, by a call of the yeas and nays, by a vote of 123 to 156. [See page 604 for Mr. Pillsbury's argument.]

Mr. E. Gerry Brown of Brockton moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by the substitution of the following:

Resolution to provide for establishing the Popular Initiative and Referendum.

The Legislature shall by statute law at the session following the acceptance of this amendment, and thereafter as occasion may require, make provisions whereby the people may exercise the rights reserved to and by and for the people in the Bill of Rights, especially articles V, VII, VIII and XIX, including the right to initiate and control legislation as hereinafter required, and to revise, amend or otherwise alter the acts of its servants committed or to be committed in the exercise of the functions, or powers heretofore delegated or that may hereafter be delegated by the people. Such statute shall also make provision as to the number of signatures required, the form and conditions under which they shall be obtained and presented for a demand for legislative action upon any proposal thus submitted; and provision by law shall also be made whereby legislative acts may be submitted for review by the people by direct action at the polls exercising their powers herein and otherwise reserved.

Mr. Brown (rising to a question of personal privilege) said: I shall not touch on the pending matter, because my position has been made

clear as that of an honest doubter. That position was made clear in my remarks when the amendment was offered. Everybody knows where I stand, and if I had anything to say it would not affect my amendment, as I know full well it is going to be defeated. But I am speaking of the insinuation conveyed by the words "professed friend." I feel that I am one of the true friends of the initiative and referendum. [Applause.] It is twenty-seven years, Mr. President and members of the Convention, since I first went out into a humble political minority in this State and Nation and therefore to be abused, misrepresented, misreported and kicked about this Commonwealth. Even some of the members who now are sitting here, who were in authority when the initiative and referendum was first presented to the Legislature, would give it no tolerance. Why, then, should I at this time be any other than a friend, expressing friendship as I understand it?

When we were drawn into this controversy over the adoption of the I. and R. there was going through this Commonwealth a discussion of the initiative and referendum which was the direct initiative and referendum as it was defined originally; it was not an expression controlled but an uncontrolled one. There was later offered what is known as the Walker plan, and it was denounced at the time it was first offered as something limiting the I. and R., and therefore something that ought not to have been introduced. Thereby the measure was shortened down to what is now called the initiative and referendum. It then came in here, and there has since been an attempt on the part of the Boston American and others outside the Convention to dragoon anybody who had any opinions on the initiative and referendum who were in opposition when it was hands up or when it was hands down. [Applause.]

I voted, and I am proud of my vote, against the previous question now on. I thus voted because I believe in the rule of reason and not in the rule of might, especially when we have got a measure which, if we could not carry it through by virtue of reason, has not much value. And again I point out my idea that the beneficent measure of the I. and R. coupled with representative government is going to be attacked through this Commonwealth and possibly defeated because you did not allow at this proper time all the latitude for debate that ought to have been allowed.

I have seen this measure loaded, I have seen it loaded again and again, as if it had not enough to carry without these numerous details. The gentleman in the first division (Mr. Curtis) puts into it something that may help defeat it. It waves the red rag virtually at a time when it ought not to be raised and invites votes against it. Am I an alleged friend, or am I a devoted friend, or a true friend, if I do not raise my voice when I see the principle of the I. and R. being lost because of harlequin rags that are being put upon it? If I see it from that viewpoint going down in defeat, ought I not to raise my voice? I am raising it here. If I was in a labor convention to-day and I could have the judgment of my labor friends after they had heard me and those opposed to me, I should abide by the result, but when any others outside of the doors of this Convention, — some of them new friends, — undertake to say that I am a professed friend, and that I have offered a dangerous amendment, they have made it more dangerous for them by pointing it out as dangerous and that I offered it.

Now, sir, I have said my say. I have put myself here on record as a friend of the initiative by my votes and my previous explanation of why I offered it. I am afraid that the measure may be lost as it is now drawn, and that is the reason I have taken this position. I should expect that the principle would have an overwhelming majority in its favor. I should prefer this majority to having it possibly defeated by details of restriction. You cannot even amend some details after they get into the Constitution, and we are asked to accept that and to cement it into the Constitution. Thus we may tie our own hands. For all I know, as I read it, we may have lost valuable rights we now have by repealing Amendment XLII. Now go to it. I am ready to vote. [Applause.]

This amendment was rejected, by a call of the yeas and nays, by a vote of 113 to 149.

Mr. Robert P. Clapp of Lexington moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by the substitution of a new draft (see Document No. 371).

This amendment was rejected, by a vote of 71 to 111.

Mr. Arthur H. Lowe of Fitchburg moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by the substitution of a new draft (see Document No. 372).

Mr. Lowe asked unanimous consent to move to amend his amendment by adding thereto all amendments which have been adopted by the Convention. Objection was made.

The amendment was rejected, by a vote of 76 to 126.

Mr. Charles H. Morrill of Haverhill moved that the resolution recommended as a substitute by the committee on Form and Phraseology (No. 370) be amended by the substitution of a new draft (see Document No. 352).

This amendment was rejected, by a vote of 17 to 95.

The Convention adopted the amended form of draft submitted by the committee on Form and Phraseology, and it was referred back to that committee for further revision. Subsequently, the committee on Form and Phraseology reported the resolution with certain changes and it was passed to be engrossed, by a call of the yeas and nays, by a vote of 163 to 125, Tuesday, November 27.

On the following day it was voted to submit the resolution to the people in the following form (see Document No. 375).

RESOLUTION

To provide for establishing the Popular Initiative and Referendum, and the Legislative Initiative of Specific Amendments of the Constitution.

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

I. Definition.

Legislative power shall continue to be vested in the General Court; but the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection; and the popular referendum, which is the power of a specified number of voters to submit laws, enacted by the General Court, to the people for their ratification or rejection.

THE INITIATIVE.

II. Initiative Petitions.

Section 1. *Contents.* — An initiative petition shall set forth the full text of the constitutional amendment or law, hereinafter designated as the measure, which is proposed by the petition.

Section 2. *Excluded Matters.* — No measure that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the Commonwealth; or that makes a specific appropriation of money from the treasury of the Commonwealth, shall be proposed by an initiative petition; but if a law approved by the people is not repealed, the General Court shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect.

Neither the eighteenth amendment of the Constitution, as approved and ratified to take effect on the first day of October in the year nineteen hundred and eighteen, nor this provision for its protection, shall be the subject of an initiative amendment.

No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition: The right to receive compensation for private property appropriated to public use; the right of access to and protection in courts of justice; the right of trial by jury; protection from unreasonable search, unreasonable bail and the law martial; freedom of the press; freedom of speech; freedom of elections; and the right of peaceable assembly.

No part of the Constitution specifically excluding any matter from the operation of the popular initiative and referendum shall be the subject of an initiative petition; nor shall this section be the subject of such a petition.

The limitations on the legislative power of the General Court in the Constitution shall extend to the legislative power of the people as exercised hereunder.

Section 3. *Mode of Originating.* — Such petition shall first be signed by ten qualified voters of the Commonwealth and shall then be submitted to the Attorney-General, and if he shall certify that the measure is in proper form for submission to the people, and that it is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people within three years of the succeeding first Wednesday in December and that it contains only subjects not excluded from the popular initiative and which are related or which are mutually dependent, it may then be filed with the Secretary of the Commonwealth. The Secretary of the Commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed measure as such description will appear on the ballot together with the names and residences of the first ten signers. All initiative petitions with the first ten signatures attached, shall be filed with the Secretary

of the Commonwealth not earlier than the first Wednesday of the September before the assembling of the General Court into which they are to be introduced, and the remainder of the required signatures shall be filed not later than the first Wednesday of the following December.

SECTION 4. *Transmission to the General Court.* — If an initiative petition, signed by the required number of qualified voters, has been filed as aforesaid, the Secretary of the Commonwealth shall, upon the assembling of the General Court, transmit it to the clerk of the House of Representatives, and the proposed measure shall then be deemed to be introduced and pending.

III. LEGISLATIVE ACTION. GENERAL PROVISIONS.

SECTION 1. *Reference to Committee.* — If a measure is introduced into the General Court by initiative petition, it shall be referred to a committee thereof, and the petitioners and all parties in interest shall be heard, and the measure shall be considered and reported upon to the General Court with the committee's recommendations, and the reasons therefor, in writing. Majority and minority reports shall be signed by the members of said committee.

SECTION 2. *Legislative Substitutes.* — The General Court may, by resolution passed by yea and nay vote, either by the two Houses separately, or in the case of a constitutional amendment by a majority of those voting thereon in joint session in each of two years as hereinafter provided, submit to the people a substitute for any measure introduced by initiative petition, such substitute to be designated on the ballot as the legislative substitute for such an initiative measure and to be grouped with it as an alternative therefor.

IV. LEGISLATIVE ACTION ON PROPOSED CONSTITUTIONAL AMENDMENTS.

SECTION 1. *Definition.* — A proposal for amendment to the Constitution introduced into the General Court by initiative petition shall be designated an initiative amendment, and an amendment introduced by a member of either House shall be designated a legislative substitute or a legislative amendment.

SECTION 2. *Joint Session.* — If a proposal for a specific amendment of the Constitution is introduced into the General Court by initiative petition signed by not less than twenty-five thousand qualified voters, or if in case of a proposal for amendment introduced into the General Court by a member of either House, consideration thereof in joint session is called for by vote of either House, such proposal shall, not later than the second Wednesday in June, be laid before a joint session of the two Houses, at which the President of the Senate shall preside; and if the two Houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all amendments pending, the Governor shall call such joint session or continuance thereof.

SECTION 3. *Amendment of Proposed Amendments.* — A proposal for an amendment to the Constitution introduced by initiative petition shall be voted upon in the

form in which it was introduced, unless such amendment is amended by vote of three-fourths of the members voting thereon in joint session, which vote shall be taken by call of the yeas and nays if called for by any member.

SECTION 4. *Legislative Action.* — Final legislative action in the joint session upon any amendment shall be taken only by call of the yeas and nays, which shall be entered upon the journals of the two Houses; and an unfavorable vote at any stage preceding final action shall be verified by call of the yeas and nays, to be entered in like manner. At such joint session a legislative amendment receiving the affirmative votes of a majority of all the members elected, or an initiative amendment receiving the affirmative votes of not less than one-fourth of all the members elected, shall be referred to the next General Court.

SECTION 5. *Submission to the People.* — If in the next General Court a legislative amendment shall again be agreed to in joint session by a majority of all the members elected, or if an initiative amendment or a legislative substitute shall again receive the affirmative votes of at least one-fourth of all the members elected, such fact shall be certified by the clerk of such joint session to the Secretary of the Commonwealth, who shall submit the amendment to the people at the next State election. Such amendment shall become part of the Constitution if approved, in the case of a legislative amendment, by a majority of the voters voting thereon, or if approved, in the case of an initiative amendment or a legislative substitute, by voters equal in number to at least thirty per cent of the total number of ballots cast at such State election and also by a majority of the voters voting on such amendment.

V. LEGISLATIVE ACTION ON PROPOSED LAWS.

SECTION 1. *Legislative Procedure.* — If an initiative petition for a law is introduced into the General Court, signed by not less than twenty thousand qualified voters, a vote shall be taken by yeas and nays in both Houses before the first Wednesday of June upon the enactment of such law in the form in which it stands in such petition. If the General Court fails to enact such law before the first Wednesday of June, and if such petition is completed by filing with the Secretary of the Commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than five thousand signatures of qualified voters, in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of June aforesaid, then the Secretary of the Commonwealth shall submit such proposed law to the people at the next State election. If it shall be approved by voters equal in number to at least thirty per cent of the total number of ballots cast at such State election and also by a majority of the voters voting on such law, it shall become law, and shall take effect in thirty days after such State election or at such time after such election as may be provided in such law.

SECTION 2. *Amendment by Petitioners.* — If the General Court fails to pass a proposed law before the first

Wednesday of June, a majority of the first ten signers of the initiative petition therefor shall have the right, subject to certification by the Attorney-General filed as hereinafter provided, to amend the measure which is the subject of such petition. An amendment so made shall not invalidate any signature attached to the petition. If the measure so amended, signed by a majority of the first ten signers, is filed with the Secretary of the Commonwealth before the first Wednesday of the following July, together with a certificate signed by the Attorney-General to the effect that the amendment made by such proposers is in his opinion perfecting in its nature and does not materially change the substance of the measure, and if such petition is completed by filing with the Secretary of the Commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than five thousand signatures of qualified voters, in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of June aforesaid, then the Secretary of the Commonwealth shall submit the measure to the people in its amended form.

VI. Conflicting and Alternative Measures.

If in any judicial proceeding, provisions of constitutional amendments or of laws approved by the people at the same election are held to be in conflict, then the provisions contained in the measure that received the largest number of affirmative votes at such election shall govern.

A constitutional amendment approved at any election shall govern any law approved at the same election.

The General Court, by resolution passed as hereinbefore set forth, may provide for grouping and designating upon the ballot as conflicting measures or as alternative measures, only one of which is to be adopted, any two or more proposed constitutional amendments or laws which have been or may be passed or qualified for submission to the people at any one election: *provided*, that a proposed constitutional amendment and a proposed law shall not be so grouped, and that the ballot shall afford an opportunity to the voter to vote for each of the measures or for only one of the measures, as may be provided in said resolution, or against each of the measures so grouped as conflicting or as alternative. In case more than one of the measures so grouped shall receive the vote required for its approval as herein provided, only that one for which the largest affirmative vote was cast shall be deemed to be approved.

THE REFERENDUM.

I. When Statutes shall take Effect.

No law passed by the General Court shall take effect earlier than ninety days after it has become a law, excepting laws declared to be emergency laws and laws which may not be made the subject of a referendum petition, as herein provided.

II. Emergency Measures.

A law declared to be an emergency law shall contain a preamble setting forth the facts constituting the emergency, and shall contain the statement that such

law is necessary for the immediate preservation of the public peace, health, safety or convenience. A separate vote shall be taken on the preamble by call of the yeas and nays, which shall be recorded, and unless the preamble is adopted by two-thirds of the members of each House voting thereon, the law shall not be an emergency law; but if the Governor, at any time before the election at which it is to be submitted to the people on referendum, files with the Secretary of the Commonwealth a statement declaring that in his opinion the immediate preservation of the public peace, health, safety or convenience requires that such law should take effect forthwith and that it is an emergency law and setting forth the facts constituting the emergency, then such law, if not previously suspended as hereinafter provided, shall take effect without suspension, or if such law has been so suspended such suspension shall thereupon terminate and such law shall thereupon take effect: but no grant of any franchise or amendment thereof, or renewal or extension thereof for more than one year shall be declared to be an emergency law.

III. Referendum Petitions.

Section 1. *Contents.* — A referendum petition may ask for a referendum to the people upon any law enacted by the General Court which is not herein expressly excluded.

Section 2. *Excluded Matters.* — No law that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal or compensation of judges; or to the powers, creation or abolition of courts, or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the Commonwealth, or that appropriates money for the current or ordinary expenses of the Commonwealth or for any of its departments, boards, commissions or institutions shall be the subject of a referendum petition.

Section 3. *Mode of Petitioning for the Suspension of a Law and a Referendum thereon.* — A petition asking for a referendum on a law, and requesting that the operation of such law be suspended, shall first be signed by ten qualified voters and shall then be filed with the Secretary of the Commonwealth not later than thirty days after the law that is the subject of the petition has become law. The Secretary of the Commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed law as such description will appear on the ballot together with the names and residences of the first ten signers. If such petition is completed by filing with the Secretary of the Commonwealth not later than ninety days after the law which is the subject of the petition has become law the signatures of not less than fifteen thousand qualified voters of the Commonwealth, then the operation of such law shall be suspended, and the Secretary of the Commonwealth shall submit such law to the people at the next State election, if thirty days intervene between the date when such petition is filed with the Secretary of the Commonwealth and the date for holding such State election; if thirty days do not so intervene, then such law shall be submitted to the people at the next following State election, unless in

the meantime it shall have been repealed; and if it shall be approved by a majority of the qualified voters voting thereon, such law shall, subject to the provisions of the Constitution, take effect in thirty days after such election, or at such time after such election as may be provided in such law; if not so approved such law shall be null and void; but no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the total number of ballots cast at such State election.

SECTION 4. *Petitions for Referendum on an Emergency Law or a Law the Suspension of which is not asked for.* — A referendum petition may ask for the repeal of an emergency law or of a law which takes effect because the referendum petition does not contain a request for suspension, as aforesaid. Such petition shall first be signed by ten qualified voters of the Commonwealth, and shall then be filed with the Secretary of the Commonwealth not later than thirty days after the law which is the subject of the petition has become law. The Secretary of the Commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed law as such description will appear on the ballot together with the names and residences of the first ten signers. If such petition filed as aforesaid is completed by filing with the Secretary of the Commonwealth not later than ninety days after the law which is the subject of the petition has become law the signatures of not less than ten thousand qualified voters of the Commonwealth protesting against such law and asking for a referendum thereon, then the Secretary of the Commonwealth shall submit such law to the people at the next State election, if thirty days intervene between the date when such petition is filed with the Secretary of the Commonwealth and the date for holding such State election. If thirty days do not so intervene, then it shall be submitted to the people at the next following State election, unless in the meantime it shall have been repealed; and if it shall not be approved by a majority of the qualified voters voting thereon, it shall, at the expiration of thirty days after such election, be thereby repealed; but no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the total number of ballots cast at such State election.

GENERAL PROVISIONS.

I. IDENTIFICATION AND CERTIFICATION OF SIGNATURES.

Provision shall be made by law for the proper identification and certification of signatures to the petitions hereinbefore referred to, and for penalties for signing any such petition, or refusing to sign it, for money or other valuable consideration, and for the forgery of signatures thereto. Pending the passage of such legislation all provisions of law relating to the identification and certification of signatures to petitions for the nomination of candidates for State offices or to penalties for the forgery of such signatures shall apply to the signatures to the petitions herein referred to. The General Court may provide by law that no copartnership or corporation shall undertake for hire or reward to circulate petitions, may require individuals who circulate petitions for hire or reward to be licensed, and may make other reasonable

regulations to prevent abuses arising from the circulation of petitions for hire or reward.

II. Limitation on Signatures.

Not more than one-fourth of the certified signatures on any petition shall be those of registered voters of any one county.

III. Form of Ballot.

Each proposed amendment to the Constitution, and each law submitted to the people, shall be described on the ballots by a description to be determined by the Attorney-General, subject to such provision as may be made by law, and the Secretary of the Commonwealth shall give each question a number and cause such question, except as otherwise authorized herein, to be printed on the ballot in the following form: —

In the case of an amendment to the Constitution: Shall an amendment to the Constitution (here insert description, and state, in distinctive type, whether approved or disapproved by the General Court, and by what vote thereon) be approved?

YES.	
NO.	

In the case of a law: Shall a law (here insert description, and state, in distinctive type, whether approved or disapproved by the General Court, and by what vote thereon) be approved?

YES.	
NO.	

IV. Information for Voters.

The Secretary of the Commonwealth shall cause to be printed and sent to each registered voter in the Commonwealth the full text of every measure to be submitted to the people, together with a copy of the legislative committee's majority and minority reports, if there be such, with the names of the majority and minority members thereon, a statement of the votes of the General Court on the measure, and a description of the measure as such description will appear on the ballot; and shall, in such manner as may be provided by law, cause to be prepared and sent to the voters other information and arguments for and against the measure.

V. The Veto Power of the Governor.

The veto power of the Governor shall not extend to measures approved by the people.

VI. The General Court's Power of Repeal.

Subject to the veto power of the Governor and to the right of referendum by petition as herein provided, the General Court may amend or repeal a law approved by the people.

VII. Amendment declared to be Self-executing.

This article of amendment to the Constitution is self-executing, but legislation not inconsistent with anything herein contained may be enacted to facilitate the operation of its provisions.

VIII. Articles IX and XLII of Amendments of the Constitution annulled.

Article IX and Article XLII of the amendments of the Constitution are hereby annulled.

The final debate on the initiative and referendum was recorded on the last day of the session of 1917, Wednesday, November 28, in connection with the order reported by the committee on Rules and Procedure and the committee on Amendment and Codification of the Constitution, sitting jointly, who were requested (by a vote of the Convention at the preceding session) to report an order directing the manner in which the proposal for establishing the initiative and referendum shall be submitted to the people for their ratification and adoption at the State election in the year 1918.

This order was reported:

Ordered, That the following Article of Amendment of the Constitution of the Commonwealth, which has been made and adopted by this Convention, and which shall be numbered one, shall be submitted to the people for their ratification and adoption by printing the same upon the official ballots to be prepared and transmitted by the Secretary of the Commonwealth to all polling places established by law within the Commonwealth for the State election to be held on the fifth day of November next, at which said places all persons qualified to vote for State officers may give in their vote by ballot for or against said Article of Amendment in the following form, to wit:

"To vote on the following, mark a Cross X in the square at the right of Yes or No:

Shall the Article of Amendment relative to the establishment of the popular initiative and referendum and the legislative initiative of specific amendments of the Constitution, submitted by the Constitutional Convention, [A] be approved and ratified [B]?"

YES.	
NO.	

And ordered further, That the method prescribed by the provisions of chapter eight hundred and thirty-five, Acts, 1913, as amended by chapter one hundred and nine, General Acts, 1917, for the transmission, examination and tabulation of the returns of votes cast on any question submitted by statute, shall apply to the transmission, examination and tabulation of the returns of votes cast for and against such Article of Amendment. If such Article of Amendment shall appear to be approved by a majority of the qualified voters voting thereon, according to the votes returned, examined and tabulated, as herein provided, it shall be deemed and taken to be ratified and adopted by the people, and the same shall be enrolled on parchment and deposited in the Secretary's office, and shall become part of the Constitution of this Commonwealth.

And ordered further, That His Excellency the Governor shall thereupon cause public proclamation to be made, announcing that such Article of Amendment has been duly ratified and adopted by the people of the Commonwealth.

Mr. Charles L. Underhill of Somerville moved that the order be amended, at [A], by inserting the words "as follows"; and that the text of the initiative and referendum amendment be inserted at [B].

Mr. Underhill: I offer this amendment at this time in perfect sincerity, but of course, as every member of the Convention can readily see, with an object in view, — the object being that when this is submitted to the people they may have a demonstration of what they may expect in the future if they adopt the initiative and referendum. That is one reason. My other reasons are these:

One is that every person in the Commonwealth who is in favor of prohibition may realize that if we once vote for prohibition in this State we shall have it recurring every year on the ballot, just as sure as they pass the initiative and referendum. Another reason is that every labor man may see, as he reads the text of this resolution, that the courts, at which he was aiming when he first adopted the idea of the initiative and referendum, are exempt from its provisions. Another reason, sir, is that every Jew in this Commonwealth, who thinks he is protected by the exemption of religion, may know that in Switzerland, under the guise of a health law, a direct attack was made upon the Jewish religion. Another is that every business man and property owner, every man who has an equity in a home or a bank

deposit, may see for himself that the Bill of Rights is under the operation of the initiative and referendum, and that he may be deprived of the rights which he has enjoyed heretofore. Another is that every farmer and agriculturist in this State may realize that in the future his industry, his method of making a living, is debarred forever from assistance or aid from the Commonwealth of Massachusetts. Another is that those who, two years ago, voted against woman suffrage by 135,000 majority may realize that that question will come before them every year for adjudication.

I want the people of Massachusetts to know and to realize, when they vote on the initiative and referendum, just exactly what they are voting for; and no better way of informing the people can possibly be devised than to put the whole text of the initiative and referendum upon the ballot.

Mr. HART of Cambridge: This is the last, I trust, of the numerous unavailing attempts to take the teeth out of the initiative and referendum. This is the last opportunity which will be offered for any one to put a stumbling-block in the way of the people of Massachusetts in their approach to a discussion of this question. The proposition is that a measure thirteen and a half pages in length shall be printed upon the ballot next November. I suppose that in the history of the United States no document of that length has appeared on a ballot *in extenso*. That is not all. This Convention is to reassemble, and before the election of next November the work of the second session will be before the people. We shall be recommending a number of amendments, nobody knows how many, — ten, twenty, perhaps thirty. The reason for printing those amendments will be precisely as good as the reason for printing the amendment which is now before us. The real difficulty is that an amendment of this length printed upon a ballot does not aid the voter; it confuses him. And that, Mr. President, is the effect which the proposition of the gentleman from Somerville (Mr. Underhill) will bring about.

He offers it in good faith. He tells us frankly what he wants to do; he wants to prevent the adoption of the initiative and referendum by confronting the voters with the measure on the ballot. Is that necessary? They will be confronted with it otherwise. Does the gentleman from Somerville suppose that the people of Massachusetts in the next six or eight months will not be familiar with the text of this measure? It will be printed in the newspapers. It will be discussed. No measure for many years has had the approach to the voters that this measure will have.

The gentleman appeals to race prejudice. He appeals to all the people in Massachusetts who have favorite measures, and he says: "Your favorite measure will be voted down" or "it may be voted down." Let me tell the gentleman from Somerville that the purpose of this initiative and referendum measure is to give the people an opportunity of saying what they want. If they desire a measure which is not agreeable to me or to the gentleman from Somerville they have a right to have that measure presented for their consideration and votes. Under the new amendment they will enjoy a convenient method of bringing it to their attention. If they then vote for something to which I am opposed I will accept my defeat.

It seems to me that there is a terrible lot of poor losers in this Con-

vention. [Applause.] This question has been fairly fought out. By a majority of thirty-eight, by a majority of all the members elected to this Convention, we have agreed upon a measure which is now to be submitted for the people's determination. It must be submitted in a manner that is convenient to the voters. For us to decide at this time to print the text of this measure upon the ballot probably would mean that we were bound to put all other measures which we may approve upon the ballot.

We have set a precedent, Mr. President, which has been followed in the recent State election, the precedent of putting upon the ballot three measures which were so brief that they could conveniently be printed, and that is all that precedent amounts to. We have now adopted a measure which cannot be conveniently presented, and if the amendment of the gentleman from Somerville (Mr. Underhill) prevails, this Convention, after fairly voting the initiative and referendum, will then add a measure tending to confuse the issue, to tangle up the voter, and to prevent a fair and free ascertainment of the will of the people of Massachusetts upon this subject.

Mr. UNDERHILL: I should like to ask the gentleman if he supposes putting this question on the ballot would require any more space than the ballot sheets which the I. and R. has made necessary in California and Oregon.

Mr. HART: It requires space of a very different character. Everybody knows it. You print thirteen and a half pages upon a ballot; a man comes in and takes a ballot; he will not read those thirteen and a half pages. The gentleman from Somerville (Mr. Underhill) knows that just as well as I do. Whereas, if there are measures even as numerous as on this document, under the California initiative and referendum, in a State in which the initiative and referendum has rendered such great services to the people of that Commonwealth, a man will pick the measures in which he is interested. How can he pick a clause out of a bill which in his judgment, as a member of a particular religious body, might somehow be unfavorable to him? That is an ignoble motive to present to members of this Convention.

Mr. WALKER of Brookline: I am sure this Convention is not going to do the absurd thing of printing the entire initiative and referendum measure of fourteen pages on the ballot. I do not care to discuss it. I do wish to call attention to this order which has been offered here, because there are one or two slight changes which should be made in it, and which the chairman of the committee will explain to the Convention. I simply point that out, so that you may correct your copies of the measure now. In the first line the word "following" should be stricken out. In the second line, after the word "Commonwealth" these words should be inserted: "relative to the establishment of the popular initiative and referendum and the legislative initiative of specific amendments of the Constitution." Those words should go in after the word "Commonwealth." In the fifth line the word "same" should be stricken out and the words "following question" put in there. Now, that is the order as the committee intended it to be. Mr. President, I move these amendments. I trust the Convention will now vote.

Mr. MORIARTY of Boston: I want to say in reply to one of the last speakers who intimated that the labor movement comes here for the

purpose of the courts, that I deny that statement and say that the labor movement, the men who are affiliated with the labor movement, come here and are as vitally interested in every subject as any part of the men in this Commonwealth. I want to deny that we have come here for the ratification of anything for the courts. We have come here for one purpose. We have not carried it away. I want to deny that we come here for the specific purpose of getting at the courts, and nothing else. Some of the delegates at this Convention have got away with some things, — some statements on the floor in regard to the labor movement. I will say that the labor movement will be here next June. The delegates who take part in the Convention, trying to do better for the citizens of this Commonwealth as a whole, ought not to get up at the last minute of this Convention and throw stigma on any organization, as has been tried to be thrown here this morning.

Mr. Francis N. Balch of Boston moved that the order be amended by striking out, in line 17, the word "popular", and inserting in place thereof the word "an"; by inserting the word "system" after the word "referendum", in line 18; and by striking out all down to and including the word "Constitution", in line 19, so as to read: "Shall the article of amendment relative to the establishment of an initiative and referendum system submitted by the Constitutional Convention be approved and ratified?"

Mr. Balch: The sole purpose of this amendment, which sounded a little complicated as read, but which is really simplicity itself, is to get rid of the word "popular," and this I ask in the name of plain fair play. I should like to know where the fairness comes in of characterizing this measure, of saying to the people that we decide to call it "popular," any more than to call it "unpopular." Why is it fair to call it "popular" any more than to call it the "sane," or "fine," or "beautiful," or "desirable" initiative and referendum? I might just as well be allowed to call it bad names as the majority of this Convention be allowed to call it good names.

Now, Mr. President, of course I am aware that the committee in using that word did not intend it in that sense. They meant to be perfectly fair. They meant to use the word "popular" in its dry, technical sense; they meant it merely as contrasted with "legislative," — one implying action by the Legislature, the other action by the people. But the word will not be so understood; it will be understood and very properly understood, by most people as a word of praise.

In the next place, Mr. President, even taking the word in its technical sense, the sense in which it was meant, undoubtedly, — but will not be understood, equally undoubtedly, — it is unfair. This is not, even in the technical sense, a "popular" initiative. Now, I know that a majority is against me on that, I am perfectly aware of it, but they are bound in the name of fair play to give reasonable weight to the opinion of a very considerable minority of this Convention. For my part I think this initiative is more fairly characterized by calling it a "boodle" initiative, and many agree with me in that; but I should not dream, naturally, of suggesting that any such colorable word be inserted in describing it. I certainly absolutely deny that even in the technical sense, or any sense whatever, it could be called the "popular" initiative. It has been rigged now so that 98 per cent of the people

may be against the initiation of a measure and yet it can be forced to go on the ballot. In what sense, even technical, is that a *popular* initiative? I ask again, in the name of plain fair play and common honesty, that that colorable and improper adjective be stricken out in sending the measure to the people. Must the I. and R. go to the electorate with a lie in its mouth?

Mr. CHURCHILL of Amherst: I should like to say for myself, before the previous question is put, that if an initiative and referendum measure really can be "put over," if I may use the expression, through the influence upon the voters, upon the people, of the implication of one meaning of the word "popular"; if we are to assume that the voters of Massachusetts are going to be led into giving a majority for this measure merely through the suggestion that it is popular, — I for one should certainly "despair of the Republic." As an opponent of the I. and R., Mr. President, I cannot personally conceive that the possible ambiguity of the word "popular" is going to have any great effect upon the vote upon this amendment.

Now, we have a situation where this Convention has adopted a title; we have called this measure "the popular initiative and referendum." We have made the title. If we did not like the implication of the word "popular", and thought that was of any importance, we ought to have defeated it then, if we could. [Applause.] We have not done it. And it was suggested this morning that the extreme length of this amendment would defeat it, if it were printed in full on the ballot; and it was perfectly plain that members favored or opposed printing it in full for that reason. I want to say that for one, Mr. President, I do not propose to carry a contest upon such points as these into the contest upon the main question. [Applause.] It is too large and serious a question for us to make the people think that we are trying to carry the amendment, or defeat it, by juggling with small points.

Mr. UNDERHILL: I acknowledge to some degree the right of the gentleman in the third division (Mr. Churchill) to take the position which he takes in the matter, as I do not know that I agree with the gentleman in the first division (Mr. Balch) in endeavoring to change the text of the resolution at this time; but, sir, we are passing now, not upon the question of the initiative and referendum, but we are deciding in what form it shall go upon the ballot, and I submit that I should not be criticized for trying to place upon the ballot the very form in which the initiative and referendum has passed this body. It is not an endeavor to becloud or befog the issue. It is simply to put before the people the whole text of what they were voting on, and if that is not proper at this time then no discussion was proper throughout the whole consideration of this matter.

The amendments moved by Mr. Walker were adopted.

The amendments moved by Mr. Balch were rejected.

The amendments moved by Mr. Underhill were rejected, by a vote of 30 to 128.

The order, as amended, was adopted.

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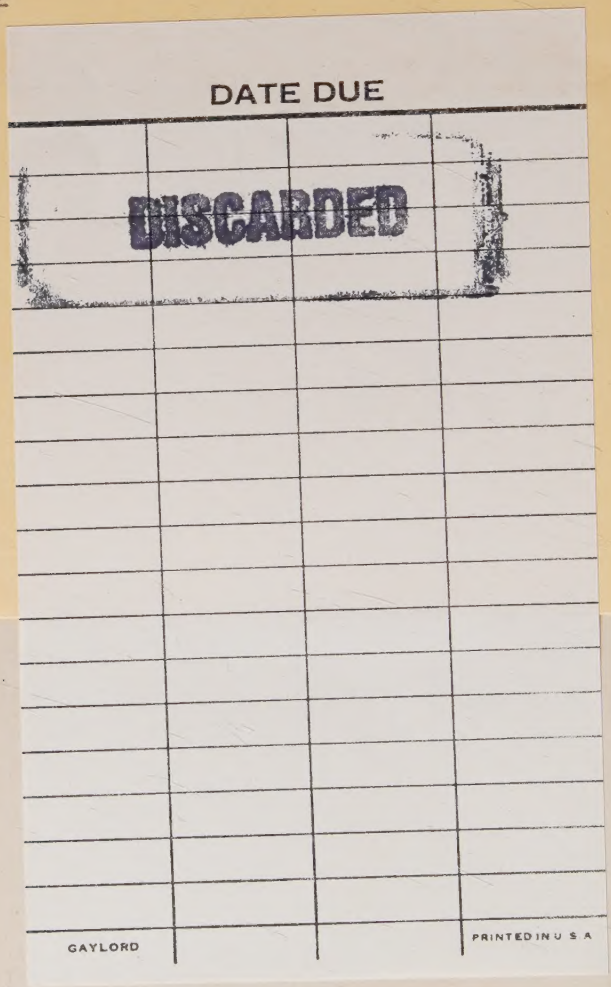
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